1983 December 22

[TRIANTAFYLLIDES, P., MALACHTOS, PIKIS, JJ.]

NABIL KAMAL CHIKH,

Appellant.

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 4449).

*Criminal Law—Sentence—Burglary and theft—Effect of remitting case for summary trial on assessment of sentence—*18 *months' imprisonment—Neither manifestly excessive nor wrong in principle——Upheld.*

The appellant, a young sailor from Syria aged 18, was charged with the offence of burglary and theft, contrary to section 292(a) of the Criminal Code, Cap. 154 and was convicted on his own plea of guilty and sentenced to 18 months' imprisonment. The offence involved the theft of C£450 in Cyprus Pounds and U.S.A. dollars and jewellery worth C£235.

Upon appeal against sentence:

— *Held*, Pikis J. dissenting, that the sentence imposed by the trial Court is neither manifestly excessive nor wrong in principle; accordingly the appeal must fail.

Appeal dismissed.

Cases referred to:

Esper v. *Republic* (1972) 2 C.L.R. 73;

Varnava v. *Police* (1975) 2 C.L.R. 129;

Karydas v. *Police* (1978) 2 C.L.R. 102;

Hinis v. *Republic* (1963) 1 C.L.R. 14;

Kakouris v. *Police* (1972) 2 C.L.R. 42;

Antoniou v. *Police* (1983) 2 C.L.R. 319.

Appeal against sentence.

Appeal against sentence by Nabil Kamal Chikh who was convicted on the 18th July, 1983 at the District Court of

Limassol (Criminal Case No. 10806/83) on one count of the offence of burglary contrary to section 292(a) of the Criminal Code, Cap. 154 and was sentenced by Eleftheriou, D.J. to 18 months' imprisonment.

Appellant appeared in person.

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

Cur. adv. vult.

TRIANTAFYLLIDES P.: Mr. Justice Malachtos will deliver the first judgment.

MALACHTOS, J. The appellant, a young sailor from Syria aged 18, was charged, on the directions of the Attorney-General of the Republic, under the powers vested in him by virtue of section 155(b) of the Criminal Procedure Law, Cap. 155, before a District Judge of the District Court of Limassol, with the offence of burglary and theft contrary to section 292(a) of the Criminal Code and was convicted, on his own plea of guilty and sentenced to 18 months' imprisonment.

The particulars of the offence appearing in the Charge Sheet, are the following:

"The accused between the 8th and 9th day of June, 1983, at Limassol, in the District of Limassol, at night time, did break and enter a building used as a human dwelling by Lucita Lampano, Evzzena Zapata, Mercedita Apolinio and Liwayway Alcaraz all from Philippines now Limassol with intent to commit a felony therein, to wit, he (the accused) stole therefrom a golden necklace, valued at £200.- and the sum of £350 in cash, the property of Lucita Lampano, 2x100 USA dollars, valued at £100.- and a golden ring, valued at £20.- the property of Erzzena Zapata, a lady's golden ring, valued at £15.- the property of Mercedita Apolonio and a travelling cheque of PANAMERICA for the sum of 50 USA dollars the property of Liwayway Alcaraz all from Limassol".

The appellant was at the time a member of the crew of the vessel "Saloua" which was berthed at the Limassol port. On the 6th June, 1983, he left the ship and stayed in Limassol; he visited the Brazil Cabaret where he met the complainants who were working there as artists; he also came to know the house where they were residing.

On the night of 8th June, 1983, the appellant kept watch out-

side the house where the complainants were residing, each one in a separate room, and after they left for work he broke and entered therein and stole the property referred to in the Charge Sheet.

At about 4 a.m. of the 9th June, 1983, when the complainants returned home from work they noticed that the doors of their rooms, which they locked before they left, were forced open and their valuables and money were missing. They immediately reported the matter to the Police.

