[JOSEPHIDES, L. LOIZOU, HADJIANASTASSIOU, JJ.]

PANICOS MENELAOU AND OTHERS,

Appellants,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeals Nos.* 3231-3233).

Sentence—Sentences of seven and five years' imprisonment for attempted armed robbery—Sections 284 *and* 366 *of the Criminal Code, Cap.* 154*—In the circumstances of this case said sentences not excessive having regard to the serious nature of the crime and the personal circumstances of the offenders—Reform of offenders and protection of society.*

Young offenders—Reformation—Institutional treatment—Need for setting up correctional institutions—Borstal institutions.

Institutional treatment—See supra.

Correctional institutions—Need for—See supra.

Borstal institutions—See supra.

Armed robbery—Attempted armed robbery—See supra.

The facts sufficiently appear in the judgment of the Court dismissing these appeals against sentence.

Cases referred to:

Tryphona alias Aloupos v. *The Republic,* 1961 C.L.R. 246, at p. 252.

Appeal against conviction.

Appeal against conviction by Paniccos Menelaou and two others who were convicted on the 1st February, 1971 at the Assize Court of Limassol (Criminal Case No. 12978/70) on one count of the offence of attempted armed robbery contrary to sections 284, 366 and 20 of the Criminal Code, Cap. 154 and were sentenced by Malachtos, P.D.C., Loris and

Hadjitsangaris, D.JJ. as follows: Accused 1 and 2 to seven years' imprisonment and accused 3 to five years' imprisonment.

Chr. Artemides, for the Appellants.

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

The judgment of the Court was delivered by:

JOSEPHIDES, J.: The three Appellants in these appeals were convicted by the Assize Court of Limassol of the offence of attempted robbery, contrary to sections 284, 366 and 20 of the Criminal Code, Cap. 154, and the first two Appellants were each sentenced to seven years' imprisonment and the third Appellant to five years' imprisonment. They now appeal against sentence only, on the ground that it is manifestly excessive.

The facts as found by the Assize Court were briefly as follows: On the night of the 16th February, 1970, at about 10.30 p.m. the three Appellants together with an accomplice (who was called as a witness for the prosecution) went to the house of the victim, an old woman aged 78, who was a widow living all by herself in an old house in Stassinou Street, Limassol. They forced open the street door, and the first two Appellants, together with the accomplice, went inside while the third Appellant kept watch outside the house. The first Appellant admitted punching the old woman on the face at least twice. The second Appellant and the accomplice searched the house to find the money which the old woman kept there, but they did not manage to find any, although she had a sum exceeding 3.000.– (three thousand pounds) in currency notes in the house which was subsequently found by the police. The accomplice also delivered one or two blows at the old woman. She started bleeding and thereupon the second Appellant said to the first Appellant and the accomplice "stop beating the old woman and let us leave". On the following morning at about 9.00 a.m. the old woman was found by the milkman lying on the floor, and she told him that she had fallen from her bed. There was blood on her face and on the pillow of her bed and she had wounds on the face and head. She was taken to the hospital where she died on the 18th February, 1970, at 2.15 a.m., that is, about two days after she had been brutally assaulted by these young men. This horrible crime was not detected until November 1970 when the Appellants confessed.

The three Appellants were tried by the Assize Court in February 1971 on a count of homicide and a count of attempted robbery. At the end of the trial the Assize Court acquitted the Appellants of the homicide charge, having given them the benefit of doubt, but convicted them of the attempted robbery charge.

At the time of the commission of the crime all Appellants were aged about 17, and at the time of their conviction they were aged 18. The trial Court had before them a social investigation report in respect of each of the Appellants and heard counsel in mitigation of punishment. In their judgment the Assize Court said that, having taken all the facts and circumstances of the case into consideration, as well as the plea in mitigation and, considering also the question of the reform of the offenders and the protection of the community, they could not but impose the terms of imprisonment already referred to, despite the youth of the Appellants. The Court added that the case of the third Appellant should be differentiated from that of the other two, having regard to the degree of his participation in the commission of the offence. In fact, this Appellant had no previous convictions. The first Appellant had six previous convictions in respect of theft and malicious injury but he was tried on the same day for all these offences (29th October, 1969), and he was put on probation for two years. However, he did not co-operate with the probation officer and he had to be taken before the Court twice. The second Appellant had a previous conviction for stealing a watch after the commission of the present crime but before he was arrested, and he was put on probation for two years on the 9th September, 1970.

The only ground on which Mr. Artemides for the Appellants argued the present appeal was that the sentences were manifestly excessive in that the Assize Court did not give due weight to the personal circumstances of the Appellants as reflected in the social investigation reports.

I think we ought to place on record our appreciation for the way in which Mr. Artemides argued the present appeal considering that he accepted the brief at short notice, having been assigned by this Court to represent the Appellants.

After hearing argument on both sides, we have given careful and anxious consideration to the question of punishment,

having regard to the principles, which have been repeatedly stated in this Court, to the effect that the responsibility for measuring sentence lies primarily with the trial Court and that this Court will not interfere with a sentence unless it is manifestly excessive or wrong in principle. The fact remains that this was a well-planned and horrible crime committed by three young men who brutally assaulted an old and unprotected woman of 78 years of age, who was living all by herself. And although, in principle, the Courts should, as far as possible, avoid sending to prison young offenders of the age of the Appellants, we think that (subject to our observations in the concluding paragraph of this judgment) the Courts would have failed in their duty to protect society and to reform the offenders if they had not imposed sentences of imprisonment.

The question which falls for determination is whether the sentences imposed are manifestly excessive. Having regard to the serious nature of the crime, which carries a maximum penalty of life imprisonment, as well as the personal circumstances of the offenders as reflected in the social investigation reports, we are of the view that the sentences imposed on them are not manifestly excessive, despite their young age. Two of the Appellants, the first and third Appellants, have alcoholic fathers and come from broken homes. The second Appellant had the fortune to have good parents who, most regrettably, were unable to control him as they allowed him, while still a student at the age of 16, to work in the evenings as a cinema-usher; and all three Appellants fell into bad company. We might add, for the benefit of those who do research in social problems, that the fathers of the three Appellants are all ex-servicemen of the Second World War.

Considering the circumstances of this case, it would be inconceivable for this Court to consider any method of treatment of these offenders other than custodial treatment but, unfortunately, the only institution we have in Cyprus for young offenders of the Appellants' age is the central prison and nothing else. Time and again this Court has pointed out the crying need for the setting up of a correctional institution similar to the "borstal institutions" as they exist in England, but it would appear that the plans for the establishment of such an institution have not yet been implemented, although it is understood that the Ministry of Justice has been pressing

for this over the past five years, if not more. This is what we said in the High Court of the Republic some ten years ago in the case of *Charalambos Tryphona alias Aloupos* v. *The Republic*, 1961 C.L.R. 246, at page 252:

> " I have given careful and anxious consideration to this case because I believe that young men must be given a chance to reform. It is a pity that in Cyprus we have no 'borstal institutions' as in England. Young men of the age of 16 and upwards can be committed to these institutions to be trained and given a chance to reform.
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> I am in a position to know that during the past seven or eight years the Courts in Cyprus have repeatedly asked the legislature to establish such institutions, but without any result. I now take this opportunity of expressing the hope that the responsible authorities in our new Republic will consider establishing the borstal system in Cyprus at the earliest possible moment."

In the result the appeals of all three Appellants are dismissed.

Appeals dismissed.