[TRIANTAFYLLIDES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

MINAS MINA AND ANOTHER,

Appellants,

v.

THE POLICE,

Respondents.

(*Criminal Appeals No.* 3242-3243)
(*Consolidated*).

Sentence—Manifestly excessive and wrong in principle—Trial Court so impressed by the severity of the offences and by the need to protect society that it has given no sufficient weight to the personal circumstances of the Appellants and the conditions under which the offences were committed—Appellants first offenders and of a quiet and law abiding nature, enjoying good reputation in their village—Sentences imposed by the trial Court held to have been manifestly excessive and wrong in principle — Reduced accordingly—Sentences of twelve months' and nine months' imprisonment, respectively, reduced into sentences of eight and five months' imprisonment, respectively.

Appeals against sentence—Principles upon which the Supreme Court interferes with sentences imposed by trial Courts.

Causing grievous harm and malicious damage contrary to sections 231 *and* 324(1) *of the Criminal Code, Cap.* 154, *respectively—Assault contrary to section* 242 *of the Code—Sentences imposed by the trial Court reduced on appeal as being manifestly excessive and wrong in principle—See* supra.

The facts sufficiently appear in the judgment of the Court whereby these appeals against sentence were allowed and the sentences imposed by the trial Court reduced as being in the circumstances manifestly excessive and wrong in principle.

Cases referred to:

Paraschos v. *The Police* (1963) 1 C.L.R. 83;

Agathocleous v. *The Police* (1965) 2 C.L.R. 119;

Psaras v. *The Police* (1968) 2 C.L.R. 8.

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MINAS MINA
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Appeal against sentence.

Appeal against sentence by Minas Mina and Xenophon Mina who were convicted on the 12th March, 1971 at the District Court of Nicosia (Criminal Case No. 875/71) on 2 counts of the offences of causing grievous harm and malicious damage, contrary to sections 231 and 20 and 324(1) and 20, respectively, of the Criminal Code Cap. 154 and Appellant 2 was also convicted on another count of the offence of common assault, contrary to section 242 of the Criminal Code (*supra*) and a sentence of 12 months' and 9 months' imprisonment was passed, by Papadopoullos D.J., on the first and second Appellant, respectively, on the grievous harm count, a sentence of 6 months imprisonment on each one of them on the malicious damage count, together with an order to pay the sum of £35 as compensation for the malicious damage done and a further sentence of 6 months imprisonment was passed on the second Appellant on the common assault count, all sentences to run concurrently.

T. Papadopoullos, for the Appellants.

Cl. Antoniades, Counsel of the Republic, for the Respondents.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: In these two appeals, which have been consolidated as they arise out of one and the same case (DCN 875/71), the Appellants appeal against the sentences of twelve months' and nine months' imprisonment, respectively, imposed on them for causing grievous harm, contrary to section 231 of the Criminal Code, Cap. 154, to Andreas Artemiou, a doctor, of Nicosia, on the 18th December, 1970, at a house in Averof Street in Nicosia; and against the sentence of six months' imprisonment imposed on them for causing, on the same occasion, malicious damage, contrary to section 324(1) of Cap. 154, to the clothing of Dr. Artemiou. Also, Appellant 2, who is the brother of Appellant 1, appeals against the sentence of six months' imprisonment imposed on him for assaulting, contrary to section 242 of Cap. 154, at the same time and place, Maria Artemi, the wife of Appellant 1.

The salient facts of the case are as follows:-

The wife of Appellant 1 was, at the material time, working as a nurse at the clinic of Dr. Artemiou; she is not a Cypriot, having been born in Ireland.

On the 17th of December, 1970, that is on the day previous to the commission of the offences in question, she left, due to deterioration of her relations with her husband, the matrimonial home and she went to live at the house in Averof Street. About a month earlier a quarrel had taken place between Appellant 1 and his wife in the presence of Dr. Artemiou and his own wife and in the course of the quarrel Appellant 1 had accused his wife of having immoral relations with Dr. Artemiou. It seems that as a result of the suspicions of Appellant 1 regarding such relations there were repeated arguments between Appellant 1 and his wife which made, eventually, the wife leave the matrimonial home on the 17th December, 1970.

