

1962
Nov. 1, 13
THE ATTORNEY-
GENERAL
v.
GEORGHIOS
STAVROU
& OTHERS

[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]
THE ATTORNEY-GENERAL OF THE REPUBLIC.

Appellant,

1. GEORGHIOS STAVROU,
2. IACOVOS DEMOSTHENOUS,
3. MICHAEL KYRIACOU,

Respondents.

(Criminal Appeal No. 2561).

Criminal Law—Sentence—Principles upon which sentence should be assessed—Young offenders—Desirability of social investigation reports by the Probation Officer before passing sentence in certain cases.

Sentence—Costs—Order of payment of costs is unusual in sentences of imprisonment.

Sentence—Shopbreaking contrary to section 294(a) of the Criminal Code, Cap. 154—Appeal by the Attorney-General—Sentence increased—

The respondents were jointly charged for shopbreaking and stealing a metal safe containing money and other articles valued at £60, contrary to section 294(a) of the Criminal Code.

They all pleaded guilty and the trial Court sentenced respondent No. 1 to £30 fine and in addition bound him over in £50 for one year to keep the peace and the remaining two respondents were bound over in the sum of £100 each with a surety to come up for judgment within one year if called upon.

Moreover, each of the three accused was ordered to pay £10 compensation to the complainant; and £2.500 mils costs towards the costs of prosecution.

Against these sentences the Attorney-General appealed, on the ground that they were, in the circumstances, manifestly insufficient, considering the gravity of the offence.

The High Court after considering each respondent's social investigation report, differentiated between them, set aside

the sentences substituting therefor heavier ones, and set aside the order for the payment of costs.

1962
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STAVROU
& OTHERS

Held : (1) Although the charges arise out of the same set of facts, yet we would differentiate between the respondents in view of the previous convictions of respondent No. 1.

(2) Respondent No. 1 will be sentenced to two years' imprisonment, the sentence to run from the date of the hearing of the appeal.

(3) Respondent No. 2 to be on probation under the supervision of the appropriate Probation Officer, for three years, under a probation order on the usual terms, controlled by the District Court.

(4) Respondent No. 3 to be on probation under the supervision of the appropriate Probation Officer, for three years under a probation order controlled by the District Court containing the condition that during the period of probation, the probationer will pursue a course of studies (night classes, if working during the day) as the Probation Officer may plan for him now, or arrange from time to time.

(5) The order for the payment of costs is unusual in sentences of imprisonment ; and is set aside.

(6) The Orders for the payment of compensation, to stand as made in the District Court.

Per curiam : If the accused are persons of young age, the trial Court should, before passing sentence, direct that a Social Investigation report by the Probation Officer be prepared.

Sentences set aside and substituted.

Cases referred to :

Styllanou and others v. The Republic 1961 C.L.R. 265 ;

Kioftes v. The Republic (Crim. Appeal 2413) *unreported*, decided on 14.11.61.

Charalambos Tryfona Aloupos v. The Republic 1961 C.L.R. 246;

Styllis Tofi v. The Republic (Crim. Appeal 2491, *unreported* decided on 8.6.62) ;

Djermal Mehmed and others v. The Police (Crim. Appeal 2474-2477 *unreported*, decided on 5.4.62).

1962
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GENERAL,
v.
GEORGHIOS
STAVROU
& OTHERS

Appeal against sentence by the Attorney-General of the Republic.

The respondents were convicted on the 25.9.62 at the District Court of Nicosia (Cr. Case No. 13905/62) on one count of the offence of shopbreaking contrary to ss.294(a) and 20 of the Criminal Code, Law Cap. 154 and were sentenced by Pierides, D.J. to the following sentences: First respondent to pay a fine of £30.— and in addition to be bound over in £50.— for one year to keep the peace. The other two respondents were bound over in the sum of £100.— each, with a surety to come up for judgment within one year, if called upon, moreover, each of the three respondents was ordered to pay £10.— compensation to the complainant, and £2.500 mils towards the costs of prosecution.

V. Aziz for the appellant.

A. Hji Constantinou (on behalf of Mr. Lefcos N. Clerides) for respondent No. 2.

Respondents 1 and 3 appearing in person.

