

1968
Jan 11

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GEORGHIOS
ELIA PSARAS
v
THE POLICE

[VASSILIADIS, P. IRIANAFYLIDIS AND JOSEPHIDES JJ]

GEORGHIOS ELIA PSARAS,

Appellant,

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THE POLICE,

Respondents

(Criminal Appeal No 2976)

Criminal Law—Sentence—Grievous bodily harm contrary to section 231 of the Criminal Code, Cap 154—Conviction and sentence—Appeal against—The appellant a police officer—Sentence increased by the Supreme Court—See, also, herebelow

Human rights—Constitution of the Republic of Cyprus, Articles 7, 8, 11—Safeguarding the right to life, corporal integrity, liberty and security—Duty of the Courts to sustain internationally accepted human rights and safeguarded by international agreements like the European Convention of Human Rights

Appeal—Sentence—Appeal against sentence—Appeal by a police officer convicted and sentenced to 12 months imprisonment for causing grievous bodily harm contrary to section 231 of the Criminal Code—Sentence increased by the Supreme Court

Sentence—Appeal—Sentence increased—See above

This is an appeal by a policeman against conviction for causing grievous bodily harm to a young student, and against a sentence of 12 months' imprisonment imposed on the appellant in the District Court of Famagusta, under section 231 of the Criminal Code, Cap 154

In dismissing the appeal and in increasing the sentence to one of eighteen months' imprisonment and after reviewing the facts, the Court

Held, (1) this Court is duty bound to take into account the legal as well as the general aspect of this case. The offence of which the appellant stands convicted is punishable, under section 231 of the Criminal Code, with imprisonment up to seven years. It moreover constitutes a violation of the human right of the victim to corporal integrity, safeguarded by Article 7 of the Constitution. It is a flagrant violation by a Police Officer, of the provisions of Articles 8

and 11 of the Constitution which prohibit any "inhuman or degrading punishment or treatment" and safeguard the "right to liberty and security of person". The object of these provisions is the protection of these human rights, established by international agreements (like the European Convention of Human Rights, and the relevant Covenant of the United Nations) to which the Republic of Cyprus is a signatory.

(2) There can be no doubt that the conduct on the part of a police officer towards a young schoolboy in the circumstances under which the offence was committed, is not only illegal: it is completely unacceptable. This must be reflected in the punishment.

(3) We have thus reached the conclusion that the sentence imposed by the trial Court is insufficient to meet the case. In view of the serious disciplinary, financial and other consequences which are bound to follow the conviction and sentence in this case, we have decided to confine the increase to six months in addition to the term imposed. The sentence, therefore, shall be increased to one of eighteen months to run from today.

*Appeal against conviction
and sentence dismissed.
Sentence increased as
stated above.*

Appeal against conviction and sentence.

Appeal against conviction and sentence by Georghios Elia Psaras who was convicted on the 17th November, 1967 at the District Court of Famagusta (Criminal Case No. 4446/67) on one count of the offence of grievous harm, contrary to section 231 of the Criminal Code Cap. 154 and was sentenced by Pikis, D.J., to twelve months' imprisonment.

G. Tornaritis with *K. Saveriades*, 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 conviction for causing grievous bodily harm ; and against a sentence

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of twelve months' imprisonment imposed on the appellant in the District Court of Famagusta, under section 231 of the Criminal Code, Cap 154

As regards the appeal against conviction, it has already been made clear during the hearing that this Court is of the opinion, that on the evidence on record it was open to the trial Court to convict the appellant. Indeed, one could hardly expect a different verdict

As regards sentence, the matter has given us considerable anxiety. We are dealing with a sentence which is bound to have serious repercussions on the appellant's career as a policeman, while on the other hand, we must bear in mind that it was imposed for an offence committed while he was on police duty. To both these matters we have given out utmost care

The main facts of the case are as follows : -

A young student of the Gymnasium of Famagusta while walking with some of his friends in a public road, he was stopped by a police car into which he was compelled to enter against his will, by the appellant policeman without any Court warrant, because he had been seen earlier that day, talking to a schoolgirl, the daughter of a police officer. The arrested schoolboy was taken in the police vehicle to the Central Police Station of the town, outside the entrance of which the car stopped for a while. Such was the state of fear in which that youngster found himself that he did not even attempt to ask for help either from any policeman there, or from any civilian in the road

