

1983 May 4

[HADJIANASTASSIOU, STYLIANIDES, AND PIKIS, JJ.]

MICHALIS ANTONI TEREZIDES,

Appellant.

v.

THE POLICE.

Respondents.

(*Criminal Appeal No. 4395*).

Criminal Law—Sentence—Common assault—Husband assaulting wife—Six months' imprisonment—Mitigating factors—Young age and repentance of appellant, his unblemished past and the forgiveness extended to him by his wife—Sentence substituted by probation for two years.

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The appellant a young person was sentenced to six months' imprisonment upon pleading guilty to two counts of common assault. The victim of the assault was his wife. Upon appeal against sentence it was contended that the sentence was manifestly excessive and wrong in principle particularly because in the meantime appellant and his wife have reconciled and because the appellant was a young person and a first offender. Also, subsequently to the imposition of the sentence one of the two children of the family died.

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Held, that having regard to the repentance of the appellant, his young age, unblemished past and forgiveness extended to him by his wife, the sentence will be individualized to one of probation for 2 years.

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Appeal allowed.

Cases referred to:

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Demetriou v. Police (1968) 2 C.L.R. 127 at pp. 128-129;

Tryfona v. Republic, 1961 C.L.R. 246;

Karaviotis v. Police (1967) 2 C.L.R. 286;

Georgioui v. Police (1967) 2 C.L.R. 292.

Appeal against sentence.

5 Appeal against sentence by Michalis Antoni Terezides who was convicted on the 23rd March, 1983 at the District Court of Larnaca (Criminal Case No. 7662/82) on two counts of the offence of common assault contrary to section 242 of the Criminal Code Cap. 154 and was sentenced by *Eliades, D.J.* to six months' imprisonment.

10 *Y. Panayi*, for the appellant.

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

15 HADJIANASTASSIOU J. gave the following judgment of the Court. The accused in the present case has appealed against the sentence of the 6 months' imprisonment which was passed upon him by a Judge of the District Court of Larnaca, having pleaded guilty to two counts of common assault, contrary to s. 242 of the Criminal Code.

The facts are these:

20 The accused is the husband of the complainant and they were residing in their own house at Meneou village together with their two young children. On 13th August, 1982, the accused for unknown reasons tried to lock the room in which both husband and wife slept but when his wife tried to stop him
25 he assaulted her on various parts of her body. When the brother of the complainant who happened to be there tried to stop him the accused started beating him as well. When finally both the accused and the brother of the complainant went outside the house the accused once again rushed on him and started
30 hitting him. Indeed, the accused was also using filthy language against his brother-in-law. As a result of the assault the wife of the accused suffered a lot of scratches at the neck and other parts of her body.

35 Counsel for the appellant, having communicated to the Court that the accused and his wife have now reconciled, invited the Court to give the accused another chance in order to enable them to start afresh. Indeed, counsel went even further and

stated that the accused has now repented for what he did and pleaded for leniency particularly on account of his young age.

The trial Judge having listened carefully to the argument put forward, had this to say:-

"The offences for which the accused has admitted his 5
guilt are very serious but more serious are the offences of
assault which are referred to counts 1 & 2 and particularly
the offence of the first count, i.e. of the assault against
his wife. The offences which include the ingredient of 10
violence are approached with severity by the Courts, and
must be met with substantial punishments in order to
influence or restrain against such violence on the wives."

With that warning in mind, finally the Judge concluded his judgment as follows:-

"I have considered all the facts and circumstances which 15
have appeared before me with the most possible attention.
I approached the subject of punishment without ignoring
the personal circumstances of the accused and particularly
the fact that he has reconciled now with his wife. But I
cannot, however, ignore the nature of the offence, the 20
necessity of his approach with the drastic way which our
case law demands and the extent of violence which the
accused has exercised against his wife. In my judgment
the punishment of immediate imprisonment is unavoidable."

