1965
Nov. 19
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ODYSSEAS
CHRISTOFI
SHIAKAS
v.
THE REPUBLIC

[VASSILIADES, TRIANTAFYLLIDES AND MUNIR, JJ.]

ODYSSEAS CHRISTOFI SHIAKAS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 2797)

Criminal Law—Carrying, possessing and receiving as stolen property, of two military rifles, contrary to sections 3 (1) (2) (*a*), 3 (1) (2) (*b*) *and* 3 (*a*) (2) (*b*) *of the Firearms Law, Cap.* 57, (*as amended by Law* 11 *of* 1959) *and section* 306 (*a*) *of the Criminal Code, Cap.* 154—*Sentence—Appeal against sentence as being manifestly excessive—Source of firearms not an ingredient of offence—Seriousness of offences—Sentence not manifestly excessive.*

Criminal Law—Administration of Justice—Courts must not flinch in the performance of their public duty to apply the law—Offenders must be prepared to take the consequences of their conduct.

The appellant was on his own plea convicted on 6 counts of the offences of carrying and possessing of two military rifles, contrary to sections 3 (1) (2) (*a*), 3 (1) (2) (*b*) and 3 (*a*) (2) (*b*) of the Firearms Law, Cap. 57 (as amended by Law 11 of 1959) and section 306 (*a*) of the Criminal Code, Cap. 154, and of receiving the said rifles knowing the same to have been stolen, contrary to section 306 (*a*) of the Criminal Code, Cap. 154 and was sentenced to 4 years' imprisonment on each count, the sentences to run concurrently.

He appealed against sentence on the ground that it was excessive. Counsel for the appellant referred to the case of *Pefkos* v. *Republic* 1961 C.L.R. 340 and argued that where the circumstances of the case constitute two or three different offences and the Court convict on all it is not necessary that sentences should be passed upon every count. If was further argued on behalf of the appellant that at the time of the offence, he did not know where the rifles came from, while the Court gave him a severe sentence, because the guns in question came from the National Guard.

The Supreme Court in dismissing the appeal referred to the history and background of sentences imposed in offences of the same nature and held :

(1) We are not prepared to hold that, in the circumstances of this case, a sentence of four years imprisonment is manifestly excessive. A man who in cold blood takes the responsibility of carrying rifles, should be prepared to take the consequenses of such conduct, as declared by the law of his country. Whatever our individual approach to this sentence may be, we are unanimously of the opinion that we cannot interfere with it as manifestly excessive. And we do not find it necessary to call upon the respondent.

The case of Ioannis Michael Pefkos v. The Republic (1961, C.L.R. p. 340) distinguished.

(2) The source, the firearms come from, is no ingredient of the offence. The offence is the carrying of firearms, contrary to the provisions of the Firearms Law ; and this is what carries the sentence provided by the statute. We are, therefore, in agreement with counsel for the appellant that this case must be approached regardless of the origin of the guns.

(3) Even so, however, we find ourselves on the one hand, dealing with an appeal against a sentence of four years imprisonment imposed upon a man of good character, with no previous convictions and the supporter of a family, and on the other hand, we have to bear in mind the nature of the offence, and the law under which such sentence was imposed by the Assize Court. We have to remember that the Legislature of the Country retains on the statute book the Firearms Law in its present form which provides for a sentence of ten years imprisonment with or without a fine up to £800 for the offence of carrying such kind of weapons. The law is there ; and when the Courts are called upon to apply it, the responsibility falls squarely upon their shoulders to do so. They must not flinch in the performance of their public duty.

(4) We feel very sorry for this man who now finds himself saddled with the consequences of conduct into which he may have drifted, carried by the mentality still prevalent with some people in the island. But, we cannot allow this sympathy to carry us away from our duty.

(5) The appeal will be dismissed ; but, in the circumstances, we think that this should be coupled with a direction for the sentence to run from the day of conviction.

Appeal dismissed. Sentence to run from the day of conviction.

Cases referred to :

Pefkos and others v. *Repuplic* 1961 C.L.R. 340 ;

Attorney-General v. *Kouppis and others* 1961 C.L.R. 188.

