[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, JJ.]

ACHILLEAS CHARALAMBOUS KAOURAS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 3787).

Criminal Law—Sentence—Causing grievous harm with intent—Section 228(*a*) *of the Criminal Code, Cap.* 154*—Serious wounding case—Proper measure of punishment—A substantial sentence is necessary as a general deterrent against violence—Sentence not manifestly excessive—Appeal dismissed.*

The appellant pleaded guilty to the offence of causing grievous harm to the complainant with intent to do her grievous harm or to maim, disfigure or disable her, contrary to section 228(a) of the Criminal Code Cap. 154 and was sentenced to two and a half years' imprisonment. He was 52 years' old and married with children, but at the time of the offence, and for about one year previously, he had been living together with the complainant. He was not a person with a clean past, but he had not any convictions of such a nature as could be described as being similar to the above offence.

The offence was committed after an altercation between the appellant and the complainant. The trial Court found that the words used by the complainant amounted to provocation as a result of which the appellant took hold of an iron bar and hit the complainant with it twice on the head. The complainant was taken to hospital unconscious, with two deep lacerated wounds on her head and with her left ear bleeding; for some time her life was at risk, but, eventually, she recovered without having become incapacitated in any way.

Upon appeal against sentence the appellant stated that he has repented for what he did under severe provocation, and that he has since been reconciled with both his wife and the complainant.

Held, dismissing the appeal, that bearing in mind both the particular circumstances of the present case as well as the

pesonal circumstances of the appellant, as well as that a substantial sentence is necessary as a general deterrent against violence (see Thomas on Principles of Sentencing, 1970 p. 93), the sentence passed on the appellant is not manifestly excessive; that this Court is not entitled to intervene in his favour for the purpose of reducing it; and that, accordingly, his appeal will be dismissed.

Appeal dismissed.

Cases referred to:

R. v. *Mallinson* [1964] Crim. L.R. 555;

R. v. *Coulson* [1965] Crim. L.R. 252;

R. v. *Hillyard* [1965] Crim. L.R. 500;

R. v. *Kilmartin* [1963] Crim. L.R. 446 at p. 447.

Appeal against sentence.

Appeal against sentence by Achilleas Charalambous Kaouras who was convicted on the 7th February, 1977 at the Assize Court of Nicosia (Criminal Case No. 29210/76) on one count of the offence of causing grievous harm, contrary to section 228(a) of the Criminal Code, Cap. 154 and was sentenced by Stylianides P.D.C., Kourris, S.D.J. and Nikitas D.J. to 2½ years' imprisonment.

Appellant appeared in person.

V. Aristodemou, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: The appellant has appealed against the sentence of two and a half years' imprisonment which was passed upon him by an Assize Court in Nicosia after he had pleaded guilty to having caused grievous harm to Athanasia Patsika, of Nicosia, on October 13, 1976, with intent to do her grievous harm or to maim, disfigure or disable her, contrary to section 228(a) of the Criminal Code, Cap. 154.

The appellant is 52 years old and married, with children, but at the time of the offence, and for about one year previously, he had been living together with the complainant in a flat in Nicosia.

The offence was committed after an altercation between them at about 4 a.m.; the trial Court found that the words used by the

complainant amounted to provocation as a result of which the appellant took hold of an iron bar, which happened to be handy in the flat, and hit the complainant with it twice on the head; he, then, went to the nearest police station where he reported what had happened.

The complainant was taken to hospital unconscious, with two deep lacerated wounds on her head and with her left ear bleeding; for some time her life was at risk, but, eventually, she recovered without having become incapacitated in any way.

The appellant appeared before us in person and he stated that he has repented for what he did under severe provocation, and that he has since been reconciled with both his wife and the complainant; as a matter of fact the complainant was in Court and stated that she has forgiven the appellant, but his wife was not present.

The punishment provided for under section 228 for the offence in question is imprisonment for life.