On appeal against sentence counsel for the appellant argued 25
that the imprisonment of 6 months - the accused being a young
person-is manifestly excessive and wrong in principle; particularly
because in the meantime the appellant and his wife have reconciled
and because the appellant is a first offender. Counsel further
relied on the well-known textbook of Sentencing in Cyprus by 30
Mr. Justice Pikis, and at p. 37 under the heading "Effect
of Youth" we read :

"Dealing with young offenders is a particularly delicate 35
task. In their case, the need of helping in the way of
their reform is extraordinarily strong, because it can be validly
assumed that their chances of rehabilitation are better
in comparison to those of older persons who have hardened
in their habits and attitudes. Thr Emphasis is on reform

rather than punishment. In *Nicos Demetriou Meytanis v. The Police*, (1966) 2 C.L.R. 84, the Supreme Court set aside a sentence of imprisonment imposed on a youth of 18, who had just completed his secondary school studies, convicted on a charge of indecent assault, and put him on probation instead, in an effort to help him reform. In the judgment it is made abundantly clear that persons of young age are often the victims of their surroundings and their cases merit special consideration and treatment. It is an area where the general sentencing pattern may be modified for good purpose. After all, to abandon persons to their fate at such an early stage would prove socially damaging. On the other hand, the court will not refrain from sending to prison a young culprit, if this appears to be the only proper alternative.”

In *Nicos Demetriou v. The Police*, (1968) 2 C.L.R. 127, Vassiliades P. had this to say at pp. 128-129 :

“The appellant was charged in the District Court of Limassol with aggravated assault on his wife on June 23, 1968. He pleaded guilty to the charge and was sentenced to six months’ imprisonment.

The learned trial Judge described the assault as brutal; and referred to a similar previous conviction of the appellant which, coupled with the circumstances of the present case, led him to the conclusion that the appellant was a man of violent character. The appeal is taken on the ground that the sentence imposed is manifestly excessive.

The approach of this Court to such an appeal has been stated in several earlier cases. The responsibility of measuring the sentence rest primarily with a trial Court. If the sentence so imposed is challenged on appeal, the appellant has to show that the trial Court misdirected itself either on the facts or on the law; or that, it allowed itself to be influenced by matter which is irrelevant to the sentence.

The appeal must be argued on the record or upon other relevant matter properly put before the Court. Likewise, any submission that the sentence was manifestly excessive in the circumstances of a particular case, has

to be based on the record. (*See Tryfona v. The Republic* 1961 C.L.R. p. 246; *Karaviotis v. The Police* (1967) 2 C.L.R. 286; *Georghiou v. The Police* (1967) 2 C.L.R. 292).

The appellant before us, conducted his case in person; and his main argument, is that his wife (the complainant in the charge) has now forgiven him and that she is now present in Court to support his plea for leniency. He also pleaded the welfare of his two minor children who depend, he said, on the earnings of their parents.

Having given this case all due consideration, we have not been persuaded that we should disturb the sentence imposed by the trial Judge. We hope that the forgiveness of the wife is genuine; and that the appellant will remember in future, her attempt to help him in this appeal. On the other hand, the most effective way of discouraging conduct of this kind on the part of a husband, inclined to use such violence against his wife, is to make him bear the consequences of such conduct. This will, moreover, show practically to the wife that she is entitled to the full protection of the law against a grave assault from her husband in her own home.

Giving to the wife's plea for leniency as much weight as we can in this case, and accepting the appellants' assurances that he has really repented for his conduct, we have decided to make use of our powers under section 147(1) of the Criminal Procedure Law (Cap. 155) and in view of the fact that the appellant has already served almost six weeks from his sentence, we have decided to direct that the sentence should be made to run from the date of conviction."

Having given the matter our best consideration and bearing in mind the particular circumstances of this case we would add as regards the sentence that assaults upon wives must be stopped. Indeed the repercussions from such conduct are not limited to the suffering of the victim but extend to every member of the family and undermine the institution of marriage. Invariably the hardest hit victims from such brutal conduct are the innocent children. One fact that occurred subsequently to the imposition of sentence of imprisonment that has shaken our determination to uphold the sentence is the death of the

youngest child of the family. In such circumstances the unity of the family is really in danger. Having regard to the repentance of the appellant, his young age, unblemished past and forgiveness extended to him by his wife, we feel justified
5 to individualize the sentence to one of probation for 2 years.

We, therefore, set aside the sentence of imprisonment on each count, for in the light of the aforesaid we consider it expedient to place the appellant under probation.

The appellant is placed under probation for a period
10 of 2 years. He will be under the supervision of the Larnaca District Probation Officer. During his probation he shall reside within the District of Larnaca except by written permission of the probation officer to reside elsewhere.

Appeal allowed.