

1987 November 24

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

ANDREAS PAMBOUKAS AND ANOTHER,

Appellants,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeals Nos. 4848, 4849).

5 *Sentence — Conspiracy to commit robbery, armed robbery, carrying and using  
firearms and possessing and carrying ammunition — Three, seven, four and  
two years' imprisonment respectively — Appellants' acting under influence of  
an older man — A mitigating factor — One of the appellants was not present  
at the scene of the armed robbery — A ground for differentiating between his  
case and the case of the other appellant — Sentence for armed robbery  
reduced to six years' for appellant Constantinou and five years' for appellant  
Pamboukas.*

10 The present appeals are directed against the aforesaid sentences passed for  
the aforementioned offences.

Both appellants pleaded guilty at the trial, whereas a third accused, namely  
a man called Paphitis pleaded not guilty and was, eventually, acquitted

15 However, counsel for the appellants and counsel for the prosecution,  
contended that Paphitis, who was much older than the appellants,  
masterminded the whole plan to commit the robbery in question.

Held, *allowing the appeal*: (1) The sentence on the appellants was passed  
before Paphitis' acquittal. The latter's role in the commission of the offences  
ought to have been taken into account as a mitigating factor.

20 (2) Appellant Pamboukas, though in law was guilty of armed robbery, was  
not present at the scene, when the robbery was committed and, for this  
reason, the trial Court, in assessing sentence, ought to differentiate between  
Pamboukas and appellant Constantinou.

25 *Appeal allowed. Sentence on  
Constantinou reduced to six  
years' imprisonment. Sentence  
on Pamboukas reduce to five years'  
imprisonment.*

**Appeals against sentence.**

Appeals against sentence by Andreas Pamboukas and Another who were convicted on the 3rd February, 1987 at the Assize Court of Nicosia (Criminal Case No. 569/87) on one count of the offence of conspiracy to commit a felony contrary to sections 371, 282 and 283 of the Criminal Code Cap. 154, on one count of the offence of armed robbery contrary to sections 255, 282, 283 and 20 of the Criminal Code, Cap. 154, on two counts counts each of carrying automatic weapons contrary to sections 2, 3(1)(b), 2(a) and 28 of the Firearms Law, 1974 (Law No. 38/74 as amended by Law 27/78) and section 20 of the Criminal Code, Cap. 154, on two counts each for using the above firearms contrary to the above sections of the Law and on two counts of possessing and carrying explosives contrary to the provisions of the above Laws and were sentenced by Nikitas, P.D.C., Laoutas, S.D.J. and Michaelides, D.J. to concurrent terms of imprisonment of three years on the first Count, seven years on the second count, 4 years on counts 3, 4, 5 and 6 and two years on counts 7, 8, 9 and 10.

*E. Efstathiou with M. Tsangarides and C. Kamenos*, for appellant in Cr. Appeal 4848. 20

*P. Angelides*, for appellant in Cr. Appeal 4849.

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

TRIANTAFYLIDIS P. gave the following judgment of the Court. The two appellants in these cases, Andreas Pamboukas (appellant in Criminal Appeal 4848) and Georghios Constantinou (appellant in Criminal Appeal 4849), were sentenced to three years' imprisonment for the offence of conspiracy, to seven years' imprisonment for the offence of armed robbery, to four years' imprisonment for offences of carrying and using firearms and to two years' imprisonment for offences of possessing and carrying ammunition. 25 30

The armed robbery was committed on 23 December 1986 and the conspiracy was related to the commission of the armed robbery. The carrying and using of firearms and the possession and carrying of ammunition occurred in relation to the commission of the armed robbery. 35

Before the trial Court appellant Constantinou was accused 1 and appellant Pamboukas was accused 2. They both pleaded

guilty whereas another co-accused (accused 3), Antonis Paphitis, pleaded not guilty and was acquitted as the trial Court was not satisfied with the quality of the evidence adduced against him

5 The appellants were sentenced on 3 February 1987, and the said Paphitis was acquitted on 16 March 1987

10 The salient facts of these cases appear to be as follows At 4 30 a m on 23 December 1986 about thirty persons were assembled for the purpose of gambling at the premises of «Olympiacos» club in Nicosia when two hooded persons, armed with military  
10 weapons, rushed suddenly into the building and, having immobilised those assembled there, they took away with them about £5,000 , which they found at the premises of the said club

15 A policeman, who was at the club, managed to get away without being seen by the robbers and he returned soon afterwards to the scene after having secured an automatic weapon from a nearby police station

20 As the two robbers were leaving the premises there followed an exchange of fire between one of them and the said policeman and, as a result, the one who fired was killed on the spot, whereas the other one managed to escape The one who was killed is Theodoros Pittaras and the one who escaped is appellant Constantinou

25 Both appellants, at about 6 a m of the same day, were arrested by the Police while proceeding towards the «Olympiakos» club, and, on being interrogated, appellant Constantinou admitted his participation in the robbery and appellant Pampoukas confessed that he had supplied Constantinou and Pittaras with firearms and ammunition, which he had taken unlawfully from a National Guard camp where he was serving

30 We agree with the learned Judges of the Assize Court, who imposed the sentences against which the appellants have appealed, that the offences to which they pleaded guilty are very serious, indeed, and that long sentences of imprisonment were necessary in the circumstances of this case

35 Appellant Constantinou was, at the material time, eighteen and a half years old and appellant Pampoukas was nineteen years old The ex co-accused 3 of the appellants, Antonis Paphitis, who was, eventually, acquitted, was at the time of the armed robbery twenty-seven years old

It has been contended by counsel for the appellants, and this seems to be endorsed by counsel for the respondent, that the aforementioned Paphitis, who is much older than the appellants, masterminded the plan to raid «Olympiakos» club in order to rob those gambling there of their money and exercised a decisive influence on them in driving them into the commission of the crimes as a result of which they find themselves serving long terms of imprisonment. The fact that, eventually, Paphitis was not convicted because the trial Court was not satisfied with the quality of the evidence against him, cannot eliminate, from the context of this case, his sinister influence on the two appellants in relation to the commission by them of the offences in question.

We are of the opinion that at the time when the trial Court was passing sentence on the appellants, prior to the acquittal of Paphitis, his alleged role in the matter, which had been confirmed by counsel appearing for the prosecution, ought to have been taken into account as a mitigating element in favour of the appellants; and we are of the opinion that the trial Court has not actually given sufficient weight to the fact that the two appellants were acting under the influence of a much older accomplice, namely Paphitis.

As regards appellant Pamboukas it is an undeniable fact that, though he is in law guilty of the offence of armed robbery, in actual fact he never participated in the robbery by being present at the «Olympiakos» club at the time when it was carried out and, we are of the view, that the trial Court in assessing sentence ought to have differentiated, for this reason as between appellant Pamboukas and appellant Constantinou.

Having given the matter most anxious consideration we have reached the conclusion that, for all the foregoing reasons, the sentences of seven years' imprisonment, which were passed upon the appellants for the armed robbery, should be reduced to six years in so far as appellant Constantinou is concerned and to five years in so far as appellant Pamboukas is concerned, but we do not propose to interfere with the sentences passed upon these two appellants in respect of the other offences committed by the appellants. These appeals are, consequently, allowed accordingly.

*Appeals allowed.*