As the owner of the 2x100 USA dollars kept a note of their numbers the Police traced one of them in the possession of Prosecution Witness No. 6, who had changed it into Cyprus currency to an Arab and gave his description. As a result, the appellant was traced and arrested and all the stolen property was found in his possession, with the exception of the sum of £350.- in Cyprus currency.

The trial Judge in passing sentence upon the appellant remarked the following:

"Τὸ ὑπὸ κατηγορίαν ἀδίκημα εἶναι πολὺ σοβαρᾶς μορφῆς καὶ εἶναι ἀπὸ τὰ πιὸ σοβαρὰ ἀδικήματα ποὺ προνοεῖ ὁ Κυπριακὸς Ποινικὸς Κώδικας ἐξ οὗ καὶ ὁ νομοθέτης τὸ χαρακτηρίζει κακούργημα ἀντὶ πλημμέλημα καὶ συνεπάγεται φυλάκιση 10 ἐτῶν. Ὁ σκοπὸς καὶ ἡ ἐπιδίωξις τοῦ νομοθέτου ἦτο σεβασμὸς πρὸς τὸ ἀπαραβίαστο τῆς κατοικίας ὡς καὶ ὁ σεβασμὸς καὶ ἡ προστασία τῆς ξένης περιουσίας. Τὸ ἀδίκημα τῆς διαρρήξεως καὶ κλοπῆς εἶναι ἕνα πολὺ σύνηθες ἀδίκημα. Εἰς πλεῖστες τῶν περιπτώσεων τὰ Δικαστήρια τῆς Κύπρου ἐπιβάλλουν ποινὲς φυλακίσεως ἀπὸ 2–6 χρόνια εἰς τὴν προσπάθεια τους νὰ τονίσουν ὅτι τὸ κακούργημα τῆς διαρρήξεως κατοικίας καὶ κλοπῆς πρέπει νὰ ἀναχαιτισθεῖ οὕτως ὥστε οἱ ἰδιοκτῆται οἰκιῶν ὅταν ἐγκαταλείπουν τὰ σπίτια των νὰ αἰσθάνονται ἀσφαλεῖς καὶ νὰ διεκδικοῦν ἀπὸ τὴ Δημοκρατία ἡ ὁποία ἔχει καθῆκον νὰ προστατεύει τὴν περιουσία τῶν πολιτῶν ὅπως ἡ περιουσία των παραμείνει ἄθικτος. Ἡ αὐστηρὰ ποινὴ ποὺ ἐπιβάλουν τὰ δικαστήρια γιὰ τὸ κακούργημα τῆς διαρρήξεως καὶ κλοπῆς ἔχει ἀκόμα ἕνα ἄλλο σκοπὸ, νὰ δημιουργεῖ εἰς τοὺς ἐγκληματίες τὸ αἴσθημα ὅτι τὸ κακούργημα αὐτὸ εἶναι πολὺ σοβαρᾶς μορφῆς καὶ ἂν τυχὸν πιαστοῦν τότε πρέπει νὰ εἶναι σίγουροι ὅτι θὰ ἐκτίσουν ποινὴ φυλακίσεως.

Κατὰ κανόνα ποινὴ φυλακίσεως ἐπιβάλλεται ἐκεῖ ὅπου τοῦτο προτίστως δικαιολογεῖται καὶ ἐμπίπτει στὰ πλαίσια μερικῶν ἀποδεχτῶν ἀρχῶν ποὺ διέπουν τὴν ἐπιβολή της, δηλαδὴ διὰ λόγους δημοσίας ἀσφαλείας, ἀποτροπῆς, ἀνταμοιβῆς καὶ ἐπανορθώσεως κατηγορουμένων προσώπων. Αἱ ὡς ἄνω ἀρχαὶ πρέπει νὰ ἐξετάζονται μετὰ τῆς μεγίστης δυνατῆς προσοχῆς ἐν συσχετισμῷ μὲ ὅλας τὰς σχετικὰς περιστάσεις μιᾶς ἑκάστης ὑποθέσεως. Ἡ ποινὴ πρέπει νὰ ἁρμόζει τόσο μὲ τὸ ἀδίκημα ὅσο καὶ μὲ τὸν ἐγκληματία. *Χαρίκλεια Σόζου Τατταρὴ* ν. *Δημοκρατίας* (1970) 2 C.L.R. 6–11.

