

1985 July 31

[TRIANTAFYLIDIS, P., LORIS, AND KOURRIS, JJ.]
ROGIROS STELIOU PATATINIS,

Appellant.

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4648).

Criminal Law—Sentence—Six months' imprisonment for causing grievous harm contrary to section 231 of Criminal Code—In the circumstances manifestly excessive.

The appellant, a 32 year old Civil Engineer, pleaded guilty on two separate counts for (I) unlawfully causing grievous harm to one Y.M. contrary to section 231 of the Criminal Code Cap. 154 and (II) assaulting and causing actual bodily harm to the wife of Y.M. contrary to section 243 of the Criminal Code Cap. 154.

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On 18.9.1984 at about 22.15 hours the appellant, whilst driving his car from a side road into the main road at Potamos tis Yermasoyias village, realised that a saloon car driven behind him was repeatedly flashing its headlights obviously with a view to overtaking appellant's car. The appellant drove his car to the left and gave way to the said car. The driver of the latter, Y. M. complainant in count 1, whilst overtaking the car of the appellant, was gesticulating with his hands in a manner indicating insulting conduct towards the appellant.

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The appellant followed the said complainant's car and, when the latter stopped in order to get his wife, the appellant alighted from his car, rushed and punched the said complainant on the face; the wife of the said complainant (complainant in count II) in her effort to release her husband from the grasp of the appellant received a kick from the appellant on her left leg. The injuries sustained by each complainant are described in the judgment.

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nakis Onoufriou Mouskis contrary to s. 231 of the Criminal Code Cap. 154 and (II) assaulting and causing actual bodily harm to the wife of the complainant in count 1 contrary to s. 243 of the Criminal Code Cap. 154.

The salient facts of this case are very briefly as follows:- 5

On 18.9.84 at about 22.15 hours, the appellant, a 32 year old civil engineer, was driving his saloon car from a side road into the main road at Potamos tis Yermasoyias village; the main road, which is within the tourist area of Limassol, is double laned. The appellant on entering the main road was obliged to proceed to the second lane of the main road, to the right, as the driver of an unknown car in front of him was manoeuvring his car with a view to parking same on the left lane. Whilst so proceeding slowly on the second lane, the appellant realized that a saloon car driven behind him was repeatedly flashing its head lights, obviously with a view to overtaking appellant's car. The appellant drove his car in the first lane, i.e. to his left and gave way to the car flashing its lights behind him—driven at the time by complainant in count I. 10 15 20

It was the allegation of the appellant in the Court below—an allegation which was accepted by the trial Judge—that complainant in count I whilst overtaking the car of the appellant was gesticulating with his hands in a manner indicating insulting conduct towards the appellant. 25

The appellant driving his car followed the car of the complainant in count I and when the latter stopped at some distance outside "Asteria" Hotel in order to get his wife (complainant in count 2), who was working in the aforesaid hotel, the appellant stopped his car behind the car of complainant in count 1, alighted therefrom and shouting in an aggressive way, obviously irritated by the conduct of the complainant, rushed and punched the complainant on the face; the wife of the complainant (complainant in count II) in her effort to release her husband from the grasp of the appellant received a kick from the appellant on her left leg. 30 35

As a result of the aforesaid assault of the appellant, complainant in count 1 suffered haemaetomas near the left eye and on the upper lip and the medical examination fur- 40

ther revealed a fracture of the scapoid bone of the left hand, which had to be immobilized in plaster; as we were told, the fracture in question was not caused by a direct hit, but was obviously the result of complainant's fall on the ground after receiving the punch from the appellant.

His wife, complainant in count II, suffered a scratch accompanied by an ecchymosis on the left leg as a result of the assault by the appellant.

The appellant, who is 32 years old, married with one minor, is a first offender, he is a civil engineer and we were told that he has certain undertakings abroad in connection with his profession, which he will be unable to meet if he is to serve the whole term of six months' imprisonment imposed on him on 30.5.1985.

Having weighed all relevant considerations, we feel that the sentence of six months' imprisonment is manifestly excessive and needs our intervention. Certainly aggressive behaviour of this nature should not be tolerated by the Courts and a custodial sentence was clearly required. But on the other hand, the appellant is a first offender and he is certainly not a person who appears to be in need of reform through imprisonment.

As stated by the President of this Court in the case of *Fasouliotis v. The Police*, (1979) 2 C.L.R. 180, at p. 187, though a custodial sentence was duly justified in the present case "a shorter sentence of imprisonment would serve sufficiently its main purpose of deterring the appellant and others like him, from resorting to conduct such as the one in respect of which he has been sent to prison".

In the circumstances, a term of 2 months' imprisonment on count 1 and 2 months' imprisonment on count II to run concurrently as from the date of sentence, i.e. the 30th May, 1985, would be the appropriate sentence.

The present appeal is, therefore, allowed accordingly.

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Appeal allowed.