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CHARIKLIA SOZOU TATTARI v. THE REPUBLIC

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

CHARIKLIA SOZOU TATTARI,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 3130).

Attempt to kill—Section 214 *of the Criminal Code, Cap.* 154—*Conviction—Sentence of two and a half years' imprisonment—Conviction affirmed on appeal—No valid reasons shown why findings made by trial Court should be disturbed—Sentence reduced on appeal to one of nine months' imprisonment, with a probation order for a period of two years from release—Serious crime—But committed in most extenuating circumstances.*

Imprisonment—Sentence of—Principles applicable in imposing and measuring sentence of imprisonment—Factors to be taken into account—Sentencing a very important and very delicate function—Matter discussed in a number of recent cases.

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

Appeal—Findings of fact made by trial Courts—Based mostly on credibility of witnesses—Principles upon which the Court of Appeal will intervene, well settled.

Firearms—Possessing and using pistol without the required permit—Sections 4 (1) (2) (*a*) (*b*) *and* 27 *of the Firearms Law, Cap.* 57 (*as amended by Laws Nos.* 11 *of* 1959 *and* 85 *of* 1963)—*On conviction no sentence passed as the said offences arose from the same incident and rested on practically the same set of facts as the attempt to kill* (supra).

The appellant, a married woman, aged 34 was convicted in the Assize Court of Limassol of attempting to kill her husband and sentenced to two and a half years' imprisonment. Against both these, conviction and sentence the appellant took the present appeal. Appellant's husband—a man of violent character with a long list of previous convictions for serious crime and a recent conviction for beating his wife (the appellant)—on October 15, 1969, was trying to gain

forceful admission into the house at a very late hour of the night. He was then living apart from his wife ; and he came on his motor-cycle after midnight, armed with an axe. She tried to send him away ; but knowing him to be a person " who would not take ' no ' for an answer "—as the trial Court put it—the appellant took the pistol from behind a cupboard in the house and going to the window where she had called her husband and where he was standing in the light, she fired at him " through the open grill of the shutters ", from close range, at his chest the bullet scraping the heart and stopping under the skin at the back.

As regards conviction it was argued on behalf of the appellant that the trial Court misdirected itself as to the ingredient of the intent to kill ; and that the evaluation of the evidence and the findings of fact were faulty. Regarding sentence, the argument went on, it was manifestly excessive in the circumstances of the case, especially the threatening attitude of the husband at the time.

Dismissing the appeal against conviction, but allowing the appeal against sentence the Court :—

Held, (I). As to the conviction for attempt to cause death under section 214 *of the Criminal Code Cap.* 154 :

(1) The trial Court went carefully into the evidence ; and stated the reasons which led them to their findings. Counsel for appellant has not been able to show valid reasons for disturbing them. The approach of this Court to such findings is well settled. They remain undisturbed unless the appellant is able to convince us that they are in any way unsatisfactory. (See *Ali* v. *The Republic* (1966) 2 C.L.R. 112, at p. 115 ; *Koumbaris* v. *The Republic* (1967) 2 C.L.R. 1, at p. 9).

(2) The ingredient of intent in a charge for attempt to kill was considered in *Kkolis* v. *The Republic*, 1961 C.L.R. 53 ; *Pefkos* v. *The Republic*, 1961 C.L.R. 340. The trial Court duly directing themselves on the question of intent, found, and rightly so, that the appellant fired the revolver with intent to kill ; and convicted her on the charge.

Held, (II). As to the sentence :

(1) Sentence of imprisonment must, as a rule, be justified on the accepted foundation for such sentence. Public security, retribution, deterrence and rehabilitation of the offender, must all be fully considered together with all other relevant

circumstances in each particular case. As it has been aptly said, the sentence must fit the crime as well as the criminal. This, as many other rules in life, is easy to state but very difficult to apply. The matter was discussed in recent cases. (See *Tryfona* v. *The Republic*, 1961 C.L.R. 246 ; *Mirachis* v. *The Police* (1965) 2 C.L.R. 28 ; *Karaviotis and Others* v. *The Police* (1967) 2 C.L.R. 286 ; *Savva* v. *The Republic* (1968) 2 C.L.R. 218).

(2) In the present case we have before us a woman of 34, the mother of three children, who stood her ground well for seventeen long years of married life, with a hardened criminal like her husband. She now stands convicted of a serious crime ; attempting to kill her husband ; a crime committed, however, in most extenuating circumstances.