The appellant is not a person with a clean part, but he has not any convictions of such a nature as could be described as being similar to the offence with which we are concerned in the present appeal.

We are dealing with the sentence in a case of serious wounding and, in this respect, the following is stated in Thomas on Principles of Sentencing, 1970 (p. 93), regarding punishment for an offence of this nature:-

> " Sentences in the majority of cases fall within the range of three to seven years' imprisonment. The most important factor influencing the choice of sentence appears to be the element of premeditation. Other factors which appear to be relevant include the degree of injury intended and actually inflicted. Use of a weapon appears to be significant mainly as an indication of premeditation. Provocation is particularly significant in reducing the gravity of the offence in the view of the Court".

It is useful to refer, also, by analogy, to some reported cases:

The report of *R.* v. *Mallinson* reads as follows in [1964] Crim. L.R. 555:-

" Lord Parker C.J., Paull and Winn JJ.: May 12, 1964.

Age: seventeen (m.). *Facts*: he stabbed his brother-in-law in the groin and abdomen in the course of a family dispute. Sentenced to three years' imprisonment. *Previous convictions:* two for dishonesty. *Special considerations*: he had taken far more drink than usual and was not likely to repeat the offence; on the other hand, the wounds were very grave and this sort of offence was prevalent in the area. *Decision*: it was a difficult case but the Court was satisfied that there was no ground for interfering with the sentence".

Regarding *R.* v. *Coulson* the following are stated in [1965] Crim. L.R. 252:-

Lord Parker C.J., Marshall and Widgery JJ.: February 15, 1965. *Age*: 22(m.). *Facts*: he stabbed his wife, cutting her face badly. He was provoked by her taunting him about another man, but he had deliberately armed himself with the knife. *Previous convictions*: for minor offences only: fines, probation. *Special considerations*: he had not picked up the knife in the heat of the moment. People must be deterred from using knives. *Decision:* 3 years' imprisonment upheld".

Also, the report of *R.* v. *Hillyard* in [1965] Crim. L.R. 500 reads as follows:-

" Lord Parker C.J., Howard and Widgery JJ.: April 6, 1965. *Age*: 23(m.). *Facts*: he was convicted of shooting with intent to disable or do grievous bodily harm. He shot at his brother with a 22 rifle after being beaten up by him. His defence was that he only shot to frighten. *Previous convictions: none. Decision:* 2½ years imprisonment upheld. But for the mitigating circumstances a far heavier sentence would have been justified".

Lastly, reference should be made to a case in which the culpability of the accused was, in the circumstances, much less than that of the present appellant and, in which, a sentence of three years' imprisonment was reduced to one of two years' imprisonment; it is the case of *R.* v. *Kilmartin* the report of which is as follows in [1963] Crim. L.R. 446 447:-

" Lord Parker C.J., Ashworth and Winn JJ.: *The Times*, March 12, 1963. *Age*: twenty-one (m.). *Facts:* pleaded guilty to wounding with intent; sentenced to three

years' imprisonment and recommended for deportation. He was involved in a public-house fight. He was attacked by a man and a girl who used a stiletto heel. Outside the public house the girl armed herself with the heel and a glass. He then picked up a milk bottle, broke it and thrust it into the back of the man. *Previous history*: came from Ireland in 1961; worked well; no previous convictions. *Special considerations:* he had been gravely provoked and was of previous good character. *Decision:* Sentence varied to two years' imprisonment; recommendation quashed".

In the light of all the foregoing and bearing in mind both the particular circumstances of the present case as well as the personal circumstances of the appellant, as well as that, as pointed out by *Thomas*, *supra*, at pp. 11, 12, "a substantial sentence is necessary as a general deterrent against violence", we have decided that the sentence passed on the appellant is not manifestly excessive, as he contends, and, therefore, we are not entitled to intervene in his favour for the purpose of reducing it; as a result, his appeal is dismissed accordingly.

Appeal dismissed.