

1985 March 20

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

HANZAL MAHMOUD BRAIDI AND ANOTHER,

*Appellants,*

v.

THE REPUBLIC,

*Respondent.*

*(Criminal Appeal No. 4562).*

---

*Sentence—Four years' imprisonment for possessing 39.404 grams of cannabis resin with intent to supply them to others contrary to ss. 2, 3, 6(1)(3), 26, 30, 31 and 38 of the Narcotic Drugs and Psychotropic Substances Law 29/1977 as amended by law 67/83—Emphasis on deterrence*  
5 *—Confession upon arrest and revelation to the Police of name of accomplices as mitigating factors—Weight to be given to such factors.*

10 On the 21.6.1984, at the Larnaca port upon customs routine check of the baggage of the appellant, a Lebanese national, who had arrived by sea from Lebanon, there was discovered hidden in eight picture-frames, which he carried into two suitcases, a quantity of cannabis resin.  
15 There were discovered in that port another two suitcases with eight more picture frames where the rest of the quantity of cannabis resin was found. Their owner, however, was not traced at that moment.

20 The appellant confessed his crime to the Police, revealed to them the name of his associate, the owner of the other two suitcases, who was arrested the following day when trying to leave the country, and he further disclosed the names of a number of other persons involved in the trade of narcotics in other countries.

25 The Assize Court sentenced the appellant to four years' imprisonment on the second count. It imposed no sentence on the first count.

*Held, dismissing the appeal:*

(1) Accused persons should be encouraged to help the Police to discover their accomplices. They can be so encouraged by relatively less severe than otherwise sentences. Also admission of a crime upon arrest is a mitigating factor. The weight to be given to such confessions and co-operation with the police depends on the stage at which same is made, the existence of other evidence in the hands of the police supporting the charge and generally the real motive behind such a confession. If a person is arrested red handed his confession is of less importance than the confession of a person who could avoid punishment. In the present case, however, there exists the other element, namely the disclosure of accomplices.

(2) The Court cannot lose sight of the fact that the maximum sentence provided by law is 14 years' imprisonment. The quantity of cannabis resin which the appellant and his accomplice intended to supply to others was 39.404 grams. The emphasis for such an offence is deterrence. The sentence is neither so excessive nor wrong in principle as to justify interference by this Court.

*Appeal dismissed.*

**Cases referred to:**

*El-Etri and Others v. The Republic* (1985) 2 C.L.R. 40;

*Wheeler v. The Police*, 1964 C.L.R. 83;

*Vouniotis v. The Republic* (1971) 2 C.L.R. 203;

*Loizou v. The Republic* (1971) 2 C.L.R. 193.

**Appeal against sentence.**

Appeal against sentence by Hanzal Mahmoud Braidı who was convicted on the 6th July, 1985 at the Assize Court of Larnaca (Criminal Case No. 6699/84) on one count of the offence of unlawfully possessing controlled drugs contrary to sections 2, 3, 6(1)(2), 26, 30, 31 and 38 of the Narcotic Drugs and Psychotropic Substances Law, 1977 (Law No. 29/77) and on one count of the offence of unlawfully possessing controlled drugs with intent to supply them to others contrary to sections 2, 3, 6(1)(3),

26, 30, 31 and 38 of the above laws and was sentenced by Papadopoulos, P.D.C., Constantinides, S.D.J. and Arestis, D.J. to four years' imprisonment on the second count with no sentence being passed on the first count.

5 *G. A. Georghiou*, for the appellant.

*R. Gavrielides*, Senior Counsel of the Republic, for the respondent.

A. LOIZOU J. gave the following judgment of the Court. This is one more instance of a Lebanese national who has  
10 been found guilty on his own plea of unlawfully possessing controlled drugs, namely 39.404 grams of cannabis resin without a permit from the Minister of Health and for possessing the same narcotics with intent to supply them to others, contrary to the provisions of the Narcotic Drugs  
15 and Phychotropic Substances Law, 1977 as amended by Law No. 67 of 1983.

On the 21st June, 1984, at the Larnaca Port upon Customs routine check of the baggage of the appellant who had arrived by sea from Lebanon there was discovered  
20 hidden in eight picture-frames which he carried into two suitcases a quantity of cannabis resin. He was arrested and there were discovered in that Port another two suitcases similar to the first two, with eight more picture-frames where the rest of the quantity of cannabis resin was found.  
25 Their owner, however, was not traced at that moment.

The appellant helped the Police with their inquiries, made a clean breast of all that he knew in connection with the supply and transportation of these narcotics and revealed the name of the associate, the owner of the two  
30 unclaimed suitcases found at the port, who was on the strength of a judicial warrant arrested the following day at Larnaca airport when trying to leave the country. Furthermore the appellant in his statement to the Police disclosed the names of a number of persons involved in the  
35 trade of narcotics in other countries.

The Assize Court of Larnaca after taking into consideration all relevant facts, both in connection with the offence and the offender and after paying due regard to the

appellant's confession and cooperation with the Police, as well as the disadvantages that a foreinger may face in serving a prison sentence, sentenced the appellant to four years' imprisonment on the second count. It imposed no sentence on the first count. It was considered, and rightly so as being contained in the second, more serious count.

Counsel for the appellant has argued in this appeal against sentence that same is manifestly excessive in view of his client's prompt confession to the Police and the disclosures he made as a result of which the other person, ex-accused 2 was arrested and brought to justice.

It is true that in the Case Law of this Court—*Wheeler v. The Police*, 1964 C.L.R. 83; *Vouniotis v. The Republic* (1971) 2 C.L.R. 203; *Loizou v. The Republic* (1971) 2 C.L.R. 193—it has been recognized that accused persons should be encouraged to help the Police to discover their accomplices and that they can be so encouraged by relatively less severe than otherwise sentences. Also that admission of the crime upon arrest is a valid reason for mitigation as indicative that the person involved by his genuine repentance condemns his own criminal conduct which is a healthy attitude that may make its repetition unlikely.

It has, however, to be pointed out that the weight to be attached to such confessions and cooperation of an accused person with the Police depends on the stage at which same is made the existence of other evidence in the hands of the Police supporting the charge and generally the real motives behind such a confession. Undoubtedly more weight will be given to a confession made through genuine remorse than a delayed confession intended to improve the position of the culprit. In the case where a person is arrested red-handed, his confession has less importance than the instance of the person who could avoid punishment and yet he confesses to his crime. In the present case, however, there exists the other element in favour of the appellant that of his disclosure of accomplices, both within the jurisdiction of the Court which led to the successful prosecution of ex-accused 2 and of persons outside the jurisdiction of the Court who are engaged in this trade of death.

5 We have paid due regard to the totality of the circumstances of the case and of all relevant factors disclosed by the exposition of the facts, both by the prosecution and the defence as well as those found in the social investigation report that was made available to the Assize Court. We cannot, however, lose sight of the fact that the maximum sentence provided by the relevant legislative provisions is fourteen years' imprisonment. The quantity which the appellant and his collaborator intended to supply to others  
10 was 39.404 grams and we have come to the conclusion that the sentence imposed by the Assize Court complained of in this appeal as being manifestly excessive is neither so excessive nor wrong in principle as to justify interference of this Court on appeal.

15 We have just dealt with the principles governing the question of the appropriate sentence that should be meted out, in the judgment delivered in *Ahmat Ali El-Etri and others v. The Republic*, Criminal Appeals No. 4582-4584\* and we need not repeat them here. The emphasis for such  
20 offences is deterrence.

For all the above reasons this appeal is dismissed.

*Appeal dismissed.*

---

\* Reported in (1985) 2 C.L.R. 40.