

1983 July 19

[HADJIANASTASSIOU, STYLIANIDES, PIKIS, JJ.]

KYRIACOS PHILIPPOU,

*Appellant.*

v.

THE REPUBLIC,

*Respondent.*

(*Criminal Appeal No. 4385*).

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*Criminal Law—Sentence—Homicide—Mental condition of appellant—  
Effect—Sentence of 15 years' imprisonment not manifestly exces-  
sive but compatible with the sentencing approach of the Courts in  
cases of homicide bordering premeditation.*

5 *Criminal Procedure—Appeal against sentence—Principles on which  
Court of Appeal acts.*

10 The appellant appealed against a sentence of 15 years' imprison-  
ment which was imposed for the offence of homicide. The  
victim of the homicide was his wife aged 23, and she was shot  
dead whilst working in a shoe factory. The crime was planned  
to minute detail and executed mercilessly. Originally the appel-  
lant had been charged with premeditated murder, but in the  
15 course of the trial, a charge of homicide was substituted with the  
leave of the Court, for that of premeditated murder, because the  
prosecution took the view that medical evidence about the mental  
condition of the appellant, could not be reconciled with pre-  
meditation. This evidence tended to establish that the appel-  
lant, although aware of the wrongfulness of his act in fact and  
law, he lacked, on account of his mental condition, the capacity  
20 to desist from the plan to kill, once conceived. His mind was  
obsessed with morbid jealousy, sapping him of the will power to  
withdraw from the plan to murder his wife.

25 Upon appeal against sentence counsel for the appellant con-  
tended that the trial Court did not attach proper weight to  
appellant's mental condition.

*Held, after stating the principles upon which the Court of Appeal may interfere with the sentence imposed by a trial Court - vide pp. 249-250 post, that though it is well settled, that the mental condition of the accused is relevant, both to the determination of the crime committed, as well as the sentence to be imposed, the sentence imposed in this case bore a proper relationship to the gravity of the facts of the case and was in no way manifestly excessive; that, moreover, it was compatible with the sentencing approach of the Courts in cases of homicide bordering premeditation; accordingly the appeal must be dismissed.*

*Appeal dismissed.*

Cases referred to:

- Kyprianou v. Republic* (1971) 2 C.L.R.158;
- Kentas v. Republic* (1971) 2 C.L.R.205;
- Tryfona v. Republic*, 1961 C.L.R.246; 15
- Afxenti "Iroas" v. Republic* (1966) 2 C.L.R.116;
- Karaviotis and Others v. Police* (1967) 2 C.L.R.286;
- Georghiou v. Police* (1967) 2 C.L.R.292;
- Demetriou v. Police* (1968) 2 C.L.R.127;
- Mouzouris v. Republic* (1966) 2 C.L.R.9 at p.11; 20
- Koliandris v. Republic* (1965) 2 C.L.R.72;
- Panteli v. Republic* (1969) 2 C.L.R.92;
- Hourris v. Republic* (1968) 2 C.L.R.206.

**Appeal against sentence.**

Appeal against sentence by Kyriacos Philippou who was convicted on the 26th February, 1982 at the Assize Court of Nicosia (Criminal Case No. 19129/82) on one count of the offence of homicide contrary to section 205 of the Criminal Code, Cap. 154 and was sentenced by Nikitas, P.D.C., Kronides, S.D.J. and Soupashis, D.J. to fifteen years' imprisonment.

*E. Efstathiou with N. Stylianides (Miss) and M. Georghiou, for the appellants.*

*A. M. Angelides*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

5 HADJIANASTASSIOU J.: The judgment of the Court will be delivered by Mr. Justice Pikis.

10 PIKIS J.: The appellant stands convicted for the murder of his wife. Not only did he bring to a premature end the life of a young woman aged 23 but, in the process, orphaned their two children aged 5 1/2 and 3 1/2 years, respectively. The crime was planned to minute detail and executed mercilessly. How the crime was committed, bringing this marriage to an abrupt end, was the subject of evidence before the Nicosia Assize Court that tried the accused.

15 Six years earlier, appellant and his victim, then a school-girl, eloped, precipitating their marriage. The match was ill-fated and short-lived. According to the evidence of the mother of the victim, the appellant behaved brutally to his wife, causing her to leave her husband and move elsewhere with the children, in October 1982. After their estrangement, appellant travelled to the United Kingdom, where he stayed for about a month. The crime was committed three days after his return to Cyprus.

