

1968
Oct. 17

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

CONSTANTINOS
HJI SINNOS
v.
THE POLICE

CONSTANTINOS HJI SINNOS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3034*)

Criminal Law—Affray contrary to section 89 of the Criminal Code, Cap. 154—Sentence of six months' imprisonment—Challenged on the ground that it was manifestly excessive—Proper in the circumstances and for the valid reasons given by the trial Court.

Criminal Law—Sentence—Disturbance contrary to section 95 of the Criminal Code, Cap. 154, committed in exactly the same circumstances as the offence of affray above—Sentence of two months' imprisonment imposed concurrently—No separate sentence should have been imposed in relation to such disturbance—Sentence quashed.

Criminal Procedure—Sentence—Appeal—Appeal against sentence dismissed—Sentence to run from the date of such dismissal—No directions having been made under section 147 (1) of the Criminal Procedure Law, Cap. 155 for the sentence to run from the date of conviction.

Sentence—See above.

Affray—Disturbance—Both offences committed in exactly the same circumstances—No separate punishment should have been imposed on the lesser offence—See above.

Cases referred to :

Pefkos v. The Republic, 1961 C.L.R. 340.

The facts sufficiently appear in the judgment of the Court.

Appeal against sentence.

Appeal against sentence by Constantinos Hji Sinnos who was convicted on the 5th September, 1968 at the District Court of Limassol (Criminal Case No. 4438/68) on two counts of the offences of affray and disturbance contrary to

sections 89 and 95 of the Criminal Code, Cap. 154, respectively, and was sentenced by Loris, D.J., to six months' imprisonment on the count of affray and to two months' imprisonment on the count of disturbance, the sentences to run concurrently.

L. Papaphilippou, for the appellant.

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

VASSILIADES, P.: The judgment of the Court will be delivered by Mr. Justice Triantafyllides.

TRIANAFYLLIDES, J.: In this case the appellant appeals against a sentence of six months' imprisonment imposed on him on the 5th September, 1968, after his conviction, on a plea of guilty, on a charge of affray, contrary to section 89 of the Criminal Code, Cap. 154 ; he also, appeals against a sentence of two months' imprisonment imposed on him, on the same date, and in the same proceedings, after his conviction, again on a plea of guilty, on a charge of disturbance, contrary to section 95 of the Criminal Code, Cap. 154.

The relevant facts, as they appear from the record before us, are, shortly, as follows :—

On the 29th February, 1968, in the evening, the appellant, who is a young man aged 23 years, was at a coffee-shop in Limassol. There he entered into an argument with a certain Loizos Kyprianou, an elderly man, aged 64 years (who later became a co-accused of the appellant in the criminal proceedings which have given rise to this appeal). As a result of such argument they started fighting and eventually the appellant grasped a chair and delivered with it a blow on the head of Kyprianou, injuring him on the head, forehead and nose. Due to the fight a disturbance was created in the coffee-shop.

The learned trial Judge, in passing sentence, stated, as his reasons for imprisoning the appellant, that taking part in a fight in a coffee-shop was a serious offence and that, on the particular occasion, it was more serious in view of the fact that the appellant had struck a blow with a chair causing injuries thereby ; furthermore, the Judge took into account the appellant's four similar previous convictions, three of which were very recent and indicated that he is a man of a violent character.

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In the light of all relevant considerations we cannot agree with counsel for the appellant that the sentence in respect of the conviction for affray is a manifestly excessive one, so as to require our intervention in the matter; it is, indeed, a severe sentence, but a proper one in the circumstances, for the valid reasons given by the trial Judge.

This appeal, therefore, in so far as it relates to such sentence, is dismissed ; and we see *no reason to interfere* with the course of the law and to order that the sentence should run as from the date of conviction ; it will run as from today.

Regarding the sentence imposed on the appellant in respect of his conviction for the offence of disturbance, we take the view that as such offence was committed in exactly the same circumstances as the offence of affray, no separate punishment should have been imposed on the appellant in relation thereto (see, *inter alia*, *Pefkos v. The Republic*, 1961 C.L.R. 340) ; we, therefore, have decided to set aside the sentence of two months' imprisonment for the disturbance and to that extent this appeal is allowed.

Orders in terms.