

1988 December 12

(SAVIDES, KOURRIS, BOYADJIS, JJ.)

SALVA HAMDAR,

*Appellant,*

v.

THE REPUBLIC,

*Respondent.*

*(Criminal Appeal No. 5047).*

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5 *Sentence — Possession of controlled drugs (295 grams of preparation containing 75% heroin) with intend to supply them to another person, contrary to sections 2, 3, 5(1)(3), 30 and 31 of the Narcotic Drugs and Psychotropic Substances Law, 1977 (Law 29/77), as amended by Law 17/83 — Appellant, a Lebanese woman, 17 years old, co-operated with the Police and pleaded guilty to the charge — In offences of this nature deterrence is the main factor in assessing sentence — Four years' imprisonment — Not manifestly excessive.*

10 The appellant is a Lebanese woman 17 years of age. She arrived at Larnaca on 30.9.88. Her destination was Spain. There was found hidden in her vagina a plastic bag containing the aforesaid preparation. When her luggage were searched, there were found hidden in her trousers four further bags containing the same substance. She consented to undergo further bodily search, but before such search was carried out, she admitted that there was another bag hidden in her anus.

15 She co-operated with the Police by giving the name of the person, who paid her in order to transport the drugs, and the name of the supplier of the drugs. She pleaded guilty to the charge.

20 The Assize Court sentenced her to four years' imprisonment Hence this appeal.

25 Held, *dismissing the appeal*: (1) The principle of individualisation of sentence does not mean that the Court must attach little or no weight to the circumstances of the offence and in particular to the severity or prevalence of the offence.

(2) There has been during the last ten years a constant increase in the length of the period of imprisonment for offences of this kind, due to awareness of the catastrophic consequences of the use of drugs. In future even more severe sentences should be passed, if such offences continue to be committed with the frequency presently observed. 5

(3) There is a small category of offences among which the supply of drugs runs first on the list, for which the propriety of the sentence is judged with reference mainly to the factor of their seriousness and the need of deterrence rather than to the personal circumstances of the offender and the need of his rehabilitation. 10

*Appeal dismissed.*

### **Appeal against sentence.**

Appeal against sentence by Salva Hamdaz who was convicted on the 11th October, 1988 at the Assize Court of Lamaca (Criminal Case No. 9387/88) on one count of the offence of possessing a controlled drug with intention of supplying it to others contrary to sections 2, 3, 6(1)(3), 30 and 31 of the Narcotic Drugs and Psychotropic Substances Law, 1977 (Law No. 29/77) and was sentenced by Nikitas, P.D.C., S. Nicolaidis, Ag. S.D.J. and Hadjihambis, D.J. to four years' imprisonment. 15 20

*G. Papantoniou*, for the appellant.

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

SAVIDES J.: The judgment of the Court will be delivered by Mr. Justice Boyadjis. 25

BOYADJIS J. On 11 October 1988 a sentence of four years' imprisonment was passed on the appellant by the Assize Court of Lamaca following her conviction on her own plea of guilty on count 2 of the information charging her with possession of a controlled drug of class «A», namely 295 grams of preparation containing 75 per cent heroin, with the intention of supplying same to another person contrary to sections 2, 3, 6(1)(3), 30 and 31 of the Narcotic Drugs and Psychotropic Substances Law, 1977, (Law 29 of 1977) as amended by Law 67 of 1983. 30

She now appeals against her sentence on the ground that it is manifestly excessive. 35

The circumstances pertaining to the crime committed by the appellant and to the person of the appellant are briefly as follows:

The appellant is a young woman of Brazilian origin residing with her husband in Lebanon. She is only 17 years old and is married to a Lebanese man. She has no children. She is a housewife with clear record. She arrived at Lamaca on board the ship «Sunny» from the Lebanese town of Junieh on 30 September 1988 and she was given a transit passenger's permit to enter the Republic, valid for one day. Her destination was Spain. At the usual passengers check at Lamaca Customs soon after her arrival, the appellant was searched by a policewoman and hidden in her vagina there was found and seized a small plastic bag containing a substance which she admitted as being heroin. The appellant and her luggage were taken to the Lamaca Police Station where an additional quantity of heroin was found packed in four other similar small bags kept in the pockets of a pair of trousers in her suitcase. Having been arrested on the same day, consented in writing to be further searched by a woman doctor for the purpose of finding other quantity of heroin which she might have hidden in other parts of her body. Before the search was carried out, however, she volunteered to surrender to them three other similar bags hidden in her anus. She was taken to the hospital where she removed from her anus in the presence of the police three bags containing heroin. In a voluntary statement given to the police after the discovery of the heroin the appellant stated that she had agreed to carry the heroin from Lebanon to Spain yielding to a proposal made to her by a man whom she met by chance and whom she named, in consideration of receiving 1,500 U.S. dollars and, of course, a free ticket from Lebanon to Spain. The heroin was to be delivered by her to a man named by her supplier.

Learned counsel for the appellant argued that (i) though the Assize Court in passing sentence on his client stated that the young age of the accused and her repentance and attitude towards the offence were taken into consideration, the Assize Court failed to attach to them sufficient weight as mitigating factors; (ii) the Assize Court failed to individualise adequately the sentence so as to fit sufficiently the person of this particular offender.

The young age of the appellant is, no doubt, a mitigating circumstance to be taken into consideration together with all other mitigating circumstances, including her attitude following her search and recovery of the heroin and her plea of guilty. We do not, however, agree with counsel for the appellant that the trial Court ought to have given to these mitigating factors greater weight than the one given to them. The principle that the sentence

must fit the person of the accused as well, sometimes described as the principle of individualisation of sentence, does not mean that the Court must attach little or no weight to the circumstances of the offence and in particular to the severity or prevalence of the offence.

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A careful consideration of the sentences which have been imposed on drug dealers and traffickers the last five to ten years reveals a steady and constant increase in the length of the period of imprisonment. This is due to our increased awareness of the catastrophic results caused by the use of drugs, especially heroin, the prevalence of such crimes, and the urgent need of defending our society on the local and international level from the evil emanating from the use of drugs. These legitimate objectives can only be achieved if the element of deterrence is the main characteristic of the sentences imposed on persons who make it their business to ruin other peoples' lives by supplying them with drugs. The Courts had no alternative but to impose increased sentences year after year for offences of trafficking of drugs after realising that their repeated warnings had gone in vain. On the occasion of the present appeal we want to repeat our warning that Courts shall not fail in their duty to suppress offences of this nature by imposing even more severe sentences in the future, if similar offences continue to be committed with the frequency presently observed.

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We would like to conclude by saying that there is a small category of offences among which the supply of drugs runs first on the list, for which the propriety of the sentence is judged with reference mainly to the factor of their seriousness and the need of deterrence rather than to the personal circumstances of the offender and the need of his rehabilitation.

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It is sad that a young woman like the appellant stands sentenced to four years' imprisonment out of the maximum term of fourteen years' imprisonment which the law provides for the offence which she has committed, but she is the author of her own misfortune. For this Court to intervene it is not enough to show that the sentence is severe or that, had we tried the case ourselves we would impose a more lenient sentence. It is up to the appellant to satisfy us that the sentence is manifestly excessive, i.e., considered

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objectively, it is either wrong in principle or out of all proportion to the circumstances that a Court ought to have taken into account in imposing it. She has failed to do so.

In conclusion, the appeal is dismissed.

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*Appeal dismissed.  
Sentence confirmed.*