

# CASES

DECIDED BY

## THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL  
FROM THE ASSIZE COURTS AND DISTRICT COURTS.

[VASSILIADES, TRIANTAFYLIDIS, MUNIR, JJ.]

1. SOZOS PANAYI TATTARIS,
2. MICHALAKIS CONSTANTINOU YIALLOURIS,
3. SAVVAS CHARALAMBOUS KORKOTIS,

*Appellants,*

v.

THE REPUBLIC,

*Respondent.*

1964  
Nov 6,  
Dec. 4

—  
SOZOS PANAYI  
TATTARIS AND  
TWO OTHERS  
v.  
THE REPUBLIC

*(Criminal Appeals Nos. 2740, 2741, 2746)*

*(Consolidated)*

*Criminal Law—Breaking into a building and stealing therefrom—Criminal Code, Cap. 154, sections 294 (a), 255 and 20—Receiving stolen property—Criminal Code, Cap. 154, section 306 (a)—Joint trial and convictions—Appeals against sentence and against conviction by co-accused.*

*Criminal Law—Sentence—Sentence of three years imprisonment for breaking into a building and stealing a cow therefrom—Criminal Code, Cap. 154, sections 294 (a), 255 and 20—Manifestly inadequate in view of the circumstances in which the offence was committed—Increased—Criminal Procedure Law, Cap. 155 section 145 (2).*

*Criminal Law—Sentence—Sentence of four years' imprisonment for receiving stolen property—Criminal Code, Cap. 154, section 306 (a)—Mitigating circumstances—Sentence manifestly excessive—Reduced.*

*Evidence in Criminal Cases—Statement of accused to the police whilst in custody—Allegation of wrongful admission of, by trial*

1964  
Nov 6,  
Dec. 4

SOZOS PANAYI  
TATTARIS AND  
TWO OTHERS  
v.  
THE REPUBLIC

*Court—Contention that value and weight accorded to such statement by trial Court unreasonable and that evidence adduced cannot support conviction.*

*Criminal Procedure—Criminal Procedure Law, Cap. 155, section 145 (2)—Increase of sentence—See also under “ Criminal Law ”.*

Appellants Nos. 1 and 2 in these three consolidated appeals stood charged of the offence of breaking into a building (a farm stable) and stealing therefrom a cow, contrary to sections 294 (a), 255 and 20 of the Criminal Code, Cap. 154 ; and appellant No. 3 stood charged of the offence of receiving stolen property, namely the cow in question, contrary to section 306 (a) of the Criminal Code Cap. 154. All three appellants were jointly tried and appellants Nos. 1 and 3 were convicted on their plea and sentenced to 3 and 4 years' imprisonment respectively. Appellant No. 2 pleaded not guilty but he was found guilty as charged and sentenced to two years' imprisonment. Appellants Nos. 1 and 3 appealed against sentence on the ground that it was excessive and appellant No. 2 appealed against conviction only on the following grounds :

- “ 1. That the statement made by appellant to the police on the 1st August, 1964, whilst the appellant was in custody was wrongfully admitted by the trial Court.
2. That the value and weight accorded to the statement in question by the trial Court was unreasonable having regard to the evidence as a whole.
3. That the conviction cannot be supported having regard to the evidence adduced.”

*Held, 1, (1) on the appeal of appellant No. 1 :*

As regards the appeal against sentence of appellant No. 1, the situation prevailing in Limassol at the time the offence in question was committed, namely, during the last week of March of this year, must not be lost sight of. The circumstances in which the cow in question was stolen amount to looting and it seems clear that the accused, taking advantage of the situation resorted to looting. Bearing this important factor in mind and also the leading part played by this appellant in the commission of this offence, the Court is of the opinion that, in all the circumstances, the sentence of three years imposed on this appellant by the trial Court is manifestly inadequate ; and therefore, making use of our powers under section 145 (2) of

the Criminal Procedure Law (Cap. 155), we increase the sentence of the first appellant on count (1) to a sentence of five years' imprisonment from the date of conviction. The offence could not have been looked upon as being mere animal stealing ; at times such as the present, looting property of any citizen of the Republic, be he Greek or Turk, who happens not to be in a position to look after it, is an abominable crime against society as a whole, and nothing less than full severity is an adequate measure for it.

