

1984 December 11

[A. LOIZOU, DEMETRIADES, LORIS, JJ.]

POLIS K. MICHAELIDES,

Appellant.

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No. 4581*)

*Criminal Law—Sentence—Forgery and uttering a forged document—
Systematic forging of postal drafts—Mental state of offender
—Though a material mitigating factor, sentence of two years’
imprisonment not manifestly excessive—Principles on which
Court of appeal interferes with a sentence imposed by a trial
Court.*

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The appellant pleaded guilty to the offences of forgery and of uttering a false document and was sentenced to two years’ imprisonment on each count to run concurrently. According to the particulars of the offences he did forge a postal draft issued by the Ministry of Labour and Social Insurance to one Theodora Charalambous for the sum of C£47.660 mils; and knowingly and fraudulently uttered the said forged postal draft. At his trial eleven other cases, in respect of outstanding offences relating to forging of postal drafts belonging to various recipients from the Social Insurance Fund, were taken into consideration in passing sentence. The appellant was aged 45 and with reduced sense of responsibility. He had many psychosomatic problems and as a result he faced financial and family problems.

20 *Upon appeal against sentence:*

Held, that though the mental state of an offender at the time of the commission of an offence is a material mitigating factor the sentence imposed was obviously lenient one, if one bears

in mind that the appellant acted in a systematic manner for over a year and that the maximum sentence provided by law for both offences is imprisonment for life; and that, therefore, the sentence imposed by the Assize Court could not be considered as manifestly excessive or that the mental state of the appellant was not given the proper weight by it; and that, accordingly, the appeal must be dismissed. 5

Held, further, that it would be wrong to assume that in cases like the present one there is room for this Court to say that whatever the sentence imposed on an accused person who is mentally affected should be further reduced; that this Court has to look at the totality of the circumstances and see, irrespective of whatever its own attitude would have been had it been sitting as a trial Court, if the sentence imposed comes within the appropriate boundaries of not being manifestly excessive or manifestly inadequate and if it does not exceed those limits, it should not and will not interfere. 10 15

Appeal dismissed.

Appeal against sentence.

Appeal against sentence by Polis K. Michaelides who was convicted on the 8th October, 1984 at the Assize Court of Limassol (Criminal Case No. 14741/84) on one count of the offence of forgery contrary to sections 331, 333(d)(i) and 336 of the Criminal Code, Cap. 154 and on one count of the offence of uttering a false document contrary to sections 339 and 336 of the Criminal Code, Cap. 154 and was sentenced by Hadji-tsangaris, P.D.C., Artemis, S.D.J. and Stavrinides, D.J. to concurrent terms of imprisonment of two years on each count. 20 25

St. Kittis, for the appellant.

A.M. Angelides, Senior Counsel of the Republic, for the respondents. 30

A. LOIZOU J. gave the following judgment of the Court. The appellant was sentenced to two years' imprisonment on two counts:

- (1) Of forgery, contrary to sections 331, 333(d)(i) and 336 of the Criminal Code, and 35

- (2) Uttering a false document, contrary to sections 339 and 336 of the Criminal Code.

The particulars of the offences as regards the first count were that the accused between the 25th July, 1983 and the 1st of August, 1983, at Pelendri, in the District of Limassol, with intent to deceive did forge a postal draft No. E. 87335, issued by the Ministry of Labour and Social Insurance to one Theodora Charalambous for the sum of C£47.660 mils by signing in the name of the said Theodora Charalambous without her authority and as regards the second count that he did knowingly and fraudulently utter the said forged postal draft.

The appellant who was represented by counsel at his trial, pleaded guilty to these two offences that carry a maximum term of imprisonment for life and asked eleven other cases, containing outstanding offences of forgery of postal drafts, which he admitted to have committed, to be taken into consideration by the Assize Court in passing sentence upon him on the offence in respect of which he had pleaded guilty.

The postal drafts in question belonged to various recipients from the Social Insurance Fund and with the exception of two which belonged to the same person, all of them belonged to different ones and their forgery spread over a period of about a year. There had been obviously in his conduct a system of operation and systematic disregard of the law.

The appellant, a resident of Pelentri village, is 45 years of age, married with three children. His employment at Amiantos mines was terminated and he had been unemployed for the last two years. He was somehow keeping himself busy at the Cafeteria of his brother in Limassol. Before his present marriage he was engaged to be married in 1967 when he had a motorcar accident as a result of which he was slightly injured but a fortnight later signs of indisposition and melancholy were observed. He was treated by a psychiatrist but on account of his condition his fiancée left him. He then got employment as a messenger with a Bank and in 1970 he was involved in another accident whilst riding a motorcycle. As a result thereof he suffered a fracture of the right femur and there followed a severe and protracted mental illness, which had left him with a physical incapacity which in conjunction with his intellectual

state and his personality handicaps had been interfering with his capacity to work and provide adequately for his family. This state of affairs, according to Dr. Kyriakides, a specialist psychiatrist, has created in him an abnormal psychological state with feelings of bitterness and dejection. 5

The Assize Court had before it a social investigation report regarding the personal circumstances of the appellant as well as the medical report of Dr. Kyriakides, regarding his mental state and which after stating his condition concludes by saying that "it becomes quite apparent from the aforesaid that Mr. Michaelides is in need of moral support and of a persistent and friendly prompting in the framework of an understanding society to adjust himself to the realities surrounding his personal and family life and to face them in a healthy and socially accepted way". 10 15

The Assize Court from the aforesaid material concluded that the appellant was a person with reduced sense of responsibility and who had many psychosomatic problems and as a result he faced financial and family problems.

In passing sentence the Assize Court stressed that it took into consideration the personal circumstances of the appellant, his immediate admission to the offence, his co-operation with the Police for the investigation of all the offences but at the same time indicated that it could not ignore the seriousness of the offence and the consequences which his actions had on the victims of his crime. 20 25

Indeed his victims appeared to be poor people, some of them old pensioners, apparently in need of the pensions which they were receiving and to which they were entitled having been contributors to the Social Insurance Scheme over a life time. 30

Learned counsel for the appellant stressed to the Court that his whole case for alleging that the sentence imposed on his client was manifestly excessive turned on the mental state of the appellant, which though mentioned by the Assize Court to have been taken into consideration, was not given the proper weight and was not duly taken into consideration. 35

It is true that the mental state of an accused person at the time of the commission of an offence is a material mitigating

factor and this appears to have been duly born in mind by the Assize Court. The sentence imposed was obviously a lenient one, if one bears in mind that the appellant acted in a systematic manner for over a year and that the maximum sentence provided
5 by law for both offences is imprisonment for life. In fact, we would have expected a much longer term of imprisonment for a normal offender.

We have no hesitation in concluding that the sentence imposed, by the Assize Court could not be considered as manifestly
10 excessive or that the mental state of the appellant was not given the proper weight by it. It would be wrong to assume that in cases like the present one there is room for this Court to say that whatever the sentence imposed on an accused person who is mentally affected should be further reduced. This Court
15 has to look at the totality of the circumstances and see, irrespective of whatever its own attitude would have been had it been sitting as a trial Court, if the sentence imposed comes within the appropriate boundaries of not being manifestly excessive or manifestly inadequate and if it does not exceed
20 those limits, it should not and will not interfere.

For all the above reasons the appeal is dismissed.

Appeal dismissed.