(3) Taking all matters into account and doing the best we can we think that the appellant should serve part of the sentence in prison, to atone for the crime. We have, therefore, decided not without difficulty, to allow the appeal against sentence and vary it to one of nine months' imprisonment from conviction, with a probation order for a period of two years from release, under the supervision of the District Court of Limassol.

Appeal against conviction dismissed. Appeal against sentence allowed.

Cases referred to :

Ali v. *The Republic* (1966) 2 C.L.R. 112, at p. 115 ;

Koumbaris v. *The Republic* (1967) 2 C.L.R. 1, at p. 9 ;

Kkolis v. *The Republic*, 1961 C.L.R. 53 ;

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

Tryfona v. *The Republic*, 1961 C.L.R. 246 ;

Mirachis v. *The Police* (1965) 2 C.L.R. 28 ;

Karaviotis and Others v. *The Police* (1967) 2 C.L.R. 286 ;

Savva v. *The Republic* (1968) 2 C.L.R. 218.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Chariklia Sozou Tattari who was convicted on the 15th October, 1969, at the Assize Court of Limassol (Criminal Case No. 11713/69) on three counts of the offences of attempting to kill contrary to section 214 of the Criminal Code, Cap. 154,

and of possessing and using a pistol contrary to sections 4 (1) (2) (*b*) and 27 and 4 (1) (2) (*a*) and 27, respectively, of the Firearms Law, Cap. 57, as amended by Laws 11 of 1959 and 85 of 1963, and was sentenced by Malachtos, P.D.C., Vassiliades and Lorris, D.JJ., to two and a half years' imprisonment on the first count and no sentence was passed on her on the remaining counts.

G. Talianos, for the appellant.

M. Kyprianou, Counsel of the Republic, for the respondent.

The judgment of the Court was delivered by :—

VASSILIADES, P.: The appellant, a married woman, aged 34, was convicted in the Assize Court of Limassol on October 15, 1969, of attempting to kill her husband, on July 20, 1969 ; of possessing a pistol without a permit contrary to section 4 of the Firearms Law (Cap. 57, as amended by Law 11/59 and Law 85/63) ; and of using a pistol without a special permit as required by the Firearms Law. She was sentenced to 2 1/2 years' imprisonment for the attempt to kill ; the court refraining to pass any sentence on the other two counts, as arising from the same incident and resting on practically the same set of facts.

Against both these, conviction and sentence, the appellant took the present appeal on the grounds stated in the notice prepared and filed in due course by her advocate. The eight different grounds against conviction turn round three main points :

(*a*) the ingredient of the intent to kill in the count for attempt ;

(*b*) the evaluation of the evidence and the findings of fact resulting therefrom ; and

(*c*) the question of self-defence.

The appeal against sentence is based on the contention that the trial Court misdirected themselves as to the circumstances under which the offence was committed. The court failed to take sufficiently into account—the appellant contends—the threatening attitude of appellant's husband at the material time ; and as a result, imposed a " grossly excessive " sentence.

After hearing exhaustively learned counsel for the appellant regarding the conviction, we found it unnecessary to call upon counsel for the Republic on that part of the appeal.

The trial Court went carefully into the evidence before them ; and stated the reasons which led them to their findings. Learned counsel for the appellant, notwithstanding his very strenuous effort, has not been able to show valid reasons for disturbing them. The approach of this court to such findings is well settled. They remain undisturbed unless the appellant is able to show that they are in any way unsatisfactory ; or, in other words, that there is sufficient reason for intervention. (See *Kiamil Ali* v. *The Republic* (1966) 2 C.L.R. 112 at p. 115 ; *Koumbaris* v. *The Republic* (1967) 2 C.L.R. 1 at p. 9).

Regarding the intent to kill in the first count, we do not think that on the evidence before them, the trial Court could reach any different conclusion. Appellant's husband—a man of violent character with a long list of previous convictions for serious crime and a recent conviction for beating his wife—was trying to gain forceful admission into the house at a very late hour of the night. He was then living apart from his wife ; and he came on his motor-cycle after midnight, armed with an axe. She tried to send him away ; but " knowing him to be a person who would not take ' no ' for an answer "—as the trial Court put it—the appellant took the pistol from behind a cupboard in the house (where she apparently knew that it was hidden) and going to the window where she had called her husband and where he was standing in the light, she fired at him, " through the open grill of the shutters ", from close range, at his chest, the bullet scraping the heart and stopping under the skin at the back.

Appellant's evidence in this connection was to the effect that she hardly realised that she had pulled the trigger, not knowing how to use the revolver ; and not remembering how the firing occurred. The trial Court, rightly, we think, rejected her evidence ; and accepted on this point the evidence of the husband to the effect that the shot came to him as a surprise, accompanied with the words " take it " from his wife, while he was standing outside the window trying to get admission into the house.