At the doorstep of a Police Station (the very existence of which is mainly for the protection of people and their legal rights) this young Gymnasium schoolboy felt that he could not ask for help or protection. Such was the condition in which he was driven by his contact with the appellant on that day

The next stage of the facts, is that the appellant drove the police vehicle under his control to a non-frequented place where he used violence, resulting to the injuries described by the medical evidence, one of which was the fracture of the fifth metacarpal bone of the boy's right hand

There can be no doubt that this is a case causing grave concern

There has been a statement today in Court, by learned Counsel who appeared for the Police, that the appellant acted on his own initiative ; and that his action was not the result of instructions from his superiors, but on the contrary, it was incompatible with their directions, and standing orders.

Notwithstanding this statement, I confess that, personally, I am still in doubt whether a young policeman, of the age of the appellant (25 years old according to the charge) would go as far as to act contrary to the instructions of his superiors, in a serious matter such as this, if he felt that his action would be unacceptable to his superiors and likely to have disciplinary consequences.

Be that as it may, this young policeman has now to face alone the consequences of what happened on that day, either because he is solely responsible or because he chose to take upon himself all the responsibility.

We have before us facing a serious charge, a young man of 25 years of age who joined the Police after he completed his secondary education about seven years ago. One would have expected that after seven years of training in the Police Force, his conduct, both while on duty and while off, would reflect the results of such training.

From my experience in the Courts of Cyprus, I am satisfied that in the Police Force of the Island the principles of good discipline, and respect for the law are well established and are properly enforced. Especially this is the case with the senior officers and the elder members of the Force. I have no doubt that they shall view this case with the same concern as we do in this Court.

We, moreover, like to feel that the appropriate Police authority will do their best to find out the root of the trouble ; and that it will take all necessary steps to eradicate it. The complainant is not the only victim of such trouble. The worse victim is the appellant himself. After a seven years of hard work to build up a career in the Police Force of his country, this young man faces now the catastrophe of his plans, in addition to the serious consequences from a sentence of imprisonment.

On the other hand, this Court is duty-bound to take into account the legal as well as the general aspect of this case. The offence of which the appellant stands convicted is punishable, under section 231 of the Criminal Code (Cap. 154), with imprisonment up to seven years. It moreover constitutes a violation of the human right of the victim to corporal integrity, safeguarded by Article 7 of

the Constitution of the Republic of Cyprus. It is a flagrant violation by a Police officer, of the provisions of Articles 8 and 11 of the Constitution which prohibit any "inhuman or degrading punishment or treatment" and safeguard the "right to liberty and security of person". The object of these provisions is the protection of these human rights, established in the contemporary world by international agreements (like the European Convention of Human Rights, and the relevant Covenant of the United Nations) to which the Republic of Cyprus is a signatory.

In the present day in civilized world, the Courts have the duty and responsibility to sustain and enforce the internationally accepted human rights, whenever these are involved or violated in a case before them.

With these considerations in mind this Court has now to decide whether the sentence of twelve months' imprisonment imposed on the appellant by the trial Judge, is manifestly excessive, as contended on his behalf; whether it is the proper sentence, in the circumstances; or it is manifestly inadequate.

There can be no doubt, in our view, that such conduct on the part of a police officer towards a young schoolboy in the circumstances under which the offence was committed, is not only illegal; it is completely unacceptable. This must be reflected in the punishment. Only severe sentences can check and effectively discourage abuse of power by police officers so inclined. We have thus reached the conclusion, not without regret, that the sentence imposed by the trial Court, is insufficient to meet the case. We found considerable difficulty in deciding the extent of the increase which has to be made to the sentence. In view of the serious disciplinary, financial and other consequences which are bound to follow the conviction and sentence in this case, we have decided to confine the increase to six months in addition to the term imposed; in other words to increase the sentence to eighteen months imprisonment from today. We would, however, add a clear warning that offences involving violation of human rights by persons in authority may have to be treated with more severity, if this case fails to have the intended deterrent effect.

In the result the appeal against conviction is dismissed; and the sentence is increased to one of eighteen months' imprisonment from today.

Appeal against conviction dismissed. Sentence increased as stated above.