Next day, the 18th December, 1970, Appellant 1 travelled at night to Nicosia together with Appellant 2 and another person, in the car of Appellant 2. They, then, borrowed another car, apparently with the intention of following Dr. Artemiou without being noticed by him, who possibly knew the car of Appellant 2. When Dr. Artemiou left his clinic and proceeded to the aforesaid house in Averof Street the Appellants followed him there and entered the house, soon after he had entered it carrying some food for the wife of Appellant 1, and they proceeded at once to attack both of them.

We must stress, at this stage, in fairness to the memory of Dr. Artemiou, who has since then died in a traffic accident, that the Appellants found the door of the house unlocked and there is nothing on the record before us to show that any impropriety was at the time taking place, or was about to take place, between Dr. Artemiou and the wife of Appellant 1.

As a result of the violent conduct of the Appellants Dr. Artemiou was seriously wounded and some of his clothes were torn; the wife of Appellant 1 was beaten, but much less severely.

This is indeed a very serious case. If the Courts were to tolerate persons motivated by suspicion, which creates in them feelings of jealousy, to take the law into their own hands and to commit crimes such as these, then, as was rightly pointed

out by learned counsel for the Respondents, order would give place to anarchy. Persons who choose to adopt this kind of conduct should be punished severely. On the other hand, in imposing severe punishment in a case of this nature the scales of justice must be evenly balanced, in the sense that sight should not be lost of the personal circumstances of the person to be punished and of the framework of events within which the offence was committed.

In the present case a factor which has to be given due weight is that both Appellants, who are twenty-six and twenty-four years old, respectively, are first offenders; and that, as it appears from the relevant social investigation reports, they are persons of a quiet and law-abiding nature who enjoy good reputation in their village.

Though, as a Court of Appeal, we would not be prepared to substitute our own assessment as to what is the right punishment in a criminal case in the place of the assessment of a trial Judge, because, as it has often been stressed, it is for the trial Courts to assess sentence in the light of the circumstances of each particular case, and we can only interfere with the sentence imposed by a trial Court if there exist any of the well-established reasons which have been laid down as entitling us to do so, in the present case, having duly considered what has been ably submitted by learned counsel for the Appellants, we have come to the conclusion that the trial Court appears to have been so impressed by the severity of the offences concerned, and by the need to protect society against high-handed conduct of this nature, that no sufficient weight was given to the personal circumstances of the Appellants and the conditions under which such offences were committed, including, in particular, the fact that the Appellants were at the time labouring under a suspicion which filled them with great indignation.

It seems to us, also, that the learned trial Judge, having taken "into consideration..... as guidance" the cases of *Paraschos* v. *The Police* (1963) 1 C.L.R. 83, *Agathocleous* v. *The Police* (1965) 2 C.L.R. 119, and *Psaras* v. *The Police* (1968) 2 C.L.R. 8, was unduly influenced by them though the facts in those cases were entirely different from those in the present case.

We are of the opinion that the objects of protecting society

against conduct of this nature, through deterring others from resorting to it in similar circumstances, as well as of making the Appellants realize once and for all that they cannot take the law into their own hands, whatever their grievances may be, and of punishing them for what they did, could be amply achieved by sentences of imprisonment less severe than those imposed on the Appellants, which, in our view, are manifestly excessive and wrong in principle; the sentences on Appellants in respect of the offence of causing grievous harm are, therefore, reduced to sentences of imprisonment for eight and five months' imprisonment, respectively; in this respect we have taken into account that Appellant 2 was obviously carried away by his feelings as brother of Appellant 1.

Also, the sentences for the offence of causing malicious damage are reduced to sentences of imprisonment for three months in the case of each Appellant (the order for £35 compensation for the damage caused to remain unaffected), and the sentence imposed on Appellant 2 for the offence of assault is reduced to one of, again, three months' imprisonment.

All sentences to run concurrently from the date on which they were imposed.

Appeals allowed.