The ingredient of intent in a charge for attempt to cause death under section 214 of our Criminal Code, was considered in *Nicolas Georghiou Kkolis* v. *The Republic*, 1961 C.L.R. page 53 ; and *Ioannis Michael Pefkos* v. *The Republic*, 1961 C.L.R. page 340. The trial Court duly directing themselves on the question of intent, found that the appellant fired the revolver with intent to kill ; and convicted her on the first count.

As to the question of self-defence upon which learned counsel for the appellant made elaborate submissions, this is governed in Cyprus by the provisions of section 17 of the Criminal Code, under the marginal title of " necessity ". In the instant case, quite rightly in our opinion, self-defence was not pressed by defending counsel at the trial. In view of appellant's statement to the police, soon after the offence, and of her evidence at the trial about three months later, submissions that the appellant fired the pistol in self-defence cannot be sustained.

Coming now to the question of sentence, we called upon counsel for the Republic as we felt that on this part of the appeal, there was room for further consideration. Sentencing is a very important and a very delicate part of the court's function in the application of the criminal law and the enforcement of its sanctions. Very properly, in our opinion, learned counsel for the Republic, after giving us certain particulars regarding the appellant, left the matter entirely in the hands of the court, with a submission that in view of the seriousness of the crime, the sentence imposed by the trial Court cannot be considered as excessive.

It is, we think, clear that the trial Court, considering the extenuating circumstances in this case, which weigh heavily in the scales of justice, tried to impose as lenient a sentence as it was, in their opinion, possible.

On the other hand, a sentence of imprisonment must, as a rule, be justified on the accepted foundation for such sentence. Public security, retribution, deterrence and rehabilitation of the offender, must all be fully considered together with all other relevant circumstances in each particular case. As it has been aptly said, the sentence must fit the crime as well as the criminal. This, as many other rules in life, is easy to state but very difficult to apply. One of the cases in Cyprus where the matter was discussed is *Charalambos Tryfona* v. *The Republic*, 1961 C.L.R., p. 246. Another is *Panayiotis Mirachis* v. *The Police* (1965) 2 C.L.R. 28 ; and two more recent ones are *Karaviotis and Others* v. *The Police* (1967) 2 C.L.R. 286 ; and *Savva* v. *The Republic* (1968) 2 C.L.R. 218. The question of sentence is being constantly considered with all due care and anxiety, in case after case, in the trial Courts and in the Court of Appeal, in the light of developments in the philosophies and practices in sentencing, in other countries ; and of the progress in the trend of present-day schools of thought in penology and criminology. We find, for instance, the work and publications of the Centre of Criminology of the University of Toronto most helpful in this connection.

In the present case, we have before us a woman of 34, the mother of three children, who stood her ground well for seventeen long years of difficult married life, with a hardened criminal like her husband. She now stands convicted of a serious crime ; attempting to kill her husband ; a crime committed, however, in most extenuating circumstances. To decide what is the appropriate sentence in her case, gave us considerable difficulty and a great deal of anxiety. We are inclined to think that the trial Court felt the same way. The crime called for a severe sentence ; the circumstances pulled the other way ; and the offender deserved more sympathy and help than punishment.

Taking all matters into account and doing the best we can, we finally reached the decision that we should not interfere with the basic period of the trial Court's sentence but, on the other hand, the appellant should not have to serve in prison, the whole of the term. We think that she should serve part of it in prison, to atone for the crime ; and at the same time to enable realities to open a new page in the life of the family. We think that the mother should have, in safety, appropriate institutional treatment of sufficient duration ; while the children will be having, temporarily, the care of the appropriate public services. After this period, in the absence of a system enabling the appellant to return home on parole, we think that the sentence should make that possible under a court order securing for her the help and supervision of the public services concerned.

We have, therefore, decided, not without considerable difficulty as I have already said, to allow the appeal and vary the sentence to one of nine months' imprisonment from conviction, with a probation order for a period of two years from release, under the supervision of the District Court of Limassol.

In the result, the appeal against conviction is dismissed ; and the conviction is affirmed as recorded by the trial Court. The appeal against sentence is allowed ; and the sentence is varied to one of nine months' imprisonment from conviction, to be followed by a probation order under the Probation of Offenders Law, Cap. 162, for a period of two years commencing from release from prison, under the supervision of the District Court of Limassol.

Appeal against conviction dismissed. Appeal against sentence allowed.