Ἡ ἐπιβολὴ ποινῆς εἶναι σημαντικὸν ἔργον καὶ πολὺ λεπτὸς ρόλος τοῦ ἔργου τῶν ποινικῶν δικαστηρίων. Ποινὴ φυλακίσεως μὲ γνώμονα τὴν κοινωνικὴ ἀσφάλεια πρέπει νὰ ἐπιβάλλεται ἐκεῖ ὅπου οἱαδήποτε ποινὴ εἶναι ἀνεφάρμοστος. Λαμβάνοντας ὑπ' ὄψιν τὰ περιστατικὰ μιᾶς ἑκάστης ὑποθέσεως πρέπει δὲ πάντοτε νὰ ἀποφεύγεται καὶ νὰ ἀποτελεῖ τὸ τελευταῖο καταφύγιο. Ἐκεῖ ὅπου τοῦτο εἶναι ἀνεφάρμοστο πρέπει ἰὰ ἐπιβληθεῖ ποινὴ φυλακίσεως διὰ νὰ ἐξυπηρετήσει ἕνα ἀπὸ τοὺς σκοποὺς ποὺ διέπουν τὴν ἐπιβολή της.

Λαμβάνοντας ὑπ' ὄψιν τὰ περιστατικὰ τῆς ὑποθέσεως, τὴ φύση τοῦ ἀδικήματος, τὸ γεγονὸς ὅτι ὁ κατηγορούμενος εἶναι 18 ἐτῶν χωρὶς προηγούμενα εἰς Κύπρο λαμβάνεται ὑπ' ὄψιν εἰς τὴν ἐπιμέτρηση τῆς ποινῆς. Δὲν ἀγνοῶ τὸ γεγονὸς ὅτι ὁ κατηγορούμενος ἀπὸ τὴν κατοικία τῶν παραπονουμένων ἔκλεψε μεγάλα χρηματικὰ ποσὰ ἢ περιουσία μεγάλης ἀξίας. Ἐὰν πρὸ στιγμῆς ἐσκεφτόμουν νὰ ἐπιβάλω οἱανδήποτε ποινὴ ἐκτὸς ἀπὸ αὐτὴν τῆς στερητικῆς τῆς ἐλευθερίας τοῦ κατηγορουμένου θὰ ἤμουν βέβαιος ὅτι δὲν ἔκαμνα τὸ καθῆκον μου εἰς τὸ ἀκέραιον. Ἔχοντας πάντοτε ὑπ' ὄψιν μου τὰ περιστατικὰ τῆς παρούσης ὑποθέσεως καὶ τὰς νομικὰς ἀρχὰς ποὺ διέπουν τὴν ἐπιβολὴν ποινῆς φυλακίσεως λείαν ἐπιεικῶς ἐπιβάλλω εἰς τὸν Κατηγορούμενον 18μηνη φυλάκιση ἀπὸ σήμερα".

("The offence charged is of a very serious nature and is of the most serious offences which are provided for by the Cyprus Criminal Code and for this reason the legislator describes it as a crime instead of misdemeanor and is liable to ten years' imprisonment. The purpose and intention of the legislator was respect for the non-violation

of a dwelling house as well as respect and protection of property. The offence of breaking and stealing is a very common offence. In most of the cases the Cyprus Courts impose terms of imprisonment from 2-6 years in their endeavour to emphasise that the crime of breaking into dwelling houses and stealing must be stopped so that when owners of dwelling houses leave their houses, they can feel safe and expect from the Republic which has a duty to protect the property of citizens that their property remains intact. The severe punishment which the Courts impose for the crime of breaking and stealing has still another purpose, to create for the criminals the feeling that this crime is of a very serious nature and if they are caught then they must be sure that they will serve a sentence of imprisonment.

