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

DEMETRIS MICHAEL KOURRIS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3161).

Sentence—Principles upon which trial Courts should assess and measure sentences—Referred to—Three years' imprisonment for aggravated assault contrary to section 231 *of the Criminal Code, Cap.* 154*—Trial Judge unduly influenced by the offender's record of previous convictions—Most of them old ones, for drunkenness and other petty offences—Hardly justifying the description of the appellant, a blind old man of* 65*, as a man "of extremely bad character with a very bad record"—On the other hand no medical report was put before the trial Judge—If the injuries caused by the appellant were as serious as stated by the police prosecutor, a medical report was highly desirable—No social investigation report, either—A regrettable state of affairs—Sentence of three years' imprisonment imposed by the trial Judge is, in the circumstances, manifestly excessive—Sentence reduced to a term of six months' imprisonment from conviction coupled with an order binding over the appellant in the sum of* £25 *for* 30 *months from today to keep the peace.*

Sentence—Appeal against sentence—Approach of the Court of Appeal—Sentence manifestly excessive—Reduced.

Drunkenness—May not, as a rule, afford a legal defence—But it is a condition which must be taken into consideration in measuring sentence—It may be a reason for imposing a heavier or lighter sentence.

Sentence—Drunkenness—See supra.

Previous convictions—Record of—Unsatisfactory assessment of—See supra.

Social investigation report—Need of—See supra.

Medical report—Highly desirable where serious injuries are alleged—See supra.

Cases referred to :

Skoullou v. *The Police* (1969) 2 C.L.R. 27 ;

Lazarou v. *The Police* (1969) 2 C.L.R. 184 ;

Evangelou v. *The Police* (reported in this Part at p. 45 *ante*).

This is an appeal by the offender against a sentence of three years' imprisonment imposed on him by the trial Judge on a charge of aggravated assault contrary to section 231 of the Criminal Code, Cap. 154. The Court of Appeal held that the sentence appealed against was manifestly excessive in the circumstances of the case and reduced it to a term of six months' imprisonment from conviction, coupled with an order binding over the appellant to keep the peace for a period of 30 months. The facts sufficiently appear in the judgment of the Court.

Appeal against sentence.

Appeal against sentence by Demetris Michael Kourris who was convicted on the 2nd April, 1970, at the District Court of Paphos (Criminal Case No. 480/70) on one count of the offence of causing grievous bodily harm contrary to section 231 of the Criminal Code, Cap. 154, and was sentenced by Papadopoulos, D.J., to three years' imprisonment.

Appellant, appearing in person.

A. Frangos, Senior 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 three years' imprisonment for assault causing grievous harm, (the offence under section 231 of the Criminal Code, Cap. 154), imposed on the appellant in the District Court of Paphos, where he was prosecuted by the police and tried summarily. The appeal is taken by the appellant in person, on the ground that the sentence imposed is manifestly excessive.

The appellant, a man over 65 years of age, and totally blind, assaulted the complainant, a close relation of his, in a village coffee-shop. The appellant, obviously under the influence of drink, was sitting in the coffee-shop together with a number of other villagers when at about 8.30 in the evening of September 5, 1969, the complainant, with whom he had some property differences, entered the coffee-shop.

On realising the complainant's presence, the appellant started accusing him of abusing his confidence in the management of property entrusted to him and of stealing. The complainant protested and suggested to the accused to go home and sleep off his drink. The latter, apparently provoked by his relative's remarks and acting under the influence of drink, attacked the complainant with his stick and then fell upon him causing scratches on his right ear, a bruise on the left hand and other injuries alleged by the police prosecutor to be fractures of finger bones and of the tenth rib.

Unfortunately, no medical report was put before the trial Judge and the description of the injuries was taken orally from the prosecuting police sergeant, who also produced a list of previous convictions commencing from February, 1929, *i.e.* some forty years ago, and containing 20 convictions, most of them old ones, for drunkenness and other petty offences.

