

1987 December 17

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

BILAL ALI AHMED AND ANOTHER,

*Appellant,*

v.

THE REPUBLIC,

*Respondents.*

*(Criminal Appeals Nos. 4917, 4918).*

5 *Sentence — Shop-breaking and stealing, contrary to section 294(a) of Criminal Code, Cap. 154 — Stolen property valued at £11,000 recovered — Appellant, an alien, 19 years' old on a short visit to Cyprus prayed for leniency on account of his family circumstances and financial condition — Three years' imprisonment — Not manifestly excessive — Observations as to what should be the attitude of the Courts in relation to offences of this nature.*

10 The appellant, an alien 19 years' old, who came for a short visit to Cyprus pleaded guilty to a count for the aforesaid offence. The value of the goods stolen from the shop in question was £11,000.- The stolen property was finally recovered.

This appeal is directed against the aforesaid sentence. The appellant prayed for leniency on account of his family circumstances and in particular the financial condition of his two younger minor brothers and his old mother of which he is their only supporter.

15 Held, *dismissing the appeal*: The sentence imposed is not manifestly excessive. The Courts should consider such offences as being very serious indeed as of their nature and in particular their commission by persons who arrive for a short stay and depart as soon as they achieve their criminal targets, it is almost impossible for the Police to detect and recover the stolen property.

20 *Appeals dismissed.*

**Appeals against sentence.**

25 Appeals against sentence by Bilal Ali Ahmed and Another who were convicted on the 6th October, 1987 at the Assize Court of Lamaca (Criminal Case No. 8166/87) on two counts of the offence of shop breaking and stealing contrary to section 294(a) of the Criminal Code, Cap. 154 and were sentenced by Nikitas,

P.D.C., Laoutas, S.D.J. and G. Nicolaou, D.J. to three years' imprisonment each on the first count and accused 1 was further sentenced to one year's imprisonment on count 2 to run concurrently.

Appellant appeared in person. 5

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

A. LOIZOU J. gave the following judgment of the Court. The appellant who is nineteen years of age comes from Iraq. He arrived at Larnaca Airport together with his brother Jelal Ali Ahmed Khalil on the 5th August 1987 and stayed in Tsokos Hotel Apartments, intending to leave Cyprus on the 14th of that month. 10

On the night of the 6th August at about 10:30 p.m. the complainant, who is a gold-smith and has a shop in Zenon Kitieos Street at Larnaca, having closed earlier that evening his shop, went back in order to switch off the lights of the shop after collecting all the jewellery and other precious merchandise that he was exhibiting therein and storing them in a special safe. The shop in question has two entrances. The one on Zenon Kitieos Street, and the other at the rear which opens into a car-park. This rear door is of the ordinary type made of aluminium frame and glass-pane, and was locked with the usual lock. Inside this door however, there was an iron door which was closed and secured by means of two padlocks. When the complainant arrived there he noticed that the lights of the shop had been switched off, the rear doors of the shop had been broken into and most of the jewellery exhibited in his shop stolen. Among the items stolen there was also a diver's wrist watch of «Casio» make. 15  
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The case was reported to the Police and as a result of its prompt action and the cooperation of ordinary citizens, the case was detected and all stolen items recovered. What had happened was that prosecution witness A. Perdakis noticed in the garden of his shop in Valdaserides street a sack hidden in a bush. The Police was called and it was ascertained that the sack contained a pair of gloves and shop-breaking tools, i.e. a lever, a screw-driver and two cutters ultimately identified as those used by the culprits for breaking into the shop of the complainant. The Police located the shop which sold these tools and obtained useful information. On the 13th August a police patrol in the area where the sack had 30  
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been found saw the appellant and his brother. The appellant had on his wrist a «Casio» watch, whilst his brother Jelal Ali had a recent wound on his hand. It may be noted here that at the scene of the crime by the rear door there were blood stains. The Police  
5 patrol linked the wound on that man's hand to the blood stains found at the scene.

Upon a search being carried out later that day, on the strength of a judicial warrant, of the apartment where the appellant and his brother were staying, the Police found a great part of the stolen  
10 items packed in several bags. Ultimately, the appellant and his brother confessed to the crime and disclosed to the Police that the rest of the stolen articles had been hidden in the tank of a kerosene stove.

Both were prosecuted before the Lamaca Assize Court and  
15 both pleaded guilty to a count of shop-breaking and stealing, contrary to section 294(a) of the Criminal Code, Cap. 154. The items stolen as described in a schedule attached to the Information were sixty-two pieces of jewellery, three lighters of Win Bugattin make and one «Casio» wrist watch. They were of a total value of  
20 eleven-thousand pounds.

Jelal Ali also pleaded guilty to a second count of shop-breaking and stealing from another shop the sum of £40 and a box containing one vase and six glasses of a total value of six pounds and ninety-five cents.

25 The appellant and his brother were sentenced to three years' imprisonment on the first count each and Jelal Ali to one year's imprisonment on the second count, sentences to run concurrently.

30 As against these sentences, both accused appealed to this Court but the appeal of Jelal Ali was dismissed as abandoned as in the meantime he had been released from prison on health grounds and did not appear before us.

The appellant who appeared in person and who did not wish to have an advocate appointed by the Court to represent him, in his  
35 address in mitigation, prayed for leniency and urged that there was room for the sentence to be reduced further on account of his family circumstances and in particular the financial condition of his two younger minor brothers and his old mother of which he is their only supporter.

Needless to say that these facts were already before the Assize Court and were duly taken into consideration by it.

The Assize Court in passing sentence, after dealing with the personal circumstances of each offender in addition to the detailed description of the circumstances relating to the offence, observed that offences of this nature by foreigners occur with a disturbing frequency and take great dimensions in a degree that they create a feeling of insecurity to the citizens. We endorse fully these observations of the Assize Court. 5

Having given our best consideration to the totality of the circumstances and bearing in mind the principles governing the functions of this Court on appeal in matters of sentencing, we have come to the conclusion that this appeal should be dismissed as the sentence imposed is not manifestly excessive. We may as well take this opportunity to stress that the Courts should consider such offences as being very serious indeed as of their nature and in particular their commission by persons who arrive for a short stay and depart as soon as they achieve their criminal targets, thus making it almost impossible for the Police to detect and recover the stolen property. 10 15 20

In conclusion we would like to pay tribute to the Prosecution Witness A. Perdakis for the public spirit exhibited by him and the quick action and vigilance of members of the Police involved in the detection of this crime that resulted in the conviction and punishment of the offenders as well as the recovery of the stolen property. 25

For all the above reasons the appeals are dismissed.

*Appeals dismissed.*