1964  
Nov 6,  
Dec. 4

—  
SOZOS PANAYI  
'TATTARIS AND  
TWO OTHERS  
v.  
THE REPUBLIC

*Held, (II) on the appeal of appellant No. 2 :*

This Court is fully satisfied that the appellant was properly convicted. As to ground No. 1 of the grounds of appeal, this Court sees no reason for disturbing the ruling of the trial Court (recorded at page 13 of the transcript record of the trial proceedings) in which the trial Court ruled that " in the light of the evidence adduced " it was " satisfied that the accused was not ill-treated in any way, and that the statement was made voluntarily ". It may be that when the Police Constable who served the copy of the note was asked by the prisoner to read it out to him himself, the Constable should have better called in an independent person to do so ; but even so, the statement of the accused was, in our opinion, rightly admitted, in the circumstances. With regard to the second ground of appeal we are satisfied that the trial Court duly cautioned itself about the value and weight to be accorded to the confession of an accused person, as is abundantly clear from the last paragraph of the trial Court's finding, which has been quoted *verbatim* earlier in this judgment.

*Held, (III) on the appeal of appellant No. 3 :*

With regard to the appeal against sentence of appellant No. 3, we consider that the term of four years' imprisonment imposed on this appellant for the offence in count 2, is, in the circumstances of his case, manifestly excessive ; even after taking into consideration the two other offences of animal stealing in question, the commission of which this appellant admitted himself while in custody for this offence. In all the circumstances, the Court considers that the sentence imposed on appellant No. 3 on count 3, is manifestly excessive and his appeal shall be allowed. His sentence shall be reduced to a term equal to that imposed by the Assizes on the second appellant, *i.e.* two years' imprisonment.

1964  
Nov 6,  
Dec. 4

SOZOS PANAYI  
TATTARIS AND  
TWO OTHERS

v.

THE REPUBLIC

2. There will be judgment and order accordingly in each of the three consolidated appeals. All sentences as decided in these appeals, to run from the date of conviction, including that of appellant No. 2.

*Order in terms.*

**Appeal against conviction and sentence.**

Appeal against conviction by appellant No. 2 and against sentence by appellants Nos. 1 and 3 who were convicted at the Assize Court of Limassol (Loizou P.D.C., Limnatis and Beha D.J.J.) on the 30th September, 1964, (Cr. Case No. 4699/64), appellants Nos. 1 and 2 having been convicted on one count of the offence of breaking into a building and stealing contrary to sections 294 (a), 255 and 20 of the Criminal Code Cap. 154 were sentenced to 3 and 2 years' imprisonment respectively and appellant No. 3 having been convicted on one count of the offence of receiving stolen property, contrary to section 306 (a) of the Criminal Code (*supra*) was sentenced to 4 years' imprisonment.

*K. C. Saveriades*, for appellants Nos. 1 and 2.

*A. N. Lemis*, for appellant No. 3.

*M. Spanos*, counsel of the Republic, for the respondent.

*Cur. adv. vult.*

The judgment of the Court was delivered by :

VASSILIADES, J.: The Court has carefully considered the matters arising in these three appeals—(Criminal Appeals Nos. 2740, 2741 and 2746). The appellants were jointly tried and convicted by the Assize Court of Limassol on the 30th September, 1964, and were sentenced to various terms of imprisonment. Their appeals have been consolidated, by order of this Court, and with the consent of the parties.

The appellant in criminal appeal No. 2740, Sozos Panayi Tattaris, who was accused No. 1 before the Assize Court (hereinafter in this judgment referred to as "Appellant No. 1") and the appellant in criminal appeal No. 2741, Michael Constantinou Yiallouris, who was accused No. 2 before the Assize Court (hereinafter in this judgment referred to as "appellant No. 2") were jointly charged, on the first count, of the offence of breaking into a building (a farm stable) and stealing therefrom a cow, contrary to sections

294 (a), 255 and 20 of the Criminal Code, Cap. 154. The appellant in criminal appeal 2746, Savvas Charalambous Korkotis, who was accused No. 3 before the Assize Court (hereinafter in this judgment referred to as "appellant No. 3 ") was charged, on the second count, with the offence of receiving stolen property, namely, the cow referred to in the first count, contrary to section 306 (a) of the Criminal Code, Cap. 154.

