1979 April 19

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

CHRISTAKIS THEODOROU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 4021).

Criminal Law—Sentence—Common assault, public insult and disturbance—Footballer attacking referee—Two months' imprisonment—Mitigating factors—Personal circumstances of appellant as appearing in social investigation report which was not before the trial Court—Appellant twenty-two years old, the main supporter of a large family, with a perfectly good record as a citizen, not normally of a violent nature and has expressed his repentance—Doubts whether trial Court would not have imposed a shorter sentence had it had in mind the said report—Sentence reduced.

The appellant pleaded guilty to the offences of common assault, public insult and disturbance and was sentenced to two months' imprisonment in relation to the assault, to one month's imprisonment for the insult, and the disturbance was taken into consideration in passing sentence. The offences were committed during a rural football match between two village teams, in one of which the appellant was a player. After he had been sent off by the referee, and after the referee had sent off two other players of the appellant's team, he entered the field and attacked the referee, with the result that part of his attire was torn, and, also, insulted him by using very vulgar language indeed.

Upon appeal against sentence there was produced a social investigation report which was not before the trial Court when it passed the aforesaid sentence.

Held, (after dealing with the seriousness of the incident in question and the approach of the Court of Appeal to offences of

this nature) that from the social investigation report, which was not before the trial Court, it appears that, indeed, the appellant, who is only twenty-two years old and the main supporter of a large family, has a perfectly good record as a citizen and is not normally of a violent nature, and has, also, since the commission of the offence in question expressed his repentance, having realized the gravity of his error; that, therefore, this Court entertains doubts whether the trial Court, had it had in mind the said report, would not have imposed a shorter sentence of imprisonment; and that, accordingly, with some reluctance this Court has decided that the safest course is to reduce the sentence to one month's imprisonment.

Appeal allowed.

Per curiam: Had the social investigation report been available at the trial, and had it been taken into account then, this Court might not have been inclined to intervene in favour of the appellant, because the sentence of two months' imprisonment would have been imposed with a full picture of all relevant considerations; and it must not be lost sight of, in this respect, that it is, primarily, the task of a trial Court to assess sentence, and it is not for this Court to reassess it on appeal.

Cases referred to:

Hapsides v. *Police* (1969) 2 C.L.R. 64.

Appeal against sentence.

Appeal against sentence by Christakis Theodorou who was convicted on the 19th March, 1979 at the District Court of Nicosia (Criminal Case No. 85/79) on three counts of the offences of common assault, public insult and disturbance, contrary to sections 242, 99 and 95, respectively, of the Criminal Code Cap. 154 and was sentenced by Artemides, D.J. to two months' imprisonment in relation to the assault count, to one month's imprisonment for the insult count and the disturbance count was taken into consideration in passing sentence.

E. Efstathiou, for the appellant.

A. M. Angelides, Counsel of the Republic, for the respondents.

TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellant appeals against the sentence of imprisonment

passed upon him when he was found guilty, on his own plea, of the offences of common assault, contrary to section 242 of the Criminal Code, Cap. 154, of public insult, contrary to section 99 of Cap. 154, and of disturbance, contrary to section 95 of Cap. 154.

He was sentenced to two months' imprisonment in relation to the assault, to one month's imprisonment for the insult, and the disturbance was taken into consideration in passing sentence.

The offences were committed by the appellant during a rural football match between two village teams, in one of which the appellant was a player. After he had been sent off by the referee, and after the referee had sent off two other players of the appellant's team, he entered the field and attacked the referee, with the result that part of his attire was torn, and, also, insulted him by using very vulgar language indeed.

We agree with the learned trial judge that conduct of this nature, in circumstances such as those in which it has occurred, is very deplorable and condemnable and that the incident ought to be regarded as a serious one. Those who take part in football matches, as well as the spectators, should exercise the utmost self-control and not allow themselves to be carried away by outbursts of temper or by fanaticism of any kind.

How this Court approaches offences of this nature when they are committed at football matches is illustrated by the case of *Hapsides* v. *The Police*, (1969) 2 C.L.R. 64, where a sentence of three weeks' imprisonment was imposed on a spectator for conduct much less serious than the conduct of the appellant in the present case.

During the hearing of this appeal much stress was laid, as a mitigating factor, on the personal circumstances of the appellant; so, we have now before us a social investigation report, which was not before the trial Court when it passed the sentence of two months' imprisonment. Had this report been available at the trial, and had it been taken into account then, we might not have been inclined to intervene in favour of the appellant, because the sentence of two months' imprisonment would have been imposed with a full picture of all relevant considerations; and it must not be lost sight of, in this respect, that it is, primarily, the task of a trial Court to assess sentence, and it is not for us to reassess it on appeal.

As, however, from the social investigation report, which was not before the trial Court, it appears that, indeed, the appellant, who is only twenty-two years old and the main supporter of a large family, has a perfectly good record as a citizen and is not normally of a violent nature, and has, also, since the commission of the offence in question expressed his repentance, having realized the gravity of his error, we are entertaining doubts whether the trial Court, had it had in mind the said report, would not have imposed a shorter sentence of imprisonment. So, with some reluctance—which in the case of one of us went as far as to make him consider whether to dissent from this judgment—we have decided, eventually, that the safest course is to reduce the sentence of the appellant to one of one month's imprisonment.

The present appeal is, therefore, allowed accordingly.

Appeal allowed.