

1989 February 20

(SAWIDES, KOURRIS, BOYADJIS JJ)

THE REPUBLIC,

*Appellant,*

v

PARIS CHARALAMBOUS GEORGHIOU,

*Respondent*

*(Criminal Appeal No 5050)*

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5 *Sentence — Imprisonment — Suspension — The Sentence of Imprisonment (Conditional Suspension in Certain Cases) Law 1972 (Law 95/72) — The nature of a suspended sentence of imprisonment — Principles governing the exercise of the discretion of a trial Court in deciding whether to suspend imprisonment*

10 *Sentence — House breaking contrary to section 291 and 292(a) and 255 of the Criminal Code Cap 154 — Jewellery valued at £8,529 stolen — Co-operation of respondent with the police resulting in the recovery of all but some jewellery valued at £356 — Clean record — At the time of the commission of the offence the respondent operated under psychological pressure — Two years' imprisonment suspended for three years on condition that the respondent will not commit a crime during such period punishable with imprisonment —*  
15 *Appeal against sentence by the Attorney-General on ground that it is manifestly inadequate, dismissed*

20 The respondent committed the aforesaid offence during the night of good Saturday when the owners of the House were attending the Church Service. He immediately left, together with his girlfriend, a black-woman whom he intends to marry and their child to Greece, where he was apprehended and sent back to Cyprus. After an initial attempt to conceal his guilt, he co-operated with the police. Such co-operation resulted in the recovery of the most part of the jewellery. The owners forgave the respondent. The Social Welfare Report showed that the respondent had a difficult childhood, and that he  
25 was facing problems, as both his and his girlfriend's family were opposed to the marriage.

Held, *dismissing the appeal*: (1) The offence in question is quite serious. The Courts frequently impose long terms of imprisonment. The prevalence of such offence is such as to call for deterrent sentences. The issue, in this appeal is not the imprisonment, but its suspension. 5

(2) A suspended sentence of imprisonment is still a sentence of imprisonment. A Court should first decide whether imprisonment is the appropriate sentence, and if yes, then to ponder whether to suspend it or not.

(3) In suspending the sentence in question the trial Court followed the principles laid down in *Demetriou v. The Republic* (1974) 2 C.L.R. 45. Indeed the respondent had a clean record, he was at the time of the commission of the offence operating under psychological pressure; his repentance was expressed by his confession, resulting in the discovery of most of the stolen property and the complainant and his wife forewent any claim in respect thereof. 10  
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*Appeal dismissed.*

*Cases referred to:*

*Christofides v. The Republic* (1970) 2 C.L.R. 78;

*Pullen and Another v. The Republic* (1970) 2 C.L.R. 13; 20

*Demetriou v. The Republic* (1974) 2 C.L.R. 45.

**Appeal against inadequacy of sentence.**

Appeal by the Attorney-General of the Republic against the inadequacy of sentence passed on Paris Ch. Georghiou the accused in Criminal Case No. 26444/88 of the Assize Court of Nicosia (Artemis, P.D.C., G. Nicolaou, S.D.J. and M. Photiou, D.J.) whereby he was sentenced to two years' imprisonment suspended for three years on a charge of house breaking contrary to sections 291, 292(a) and 255 of the Criminal Code, Cap. 154. 25

*R. Petridou (Mrs.), Counsel of the Republic B*, for the appellant. 30

*E. Efstathiou with C. Kamenos*, for the respondent.

SAVIDES J. gave the following judgment of the Court. This is an appeal by the Attorney-General of the Republic under section 145(3)(b) of the Criminal Procedure Law, Cap. 155 against the sentence of two years' imprisonment, suspended for three years, imposed upon the respondent by the Assize Court of Nicosia on a 35

charge of house breaking contrary to sections 291, 292(a) and 255 of the Criminal Code, Cap. 154.

The facts of the case are briefly as follows:-

The respondent, a 25 year old builder pleaded guilty before the  
5 Assize Court of Nicosia on a charge of house breaking in that on a date unknown between the 9th April, 1988, and 10th April, 1988, at Strovolos, in the District of Nicosia, during the night, that is between 23 p.m. and 2 a.m. broke and entered into the house of Theophilos Theophilou with intent to commit a felony therein to  
10 wit, to steal, and in fact stole various jewellery of the total value of £8,529.-, property of the said Theophilos Theophilou.

The crime was committed in fact on the night of the Holy Saturday whilst the complainant and his family were absent from the house having gone to the church for the night Easter Service.  
15 The respondent knew the whereabouts of the house as the wife of the complainant, who is a welfare officer, was taking care of the respondent and was trying to help him and his family in their financial and social difficulties and, for such purpose he had visited the house several times. He managed to get into the house by  
20 breaking the shutters of one of the bedroom windows and after entering therein he stole various jewellery of the total value of £8,529.-. The respondent disposed of some of the jewellery in Cyprus and with the money he collected he left Cyprus for Athens with the woman with whom he was cohabiting and his newly born  
25 child to visit his cousin and from there they went to certain Greek islands. He disposed of a small part of the jewellery there and whilst he was attempting to sell a gold sovereign in Crete the police suspected him, arrested him and after communicating with the police in Cyprus they sent him to Cyprus where, upon his  
30 arrival, he was arrested.