1964  
Nov 6,  
Dec. 4

—  
SOZOS PANAYI  
TATTARIS AND  
TWO OTHERS  
v.  
THE REPUBLIC

Appellant No. 1 pleaded guilty to the offence charged in the first count and appellant No. 3 pleaded guilty to the offence charged in the second count. Appellant No. 2, however, pleaded not guilty to the offence charged in the first count and the Assize Court accordingly ordered appellant No. 1 and appellant No. 3 to stand down and to await sentence whilst the hearing of the case against appellant No. 2 on the first count proceeded.

At the conclusion of the hearing against appellant No. 2, the Assize Court found appellant No. 2 guilty of the offence as charged in the first count and, having called appellants Nos. 1 and 3 back to the dock, proceeded to sentence appellant No. 1 to imprisonment for a period of three years, appellant No. 2 to imprisonment for a period of two years, and appellant No. 3 to imprisonment for a period of four years. In sentencing all three appellants the trial court took into account the previous convictions of each appellant. Appellant No. 1 admitted eighteen of the nineteen previous convictions recorded on his sheet ; in the case of appellant No. 2 there were four admitted previous convictions ; and appellant No. 3 admitted six previous convictions. Moreover, with regard to appellant No. 3 the trial Court in sentencing this appellant also took into account under the provisions of section 81 of the Criminal Procedure Law (Cap. 155) two other outstanding offences of animal stealing, which the appellant had admitted.

The first and third appellants have now appealed to this Court against the sentence imposed upon them ; and the second appellant has appealed against his conviction only ; as there is no appeal against sentence either by him or by the Republic, this Court cannot take any action in relation therewith, though it does think that the sentence imposed is inadequate in the circumstances. Dealing first with the appeal of appellant No. 2, the Assize Court of Limassol found the accused guilty as charged on the first count, and it is convenient to state here the short and lucid reasons

1964  
Nov 6,  
Dec. 4  
—  
SOZOS PANAYI  
TATTARIS AND  
TWO OTHERS  
v.  
THE REPUBLIC

of the trial Court for so finding the accused guilty :—

“ This accused is charged with store breaking and theft of a cow, the property of one Hilmi Omer, together with accused No. 1 in this case.

The case for the Prosecution in so far as this accused is concerned, rests solely on the evidence of P.W. 2, Andreas Lambi and on a statement made by the accused exhibit 1.

Andreas Lambi is undoubtedly an accomplice. His evidence is not corroborated in the legal sense, that is to say by other independent evidence implicating the accused. We must say that this witness has made a good impression on us, but having said that, we must also say that we would hesitate to convict on his evidence alone. As I said, in addition there is the accused's statement.

We have already ruled that that statement was a voluntary one and the thing we have to consider is whether we may rely on this evidence to convict, that is to say, whether this statement is true. There is no doubt that the accused had the opportunity of committing this offence. It is also clear that his confession is possible. Furthermore, in so far as it goes, it is consistent with the other evidence. It is a cogent and intelligible and rather detailed narrative of what took place. It is significant that in the opening paragraph of this statement, and obviously by way of excuse, he states a fact which he himself has admitted to be true, at least in his own mind, which he himself only could have made, and which has very little bearing on the actual commission of the offence.

In the light of the above circumstances and always bearing in mind the caution that the Court must exercise in such cases, we have come to the conclusion that his statement is a true one and that we may safely rely on it. We therefore, find the accused guilty as charged.”

Counsel for appellant No. 2 filed on the day of the hearing of this appeal, on the 6th November, 1964, his full grounds of appeal against conviction which comprised the following three grounds :—

- (1) that the statement made by appellant to the Police on the 1st August, 1964, whilst the appellant was in custody (exhibit 1 before the Assize Court) was wrongfully admitted by the trial Court ;

- (2) that the value and weight accorded to the statement in question by the trial Court was unreasonable having regard to the evidence as a whole ;
- (3) that the conviction cannot be supported having regard to the evidence adduced.

