1988 May 4

(A. LOIZOU, P., PIKIS, KOURRIS, JJ.)

FAHD ABDO KOZHAYA AND OTHERS,

Appellants,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeals Nos. 4969, 4972, 4973).

Sentence — Possession and uttering of forged U.S. Dollars and obtaining goods to the value of £400 and cash £20 by false pretences — Three years' imprisonment on each of the first two appellants for the offence of possession and uttering, and one and a half year on the third appellant — One year's imprisonment for the offence of obtaining by false pretences — In the circumstances, not excessive.

Sentence — Individualisation of — Should not lead to neutralization of the sentence.

Sentence — Decided cases do not establish binding precedents.

The appellants were sentenced as aforesaid for the hereinabove offences. Their main argument on appeal was the failure of the trial Court to individualize the sentence.

Held, *dismissing the appeals:* (1) The individualization of sentence is an accepted principle, but such individualization must never lead to frustration or neutralization of sentencing.

(2) The sentences are neither manifestly excessive nor wrong in principle.

Appeals dismissed.

Cases referred to:

Philippou v. The Republic (1983) 2 C.L.R. 245.

Appeals against sentence.

Appeals against sentence by Fahd Abdo Kozhaya and Others

who were convicted on the 19th January, 1988 at the Assize Court of Larnaca (Criminal Case No. 10591/87) on several counts of the offences of possessing and uttering forged U.S.A. dollars and of obtaining goods by false pretences contrary to the provisions of the Criminal Code, Cap. 154 and were sentenced by Nikitas, P.D.C., Laoutas, S.D.J. and G. Nicolaou, D.J. as follows: Accused 1 and 2 to three years' imprisonment for the offences concerning the possession and uttering of forged dollars and to one years' imprisonment on the offence of obtaining goods by false pretences; accused 3 was sentenced, to 1 1/2 years' imprisonment on the possession and uttering of forged dollars and to one year's imprisonment on the offence of obtaining goods by false pretences; all sentences to run concurrently.

N. Clerides, for the appellants.

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

A. LOIZOU P. read the following judgment of the Court. The three appellants were found guilty on their own plea of several counts of possessing and uttering forged U.S.A. dollar bills and also of obtaining by false pretences goods to the value of £400.- and £20 cash.

The first two appellants were sentenced by the Larnaca Assize Court to three years' imprisonment for the offences concerning the possession and uttering of forged dollar bills and to one year's imprisonment for the offences concerning the obtaining of goods and cash by false pretences.

The third appellant was sentenced to one and a half years' imprisonment on two counts, one for uttering three forged dollar bills of one-hundred dollars each, and the other for possessing forged dollar bills and to one year's imprisonment on two other counts, one for obtaining money by false pretences and another for attempting to utter a forged dollar bill of one-hundred dollars. All sentences were ordered to run concurrently.

The facts of the case are briefly these. The three appellants come from Lebanon and they are of about twenty-five years of age. The first appellant obtained at a very cheap price a number of such forged U.S. dollars from dealers there, where apparently the circulation of forged U.S. dollar bills thrives. He cooperated with the second appellant who is his employee, prepared a plan how to

circulate them in Cyprus and for that purpose they came to Cyprus on the 28th October, 1987. The third appellant came with them but the Assize Court in all fairness accepted the version she gave to the Police in her voluntary confession to the effect that she was not initiated in the plan from the start but only after their arrival in Cyprus.

The second appellant had already visited Cyprus twice, i.e. on the 7th July and on the 24th October, and during those visits he managed to cash five in all forged dollar bills but he avoided arrest because he left Cyprus in the meantime. His activities during his first visit were the subject of counts 9 to 14 on the information, whereas on the second visit he committed the offences which were the subject of a pending case before the Assize Court.

It seemed to them that their scheming proved successful and they came later on in October to continue their criminal activities in Cyprus.

They were ultimately, however, found by the Police to be in possession of forged U.S. dollars of a value of $5,500.

During their last visit on the 28th and 29th October, they visited various banks. The first appellant was giving to his two accomplices a small number of bills which they cashed and he was given the proceeds. The last attempt of the second appellant was on the 29th October when he tried to cash three forged one-hundred dollar bills in Ermou street in Larnaca, but he was not that lucky this time as the cashier of the department noticed the receipt and immediately called the Police, which acting promptly proceeded to the arrest of the appellants and after due investigation of all cases they were utlimately prosecuted, convicted and sentenced.

On appeal before us, learned counsel for them urged that the Assize Court acted on a wrong principle in that it paid undue weight to the gravity of the offences and failed to individualize the sentences between the three appellants so as to fit each offender.

We have been referred to a number of cases that have laid down that principle, but we must say that in matters of sentencing the decided cases do not establish binding precedents but only set out a pattern of sentencing which is desirable to be followed, subject to the necessary modifications so that the sentence will fit the facts and the personal circumstances of the offender in each case.

Furthermore the individualization of sentence is an accepted principle, but such individualization must never lead to frustration or neutralization of sentencing.

On the other hand, what is manifestly excessive has been defined in the case of *Philippou v. The Republic* (1983) 2 C.L.R. 245 where it was said by Pikis, J., in delivering the unanimous judgment of the Court at p.250 that «the word 'manifest' implies, the element of excess or inadequacy must be apparent and, speaking of a sentence manifestly excessive, the excess must be obvious, looking upon the matter from an objective angle ..... The element of excess must be such as to provide an objective basis for its ascertainment. Such basis may be provided either by the facts of the case bearing no proportion to the sentence imposed, or by the sentence being altogether out of range with sentences approved by the Supreme Court on previous occasions.»

The Assize Court in passing sentence took into consideration all the personal circumstances of each appellant which were placed before it very ably by their defending counsel. It took also into consideration all relevant factors and arrived at the sentence that it did impose on each appellant, bearing in mind the gravity of the offences as it ought to have been done. It should not be forgotten that for the offences of uttering the sentence provided by the criminal code is one of imprisonment for life and that of possessing, seven years' imprisonment.

We have listened with care to the address of learned counsel but we are afraid that we have not been persuaded that this is a case where this Court should interfere with the sentences imposed, which are in our view neither manifestly excessive nor wrong in principle.

Needless, also, to say that such offences appear in Cyprus in recent years in an alarming frequency and Courts should take cognizance of the prevalence of such offences committed by visitors to Cyprus and should try by their sentences to see that culprits and would be offenders are convinced that Cyprus is not a haven for the uttering of forged currency notes.

For all the above reasons, the appeals are dismissed.

Appeals dismissed.