

1987 March 16

[TRIANTAFYLIDIS P DEMETRIADES LORIS JJ]

KYRIACOS SOCRATOUS,

Appellant,

v

THE POLICE,

Respondents

(Criminal Appeal No 4855)

Sentence—Knowingly living on the earnings of prostitution contrary to section 164(1)(a) of the Criminal Code, Cap 154—Appellant jointly charged with another person (ex accused 2)—Three months’ imprisonment on appellant and £250 - fine on ex accused 2—Sentence on appellant, if isolated from the other sentence—not manifestly excessive—But in the circumstances, including the disparity and the absence of reasoning for the differentiation, it is wrong in principle—One month’s imprisonment would have been the proper sentence

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Sentence—Disparity as a ground of appeal

The appellant, who was jointly charged with ex-accused 2 for the above offence, was sentenced to three months’ imprisonment, whilst ex-accused 2 was sentenced for the same offence to a fine of £250 - The fact that ex-accused 2 was the breadwinner of his family and the fact that a sentence of imprisonment would have had disastrous consequences both on his work and on his pension tipped the scales against a sentence of imprisonment The main complaint of the appellant is disparity of sentence

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Held, allowing the appeal (1) The sentence, if isolated from the sentence of ex-accused 2, is not manifestly excessive

(2) Disparity of sentence has been repeatedly considered by this Court There is no doubt that the sentence on ex-accused 2 was individualised In the light, however, of all the circumstances, including the disparity as well as the absence of reasoning for the differentiation of sentence in respect of the appellant, the sentence is wrong in principle and, as the appellant has already served one month’s imprisonment, which is the appropriate sentence, he would be discharged as from to-day

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Appeal allowed

Cases referred to.

Nicolaou v The Police (1969) 2 C.L.R. 120.

Iacovou and Others v The Republic (1976) 2 C.L.R. 114;

Koukos v The Police (1986) 2 C.L.R.1.

5 Appeal against sentence.

Appeal against sentence by Kyriacos Socratous who was convicted on the 18.2.87 at the District Court of Famagusta (Criminal Case No.162/87) on one count of the offence of knowingly living on earnings of prostitution contrary to section 164(1)(a) of the Criminal Code, Cap.154 and was sentenced by Eliades, D.J. to three months' imprisonment.

A. Zachariou, for the appellant.

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

15 TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Loris, J.

LORIS J.: The present appeal is directed against the sentence of three months' imprisonment imposed on the appellant by the District Court of Famagusta (Criminal Case No.162/87) upon his plea of guilty to a joint charge with ex-accused No.2, of knowingly living on the earnings of prostitution contrary to section 164(1)(a) of the Criminal Code, Cap.154.

Ex-accused No.2, a 42 year old taxi driver pleaded guilty to the charge on 12.2.1987 and was sentenced to a fine of £250; the appellant, a 40 year old waiter, pleaded initially not guilty to the joint charge; on 16.2.87 immediately before the commencement of the hearing of his case, after obtaining the leave of the trial court he withdrew his previous plea and entered a plea of guilty; upon his plea of guilty he was sentenced as aforesaid, to three months' imprisonment.

The main complaint of the appellant is disparity of sentence; learned counsel on his behalf argued that it was wrong in principle to make such a differentiation between the sentence passed on ex-accused No.2 and the appellant in view of the fact that both were

first offenders and the role of each one in the commission of the offence was more or less the same, if the role of ex-accused No.2 was not more serious.

Learned counsel appearing for the respondent conceded that there was a disparity of sentence and stressed that there was no reasoning justifying such a differentiation in passing sentence.

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The disparity of sentence is a ground which has been repeatedly considered by our Courts; we shall confine ourselves in mentioning here the case of *Nicolaou v. The Police* (1969) 2 CLR 120, the case of *Iacovou & Others v. The Republic* (1976) 2 CLR 114, where the learned President of this Court has elaborated at length on the «Principle of disparity of sentence as a ground of Appeal» (vide pages 128-131) and the recent case of *Koukos v. The Police* (1986) 2 CLR 1.

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In the appeal under consideration we have carefully gone through the record and the sentences imposed by the trial Court in the case of ex-accused No.2 and the appellant. There is no margin for doubt that the sentence passed on ex-accused No.2 was individualized; the fact that he was the breadwinner of a family consisting of his wife and two minor children, as well as the fact that a term of imprisonment would have had disastrous consequences both on his work at the Sovereign Base Area, as well as on his pension, tipped the scales against a sentence of imprisonment.

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The sentence of three months' imprisonment imposed on the appellant for the offence of the joint charge, seen isolated from the case of ex-accused No.2, cannot be described as manifestly excessive; and we would not be prepared to interfere on that ground alone. But considering all the circumstances of the case, in the light of the facts before us, including the disparity of the sentence imposed on ex-accused No.2 - conceded by learned counsel appearing for the Respondents - as well as the absence of reasoning for the differentiation of sentence in respect of the appellant, we hold the view that the sentence imposed on the present appellant is wrong in principle.

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With all that in mind, we have come to the conclusion that the best we can do in this case, is to discharge the appellant from today considering that the part of the sentence which he has already

served (one month) is the appropriate sentence in the circumstances.

In the result the appeal is allowed. The sentence is reduced to the period which appellant has already served in prison until to-day,
5 so that he may be released forthwith. We order accordingly.

Appeal allowed.