

1979 July 6

[A. LOIZOU, MALAHTOS, SAVVIDES, JJ.]

DEMETRAKIS PARASKEVA KYPRI,

*Appellant,*

v.

THE REPUBLIC,

*Respondent.*

(*Criminal Appeal No. 4049*).

*Military offences—Sentence—Violence against superior—For months' imprisonment—Offence going to the root of military discipline and cannot be lightly treated—Appeal dismissed.*

5 *Criminal Law—Sentence—Assessment—Primarily the task of trial Courts.—*

*Court of Appeal—Appeal against sentence—Approach of the Court of Appeal.*

10 The appellant, a sergeant in the National Guard, was sentenced to four months' imprisonment after pleading guilty to the offence of violence against a superior. The superior, a lieutenant in the National Guard, was hit by the appellant and other persons on the face and other parts of his body because he had in the past reprimanded the appellant for not wearing his beret.

*Upon appeal against sentence:*

15 *Held*, that on the totality of the circumstances and bearing in mind that the decision as to sentence is primarily the task of trial Courts and that this Court interferes only when the sentence is, *inter alia*, manifestly excessive, or inadequate or when the trial Court has acted on a wrong principle of law, there is no  
20 reason to interfere with the sentence imposed; that these are offences that go to the root of military discipline and cannot be lightly treated; and that, accordingly, the appeal must be dismissed.

*Appeal dismissed.*

**Appeal against sentence.**

Appeal against sentence by Demetrakis Paraskeva Kypri who was convicted on the 4th June, 1979 at the Military Court sitting at Nicosia (Case No. 188/79) on one count of the offence of violence against a superior, contrary to section 53(1) of the Military Criminal Code and Procedure Law, 1964 (Law 40/64) and was sentenced to four months' imprisonment. 5

Appellant appeared in person

*G. Santis*, for the respondent.

A. LOIZOU J. read the following judgment of the Court. This is an appeal against the sentence of four months imprisonment imposed by the Military Court on the appellant who had been found guilty on his own plea of the offence of violence against superior, contrary to section 53(1) of the Military Criminal Code and Procedure Law 1964, (Law No. 40 of 1964). 10  
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The short facts of the case are as follows:

On the 8th January, 1979, Lieutenant Panayiotis Kleovoulou, Duty Officer at the time at the National Guard Headquarters at Idalion, met the appellant, a Sergeant in the National Guard, who was until then unknown to him, moving around with his head uncovered, and ordered him to put on his beret. The appellant for no known reason, refused to do so, thus committing a disciplinary offence. 20

On the following day the said Lieutenant, whilst sitting in the coffee-shop "Kiareza" was threatened by an unknown civilian for having reprimanded the appellant. 25

On the 14th February, 1979, at about 9.45 a.m. whilst this Lieutenant in company with another person was coming out of the coffee-shop of a certain Tassi at Idalion, noticed the appellant in mufti in the company of two civilians. The one of them was the same person who had threatened the Lieutenant at the coffee-shop of "Kiareza", and there and then, once more, threatened him that he would be beaten up if the appellant was punished for that disciplinary offence. The Lieutenant then said that he had only done his duty and left. They were, however, followed by the appellant and his companions and the appellant hit the Lieutenant on the face and other parts of his body. Upon medical examination he was found to have scrat- 30  
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ches mainly on the face. The matter was reported and when the appellant was later charged, his reply was, "I admit, it was not only myself that hit him, but also one of the other persons did".

5 The appellant had one previous conviction for stealing for which he had been sentenced to £10.—fine. The Military Court, however, in passing sentence said that as it was not of a similar nature it would not take it seriously into consideration.

10 The appellant in his plea in mitigation which in effect was repeated on appeal, complained that he had been provoked by the said Lieutenant, as the latter insulted him and his mother. The Military Court in passing sentence took into consideration the personal circumstances of the appellant, the nature of the offence and, also, the fact that the appellant had been punished with 20 days disciplinary detention and demoted to the ranks.  
15 It inquired into the allegations of the appellant about insult and provocative conduct on the part of the Lieutenant but dismissed same. Moreover, it stressed the fact that the offence on which it was about to impose sentence carried a maximum term of imprisonment of seven years and that it was a type of offence  
20 that went into the root of military discipline. Thereupon, imposed the sentence complained of.

On the totality of the circumstances and bearing in mind that the decision as to sentence is primarily the task of trial Courts and that this Court interferes only when same is, *inter alia*,  
25 manifestly excessive, or inadequate or when the trial Court has acted on a wrong principle of Law, we see no reason to interfere with the sentence imposed. No doubt, these are offences that go to the root of military discipline and cannot be lightly treated. The appeal, therefore, is dismissed.

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*Appeal dismissed.*