

1987 December 4

[TRIANTAFYLIDIS, P., DEMETRIADES, LORIS, JJ.]

1. STELIOS IERIDES,  
2. SAVVAS CHRISTODOULOU,

*Appellants,*

v.

THE REPUBLIC,

*Respondent.*

*(Criminal Appeals Nos. 4879, 4880).*

5 *Sentence — Conspiracy to commit forgery and forgery of a cheque — 15 months' imprisonment for the first offence and 20 months' imprisonment for the second on appellant 1 — The two offences were aspects of one and the same crime — Uttering a forged cheque and attempt, when such cheque was*  
10 *uttered, to obtain money by false pretences — 12 months' imprisonment for the offence of uttering and 9 months' imprisonment for the said attempt on appellant 2 — Again both offences constituted different aspects of one and the same crime — Once trial Judge decided that no more than 15 months' imprisonment should be imposed for the one of the twin offences on*  
15 *appellant 1 and that no more than 9 months' should be imposed on appellant 2 for the one of the other twin offences, the better course was either not to impose a sentence for each of the other twin offences or impose the same sentence to run concurrently — Moreover, the sentence of 20 months on*  
*appellant 1 will be reduced to 15 months' imprisonment and the sentence of 12 months' on appellant 2 will be reduced to 9 months' imprisonment, because one of the principal culprits escaped abroad and another accomplice was made a prosecution witness — Appeals allowed to the extent indicated above.*

The facts of this case sufficiently appear in the judgment of the Court.

20 *Appeals allowed. Sentences reduced as aforesaid.*

**Appeals against sentence.**

25 *Appeals against sentence by Stelios Ierides and another who were convicted on the 13th May, 1987 at the District Court of Nicosia (Criminal Case No. 25136/86) as follows: Accused 1 on one count of the offence of conspiracy to commit forgery contrary*

to section 371 of the Criminal Code Cap 154 and on one count of the offence of forgery contrary to sections 331, 333 (d)(i)(ii), 336, 20 and 21 of Cap 154 and accused 2 on one count of the offence of uttering a forged cheque contrary to sections 331, 333, 336, 339, 20 and 21 of Cap 154 and on one count of the offence of attempting to obtain money by false pretences contrary to sections 297, 298, 367, 368, 20 and 21 of Cap 154 and were sentenced by Kallis, D J as follows Accused 1 to fifteen months' imprisonment on the first count and twelve months' imprisonment on the second count and accused 2 to twelve months' imprisonment on the first count and nine months' imprisonment on the second count, the sentence to run concurrently

*E Efstathiou with C Kamenos* for appellant in appeal No 4879

*N Panayiotou*, for appellant in appeal N 4880

*S Matsas*, for the respondent

TRANTAFYLLIDES P gave the following judgment of the Court The appellants were the co-accused in criminal case No 25136/86 before the District Court of Nicosia

Appellant 1 was found guilty of the offence of conspiring between 27 and 29 May 1986, in Nicosia and Limassol, with a certain Michael Hadji from Greece to commit forgery (on count 9 of the charge) and of the offence of having forged between the said dates a cheque (on count 11 of the charge)

Appellant 2 was found guilty of the offence of uttering on 30 May 1986 in Nicosia the aforementioned forged cheque (on count 12 of the charge) and of the offence of attempting on 30 May 1986 in Nicosia to obtain money by false pretences by using that cheque (on count 13 of the charge)

Appellant 1 was sentenced to fifteen months' imprisonment on count 9 and to twenty months' imprisonment on count 11, and appellant 2 was sentenced to twelve months' imprisonment on count 12 and to nine months' imprisonment on count 13, all sentences to run concurrently as from 11 May 1987

Both the appellants pleaded not guilty on their trial and after they were convicted and sentenced, as aforesaid, they appealed against both their convictions and the sentences which were passed upon them

During, however, the hearing of these appeals they both withdrew the appeals against their conviction, which were

dismissed accordingly, and there were heard and determined only their appeals against sentence

In the light of the circumstances of this case, which we need not narrate in this judgment for the purposes of the determination of the present appeals and which are more than adequately set out in the carefully prepared judgment of the learned trial Judge, and in the light of all factors relevant to sentencing which were duly weighed by the trial judge and are referred to in his reasons for imposing the sentences in question on the appellants, we would not have been prepared to hold that the sentences which were imposed on the appellants are wrong in principle or manifestly excessive had it not been for the following considerations

Appellant 1 was sentenced to fifteen months' imprisonment for having conspired to forge the cheque in question and to twenty months' imprisonment for having actually forged it and both these two offences constitute two different aspects of one and the same crime

Appellant 2 was sentenced to twelve months' imprisonment for uttering the said forged cheque and to nine months' imprisonment for having attempted when he uttered the cheque to obtain the money by false pretences and again in our opinion, these two offences constitute two different aspects of one and the same crime

In the particular circumstances of this case and once the trial Judge had decided that he would not impose more than fifteen months' imprisonment on appellant 1 and more than nine months' imprisonment on appellant 2 for one of the twin offences which each of them had committed we think that the better course would have been not to impose any sentence for the other offences committed by the appellants or to impose the same sentence to run concurrently

We have, therefore, decided to intervene in favour of the appellants and to reduce the sentence imposed in respect of count 11 on appellant 1 from twenty months' imprisonment to fifteen months' imprisonment so that it will be the same as the sentence imposed on him in respect of count 9, and, also, to reduce from twelve months' imprisonment to nine months' imprisonment the sentence imposed on appellant 2 in respect of count 12 so that it will be the same as the sentence imposed on him in respect of count 13

We have decided to reduce the sentences of the appellants, as aforesaid, also because of the reason that one of the prime culprits in this case, the aforesaid Michael Hadji from Greece, never had to face trial in Cyprus and another accomplice, Adamos Charitonos, was made a prosecution witness and thus he also evaded punishment. 5

It would, indeed, be unjust for the appellants to be made to serve the longer of the two sentences to which each one of them had been sentenced in respect of the two offences of which each one of them had been found guilty and it is in the interests of justice for each one of them to serve the shorter of the two sentences which was imposed on him. 10

In the light of the foregoing these appeals are allowed to the extent that the sentence imposed on appellant 1 on count 11 is reduced from twenty months to fifteen months and the sentence imposed on appellant 2 on count 12 is reduced from twelve months to nine months' imprisonment. 15

*Appeals allowed.*

*Sentences reduced.*