

1967
Sept. 29

[VASSILIADES, P., JOSEPHIDES AND HADJIANASTASSIOU, JJ.]

GOUNASIR
FIDA
v.
THE POLICE

GOUNASIR FIDA,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 2951)

Criminal Law—Sentence—Concurrent sentence of four months and one month imprisonment for obtaining money by false pretences and for pretending to exercise witchcraft—Criminal Code Cap. 154 sections 298 and 304—Appealed against as being excessive—Call for leniency on humanitarian grounds—Appellant the mother of a new-born baby—Sentence on the lenient side—Appeal dismissed.

False pretences—Pretending to exercise witchcraft—See under Criminal Law above.

Witchcraft—See under Criminal Law above.

This was an appeal against sentence on the ground that it was excessive. The appellant a gipsy, of the age of 33, was convicted on her own plea of the offences of obtaining money by false pretences and of pretending to exercise witchcraft contrary to sections 298 and 304, respectively, of the Criminal Code Cap. 154, and was sentenced to four months imprisonment on the 1st and to one month's imprisonment on the second count, the sentences to run concurrently.

Counsel appearing on her behalf before the Court of Appeal made a strong plea for leniency mainly on the ground that the appellant being now the mother of a new-born baby, born to her four days after her conviction, she is serving a sentence much more hard than the one she received before her confinement.

Held, (1) we fully appreciate the humanitarian force of that argument. But we regret finding ourselves unable to derive any assistance from it in dealing with this appeal. We can have no doubt that the prison authorities and the public services co-operating with them will take due care of the humanitarian side of the case.

(2) We unanimously take the view that the sentence imposed by the trial Judge for an offence of this nature, and in the circumstances of this case, is definitely on the lenient side. The mental strain of the victims of such practices should always be borne in mind in measuring the sentence in such cases.

(3) It is with considerable difficulty that we reached the decision to order under section 147 of the Criminal Procedure Law (Cap. 155) that the sentence of imprisonment imposed more than six weeks ago shall be made to run from the date of conviction instead of from to-day.

(4) Appeal dismissed. Sentence affirmed ; to run from date of conviction.

Order in terms.

Appeal against sentence.

Appeal against the sentence imposed on the appellant who was convicted on the 22nd August, 1967, at the District Court of Nicosia (Criminal Case No. 14968/67) on 2 counts of the offences of obtaining money by false pretences, contrary to s. 298 of the Criminal Code, Cap. 154 and of pretending to exercise witchcraft, contrary to s. 304 of the Criminal Code Cap. 154 and was sentenced by Demetriou, D.J. to four months' imprisonment on count 1 and one month's imprisonment on count 3, the sentences to run concurrently.

Ali Dana, for the appellant.

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

The judgment of the Court was delivered by :

VASSILIADES, P.: This is an appeal against a sentence of four months imprisonment for obtaining money by false pretences, contrary to section 298 of the Criminal Code, and one month imprisonment running concurrently, for pretending to exercise witchcraft contrary to section 304 of the Criminal Code (Cap. 154). The appeal was taken by the appellant in person, a few days after conviction, on the ground that the sentence is excessive.

The appellant is a gipsy, of the age of 33, according to the charge-sheet ; and the mother of seven children, according to her advocate, the last of whom was born to her in the Government Hospital, four days after her conviction.

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She was convicted in the District Court of Nicosia, on the 22nd August, 1967, on a charge for obtaining from a housewife of Ayios Dometios, cash and various articles of a total value of £60, odd, on several visits to the house of the complainant during July last, on the false pretence that being in a position to exercise witchcraft, she was protecting the woman's husband from evil and from a dangerous disease, through a team of satans which she was co-operating with.

At the trial Court, the appellant was defended by an advocate, on whose advice, apparently, after the evidence of the complainant, she (the appellant) withdrew her original plea of not guilty, by leave of the court ; and pleaded guilty to two of the three counts in the charge-sheet. She was convicted on that plea ; and in due course, she was sentenced as stated earlier.

Mr. Dana, this morning before us, made a strong appeal for leniency, based mainly on the ground that his client being now the mother of a new-born baby she is serving a sentence much more hard than the one she received before her confinement.

We fully appreciate the humanitarian force of that argument. But we regret finding ourselves unable to derive any assistance from it in dealing with this appeal. We can have no doubt that the prison authorities and the public services co-operating with them will take due care of the humanitarian side of the case.

We unanimously take the view that the sentence imposed by the trial Judge for an offence of this nature, and in the circumstances of this case, is definitely on the lenient side. The mental strain of the victims of such practices should always be borne in mind in measuring the sentence in such cases.

It is with considerable difficulty that we reached the decision to order under section 147 of the Criminal Procedure Law (Cap. 155) that the sentence of imprisonment imposed more than six weeks ago shall be made to run from the date of conviction instead of from today.

Appeal dismissed. Sentence affirmed ; to run from date of conviction.

Order in terms.