Upon his arrest his explanation to the police was that he bought the jewellery which he sold in Greece from a person whom he only knew by his small name but shortly afterwards he gave a statement to the police and admitted having committed the  
35 offence and he handed over to the police all the jewellery which he had left behind in Cyprus. In his statement to the police he gave a full account both concerning the surrounding circumstances of the offence as well as the persons to whom he sold some of the jewellery and at the same time he expressed his repentance.

The jewellery was returned to the complainant with the exception of jewellery to the value of £356.- which could not be traced and for which the complainant stated to the police that he had no claim and that both he and his wife having taken into consideration the personal circumstances of the respondent had forgiven him. 5

The respondent is a first offender and he is cohabiting with a black woman from Uganda whom he intends to marry and with whom he has a child now a few months old. In a welfare officer's report, which was produced before the Assize Court, mention is made of the difficult life the respondent had during his childhood with his family where his father frequently ill-treated him and forced him to discontinue education to go to work. Also the social problems he was facing as a result of his cohabitation with a black woman to the marriage of whom both his family and her family objected and also the problems he was facing to find a home for himself and his family due to the colour of his wife. 10 15

The trial Court in a carefully considered judgment dealt with the seriousness of the offence which they treated as a prevalent offence and found that in the circumstances the proper sentence for such offence was imprisonment for two years. Then they proceeded to consider whether in the circumstances of the case and, bearing in mind the fact that the sentence imposed did not exceed two years, the case was a proper one to suspend the sentence. The Court bearing in mind the report of the welfare officer that at the time of the commission of the crime the respondent was operating under psychological stress, the fact that he had no previous convictions, his conduct after his arrest by admitting the offence and making a clean breast about it and delivering to the police the jewellery which he had hidden in Cyprus and also giving a detailed account as to the persons to whom he had disposed some of the jewellery as a result of which most of them were recovered, came to the conclusion that all these factors militated for the suspension of the sentence of imprisonment and they made an order accordingly suspending the sentence for a period of three years on condition that he will not commit any crime punishable with imprisonment during such period. Also they made a probation order for a period of two years. 20 25 30 35

In the course of her address learned counsel for the appellant pointed out that appellant did not consider a sentence of two 40

years' imprisonment as insufficient or manifestly low but what she was challenging was the order suspending such sentence. She stressed the fact that crimes of this nature have become prevalent and a real menace to society and that the circumstances under  
5 which it was committed renders it more serious bearing in mind the fact that the respondent broke and entered the house of persons who had been helping him and stole therefrom jewellery of considerable value. She stated that this offence in the  
10 circumstances may be considered as a well planned offence and that the Court was wrong in finding that the psychological condition of the respondent had anything to do in the case and wrongly took such factor into consideration. Counsel also  
15 submitted that the deterrent element in cases of this nature was a matter which should have been taken into consideration and that personal circumstances should not have been allowed to  
supersede the seriousness of the offence and concluded that the nature of the offence and all surrounding circumstances did not  
justify an order suspending the sentence of imprisonment.

Learned counsel for the respondent laid stress to the principle  
20 that the responsibility of measuring the appropriate sentence must rest with the trial Court and the Supreme Court will not interfere with a sentence on appeal unless there are sufficient reasons for such intervention.

Counsel submitted that in the present case there are no  
25 sufficient reasons for such intervention as the Assize Court gave sound reasons for suspending the sentence which are in line with the principles applicable to suspended sentences.

Counsel drew the attention of the Court to the contents of the  
30 two reports prepared by the department of Social Services the one which was before the Assize Court and the second prepared on the directions of this Court, and in particular the difficult childhood the appellant had, the problems he encountered both with the family of his prospective wife and his own family resulting from their objection to his marriage, the colour discrimination problems  
35 he came across in his efforts to secure a home for his family, his increased responsibilities resulting from the birth of his child and the opinion expressed in both reports about the respondent, his repentance and eagerness to cooperate with the probation officer. He also laid stress to the young age of the respondent, his clean  
40 criminal record, his confession coupled with the delivery of most of the articles stolen and also the fact that the complainants had

forgiven him and forewent any claim for the small quantity not recovered in the expectation that this will help him in his life with his new family. Counsel lastly invited the Court to dismiss the appeal and approve the sentence imposed upon the respondent by the Assize Court.