The judgment of the Court was delivered by :—

VASSILIADES, J. : This is an appeal by the Attorney-General against the sentence imposed on the respondents by the District Court of Nicosia, for shopbreaking and stealing. The charge is for the crime in sect. 294(a) of the Criminal Code, which is punishable with imprisonment for seven years.

The respondents were jointly charged for committing the crime together ; and stealing from the shop in question a metal safe, containing money and other articles valued at £60.—

They all pleaded guilty ; whereupon the trial-court passed sentence, after hearing the prosecuting officer, as usual, and the accused, or advocates on their behalf, in mitigation.

The first respondent in the dock was sentenced to £30.— fine ; and, in addition, to be bound over in £50.— for one year to keep the peace. The other two respondents were bound over in the sum of £100.— each, with a surety to come up for judgment within one year, if called upon. Moreover, each of the three accused was ordered to pay £10.— compensation to the complainant ; and £2.500 mils towards the costs of prosecution.

Against these sentences, the Attorney-General appealed, on the ground that they are, in the circumstances, manifestly insufficient, considering the gravity of the offence.

The learned trial judge did not place on record his reasons for these sentences. One such reason, may be the age of the respondents. According to the charge-sheet the first respondent is 23 ; the second 21 ; and the third 20 years of age.

But if the young age of the accused was the learned Judge's reason for such light sentences, it was also a strong reason for directing a Social Investigation report by the Probation Officer, for each accused, before passing sentence, as indicated on more than one occasion, by this Court. It is sufficient to refer to *Stylianou and others v. The Republic* 1961 C.L.R. 265, where it was said :

".....in cases where the persons convicted are of young age, and a sentence of imprisonment is contemplated, the services of a Probation Officer shall be made available to the Court".

And in *Kiofte's v. The Republic* (Crim. App. 2413) the view was expressed that such reports are very useful where the offenders are young persons, and this Court felt confident that all Courts would avail themselves of such reports, in appropriate cases.

It is to be regretted that since then, more than once this Court had to adjourn the hearing of an appeal against sentence, as we had to do in this case, in order to have such reports prepared and filed.

Coming now back to this case, we have considered the matter in hand, in the light of the information contained in the report concerning each individual respondent, and of what each of them had to say in this connection. We are unanimously of the opinion that the appeal was justified, and it must succeed.

This Court had occasion to deal with the considerations bearing upon sentence in *Charalambos Tryfona Aloupos v. The Republic* (Crim. App. 2412, decided on 3.11.61) ; in *Styllis Tofi v. The Republic* (Crim. App. 2491, decided on 8.6.62) ; and in numerous other appeals to which I need not now refer. Upon these considerations, we think that the sentences imposed in

1962
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the District Court must be set aside ; and be substituted by the sentence and orders which follow.

Moreover, we are unanimously of the opinion that, owing to the antecedents and other relevant matters bearing on the question of sentence, we must differentiate between the first respondent and the other two, although they have all committed one and the same crime under similar circumstances. (*Djemat Mehmed and others v. The Police - Crim. Appeals 2474-2477 consolidated*). We are not taking into account his first two convictions in 1955 and 1956 ; but we cannot overlook his three last convictions, all in 1960, suggesting a rather unruly and indisciplined character.

We venture to hope that the sentence he is about to receive, will give him the opportunity to reconsider his attitude towards the community, and reform his ways. He must realise that his future lies entirely in his hands.

The result of the appeal is that the sentences imposed are substituted as follows :—

Respondent No. 1. Georghios Stavrou :

Two years imprisonment from today.~

Respondent No. 2. Iacovos Demosthenous :

To be on probation under the supervision of the appropriate Probation Officer, for three years, under a probation order on the usual terms, controlled by the District Court.

Respondent No. 3. Michael Kyriacou :

To be on probation under the supervision of the appropriate Probation Officer, for three years under a probation order controlled by the District Court, containing the condition that during the period of probation, the probationer will pursue a course of studies (night classes, if working during the day) as the Probation Officer may plan for him now, or arrange from time to time.

The Order for the payment of costs is unusual in sentences of imprisonment ; and is set aside.

The Orders for the payment of compensation, to stand as made in the District Court.

Sentence set aside and substituted.

1967
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