

1987 April 24

(TRIANTAFYLLOIDES, P., LORIS, STYLIANIDES, JJ)

RENA FRANCOIS BARHOUCHE,

Appellant,

v

THE REPUBLIC,

Respondent

(Criminal Appeal No 4759)

Sentence — Subsequent developments regarding prisoner's personal or family circumstances — Whether they can justify interference with an otherwise appropriate sentence — Question answered in the affirmative

5 The appellant, a young Lebanese woman of 27 with two minor children, was sentenced to four and a half years' imprisonment for possessing 727 grams of heroin

 While in prison appellant's condition of mental health deteriorated. She is suffering from depression and suicidal tendencies, moreover, it was discovered that she has a lump in her left breast, suspected to be malignant.

10 Held, allowing the appeal, that though the sentence is neither manifestly excessive nor wrong in principle, an appellate tribunal may, on the ground of subsequent developments regarding the personal or family circumstances, a person sentenced to imprisonment interfere with a sentence which is considered as being otherwise appropriate and show its mercy to the appellant. The exceptional circumstances of this case justify such a course.

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Appeal allowed.

Cases referred to

Franklyn, 3 Cr App R 65,

Haleth, 4 Cr App 178,

20 *Kakathymis v Republic* (1971) 2 C L R 309,

Kyta v Republic (1984) 2 C L R 468

Appeal against conviction and sentence.

Appeal against conviction and sentence by Rena Francois Barhouch who was convicted on the 21st June, 1986 at the Assize

Court of Larnaca (Criminal Case No 4795/86) on one count of the offence of possessing 727 grams of heroin contrary to sections 2, 3, 6(1)(3), 30 and 31 of the Narcotic Drugs and Psychotropic Substances Law, 1977 (Law No. 29 of 1977) (as amended by Law No 67/83) and was sentenced by Papadopoulos, P D C , Eliades and Arestis, D JJ to 4 1/2 years' imprisonment 5

N Clendes, for the appellant

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

TRIANTAFYLLIDES P gave the following judgment of the Court The appellant, who is a young, twenty-seven years old, Lebanese woman and mother of two children, was sentenced on 21 June 1986. by the Larnaca Assize Court, to imprisonment for four and a half years after having been found guilty of the offence of possessing 727 grams of heroin 10 15

The sentence of imprisonment is to run as from 18 March 1986 when she was first arrested for the possession of the heroin

At the time when she was sentenced the trial court observed, as regards the mental health of the appellant, that it would have been helpful if a medical report was available regarding her exact condition especially by a doctor who had examined her after her arrest But such a report was not produced at her trial 20

On the basis of the medical reports which are now before us we have a quite complete picture about the health of the appellant, and unfortunately the appellant is in an, indeed, grave predicament 25

The mental condition of the appellant has deteriorated greatly while she has been in prison and, as it appears from the reports of two psychiatrists Dr Chr Charalambides and Dr T Evdokas, she is suffering from depression and according to Dr Evdokas she has suicidal tendencies which must be taken seriously as she has attempted to commit suicide in the past Another psychiatrist, Dr A Demetrou states in his report that further incarceration will make the condition of the appellant worse 30

While she has been in prison it was discovered that she has a lump in her left breast, and we have now before us the reports of two surgeons Dr V Makris and Dr M Theophanous, according to which there are strong suspicions that it is malignant, but, of 35

course, no final diagnosis can be made unless and until a biopsy is performed.

Due, however, to her mental depression she refuses to undergo the surgery necessary for a biopsy.

5 In the meantime the appellant has been granted by an Ecclesiastical Court in Lebanon custody of her two minor children and an order of separation from her husband; and there can be no doubt that her condition is being aggravated by the knowledge that her children need her and she is away from them.

10 This is really a tragic situation.

Though we cannot regard the sentence passed upon the appellant as being either manifestly excessive or wrong in principle it is quite clear that since she has gone to prison there has been serious deterioration of her physical and mental health.

15 Actually her life is now in grave danger because she may either commit suicide or the malignancy in her breast may spread with fatal results before it is definitely diagnosed and treated as such.

It appears that in a case of this kind an appellate tribunal may, on the ground of subsequent developments regarding the personal or
20 family circumstances of a person sentenced to imprisonment, interfere with a sentence which is considered as being otherwise appropriate.

Useful reference in this respect may be made to Principles of Sentencing, by Thomas, 2nd ed., pp. 212, 213 and 214, and to the
25 cases of *Franklyn*, 3 Cr. App. R. (S.) 65 and *Haleth*, 4 Cr. App.R. (S.) 178.

It is, also, useful to refer to case-law of our own, such as *Kakathymis v. The Republic* (1971) 2 C.L.R. 309, 315, and *Kyta v. The Republic*, (1984) 2 C.L.R. 468, 474.

30 As Watkins L.J. said in the *Haleth* case, *supra*, the time has come to show the mercy of this Court to this appellant; and in the very exceptional circumstances of this case we order that her sentence is to be so reduced that she can be released immediately.

Appeal allowed.