Appeal against sentence.

Appeal against the sentence imposed on the appellant who was convicted on the 12.10.65, at the Assize Court of Limassol (Criminal Case No. 5767/65) on six counts of the offences of carrying, possessing and receiving as stolen property of two military rifles, contrary to sections 3 (1) (2) (*a*), 3 (1) (2) (*b*) and 3 (*a*) (2) (*b*) of the Firearms Law, Cap. 57 (as amended by Law 11 of 1959) and was sentenced by Loizou, P. D. C. Malachtos and Beha, D. J. J., to 4 years' imprisonment on each count, the sentences to run concurrently.

L. N. Clerides, for the appellant.

A. Frangos, counsel of the Republic, for the respondent.

The judgment of the Court was delivered by :

VASSILIADES, J. : This is an appeal against a sentence of four years imprisonment, imposed by the Assize Court of Limassol, for the carrying, possessing and receiving as stolen property of two military rifles.

Counsel for the appellant has strenuously argued on behalf of his client, that the sentence imposed is manifestly excessive ; and that it was imposed on wrong principle. Where the circumstances of the case, learned counsel submitted, constitute two or three different offences and the Court convicts on all, it is not necessary that sentences should be passed upon every count ; and he referred us to *Ioannis Michael Pefkos* v. *The Republic* (1961, C.L.R. p. 340 at p. 370). The circumstances of this case are so different from those in Pefkos' case, that we find it unnecessary to deal further with this submission.

Another point which was stressed on behalf of the appellant is that at the time of the offence, the appellant

did not know where the rifles came from, while the Court gave him a severe sentence, because these guns came from the National Guard.

We have pointed out to Counsel during the argument, that the source, the firearms come from, is no ingredient of the offence. The offence is the carrying of firearms, contrary to the provisions of the Firearms Law ; and this is what carries the sentence provided by the statute. We are, therefore, in agreement with counsel for the appellant that this case must be approached regardless of the origin of the guns.

Even so, however, we find ourselves on the one hand, dealing with an appeal against a sentence of four years imprisonment imposed upon a man of good character, with no previous convictions and the supporter of a family, and on the other hand, we have to bear in mind the nature of the offence, and the law under which such sentence was imposed by the Assize Court. We have to remember that the Legislature of the Country retains on the statute book the Firearms Law in its present form which provides for a sentence of ten years imprisonment with or without a fine up to £800 for the offence of carrying such kind of weapons. The law is there ; and when the Courts are called upon to apply it, the responsibility falls squarely upon their shoulders to do so. They must not flinch in the performance of their public duty.

As early as 1960 in a case of carrying a pistol, where the trial Court, in the circumstances prevailing at that time, imposed a sentence of fine only, the Attorney-General of the young Republic appealed against that sentence ; and the Court of Appeal very clearly stated their views in the matter, and the grave dangers attaching to the offence of carrying arms. The sentence of fine was set aside, and it was substituted by a sentence of imprisonment with a clear warning as to what the carrying of arms may mean to persons who take the risk of doing so against the law. I refer to Criminal Appeal 2331 ; *The Attorney-General v. Kyriacos Nicola Kouppis and others ;* 1961, C.L.R. p. 188.

Five whole years have since passed, and I am afraid Mr. Clerides is right in saying that the sentences imposed by the Courts during this period have not always reflected the severity of the law, or the intention of the legislature as expressed in its provisions. On more than one occa-

sion when a case of that kind came before the Court of Appeal, the opportunity was made use of for giving warning, even when the Court did not find it necessary to interfere with the sentence of the trial Court.

It is with this background that we have to approach the present appeal. And, although some of us may feel that we may have passed a somewhat different sentence in this particular case—less severe or more severe—in the first instance, we are not prepared to hold that, in the circumstances of this case, a sentence of four years imprisonment is manifestly excessive. A man who in cold blood takes the responsibility of carrying rifles, should be prepared to take the consequences of such conduct, as declared by the law of his country. Whatever our individual approach to this sentence may be, we are unanimously of the opinion that we cannot interfere with it as manifestly excessive. And we do not find it necessary to call upon the respondent.

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