

MOISIS KYRIACOU VARNAVA,

*Appellant,*

v.

THE REPUBLIC,

*Respondent.*

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MOISIS  
KYRIACOU  
VARNAVA  
v.  
THE REPUBLIC

(*Criminal Appeal No. 3265*).

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*Sentence—Fifteen months' imprisonment for defilement of a girl under 13 years—Section 153(1) of the Criminal Code Cap. 154—Complainant a consenting party—Appellant a young first offender with a very favourable social investigation report, serving in the National Guard—Factor that Appellant after serving his sentence of imprisonment will continue his military service in the National Guard, where he will have to lead a disciplined life, does not seem to have been duly taken into account by the trial Court—Sentence held to have been manifestly excessive—Sentence reduced to one of six months' imprisonment.*

*Appeal—Sentence—See supra.*

*Defilement of a girl under 13—Section 153(1) of the Criminal Code—See supra.*

*Young offenders—Observations with regard to the lack of suitable institutions for the imprisonment of young offenders—See further supra.*

The facts sufficiently appear in the judgment of the Court, allowing this appeal against sentence and holding that the sentence appealed against is manifestly excessive.

#### **Appeal against sentence.**

Appeal against sentence by Moisis Kyriacou Varnava who was convicted on the 5th June, 1971 at the Assize Court of Famagusta (Criminal Case No. 2200/71) on one count of the offence of defilement of a girl under 13 years of age contrary to section 153(1) of the Criminal Code Cap. 154 and was sentenced by Georghiou, P.D.C., Pikis and S. Demetriou, D.JJ. to 15 months' imprisonment.

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*K. Saveriades*, for the Appellant.

*A. Frangos*, Senior Counsel of the Republic, for the Respondent.

The judgment of the Court was delivered by:—

TRIANAFYLLIDES, P.: In this case the Appellant appeals against the sentence of fifteen months' imprisonment which was passed upon him after he had pleaded guilty to the offence of defilement of a girl under thirteen years of age (she was, actually, twelve years old at the material time) contrary to section 153(1) of the Criminal Code, Cap. 154.

According to the particulars of the count on which the Appellant was convicted, on a date between the 1st March, 1970, and the 30th April, 1970, the Appellant, did unlawfully and carnally know the said girl. At the time he was sixteen years old. The offence was not detected immediately but about nearly a year later the girl mentioned what had happened to her mother who reported the matter to the police. The Appellant, when arrested by the police, admitted what he had done, adding that the girl had been a consenting party.

At the time when the Appellant was sent to prison for this offence—about a month ago—he was serving in the National Guard, in which he enlisted in January, 1971, and he will have to complete his military service after he comes out of prison.

He is a first offender and the social investigation report which was prepared in respect of him is a very favourable one.

It is not in dispute that the girl was, as stated, a consenting party; but we cannot overlook that the Appellant took advantage of the fact that the girl, who was much younger than him, was in love with him and persuaded her, because of her feelings for him, to allow him to commit the offence in question.

We have, also, not lost sight of the fact that the Appellant acted as he has done because of psychological and physiological factors which do affect a young man of his age, but we have to stress most emphatically that young men, when finding themselves in a situation like the present one, must exercise self-control and not permit themselves to act in the way in which the Appellant has acted.

Having taken all relevant considerations into account, including the factor that after serving a sentence of imprisonment the Appellant will continue his service in the National Guard, where he will have to lead a disciplined life— (and this factor does not seem to have been duly taken into account by the trial Court)—we have reached the conclusion that the sentence passed upon the Appellant is manifestly excessive and that a sentence of six months' imprisonment, as from the date of the Appellant's conviction, would adequately serve the purpose of reforming him and would also operate as a warning to other young persons not to allow themselves to indulge in conduct such as that for which the Appellant is being punished.

We feel that we must observe, in concluding, that in view of the lack of suitable institutions for the imprisonment of young persons such as the Appellant we do feel rather unhappy about having to send him to serve his sentence in the ordinary prisons.

In the light of the foregoing this appeal is allowed and the sentence appealed against is reduced to six months from the date of the conviction.

*Appeal allowed.*

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