

MICHAEL GEORGHIOU,

Appellant,

v.

THE POLICE,

Respondents.

MICHAEL
GEORGHIOU
v.
THE POLICE

(*Criminal Appeal No. 3150*).

Appeal—Criminal Appeal—Abandonment after commencement of hearing—Leave required—The Criminal Procedure Law, Cap. 155, section. 142—Leave to withdraw the present appeal against sentence refused—After hearing the case, the Court dismissed the appeal and ordered that sentence should run from conviction.

Assault—Aggravated assault contrary to section 243 of the Criminal Code, Cap. 154—Sentence—Six months' imprisonment—No sufficient reason shown why the Court of Appeal should reduce sentence—Appeal against sentence dismissed.

Appeal—Sentence—Approach of the Court of Appeal to appeals against sentence.

Sentence—Social investigation report—Desirability—Especially in cases connected with family life and when it appears that a sentence of imprisonment may be necessary.

Social investigation report—See supra and infra.

Husband and wife—Husband assaulting his wife—See supra and infra.

Observations with regard to :

- (a) The desirability that in cases of this nature, connected with family life, especially when it appears that a sentence of imprisonment may be necessary, the judge when considering sentence, should have the advantage of information on the background of the case as reflected in a social investigation report ; and
- (b) the desirability that social investigation reports should be supplied in sufficient numbers to provide a copy for each Judge and a copy to each side in the proceedings and that when a report is required for the purpose of a case in Court, any change in the position must come from the Court.

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Cases referred to :

The Attorney-General v. Stavrou and Others, 1962 C.L.R. 274, at p. 277 ;
Skoullou v. The Police (1969) 2 C.L.R. 27 ;
Athanassiades v. The Police (1969) 2 C.L.R. 160 ;
Demetriou v. The Police (1968) 2 C.L.R. 127.

This is an appeal against sentence of six months' imprisonment by the offender husband for assaulting his wife contrary to section 243 of the Criminal Code, Cap. 154. The Court of Appeal refused leave to withdraw the appeal and proceeded to hear the case ; and dismissed the appeal but directed that the sentence of imprisonment should run from the date of conviction. The facts sufficiently appear in the judgment of the Court.

Appeal against sentence.

Appeal against sentence by Michael Georghiou who was convicted on the 31st January, 1970, at the District Court of Paphos (Criminal Case No. 4136/69) on one count of the offence of aggravated assault contrary to section 243 of the Criminal Code, Cap. 154 and was sentenced by Papadopoulos, D.J., to six months' imprisonment.

N. Charalambous, for the appellant.

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

VASSILIADES, P.: The hearing of this appeal which commenced on March 5, 1970, was adjourned for today on the application of counsel for the appellant, to enable the welfare services to prepare and file a social investigation report. This Court has indicated on more than one occasions that in cases of this nature, connected with family life, it is desirable, especially when it appears that a sentence of imprisonment may be necessary, that the judge, when considering sentence, should have the advantage of information on the background of the case, as reflected in a social investigation report (see *The Attorney-General v. Georghios Stavrou and Others*, 1962 C.L.R. 274 at p. 277; *Georghios Skoullou v. The Police* (1969) 2 C.L.R. 27).

In opening this appeal against sentence, learned counsel complained on behalf of his client that such report had not been made available ; and the appeal was adjourned accordingly for that purpose, after hearing argument on the merits.

On March 13, counsel filed a notice that the appellant intends to abandon the appeal. We have it from him today that this was the result of a personal investigation at Paphos where the appellant lives with his family ; and the advice, which counsel gave to his client, after such an investigation.

It was pointed out to counsel that at this stage the appellant could give notice of his intention to apply for leave to withdraw the appeal ; but he was not entitled to abandon it under section 142 of the Criminal Procedure Law, Cap. 155 (*Kyriacos Athanassiades v. The Police* (1969) 2 C.L.R. 160). After hearing counsel in support of the application for leave to withdraw the appeal, the Court took the view that in the circumstances of this case, the application should be refused.

Addressing us on the substance of the appeal, learned counsel submitted that the sentence imposed by the trial Judge, albeit on the severe side, was not such as to justify intervention by this Court. Six months' imprisonment, counsel submitted, for assaulting his wife in the course of a quarrel between the couple, was rather a severe sentence for a first offender on whose business (as dry-cleaner, practically run by himself) his family consisting of a wife and four minor children, actually depended. After all, counsel added, the assault was a matter of one or two slaps which caused a bruised eye ; and he referred to the case of *Nicos Demetriou v. The Police* (1968) 2 C.L.R. 127, where the assault was of a more serious nature and the convicted husband, was a man of violent character. The sentence there was also six months' imprisonment, affirmed on appeal. Mr. Frangos for the Police, left the matter to court.

After counsel's visit to Paphos where he interviewed as he told us, the welfare officer, no social investigation report arrived. Apparently the welfare officer must have formed the impression that counsel intended to abandon the appeal ; and therefore no social investigation report was necessary. This is the only explanation we can give to the fact that no report was filed. Mr. Frangos today undertook to make it clear to the welfare authorities that when a report is required for the purposes of a case in court, any change in the position must come from the court ; and the report must be prepared and supplied unless the appropriate court officer states that it is no longer required. It should, moreover, be made clear to the public service concerned that unless there are good reasons to the contrary, reports prepared for a court

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case should be supplied in sufficient numbers to provide a copy for each Judge and a copy to each side in the proceeding. It is desirable that counsel in the case should have the opportunity to consider the report and discuss it with their client before they are called to deal with its contents at the hearing of the case.

In the case before us, we think that at this stage and in the light of the new development, we should deal with the matter on what is on the record. On that material, seen in the light of what we heard from counsel on behalf of the appellant, we take the view that we should not interfere with the sentence, although some of us think that it is rather on the lenient side. As we have said in other cases, the responsibility for imposing sentence lies primarily with the trial Court ; and this Court will only intervene if it is made to appear that there is sufficient reason for such intervention.

In the case before us, we think that no such reason has been shown ; and the appeal should therefore be dismissed. The sentence to run according to law from today.

Appeal dismissed.