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Housebreaking is a very serious offence and falls within the category of felonies and when committed at night, as in the present case, it entails imprisonment of up to ten years. It has always been treated so by the Courts and long terms of imprisonments have frequently been imposed. During the last few years it has become one of the prevalent offences and a social menace to the welfare of the law abiding citizens, undermining the law and order in society. It is high time that offences of this type should be faced with severe punishments which would operate as a deterrent for the commission of such offences.

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The approach of this Court to appeals against sentence is well settled in a line of cases. The responsibility for measuring appropriate sentence must rest primarily with the trial Court. Sentencing is indeed a difficult and delegate function of the Court in the exercise of its criminal jurisdiction. It must be performed with due care; but this Court will not interfere with a sentence on appeal unless there are sufficient reasons for such intervention. (Reference may be made in this respect to *Christofides v. The Republic* (1970) 2 C.L.R. 78 at p. 80; *Robert Pullen and Another v. The Republic* (1970) 2 C.L.R. 13 and the cases referred to therein).

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In the present appeal we find that a sentence of two years' imprisonment, lenient as it may be, is not manifestly low and the Assize Court was not wrong in this respect. What is in issue however before us is not the term of such imprisonment but the order suspending the sentence for a period of three years.

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The power to suspend a sentence of imprisonment found its way in our legislation for the first time under s.11 of the Military Criminal Code and Procedure Law, 1964 (Law 40/64). It was introduced into our criminal law generally by the Sentence of Imprisonment (Conditional Suspension in Certain Cases) Law 1972 (Law 95/72) by which the circumstances under which a sentence may be suspended are defined. A sentence may be suspended under Law 95/72 if it does not exceed two years imprisonment and under the Military Criminal Code and Practice

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Law, as amended, in respect of offences punishable by imprisonment for less than five years.

In Sentencing in Cyprus by G.M. Pikis we read the following at p.12 on the question of suspended sentence:

5 «Our legislation on suspended sentences is modelled on the  
corresponding English legislation. Courts in England have  
repeatedly emphasized that a suspended sentence of  
imprisonment is a sentence of imprisonment in every sense  
except that its execution is postponed. Therefore, the court  
10 must decide in the first place, as a matter of principle, whether  
a sentence of imprisonment is justified and then ponder over  
the possibility of suspension. A suspended prison sentence is  
not an alternative to probation nor a species of probation.»

15 In *Demetriou v. The Republic* (1974) 2 C.L.R. 45, the Court  
analysed the principles upon which a sentence may be suspended  
under s.11 of the Military Criminal Code and referred for guidance  
to the provisions of s.100 of the Greek Military Code enumerating  
the factors that should bear with the Court in the exercise of its  
discretion. In the English text of the judgment at pp. 49-50  
20 Triantafyllides, P., had this to say:

«As it is obvious that Law 40/64 was drafted on the basis of  
corresponding provisions in force in Greece, it is useful to  
refer to section 100 of the Criminal Code in Greece, which  
lays down the following criteria in relation to the suspension of  
25 a sentence. It reads as follows (in translation):-

‘Suspension of sentence may be granted if from an  
examination of the circumstances in which the offence was  
committed, and in particular in view of what caused it, the  
past life, and the character of the convicted person, the  
30 court is of the opinion that it is not necessary for him to  
serve the sentence in order to be deterred from committing  
other criminal acts. In forming such an opinion the court  
must take, also into consideration the conduct of the  
offender after the offence, and especially any repentance  
35 shown, and the willingness to make reparation for the  
consequences of the offence’»

The above principles were in fact followed by the trial Court in the present case.

The respondent has a clean criminal record. This factor was

taken into consideration by the trial Court. Also the trial Court took into consideration the fact that the respondent at the time of the commission of the offence was operating under psychological distress due to the problems which he encountered as a result of the colour of his prospective wife and his newly born child, a matter which is born out from the report of the office of the Director of Welfare Services. The personal and family circumstances of an accused person are matters which should be taken into consideration by a Court and in the present case the trial Court was right in taking into consideration such circumstances. We also agree with the trial Court that the repentance of the respondent expressed in his confession to the police in which he made a clean breast of the commission of the offence which resulted to the discovery of most of the jewellery stolen with the exception of a small part of it for which the complainant and his wife in an effort to help the respondent in his family conditions forewent any claim, should be taken into consideration.

The trial Court concluded as follows:

«Finally, having taken all these matters into consideration we find that we can, exercising the utmost leniency, to suspend the sentence of imprisonment to afford the accused the opportunity to face his problems and establish his relations with his new family and to settle in his employment. So we afford him this opportunity to establish the prerequisites for a decent life for himself and his family which every human being deserves.»

We find nothing wrong in the approach of the Court in the present case and we have come to the conclusion that the trial Court properly exercised its discretion in suspending the sentence of imprisonment.

In the result the appeal fails and is hereby dismissed.

*Appeal dismissed.*