The appellant admitted the charge ; expressed his regret and repentance ; said that he had been provoked by the complainant who also struck him with a chair ; and promising never again to give cause for complaint, pleaded for leniency.

The learned trial Judge, apparently impressed by the length of the list of previous convictions placed before him, described the appellant as a man of " extremely bad character with a bad record " ; and added (presumably as the reason for imposing the maximum sentence in his power, three years' imprisonment) that " society needs the maximum protection from such characters whatever their physical state may happen to be "; obviously referring to the blindness of the appellant.

Looking at the list of previous convictions on the record before us, we cannot but observe that most of them are for drunkenness, begging, and other minor offences, for which the appellant received small fines, or was bound over in various sums to keep the peace, or to come up for judgment. The heaviest sentence ever received by the appellant was one of three months' imprisonment for uttering a false document in 1950 (some twenty years ago) and a similar sentence for malicious damage and drunkenness in 1969. During the last ten years the appellant had five of the convictions described above.

Mr. Frangos, Senior Counsel of the Republic, appearing for the Police in this appeal, frankly conceded that the material before the Court, including the list of previous convictions, hardly justified the description of the appellant as

a man " of extremely bad character with a very bad record " ; and as the sentence was apparently founded upon that basis, Mr. Frangos did not feel that he could support the sentence of three years' imprisonment for the offence committed in the circumstances of this case. We think that counsel was well justified in taking this stand.

With all respect to the learned trial Judge, we have no difficulty or hesitation in reaching the decision that the sentence is, in the circumstances, manifestly excessive ; and has to be reconsidered under the provisions of section 145 (2) of the Criminal Procedure Law, Cap. 155. The Judge measured the sentence upon the material placed before him which can hardly be described as satisfactory for that purpose. The injuries caused by the assault were an important matter. The charge did not describe them. If they were as serious as stated by the police prosecutor, a medical report was highly desirable. The Judge was supplied with a list of previous convictions covering a period of 40 years and running into three full pages creating the impression of a very damning document. But looking at it more carefully one can readily see that in most of those cases the appellant received fines of a few shillings. The biggest fine is one of £3 for affray in 1954, more than 15 years ago. On six occasions the appellant was bound over in sums varying from £5 to £50 for periods of one or two years. No information was put before the Judge as to how the appellant reacted to that treatment. It would be very useful for the Judge to have that information.

The trial Judge does not seem to have taken into consideration the state of appellant's mind at the material time. The appellant was obviously in a state of drunkenness. Drink may, as a rule, not afford a legal defence ; but it is a condition which must be taken into consideration as one of the facts of the case. It must certainly be taken into account in measuring sentence. It may be a reason for imposing a heavier sentence or a lighter one, depending on the relevant circumstances in each case.

Attending the proceedings before us by the side of the blind appellant (who did not have the assistance of an advocate) stood his son, a young taxi-driver living and working at Famagusta where his wife comes from. He informed the Court, *inter alia*, that the appellant lost his eye sight some 14 years ago ; and that he can offer his father a home and the care and affection of himself and his wife when the old father comes out of prison. He also offered to sign

a surety for his father if required. A social investigation report would reveal all that information and probably a good deal more, if the prosecution had obtained one for the Judge. Such a report was necessary if the police thought that this was the case calling for a severe sentence.

The attention of the trial Judge was not drawn to any of the cases where this Court discussed and considered the question of sentence. We may refer to two or three recent ones where reference is made to earlier cases. *Georghios Skoullou* v. *The Police* (1969) 2 C.L.R. 27 ; *Lambros Lazarou* v. *The Police* (1969) 2 C.L.R. 184 ; *Andreas Evangelou* v. *The Police* (reported in this Part at p. 45 *ante*).

Reviewing the sentence under the provisions of section 145 (2) of the Criminal Procedure Law, Cap. 155, we think that the sentence imposed in the District Court must be modified by reducing the imprisonment to six months from conviction, and couple it with a bond in the sum of £25 with a surety (appellant's son will do), for 30 months from today to keep the peace.

Appeal allowed ; sentence modified as above.

Appeal allowed.