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[VASSILIADES, P., JOSEPHIDES, LOIZOU, JJ.]

MICHAEL
ACHILLEOS
v.
THE POLICE

MICHAEL ACHILLEOS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3189*).

Sentence—Acting in a manner so rash or negligent (unintentional firing of a pistol at the customs in the airport) as to endanger human life—Section 236 (h) of the Criminal Code, Cap. 154—Sentence of £100 fine and binding over in the sum of £150 for two years to keep the peace—Appeal against sentence—Fine though rather not so manifestly excessive as to justify intervention—No justification for the binding over order considering the personal circumstances of the appellant—Order set aside.

Sentence—Sentencing is a very important and delicate function of the Court—And Judges must, therefore, be assisted with all relevant information (see Lazarou v. The Police (1969) 2 C.L.R. 184, at p. 187 ; Tattari v. The Republic (reported in this Part at p. 6 ante ; at p. 11) ; Pullen v. The Republic (reported in this Part at p. 13 ante ; at p. 16) ; Ioannou v. The Police (reported in this Part at p. 36 ante).

Cases referred to :

Terlas v. The Police (reported in this Part at p. 30 ante ; at p. 35) ;

Lazarou v. The Police (1969) 2 C.L.R. 184, at p. 187 ;

Tattari v. The Republic (reported in this Part at p. 6 ante ; at p. 11) ;

Pullen v. The Republic (reported in this Part at p. 13 ante ; at p. 16) ;

Ioannou v. The Police (reported in this Part at p. 36 ante).

The facts sufficiently appear in the judgment of the Court, allowing in part this appeal against sentence.

Appeal against sentence.

Appeal against sentence by Michael Achilleos who was convicted on the 15th July, 1970, at the District Court of Nicosia (Criminal Case No. 8885/70) on one count of the

offence of reckless and negligent act contrary to sections 236 (h) and 35 of the Criminal Code, Cap. 154, and was sentenced by Stylianides, D.J., to pay a fine of £100 and was bound over in the sum of £150 for two years to keep the peace and be of good behaviour.

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L. Papaphilippou, for the appellant.

Cl. Antoniadēs, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :—

VASSILIADES, P. : This is an appeal against a sentence of £100 fine coupled with a bond in the sum of £150 for two years to keep the peace and be of good behaviour, imposed on the appellant—a 33 years' old plumber—in the District Court of Nicosia, after his conviction under section 236 (h) of the Criminal Code (Cap. 154) for acting in a “manner so rash or negligent as to endanger human life”. The appeal is taken on the ground that the sentence is manifestly excessive, considering the circumstances in which the offence was committed and the character, health and other matters connected with the offender, which must be taken into account in dealing with sentence. Imposing in the circumstances, the maximum fine provided by law for a misdemeanour, the trial Judge imposed—counsel for the appellant argued—a manifestly excessive sentence.

The facts of the case are simple and constitute practically common ground. The appellant, a plumber of rather limited means, with a wife and four minor children, was found to suffer of paralysis. After treatment in the Government Hospital here, he was advised to seek treatment abroad. With the assistance of relatives in South Africa, he went to Johannesburg some time in 1969, for his health. On June 15, 1970, he returned to Cyprus by air ; and while his luggage was being checked at the Customs in the airport, he declared possessing a pistol which he produced and placed on the counter. The customs officer enquired whether it was unloaded ; and the appellant removed the magazine. To a further enquiry by the officer whether it was now certain that there was no bullet in the barrel, the appellant replied that it was empty ; and pointing it at the floor—according to the officer—to assure him that it was empty, apparently pressed the trigger and the pistol fired, wounding appellant's other hand (the palm

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of his left hand) and injuring also another customs officer standing 2-3 yards away, on the left foot. Fortunately neither of the injuries was very serious.

Appellant's explanation to the police—which he gave at the hospital on the same day—was that the pistol fired accidentally while he was trying to open the barrel to make sure that it was empty. In mitigation, counsel on his behalf submitted that the firing of the pistol was accidental, fortunately without serious consequences ; that the appellant was a person of good character and a first offender ; and that he would probably have to pay considerable compensation to the other person injured which he could hardly afford, being a man of poor means and impaired health, with a wife and four minor children to support.

The trial Judge took the view that the circumstances in which the offence was committed called for severe punishment as they involved considerable danger to other persons. Taking however, into consideration the character of the appellant and the condition of his health, the Judge decided to avoid imposing a sentence of imprisonment but he considered that he should inflict the maximum fine for a misdemeanour, £100, plus a bond to keep the peace as stated earlier.

After hearing learned counsel for the appellant on the question of sentence, we found it unnecessary to call on counsel for the police regarding the fine ; but we asked whether the respondent wished to be heard in support of the part of the sentence directing the signing of a bond to keep the peace. Mr. Antoniadis for the Attorney-General, quite rightly in our opinion, stated that he did not think that he could support that part of the sentence.

What, therefore, remains for us to decide at this stage, is whether in the special circumstances of this case (those pertaining to the offence as well as those pertaining to the offender) the sentence of £100 fine has been shown by the appellant to be so manifestly excessive as to justify intervention by this Court. (See *Terlas v. The Police* (reported in this Part at p. 30 *ante*; p. 35); and earlier cases).

The part of the case before us pertaining to the offence, presents, in our opinion, no difficulty. Possessing a loaded pistol in the airport customs, where a number of other persons are usually found, is in our opinion, rash and reckless conduct, likely to endanger human life, or cause harm to others ; and calls for a rather severe sentence. But the considerations pertaining to the offender, which the Court must bear in mind in measuring sentence, present

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some difficulty in this case, resulting mostly from the fact that material information in that connection, is lacking. What experience did the defendant have in the handling of such weapons? What made him carry a loaded pistol on his person? Did it have anything to do with his idea of security in present-day air-travelling? What is the real state of his health? Whether he can work at all; and what are his earnings. What other means, if any has he got at his disposal so as to be able to pay the fine? Unfortunately none of these relevant matters were placed before the trial Judge in connection with sentence; and none is now before us.

This Court has repeatedly expressed the view that all information relevant to sentence should, in every case be duly placed before the Court to enable the Court to deal with the question of sentence. We have stressed time and again that sentencing is a very important and delicate function of the Court where the Judge must be assisted with all relevant information. (See *Lazarou v. The Police* (1969) 2 C.L.R. 184 at p. 187; *Tattari v. The Republic* (reported in this Part at p. 6 *ante*; at p. 11); *Pullen v. The Republic* (reported in this part at p. 13 *ante*; at p. 16); *Ioannou v. The Police* (reported in this Part at p. 36 *ante*)). We do not think that in the circumstances of this particular case, we would be justified in calling for such information at this stage. In view of the sentence we are dealing with, we think that we should dispose of the appeal on the material before us. We think that £100 fine, although it may be a rather heavy fine for the unintentional firing of the pistol in this case, it is not so manifestly excessive considering that the appellant was carrying it loaded in a public place, as to justify intervention by this Court. But as regards the other part of the sentence—the bond for £150 to keep the peace for two years—we find no justification in the circumstances of this appellant; and we think that it should be set aside.

In conclusion the appeal is allowed; and the sentence of the trial Court is modified (under section 145(2) of the Criminal Procedure Law, Cap. 155) to one of £100 fine, payable within one month. If the appellant finds that he will not be able to pay the fine within that period and shall thus have to serve imprisonment in lieu (which the trial Court rightly intended to avoid) he may apply to the District Court for directions as to the mode of payment of the fine, presenting at the same time, the material required in support of such an application.

Appeal allowed; sentence modified.