

HASSAN DOURMOUSH,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 2626)

Criminal Law—Carrying knife contrary to section 82 of the Criminal Code, Cap. 154—Minimum sentence of six months' imprisonment—Unless the Court thinks it expedient to impose a lesser sentence in the light of the circumstances of the case—Section 82 (2)—Discretion should be judicially exercised—Section 82 (supra) does not require "special reasons" for imposing a lesser sentence than the minimum one prescribed thereby.

Section 82 of the Criminal Code, Cap. 154 reads as follows :

" 82 (1) Any person who wears or carries a knife not ending in a sharp point outside his house or the curtilage thereof is guilty of a misdemeanour and is liable to imprisonment for one year.

(2) Any person who wears or carries a knife ending in a sharp point outside his house or the curtilage thereof is guilty of a misdemeanour and is liable to imprisonment for one year and, notwithstanding anything to the contrary in sections 29, 32 and 33 of this Code contained, is liable to a minimum sentence of imprisonment for six months unless the Court, in all the circumstances of the case including consideration of hardship and similar mitigating circumstances personal to the convicted person, thinks it expedient to impose a lesser sentence or make any other order.

(3) Whenever any lesser sentence is imposed or any other order is made under subsection (2) of this section the Court shall record the reasons for the imposition of such sentence or making of such order.

(4) No person shall be deemed to have committed an offence under this section if he shall prove to the satisfaction of the Court that he was wearing or carrying outside his house or the curtilage thereof the knife in respect of which the charge is made, for some lawful purpose for which such knife was necessary."

In this case the appellant was convicted on his own plea of the offence of carrying a pointed knife contrary to section 82 (*supra*) and sentenced to the minimum sentence of six months'

1963
March 21
—
HASSAN
DOURMOUSH
v.
THE POLICE

imprisonment. It appears that the trial Judge misdirected himself in that in imposing the minimum sentence of six months' imprisonment: (a) was influenced by the consideration that the accused failed to prove that he was a shepherd as he alleged, and (b) he failed to direct his mind to the relevant mitigating circumstances in the case. The misdirection under (a) consists in that, had the accused proved that he was carrying the knife for his occupation, his conviction would not stand in view of sub-section 4 of section 82 of the Criminal Code, Cap. 154 (*supra*).

Appeal allowed. Sentence of imprisonment reduced.

Appeal against sentence.

The appellant was convicted on the 1st March, 1963, at the District Court of Nicosia (Criminal Case No. 24157/62) on one count of the offence of carrying a knife ending in a sharp point, contrary to ss. 82 (2) and 84 (b) of the Criminal Code, Cap. 154 and was sentenced by Izzet, D.J., to six months' imprisonment.

Hakki Suleyman for the appellant.

O. Beha for the respondents.

The facts sufficiently appear in the Judgment of the Court read by :

ZEKIA, J. : The appellant in this case was on the 1st March, 1963, convicted and sentenced to six months' imprisonment for the offence of carrying a knife ending in a sharp point outside his house and the curtilage thereof.

The appeal is against the sentence imposed by the learned trial Judge. The relevant provision of the Law is section 82 of the Criminal Code, Cap. 154. The second part of the section reads as follows :

“ Any person who wears or carries a knife ending in a sharp point outside his house or the curtilage thereof is guilty of a misdemeanour and is liable to imprisonment for one year and, notwithstanding anything to the contrary in sections 29, 32 and 33 of this Code contained, is liable to a minimum sentence of imprisonment for six months unless the Court, in all the circumstances of the case including consideration of hardship and similar mitigating circumstances personal to the convicted person, thinks it expedient to impose a lesser sentence or make any other order.”

Now, section 82 of the Criminal Code does not require special reasons for imposing a lesser sentence than the one

prescribed. From the quotation it is clear that if the Court taking into account all circumstances of the case including consideration of hardship and similar mitigating circumstances personal to the convicted person, thinks it expedient to impose a lesser sentence or make any other order, it can do so.

1963
March 21
—
HASSAN
DORMOUSH
v.
THE POLICE

The trial Court found that the accused failed to prove that he was a shepherd but whether he was a shepherd or not after his plea of guilty to the offence of carrying a knife was not of importance because had the prisoner proved that he carried the knife in question for his occupation as a shepherd his conviction could not stand. The trial Judge does not seem to have directed his mind to the mitigating circumstances of the case which entitled him to impose on the appellant a lesser sentence than the one prescribed. In our opinion, the facts and circumstances of the case justify the imposition of a much lesser sentence on the accused than the one imposed.

The appellant is a young man and first offender ; he is married with a child. The type of the knife he was carrying was a common type of clasp knife with a blade exceeding only by half an inch the permissible size. He was found carrying this knife under no suspicious circumstances. All this, in our view, can legitimately be taken into account as mitigating circumstances and we think, therefore, that if the sentence passed on the appellant is reduced to such a period so as to release him to-day will be the proper course to take in this appeal.

Appeal allowed. Sentence of imprisonment reduced accordingly.