[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

DAVID DAWES,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No* 2573).

Criminal Law—Carrying a dagger contrary to section 81(1) of the Criminal Code, Cap. 154—Sentence—An accused person, especially, foreigner, should understand not only the nature of his plea but also that he is charged with a serious offence.

Criminal Procedure—Appeal against sentence—Fresh evidence—Application for fresh evidence

New trial for re-assessment of the sentence in the light of such further evidence as the prosecution and the accused may adduce—The Courts of Justice Law, 1960 (No 14/60) section 25(3)

Late in the evening of 23rd October 1962, the accused was arrested in Larnaca because he was carrying a knife. He was released from custody the same day at 23 30 hours. The following day he was arraigned in Court charged with carrying a dagger outside his house contrary to section 81(1) of the Criminal Code, Cap. 154, pleaded guilty, was convicted and sentenced On appeal against sentence, the appellant applied to the High Court for leave to adduce fresh evidence The High Court set aside the sentence and remitted the case to the District Court of Larnaca to assess the penalty in the light of such fresh evidence as the prosecution or the defence may adduce

Held. (1) From the affidavits submitted in support of the application it is apparent that there ought to have been further information before the trial Judge

(2) The application for leave to call before the High Court further evidence of an extenuating nature could not fairly be granted because the trial might very well have been conducted differently if such evidence had been before the trial Judge

(3) For protection of the public as well as of the accused

the proper course here is to set aside the penalty and remit the case to the trial Judge to hear such evidence relating to sentence as the prosecution and the accused may adduce and section 25(3) of the Courts of Justice Law 1960, authorizes this procedure.

(4) We are not prepared to receive the affidavits which have been filed upon the application that we should hear further evidence as evidence upon which we should vary the sentence but we do take them into account in arriving at our decision.

(5) The trial Court should make sure that an accused foreigner should understand the nature of his plea and understand that he is charged with a serious offence.

(6) The trial Judge must make sure by whatever means are available to him that an accused appreciates his situation and that he has proper opportunity to put forward whatever is to be said on his behalf whether in mitigation of sentence or for his defence.

The sentence is set aside and the case is remitted to the trial Judge in the District Court of Larnaca to assess the penalty.

Cases referred to :

Baranoglou v. The Police, Criminal Appeal No. 2349, decided on May 2, 1961 (*unreported*), *followed*.

Appeal against sentence.

The appellant was convicted on the 24/10/62 at the District Court of Larnaca (Cr. Case No. 4502/62) on one count of the offence of carrying a dagger outside his house contrary to s. 81(1) of the Criminal Code, Cap. 154 and was sentenced by Orphanides, D.J. to six months' imprisonment.

St. G. Mcbride for the appellant.

V. Aziz for the respondent.

The judgment of the Court was delivered by :—

WILSON, P. : The accused was charged on October 23rd, 1962, at Larnaca with carrying a dagger outside his house contrary to section 81(1) of the Criminal Code, Cap. 154. He was arrested late in the evening of that day and released from custody at about 23.30 hours. On October 24, 1962, the following day, he was arraigned in Court and pleaded guilty to this charge. He was not represented by counsel but he was accompanied by a superior officer. After the plea the facts were recounted, as is usual, by the sub-Inspector who prosecuted the case.

The accused, a soldier in the British Army, made a short statement to the Court and the sub-Inspector said that there were no previous convictions against him. The Commanding Officer stated that the accused so far had given no trouble and he was under a mental strain because his wife was three weeks overdue in giving birth to a child. The baby ought to have been born three weeks previously.

It is apparent from the record that the trial was a very brief one and that the procedure followed from arrest to arraignment illustrates that in criminal cases the law moves promptly, which is as it should be.

In this case, however, from the affidavits which have been filed in support of the application to call further evidence before us, at this time, it is apparent that there ought to have been further information before the trial Judge.

The problem is whether we should hear such further evidence or whether the case should be sent back for a re-assessment of the penalty.

The application for leave to call before us further evidence of an extenuating nature could not fairly be granted because the trial might very well have been conducted differently if such evidence had been before the trial Court. It is evidence the police may wish to meet by putting in other evidence, which would have a material bearing upon sentence. It is well known, when there is a plea of guilty, the evidence relating to sentence at trial is often rather sketchy and that the police officers frequently do not give all the facts in great detail.

For protection of the public as well as of the accused the proper course here is to set aside the penalty and to remit the case to the trial judge to hear such evidence relating to sen-

tence as the prosecution and the accused may adduce. Section 25(3) of the Courts of Justice Law, 1960, authorizes this procedure.

In a Judgment of this Court on May, 2nd 1961, Criminal Appeal No. 2349, *Baranoglou* v. *The Police*, the Court was dealing with a foreign citizen who was charged with kidnapping. He pleaded guilty and was sentenced. Upon an appeal it appeared that the accused was represented by an advocate but, in fact, the accused did not understand the nature of the charge. In the result a new trial was directed. I quote from the Judgment :

> "One of the requirements is that the Court should be satisfied that he understood the nature of the plea and this Court, having regard to the matters which have been alluded to, and particularly to the affidavit of the advocate who appeared in the court below as well as the trial judge's report, under these rather exceptional circumstances, is not satisfied that this foreign citizen understood the nature of his plea and, in the circumstances, we think that the proper course is that which the Attorney-General now has invited us to adopt, namely to direct that a new trial should be held of this man on the charge for which he appeared in the District Court. Conviction and sentence quashed".

In the present case we are not prepared to receive the affidavits which have been filed upon the application that we should hear further evidence, as evidence upon which we should vary the sentence, but we do take them into account in arriving at our decision. We would extend the principle which has been just enunciated to include that the accused foreigner should also understand the nature of his plea and understand that he is charged with a serious offence. It is difficult to lay down a general rule which may be applied in all cases but, in this case, the accused was arraigned the following morning — about 10 hours after he was apprehended.

He was not represented by counsel and in this we think the Army was deficient in not giving proper instructions to the Commanding Officer to take the necessary steps to protect the soldier, who, quite obviously, was not in a position to protect himself.

We do not criticise the trial Judge before whom procee-

dings are often brief. The Judge appeared to have no indication there were extenuating circumstances to be brought to his attention. We do think, however, trial Judges need to feel satisfied by whatever means are available to them that an accused appreciates his situation and that he has proper opportunity to put forward whatever is to be said on his behalf whether it is a defence or in mitigation of sentence.

The accused will be admitted to bail on personal bond in the sum of £200, if his Commanding Officer also is in a position to undertake that he will appear.

Major Linch : I guarantee that the accused will appear for sentence.

WILSON, P. : The signing of the bond might be unnecessary but it indicates the seriousness of the charge. I hope the Army will be more careful in future.

The sentence is set aside and the case is remitted to the trial Judge in the District Court of Larnaca to assess the penalty.

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