20 On his return from the United Kingdom, the appellant stayed with his sister at Alethrico. He suspected his wife of infidelity and set up a plan to murder her. He stole the sporting-gun and cartridges belonging to his brother-in-law, stored in a cupboard and, set out for Nicosia with the avowed purpose of killing his wife. Having armed himself, he entered the small shoe-factory where she was working as a labourer and, without more ado, he shot at her from close range (from a distance of about 8 feet), hitting her on the right shoulder plate. His wife realised what was in store for her and tried to run away but without success. On the way she collided on a fixture of the factory and fell, face down to the ground. The appellant approached her and took a second contact shot at her, standing virtually above her, wounding her fatally close to the spine. What followed, may appropriately be described as pandemonium. Fellow-workers of the deceased disarmed appellant after a struggle. Soon afterwards the Police arrived at the scene and took-up investigations.

35 Originally the accused was charged with premeditated murder. 40 In the course of the trial, a charge of homicide was substituted

with the leave of the Court, for that of premeditated murder. The Prosecution took the view that medical evidence about the mental condition of the appellant, could not be reconciled with premeditation. The medical evidence coming from Dr. Neophytou, the Acting Director of the Government Psychiatric Services, tended to establish that the appellant, although aware of the wrongfulness of his act in fact and law, he lacked, on account of his mental condition, the capacity to desist from the plan to kill, once conceived. His mind was obsessed with morbid jealousy, sapping him of the will power to withdraw from the plan to murder his wife. Evidently the Assize Court took the view that this evidence justified the substitution of the charge, in view of the ingredient necessary to establish premeditation, notably opportunity to reflect and relinquish intent to kill, which presupposes ability to desist from implementation of the plan.

The Assize Court, in a judgment notable for its clarity, delivered by the President of the Assize Court Nikitas, P.D.C., after reviewing the facts and circumstances personal to the appellant, passed a sentence of 15 years' imprisonment. While making allowance for the disturbed personality of the appellant, it emphasized at the same time the gravity of conduct calculated to cause loss of human life.

The appeal is solely directed against the length of the term of imprisonment, excessive in the contention of the appellant, because of failure on the part of the trial Court to attach proper or sufficient weight to his mental condition. In the submission of counsel, the sentence imposed by the trial Court was, on account of the mental condition of the appellant, manifestly excessive. Reference was made to the evidence, shedding light on the condition of the appellant, especially the extent to which his morbid jealousy obsessed his mind. In the evidence of Dr. Neophytou, appellant suspected his wife of infidelity with every man she met.

Counsel for the appellant, citing from *Sentencing in Cyprus*, reminded us of the delicacy of the sentencing process and the need to keep the measure of sentence flexible, in order that the Court may do justice according to the facts of the case and, in a way befitting the person of the accused. Arguing from the premise of the sentences approved by the Supreme Court in the

cases of *Georghios Kyprianou v. The Republic* (1971) 2 C.L.R. 158 and *Charalambos Michael Kentas v. The Republic* (1971) 2 C.L.R. 205, where sentences of ten years' imprisonment were passed upon felons suffering from mental abnormalities, convicted of homicide. he invited us to hold that the sentence imposed upon the appellant was manifestly excessive and must, therefore, be reduced.

Counsel for the Republic supported the sentence as correct in principle and warranted by the grave facts of the case. The caselaw, he submitted, so far as it establishes a sentencing pattern, suggests that in borderline cases of premeditation, as the present case, the appropriate sentence is one ranging from life to 15 years' imprisonment.

Principal responsibility, both counsel acknowledged, for the determination of the sentence, rests with the trial Court. The trial Court is supremely placed, given the trial process, to sift and evaluate the facts and adjudge the sentence to be passed. Our power to interfere on appeal is limited and rightly so, considering the role of an appeal Court under our system of justice. Our powers are confined to a review of the sentence upon well established principles. Any attempt on our part to determine the sentence de novo, would constitute a usurpation of the functions of the trial Court. The limits of our jurisdiction on appeal, is the first question to be answered in order to decide whether there is room for interference with the sentence imposed in this case.

The grounds upon which the Court of Appeal may interfere with the sentence imposed, are fairly well settled - See, inter alia. *Tryfona v. The Republic*, 1961 C.L.R. 246; *Afxenti "Iroas" v. The Republic* (1966) 2 C.L.R. 116; *Karaviotis & 4 Others v. The Police* (1967) 2 C.L.R. 286; *Georghiou v. The Police* (1967) 2 C.L.R. 292; *Demetriou v. The Police* (1968) 2 C.L.R. 127. They are -

(A) Misdirection on the part of the trial Court, respecting the facts or the law, or both.