1964  
Nov 6,  
Dec. 4

SOZOS PANAYI  
TATTARIS AND  
TWO OTHERS  
v.  
THE REPUBLIC

This Court, having heard the submissions made by learned Counsel for appellant No. 2, did not consider it necessary to call on Counsel for the Republic to address the Court on any of the above three grounds of appeal. The Court is fully satisfied that the appellant was properly convicted. As to ground No. 1 of the grounds of appeal, this Court sees no reason for disturbing the ruling of the trial Court (recorded at page 13 of the transcript record of the trial proceedings) in which the trial Court ruled that "in the light of the evidence adduced" it was "satisfied that the accused was not ill-treated in any way, and that the statement was made voluntarily". It may be that when the Police Constable who served the copy of the note was asked by the prisoner to read it out to him himself, the Constable should have better called in an independent person to do so ; but even so, the statement of the accused was, in our opinion, rightly admitted, in the circumstances. With regard to the second ground of appeal we are satisfied that the trial Court duly cautioned itself about the value and weight to be accorded to the confession of an accused person, as is abundantly clear from the last paragraph of the trial Court's finding, which has been quoted *verbatim* earlier in this judgment.

Coming now to the appeal against sentence of appellant No. 1, the situation prevailing in Limassol at the time the offence in question was committed, namely, during the last week of March of this year, must not be lost sight of. The circumstances in which the cow in question was stolen amount to looting and it seems clear that the accused, taking advantage of the situation resorted to looting. Bearing this important factor in mind and also the leading part played by this appellant in the commission of this offence, the Court is of the opinion that, in all the circumstances, the sentence of three years imposed on this appellant by the trial Court is manifestly inadequate ; and therefore, making use of our powers under section 145 (2) of the Criminal Procedure Law (Cap. 155), we increase the sentence of the first appellant on count (1) to a sentence of five years imprisonment from the date of conviction. The offence could not have been looked upon as being mere animal stealing ; at times such as the present, looting property of

1964  
Nov 6,  
Dec. 4

SOZOS PANAYI  
TATTARIS AND  
TWO OTHERS  
v.  
THE REPUBLIC

any citizen of the Republic, be he Greek or Turk, who happens not to be in a position to look after it, is an abominable crime against society as a whole, and nothing less than full severity is an adequate measure for it.

With regard to the appeal against sentence of appellant No. 3, we consider that the term of four years' imprisonment imposed on this appellant for the offence in count 2, is, in the circumstances of his case, manifestly excessive; even after taking into consideration the two other offences of animal stealing in question, the commission of which this appellant admitted himself while in custody for this offence. The Court has reached this conclusion not only on account of the inferior role which he played in the disposal of the stolen cow, and of all the other mitigating circumstances which have been submitted before the trial Court and to this Court, on his behalf by his learned counsel, but also in view of the fact that as soon as this appellant came to know the actual circumstances of the stealing of this cow, through appellant No. 2, and so realised the true character of the offence, he apparently did everything in his power to help the owner to recover his stolen property. Though admittedly a criminal, he showed at least awareness of his duty to a fellow citizen, in his plight due to the current anomalous situation. But, in spite of this appellant's efforts the stolen cow was eventually sold for the sum of £38 from which amount this appellant received no gain. Furthermore, as soon as the appellant was arrested he lost no time in volunteering to make statements to the Police, not only concerning the present case, but also the other two cases of animal stealing which the trial Court had taken into account in assessing the sentence to be imposed on him.

In all the circumstances, the Court considers that the sentence imposed on appellant No. 3, on count 3, is manifestly excessive and his appeal shall be allowed. His sentence shall be reduced to a term equal to that imposed by the Assizes on the second appellant, *i.e.* two years' imprisonment.

There will be judgment and order accordingly in each of the three consolidated appeals. All sentences as decided in these appeals, to run from the date of conviction, including that of appellant No. 2.

*Order in terms.*