

1984 December 10

[A. LOIZOU, DEMETRIADIS, AND LORIS, JJ.]

GEORGHIOS ERACLEOUS,

*Appellant*

v.

THE POLICE,

*Respondents.*

(*Criminal Appeal No. 4566*).

*Criminal Law—Sentence—Common assault—Public insult and threatening violence—Six weeks' imprisonment suspended for three years and a total of £50 fine—Neither manifestly excessive nor wrong in principle.*

- 5 *Criminal Law—Sentence—Combining a fine with a suspended sentence of imprisonment—Not contrary to law—But fine should be within the means of the sentenced person.*

10 The appellant pleaded guilty to the offences of common assault, public insult, threatening violence, and disturbance and was sentenced to six weeks' imprisonment on the first count, one week's imprisonment on the second, six week's imprisonment on the third and no sentence was passed on the fourth count. These sentences were ordered to run concurrently and suspended for a period of three years under Law 95/72.

15 Appellant was further, sentenced to a total fine of £50. He was a first offender, married with six children aged between 8 to 20. He was an invalid and his earnings were stated by his counsel at the trial to be £80 per month.

*Upon appeal against sentence:*

20 *Held* (1) that the sentence imposed on the appellant is neither manifestly excessive nor wrong in principle.

(2) That combining a fine with a suspended sentence of imprisonment is not contrary to law; that care, however, should be taken by trial Judges adopting this course that the fine should

be within the means of the sentenced person, so that it will not defeat the purpose aimed at by the Judge, when he came to the conclusion bearing in mind the circumstances of the case, that it was desirable to afford the sentenced person an opportunity to avoid serving a term of imprisonment.

5

*Appeal dismissed.*

Cases referred to:

*Marcos and Others v. Police* (1975) 2 C.L.R. 171;

*R. v. King* [1970] 2 All E.R. 249.

**Appeal against conviction and sentence.**

10

Appeal against conviction and sentence by Georghios Eracleous who was convicted on the 7th August, 1984 at the District Court of Nicosia (Criminal Case No. 22686/83) on one count of the offence of common assault contrary to section 242 of the Criminal Code, Cap. 154, on one count of the offence of public insult contrary to section 99 of the Criminal Code, Cap. 154, on one count of the offence of threatening violence contrary to section 91(c) of the Criminal Code, Cap. 154 and on one count of the offence of disturbance contrary to section 95 of the Criminal Code, Cap. 154 and was sentenced by Kronides, S.D.J. to six weeks' imprisonment on the first count, one week's imprisonment on the second count and to six weeks' imprisonment on the third count with no sentence passed on the fourth count, the sentences to run concurrently; he was further ordered to pay a total fine of £50.-.

15

20

25

Appellant appeared in person.

A.M. *Angelides*, Senior Counsel of the Republic, for the Respondents.

A. LOIZOU J. gave the following judgment of the Court. The appellant having been found guilty of the offences of common assault, contrary to section 242, public insult, contrary to section 99, threatening violence, contrary to section 91(c), and disturbance, contrary to section 95 of the Criminal Code, was sentenced to six weeks' imprisonment on the first count, one week's imprisonment on the second count, and six weeks' imprisonment on the third count. No sentence was passed on the fourth count as it emanated, as it was said by the learned

30

35

trial Judge, from the same facts that constituted the offences in the other three counts. These sentences were ordered to run concurrently, and suspended for a period of three years under the provisions of the Sentence of Imprisonment (Conditional Suspension in Certain Cases) Law, 1972 (Law No. 95 of 1972). The appellant was further fined C£20.- on the first  
5 of 1972). The appellant was further fined C£20.- on the first count, C£10.- on the second and C£20.- on the third one.

The appellant appealed against both his conviction and sentence but in arguing his case before us, he abandoned the appeal  
10 against conviction and pursued only his complaint against the sentence imposed on him.

The facts of the case as appearing in the judgment of the Court are as follows:-

On the 6th November, 1983, the complainant who is a practising lawyer of Nicosia, was with his wife and young son  
15 visiting his native village Platanistassa in order to attend the engagement of a friend that was taking place there. At about 4.30 p.m. he decided to return to Nicosia. He proceeded with his wife by car to "Achilleas" Club looking for their young son.  
20 The wife of the complainant alighted from the car and looked for their son but as the latter was not there she returned to the car. At that time the appellant was coming together with another person from the opposite direction and started shouting and insulting the complainant with very nasty words which  
25 need not be repeated here. He approached the car continuing the insults and with his hands started pushing the car by holding it from the half-opened window. Prompted by his wife, the complainant started the car and left the scene of the incident. They went towards the outskirts of the village but as they did  
30 not find their son they returned still in search of him.

When passing by the place that the first incident had occurred, the complainant noticed that the appellant had thrown something at his car. He stopped, descended from it and said to the appellant: "What do you want, are you a man to insult  
35 me". The appellant immediately started assaulting the complainant and hit him with his hands. The complainant put his hands in front of his face in order to protect himself and retreated and got in his car. The complainant's wife who was shocked by the incident she witnessed told the appellant: "What are

these things you are doing?" And the appellant said: "Tell him not to come to the village because I shall shoot him".

The appellant is a first offender, married with six children aged between 8 to 20. Two of them are serving in the National Guard, two are attending a secondary school and two the Elementary School. He is an invalid since 1966 as a result of an accident which occurred when he was himself a soldier and his earnings were stated by his counsel at the trial to be C£80.- per month.

On the totality of the circumstances before us, we have come to the conclusion that the sentence imposed on the appellant is neither manifestly excessive nor wrong in principle. The conduct of the appellant amounted in effect to bullying the complainant in circumstances that cannot be tolerated by the Courts and are abhorrent to our Society.

As regards the question whether a suspended sentence of imprisonment could be combined with a fine, we have no doubt that such a course is open to Courts. In the case of *Mavros and Others v. The Police* (1975) 2 C.L.R. p. 171, it seemed to this Court there was no obstacle to combining a suspended sentence with a fine, though the matter did not arise for determination in that case. It referred, however, in support of that, to the case of *R. v. King* [1970] 2 All E.R. 249, where it was held that there is nothing in principle to prevent a Court when imposing a suspended sentence from imposing a fine also which adds a sting to what might otherwise be thought by the convicted person to be a "let-off", but in imposing such a fine special care should be taken to see that it is well within the convicted person's means to pay, otherwise if a fine is given which results in imprisonment then the danger foreseen by the trial Judge might well arise.

We respectfully endorse and adopt fully this approach. We have no difficulty in holding that combining a fine with a suspended sentence of imprisonment is not contrary to law. Care, however, should be taken by trial Judges adopting this course that the fine should be within the means of the sentenced person, so that it will not defeat the purpose aimed at by the Judge, when he came to the conclusion bearing in mind the

circumstances of the case, that it was desirable to afford the sentenced person an opportunity to avoid serving a term of imprisonment.

For all the above reasons this appeal is dismissed.

5

*Appeal dismissed.*