The cases cited by counsel for the appellant - *Kyprianou* and *Kentas*, supra - afford examples of misdirection on the part of the trial Court with regard to the facts. In both cases, the Court misappreciated the facts bearing on the

mental condition of the accused. Upon their ascertainment, the Supreme Court passed sentences reflecting the true facts of the case. A misdirection as to the law, may occur whenever the gravity of the offence, either in the legal or social context, is misunderstood. Where the Court misdirects itself, as to the law in the sense explained, the sentence may, depending on the extent and nature of the misdirection, become wrong in principle. 5

(B) Taking into consideration, for the purposes of sentence, extraneous material, that is matters irrelevant in law or fact to sentencing. What are extraneous matters, depends on the nature of the charge and the facts in issue by reference thereto. 10

(C) Where the sentence is manifestly excessive or inadequate. As the word "manifest" implies, the element of excess or inadequacy must be apparent and, speaking of a sentence manifestly excessive, the excess must be obvious, looking upon the matter from an objective angle. Certainly not from the viewpoint of the Judges of the Court of Appeal putting themselves in the position of the trial Court. The element of excess must be such as to provide an objective basis for its ascertainment. Such basis may be provided either by the facts of the case bearing no proportion to the sentence imposed, or by the sentence being altogether out of range with sentences approved by the Supreme Court on previous occasions. 15  
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With the above in mind, we shall proceed to resolve the issue before us and decide whether the sentence imposed was manifestly excessive. The facts disclose a case of brutal killing, well planned and remorselessly executed. The life of a young woman of 23 was prematurely terminated, leaving behind two orphans. Their existence did not appear to have exerted any influence whatever on the decision of the appellant to murder his wife, or its execution. 30

The basic complaint is that the trial Court did not attach proper weight to appellant's mental condition, that is the morbid jealousy that bedevilled him for quite some time and obsessed him to the point of rendering him incapable of desisting from the execution of his decision to murder his wife once he decided to kill her. 35  
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Contemplating long terms of imprisonment may be harsh but, as *Zekia, P.* said in *Georghios Avraam Mouzouris v. The Republic* (1966) 2 C.L.R. 9, 11, "Taking the life of somebody else cannot be less cruel." As the judgment of the Assize Court reveals, the trial Court was alive to the implications of the mental condition of the appellant upon his personality and paid due heed to the element of mental sickness as a determinant of sentence. In our judgment, the sentence imposed bore a proper relationship to the gravity of the facts of the case and was in no way manifestly excessive. Moreover, it was compatible with the sentencing approach of the Courts in cases of homicide, bordering premeditation.

A series of decisions of the Supreme Court establishes that in cases of murder, perpetrated after a plan to kill the victim, reduced to homicide on account of the mental condition of the culprit, the proper sentence is one ranging from life to 15 years' imprisonment. In *Christos Stylianou Koliandris v. The Republic* (1965) 2 C.L.R. 72, and in *Mouzouris*, supra, it was specifically decided that in cases of homicide, bordering a charge of premeditated murder, the proper sentence is one of life imprisonment. Both were cases of murder, accompanied by a degree of planning reduced to homicide on account of the mental condition of the culprit. The case of *Mouzouris*, supra, in particular, bears a comparison to the present case. As in the present case, the accused was obsessed with jealousy who, like the appellant, fired at his victim in cold blood.

It is settled that the mental condition of the accused is relevant, both to the determination of the crime committed, as well as the sentence to be imposed - *Adamos Pantelis v. The Republic* (1969) 2 C.L.R. 92. In that case, a sentence of life imprisonment for homicide was reduced to one of 20 years' imprisonment on account of the paranoia from which the accused suffered. Even where the emotional strain of the accused preceding the commission of the offence is compounded by real, not imagined provocation as in this case, a sentence of 15 years' imprisonment is not regarded as in any sense excessive - *Georghios Demetris Hourris v. The Republic* (1968) 2 C.L.R. 206. The accused had killed the man who dishonoured his daughter, a matter of great significance, according to the ethical code of the rural community in which he lived, while under considerable emotional strain. A

sentence of 15 years' imprisonment was sustained as correct in principle and warranted by the facts of the case.

Although we are unanimous in our view that there is no room for interference with the sentence imposed, for the reasons earlier given, it must be recorded that my brother Judges Hadjiannastassiou and Stylianides, JJ., would, in view of the medical evidence, have opted for a lighter sentence had they been members of the trial Court. 5

The appeal fails. It is consequently dismissed.

*Appeal dismissed.* 10