

1967
Oct. 19

[VASSILIADES P., TRIANTAFYLLIDES, HADJIANASTASSIOU, JJ.]

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ANDREAS
VASILI
HJI YIANNI
v.
THE POLICE

ANDREAS VASILI HJI YIANNI,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 2954*)

Criminal Law—Sentence—Appeal against sentence—Stealing beet-roots valued at £0.300 mils—Sentence reduced as being in the circumstances manifestly excessive.

Criminal Procedure—Appeal—Sentence—Principles upon which the Appellate Court will interfere—See above.

Sentence—Appeal—Sentence reduced—See above.

Cases referred to :

Nicolaou v. The Republic (1966) 2 C.L.R. 60 at p. 61 ;

Michael Afxenti “Iroas” v. The Republic (1966) 2 C.L.R. 116
at p. 118.

The facts sufficiently appear in the judgment of the Court whereby the sentence imposed by the trial Judge was reduced as being, in the circumstances excessive.

Appeal against sentence.

Appeal against sentence imposed on the appellant who was convicted on the 29th September, 1967, at the District Court of Famagusta (Criminal Case No. 4846/67) on one count of the offence of stealing crops, contrary to section 265 (1) of the Criminal Code, Cap. 154, and was sentenced by Pikis, D.J., to pay a fine of £50.

S. Marathovouniotis, for the appellant.

M. Spanos, 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 £50 fine or two months imprisonment in default, imposed on the appellant in the District Court of Famagusta, for stealing six okes of beetroots valued at 300 mils.

The appellant pleaded guilty to the charge ; and counsel on his behalf explained to the trial Judge in mitigation that his client openly took that small quantity of beetroots from the plantation of the complainant, who was a friend of his, acting on the belief that the complainant would not mind him doing so. In fact, when the Policeman saw the fresh beetroot leaves in the yard of the accused and enquired about them, the latter readily admitted that he had taken the beetroots from the complainant's garden.

The trial Judge took a " very serious " view of the case, saying so in his notes, on the ground that the stealing of crops and generally stealing of farmers' animals and crops, is punishable with imprisonment for five years and that the detection of the crime being " very difficult, it is most desirable to protect crop owners from people who interfere with their property ".

The learned trial Judge quite rightly in our opinion states in his judgment that this case is " not of an intrinsically serious nature having in mind the value of the stolen crop and the readiness with which accused admitted his crime to the Police ". He further took into consideration the age of the accused (47 years old), and the fact that he is a first offender. He, however, proceeded to impose a sentence of £50 fine, coupled with an order for recognizance in the sum of £200 for one year to keep the peace, and an order to pay £4 costs.

In addressing this Court, learned counsel for the appellant stated that in his long practice before the District Court of Famagusta he could not remember of any case where in similar circumstances the Court imposed such a heavy fine. He could not, however, refer us to actual cases in support of his submission.

Counsel for the prosecution agreed that this is an unusually severe sentence but was not prepared to say that it was manifestly excessive.

The approach of this Court in appeals against sentence on the ground that the sentence is manifestly excessive, is that the responsibility for imposing sentence after conviction rests primarily with the trial Court. The Court of Appeal will not interfere with the sentences imposed by the trial Court unless it is shown that there are sufficient legal reasons for doing so. One of such reasons is that the sentence is manifestly excessive in the circumstances

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in which the offence was committed (see *Lambros Costa Nicolaou v. The Republic* (1966) 2 C.L.R. 60 at p. 61; also *Michael Afxenti "Iroas" v. The Republic* (1966) 2 C.L.R. 116 at p. 118).

In the circumstances of this case, however, we are unanimously of the opinion that the sentence imposed is manifestly excessive. There is nothing on the record to show that this kind of stealing is prevalent in the area where the offence under consideration was committed; and we agree with the learned trial Judge that the facts of this case do not make it one of a serious nature. We, therefore, take the view that this appeal must be allowed and the sentence be reduced to one of £25 fine, payable within a month; or two months imprisonment in default. The order for a recognizance already signed by the appellant to stand. Also the order for the payment of £4 costs, or 7 days imprisonment in default.

Appeal allowed. Sentence reduced as above. Orders for recognizance and for payment of costs to stand.