

1966
Dec. 9

MICHAEL
ANTONI
AFXENTI
"IROAS"
v.
THE REPUBLIC

[VASSILIADES, AG. P., JOSEPHIDES, J., AND LOIZOU, AG.J.]

MICHAEL ANTONI AFXENTI "IROAS",

Appellant.

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 2862)

Criminal Law—Sentence—Homicide—Criminal Code, Cap. 154, section 205 (as amended by section 5 of the Criminal Code (Amendment) Law, 1962 (Law No. 3 of 1962)—Appeal against sentence—Appropriate sentence—Responsibility of imposing the appropriate sentence lies with the trial Courts—Grounds on which the Court of Appeal will interfere with sentence—Circumstances under which the offence was committed—Mental condition of the accused—No justification for interfering with sentence—See, also, under Criminal Procedure, below.

Criminal Procedure—Sentence—Appeal against sentence—Grounds on which the Court of Appeal will interfere—Responsibility of imposing the appropriate sentence lies with the trial Courts—The Court of Appeal will only interfere with a sentence so imposed, if it is made to appear that the trial Court misdirected itself either on the facts or the law—Or that it allowed itself to be influenced by matter which should not have affected the sentence—Or that the sentence is manifestly excessive in the circumstances of the particular case.

This is an appeal against a sentence of twelve years' imprisonment imposed on the appellant by the Assize Court of Nicosia for homicide contrary to section 205 of the Criminal Code, Cap. 154 (as amended by Law No. 3 of 1962, *supra*). The ground upon which the appeal is made is that the sentence is excessive. The charge as preferred under the said section 205 carries a sentence of imprisonment for life. It was argued, *inter alia*, by counsel on behalf of the appellant that his (appellant's) violent conduct was the result of mental strain arising from epilepsy, of which the appellant was suffering for years.

The Supreme Court in dismissing the appeal :-

Held, (1) this Court has had occasion to state more than once in earlier cases that the responsibility of imposing the appropriate sentence lies with the trial Courts.

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(2) The Court of Appeal will only interfere with a sentence so imposed, if it is made to appear from the record that the trial Court misdirected itself either on the facts or the law ; or that the Court in considering sentence, allowed itself to be influenced by matter which should not affect the sentence ; or, if it is made to appear that the sentence imposed is manifestly excessive in the circumstances of the particular case.

(3) After hearing counsel for the appellant, both regarding the circumstances under which the offence was committed, and regarding the mental condition of the appellant, upon which counsel mainly relied in addressing this Court, we are *unanimously of the opinion that there is no justification for interfering with the sentence imposed.*

Appeal dismissed. Sentence will run, according to law, from today.

Appeal against sentence.

Appeal against the sentence imposed on the appellant who was convicted on the 3rd November, 1966, at the Assize Court of Nicosia (Criminal Case No. 15670/66) on one count of the offence of homicide contrary to section 205 of the Criminal Code, Cap. 154 (as amended by section 5 of Law 3 of 1962) and was sentenced by Loizou, P.D.C., Ioannides and Mavrommatis, D.JJ., to twelve years' imprisonment.

L. Papaphilippou, for the appellant.

A. Frangos, Counsel of the Republic, for the respondent.

The judgment of the Court was delivered by :

VASSILIADES, AG. P.: This is an appeal against a sentence of twelve years' imprisonment imposed on the appellant by the Assize Court of Nicosia on November 3, 1966, for homicide. The appellant pleaded guilty to the charge ; and the trial Court as usual, heard counsel for the prosecution on the facts, and counsel for the appellant in mitigation, before passing the sentence in question.

The ground upon which the appeal is made is that the sentence is excessive. The charge (preferred under section 205 of the Criminal Code as amended by section 5 of Law 3 of 1962) carries a sentence of imprisonment for life.

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The facts, as stated in the judgment of the trial Court, are that the appellant on the 8th of June, 1966, while working as a casual labourer in road-building, was reprimanded by the foreman on the spot regarding the manner in which he was doing his work. He was reprimanded in an "abrupt manner", the trial Court say in their judgment.

Apparently the appellant took offence at his foreman's observations ; and when the latter returned shortly afterwards, to the spot where the appellant was working, the appellant suddenly attacked the foreman with a spade. It was a sudden and unprovoked attack, with a heavy and dangerous tool, with which the appellant delivered two violent blows on his victim, both directed against the latter's head. The first struck the foreman on the shoulder, and the second right on the head, causing him fatal injuries.

The defence put forward on behalf of the appellant at the trial, was that his violent conduct was the result of mental strain arising from epilepsy, of which the appellant had been suffering for years. A medical report from a Government mental specialist was produced in support of this defence. It is exhibit 5 on the record ; and it confirms that the appellant is an epileptic. But it concludes with the statement that his condition is not such as to affect materially his mental faculties. And the doctor who signed this report, it gives it as his opinion that at the time of the commission of the offence, the appellant knew the nature, and the probable consequences of his acts.

The trial Court, taking all circumstances into consideration, (including the age of the appellant who is fifty-six years old), imposed a sentence of twelve years imprisonment.

This Court has had occasion to state more than once in earlier cases, that the responsibility of imposing the appropriate sentence in a case, lies with the trial Court. The Court of Appeal will only interfere with a sentence so imposed, if it is made to appear from the record that the trial Court misdirected itself either on the facts or the law ; or, that the Court, in considering sentence, allowed itself to be influenced by matter which should not affect the sentence ; or, if it is made to appear that the sentence imposed is manifestly excessive in the circumstances of the particular case.

After hearing learned counsel for the appellant, both regarding the circumstances under which the offence was committed, and regarding the mental condition of the

appellant, upon which counsel mainly relied in addressing this Court today, we are unanimously of the opinion that there is no justification for interfering with the sentence imposed ; and we did not find it necessary to call upon counsel for the prosecution to support the sentence. The taking of human life is, for obvious reasons, a matter of very serious concern ; and the courts have always taken a serious view of crimes resulting in the loss of life, especially in circumstances of violent attacks such as the one under consideration.

This appeal must be dismissed ; and the sentence will run, according to law, from today, which sufficiently reflects our mind in the matter.

*Appeal dismissed. Sentence
to run according to law.*

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