1970
Dec. 8

LOUCAS CHARALAMBOUS ARISTOTELOUS v. THE REPUBLIC

[VASSILIADES, P., TRIANTAFYLLIDES, STAVRINIDES, JJ.]

LOUCAS CHARALAMBOUS ARISTOTELOUS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 3201).

Sentence—Sentence of imprisonment—Benefit of military discipline by 21 *months' military service on expiry of the sentence imposed—A ground for reducing the sentence—Sentence of eighteen months' imprisonment for burglary reduced into a term of nine months.*

Burglary—Section 292 *of the Criminal Code, Cap.* 154*—Aggravated assault—Section* 243 *of the Code—Sentence—Eighteen and nine months' imprisonment, respectively, to run concurrently—Sentence reduced—See* supra.

This is an appeal against the sentences imposed on the appellant by the Assize Court of Paphos, after his conviction in that Court for burglary and aggravated assault under sections 292 and 243, respectively, of the Criminal Code, Cap. 154. The sentences were eighteen months' imprisonment for the burglary and nine months' for the aggravated assault. The Court of Appeal, taking into consideration, *inter alia*, that the appellant has been called for his military service in the National Guard which would keep him in the army for about twenty-one months after his release from prison on expiry of his sentence—allowed the appeal ; and reducing the sentence imposed to nine months' imprisonment on each count—to run concurrently—from the date of conviction :—

Held, (1). We are inclined to think that if the trial Court had in mind that on expiry of appellant's prison sentence he will have the benefit of military discipline for a further period of twenty-one months, the trial Court might have come to a different conclusion regarding the length of sentence on the first count (burglary).

(2) We, therefore, allow the appeal and vary the sentence to one of nine months' imprisonment on each count, to run concurrently from the date of conviction.

Appeal allowed. Sentence reduced.

Cases referred to :

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

Appeal against sentence.

Appeal against sentence by Loucas Charalambous Aristotelous who was convicted on the 22nd September, 1970, at the Assize Court of Paphos (Criminal Case No. 2445/70) on two counts of the offences of burglary and aggravated assault contrary to sections 292, 20 and 243 of the Criminal Code, Cap. 154, and was sentenced by Malachtos, P.D.C., Vassiliades and Pitsillides, D.JJ., to 18 months' imprisonment on the first count and 9 months' imprisonment on the secound count, the sentences to run concurrently.

C. J. Myrianthis, for the appellant.

S. Nicolaides, counsel of the Republic, for the respondent.

The judgment of the Court was delivered by :—

VASSILIADES, P. : This is an appeal against the sentences imposed on the appellant by the Assize Court of Paphos on September 22, 1970, after his conviction in that Court for burglary, under section 292 of the Criminal Code (Cap. 154), and for aggravated assault, under section 243 of the Criminal Code. The appellant was jointly charged and convicted together with another person who is not now before us. The appellant pleaded guilty to both counts ; and the Court proceeded to pass sentence upon him on the facts presented by counsel for the prosecution after hearing appellant's advocate, as usual, in mitigation.

Taking the facts from the record, we can state them briefly for the purposes of this judgment : The appellant, a youth of 19 years of age doing his national service, took an outing for the evening of June 10, 1970, together with a friend of his aged 17, in the town of Paphos. The two youths went to a cinema ; then to a coffee shop ; and from there they went for a walk passing the house of a woman

described in appellant's own statement to the police, as a woman of loose morals. The appellant knew the woman ; and apparently knew the interior of the house sufficiently well to be able to find his way into the house, through an old back-window, the frame of which the appellant and his friend removed from the wall in order to gain access into the house.

There was no light in the house. The woman was in fact away to another town for a few days. The appellant and his friend had acquired from a wheel barrow a box of matches for light ; and striking matches one after another, started searching for money in the woman's wardrobe. In his statement to the police, the appellant said that he entered the house in order to destroy a photograph of his which he knew was to be found in the house. In fact, he found and tore up a photograph of a friend of his, which was later found in pieces by the police.

A neighbour passing outside the house noticed light inside ; and knowing that the woman was away, he watched for a minute. The striking of the matches made him realise that there were people inside. Suspecting that they were there for some illegal purpose, he called out to them : "What are you doing in there ?" Getting no reply, he got inside the house from the backyard. The appellant and his friend tried to run away ; the good neighbour chased them and caught the appellant by the arm. To get off his grip, the appellant hit the person who had arrested him with a bottle which was on a table nearby. He struck right on the head, wounding the man on the left temple and eye with the bottle.

That assault is the subject of the second count. It enabled the appellant to run away for the moment ; but the wounded man gave chase, notwithstanding his injuries, calling out at the same time for help. A police patrol that happened to be in the vicinity, joined in the chase and eventually caught the appellant and his friend. Charged at the police station with housebreaking and wounding, the two culprits gave their version in statements duly obtained, after caution, by a police sergeant. They were both prosecuted ; committed for trial by the Assizes ; and eventually convicted on their own plea, as already stated, about three months later.

The appeal is taken on the ground that the sentence is manifestly excessive. Mr. Myrianthis on behalf of the appellant referred to several cases where the approach

of this Court to appeals against sentence is stated in the background of the facts bearing upon the question of sentence in each case. As has been repeatedly said, the responsibility for measuring sentence lies primarily with the trial Court. This Court will not interfere with a sentence unless sufficient reason has been shown, justifying such intervention. (See *Pullen* v. *The Republic* (reported in this Part at p. 13 *ante* ; at p. 16)).

In the case in hand, the trial Court were dealing with two young persons, both of them first offenders. The Court had before them the social investigation reports which gave relevant information for the purposes of sentence. In the light of such information and of the other circumstances on which the case of the other, the younger, offender could be distinguished the trial Court made in his case, a probation order for two years. In the case of the appellant, the Court, taking into consideration his leading role in the commission of the offence and the fact that, in the past, appellant's behaviour showed him to be a rather unruly and irresponsible young person, the trial Court imposed upon him a sentence of 18 months' imprisonment for the burglary and 9 months' for the assault, both sentences running concurrently.

One of the grounds upon which learned counsel for the appellant submitted as a reason for reconsideration by this Court of the sentence imposed upon the appellant is that the latter has been called up for his military service in the National Guard which will keep him in the army for about 21 months, after his release from prison on expiry of his sentence. Counsel submitted that this fact was not placed before the trial Court ; nor does it appear to have been taken into consideration in assessing sentence. Army discipline and general training during a young man's military service may well be a period offering a good opportunity for learning the advantages of a disciplined and responsible way of life. It is a period during which a youth's conduct is under the supervision of his seniors in rank ; and officers well experienced in handling young persons ; especially persons handicapped by the lack of discipline and the required sense of responsibility.

We are inclined to think that if the trial Court had in mind that on expiry of appellant's prison sentence he will have the benefit of military discipline for a further period of 21 months, the Court might have come to a different conclusion regarding the length of the sentence on the

first count. Taking into consideration that the facts constituting the second count arose from the same incident and form part of the whole case, we think that the shorter sentence imposed by the trial Court on the second count, followed, as it is going to be, by 21 months of military service, is the appropriate sentence for this particular offender in the circumstances of this case ; and a suitable treatment for his reform. We, therefore, allow the appeal and vary the sentence to one of 9 months' imprisonment on each count, to run concurrently from the date of conviction. Appeal allowed ; order accordingly.

Appeal allowed.