

1974

Jan. 11

VASSOS MANOLI
CHRISTODOULOU

v.

THE REPUBLIC

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

VASSOS MANOLI CHRISTODOULOU,

Appellant,

v.

THE REPUBLIC

Respondent.

(*Criminal Appeal No. 3525*).

Homicide—Contrary to section 205 of the Criminal Code, Cap. 154 (as amended by Law No. 3 of 1962)—Sentence—Twelve years' imprisonment—No sufficient significance attributed by the trial Court to three weighty factors—Emotional stress of the Appellant—It is an important mitigating factor—Personal circumstances of the convict (Appellant)—Retribution should not be such as to stifle in the Appellant the expectation that he will have a reasonable, in the circumstances, early chance to rebuild his life—Sentence imposed manifestly excessive—Reduced to one of eight years' imprisonment.

Sentence—Mitigating factors—Sentence manifestly excessive—Reduced on appeal—See further supra.

The facts sufficiently appear in the judgment of the Court reducing the sentence imposed from twelve years' imprisonment to one of eight years' imprisonment.

Appeal against sentence.

Appeal against sentence by Vassos Manoli Christodoulou who was convicted on the 24th October, 1973 at the Assize Court of Famagusta (Criminal Case No. 5157/73) on one count of the offence of homicide contrary to section 205 of the Criminal Code Cap. 154, as amended by the Criminal Code (Amendment) Law, 1962 (Law No. 3/62) and was sentenced by Savvides, P.D.C., Demetriou, Ag. S.D.J. and Chrysostomis, D.J. to twelve years' imprisonment.

L. Clerides with E. Lemonaris for the Appellant.

Cl. Antoniadis, Counsel of the Republic, for the Respondent.

The judgment of the Court was delivered by:—

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

The homicide was committed on July 21, 1973, in Famagusta; and the victim, Maria Ioannou Hjistylli, was a young woman who was, at the time, cohabiting with the Appellant; their cohabitation had commenced four years earlier and as a result of it a child was born in December, 1971.

It appears that during the last few months before her death Maria decided to stop cohabiting with the Appellant, who was, however, still passionately in love with her and was doing his best to dissuade her from leaving him; he even enlisted for this purpose the assistance of a welfare officer.

It seems that Maria remained, nevertheless, determined to leave him and that, consequently, the situation became critical, reaching its climax during the twenty-four hours immediately before the homicide.

In the morning of the fateful day the couple went to the welfare office for yet another effort to solve their differences and then they returned to their house; Maria entered the bedroom and the Appellant followed her, locking the door of the room behind him. Shortly afterwards, Maria jumped out, through the window, into the yard; the Appellant followed her and chased her, caught up with her and started, to hit her with, at first, his hands; then he got hold of a stick which he found, unfortunately, near at hand and he began striking her with it; as a result her skull was fractured and she died. All these happened in broad daylight and in the presence of bystanders who did not intervene to rescue the victim, but were only trying by words to make the Appellant desist from assaulting Maria.

One of the means to which Maria had resorted in her effort to make the Appellant let her go away from him was to tell him, falsely, that the child was not his, but of another man; so, the Appellant, after he had killed Maria, went straight to the police and said that he had killed his mistress because they

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had had a quarrel when she told him that their child was not his.

Having considered the reasons given by the trial Judges for their appeal from decision we have reached the conclusion that they did not attribute sufficient significance to three weighty, in our opinion, factors, namely, first, the great emotional stress under which the Appellant was labouring at the material time, secondly, the fact that the killing was committed by a stick which just happened to be lying about in the yard, and, thirdly, that the Appellant is now the only protector of the child.

Emotional stress, as correctly pointed out in *Thomas on Principles of Sentencing* at p. 184, is, indeed, an important mitigating factor.

We have noted, too, that the trial Court appears to have given undue weight to the fact that the Appellant delivered repeated blows in the course of killing his victim, as if it could be expected of him, in the highly excited condition in which he was, to have appreciated clearly what he was doing.

It is most unfortunate that a young woman was killed. We do take a very serious view of this case; it is not the right of anyone to pester a woman, and eventually assault and kill her, because she no longer wants to live with him; and society has to be protected against conduct of this kind. We are, therefore, not losing sight of the deterrent aspect of the punishment in this case.

But we must, also, as in every case, take duly into account the personal circumstances of the Appellant, and, really, we do not think that retribution for his crime should be such as to stifle in him the expectation that he will have a reasonably early chance to rebuild his life.

In the light of all the foregoing we think that the sentence passed upon him is manifestly excessive and we reduce it to one of eight years' imprisonment.

This appeal is, therefore, allowed accordingly.

Appeal allowed.