[TRIANTAFYLLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

ANTONIS C. ECONOMOU,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 3511).

Sentence—Homicide contrary to section 205 *of the Criminal Code, Cap.* 154 (*as amended by Law No.* 3 *of* 1962)—*Six years' imprisonment—Assessment of sentence is primarily the task of the trial Courts—Appellant's personal circumstances, the provocation by the deceased and the manner in which the injuries were inflicted on the deceased duly taken into account by the trial Court—Sentence neither manifestly excessive nor wrong in principle—Appeal against sentence dismissed.*

Homicide—Sentence—See supra.

The facts sufficiently appear in the judgment of the Court dismissing this appeal against sentence on a charge of homicide.

Cases referred to:

Mina and Another v. *The Police* (1971) 2 C.L.R. 167;

Pullen and Another v. *The Republic* (1970) 2 C.L.R. 13.

Appeal against sentence.

Appeal against sentence by Antonis C. Economou who was convicted on the 24th September, 1973 at the Assize Court of Paphos (Criminal Case No. 1186/73) on one count of the offence of homicide contrary to section 205 of the Criminal Code, Cap. 154, as amended by section 5 of the Criminal Code (Amendment) Law, 1962 (Law 3/62) and was sentenced by Stylianides, P.D.C., Hadjitsangaris and Hji Constantinou, S.D.JJ. to six years' imprisonment.

E. Ieropoullos with *A. Evzonas*, for the Appellant.

N. Charalambous, Counsel of the Republic, for the Respondent.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: The Appellant complains against the sentence of six years' imprisonment which was passed upon him by an Assize Court when he was convicted, on his own plea, of the offence of homicide, contrary to section 205 of the Criminal Code, Cap. 154, as amended by section 5 of the Criminal Code (Amendment) Law, 1962 (Law 3/62).

The facts of the case are, briefly, as follows:-

The Appellant and his victim, the deceased, met in the fields, in the vicinity of properties of theirs, which were next to each other, and, because of a dispute over a right of way granted to the Appellant over the property of the deceased, the deceased started throwing stones at the Appellant with the result that he was seriously injured and had to be kept in hospital for eight days.

The deceased was a woman fifty-five years old. The Appellant is a man fifty-seven years old. He responded to the stone throwing by throwing himself stones at the deceased and, as it appears from the relevant medical report stating the various injuries caused to the deceased, he must have thrown quite a number of stones. Due to these injuries the deceased died; the cause of death being severe concussion coupled, perhaps, with the fact that she was not taken to hospital in time.

The Appellant is the sole supporter of his family. He has an unblemished past record. Counsel appearing for him have argued that the Assize Court passed a sentence which was manifestly excessive and wrong in principle, because it failed to take into account all mitigating circumstances, and, in particular, the personal circumstances of the Appellant; it was contended, too, that the Assize Court attributed undue importance to the severity of the crime and to the need to deter others from committing similar crimes; we have been referred in this respect to *Mina* v. *The Police* (1971) 2 C.L.R. 167, and *Pullen and Another* v. *The Republic* (1970) 2 C.L.R. 13.

Each case has to be decided on its own merits, and, as was stated in both the above cases, the question of the sentence to be imposed is primarily the task of the trial Court.

In the present case it is clear from the judgment of the trial Court that it took duly into account the Appellant's personal circumstances, the provocation of the Appellant by the deceased,

the manner in which the injuries were inflicted on the deceased—merely by stone throwing and without the use of any lethal instrument—as well as the nature of the injuries suffered by the Appellant.

We cannot accept the submission of counsel for the Appellant that this is a case which is on the border line between self-defence and homicide, and that, really, the only fault of the Appellant was that he did not retreat when attacked by the deceased. That could have been the case if he had thrown only one or two stones in merely trying to defend himself while retreating; but, instead, he remained there and engaged in a stone throwing contest with a woman, with the result that she lost her life; no matter how much weight is to be given to all the mitigating circumstances we cannot hold that this is a case in which the sentence was either manifestly excessive or wrong in principle.

We, therefore, have to dismiss this appeal and, as we are not prepared to make an order that the sentence should run as from the date on which it was passed, the sentence should run as from today.

Appeal dismissed.