As a rule a sentence of imprisonment is imposed when in the first place it is justified and falls within the framework of some accepted rules which govern its imposition, i.e. for reasons of public safety, deterrence, reward and redress of accused persons. The above rules must be examined with the greatest care in combination with all the relevant circumstances of every case. The sentence must suit the offence as well as the offender. *Chariklia Sozou Tattari* v. *Republic* (1970) 2 C.L.R. 6, 11.

The imposition of sentence is an important task and the role of Judges trying criminal cases very delicate. Sentence of imprisonment with the object of social safety must be imposed where any sentence is inapplicable taking into consideration the circumstances of each case, but it must always be avoided and must constitute the last measure. Where this is not applicable, a sentence of imprisonment must be imposed to serve one of the purposes which govern its imposition.

Taking into consideration the circumstance of the case, the nature of the offence, the fact that the accused is 18 years old without any previous convictions in Cyprus is taken into consideration in passing sentence. I do not ignore the fact that the accused stole from the dwelling house of the complainants large sums of money or property of a great value. If for a moment I thought of imposing any sentence other than that of deprivation of the liberty

of the accused I would be certain that I would not be performing my duty in full. Having always in mind the circumstances of the present case and the legal principles governing the imposition of a sentence of imprisonment, very lenienlty I impose on the accused 18 months' imprisonment as from to-day").

As stated in the Notice of Appeal, which was filed by the appellant from prison, the ground on which the appeal is founded is that the sentence is excessive.

It has been well established in a considerable number of cases decided by this Court that we cannot on appeal substitute our own assessment of the right sentence in place of that of the trial Court. This Court can only interfere if the sentence, imposed by the trial Court, is either manifestly excessive or wrong in principle.

In the present case I must say that the sentence imposed by the trial Court is neither manifestly excessive nor wrong in principle, but it is, in my view, the proper sentence imposed in the circumstances.

I would, therefore, dismiss the appeal.

TRIANTAFYLLIDES P.: The next judgment will be delivered by Mr. Justice Pikis.

PIKIS J.: The appellant an eighteen-year old Syrian sailor, appeals against the sentence of 18 months' imprisonment imposed by Eleftheriou, D.J., on a count of burglary, involving the theft of C£450.- in Cyprus Pounds and U.S.A. dollars, and jewellery worth C£235.-. The victims were Philippo artists who became acquainted with the appellant the night before the commission of the crime. Appellant sought, unsuccessfully it seems, to cultivate an intimate relationship with one of them in the course of a visit to the Limassol cabaret where they practised their trade. The offence was committed while the complainants were absent from the rooms where they stayed at a Limassol hotel. He was apprehended shortly after the commission of the offence and accosted with having committed the crime. He readily confessed and returned the jewellery that was still in his possession intact, and part of the money stolen. He was unable to return a sum of C£368.00 he had apparently spent. In a statement to the police, he maintained that his motive for the

commission of the crime was to induce one of the artists who denied him the night before to spend a night with him, by returning the stolen jewellery.

Arguing his appeal before us, appellant referred to his sad family background, his poor health having had to undergo an operation while in prison, and his youth, as factors militating for the reduction of the sentence passed by the trial Court. Mr. Angelides for the prosecution, submitted there is no room for interference with the sentence passed, either from the standpoint of principle or the length of the sentence imposed.

Perusal of the record of the Court, reveals two irregularities, serious in our view. The police officer who conducted the prosecution, was allowed to make a statement to the effect that there is no proof about the previous convictions of the appellant, as he is a foreigner, a statement implying that appellant is probably burdened with previous convictions in the country of his origin, albeit convictions the police were unable to prove. It was a statement calculated to diminish the effect of his clean record as a mitigating factor. The trial Judge, instead of dismissing this insinuation as to previous convictions, as he should have done, attached some weight to it, as may be gathered from the reasoning of his judgment. Instead of treating the appellant as a first offender, he confined his statement on the subject to the fact that appellant had no previous convictions in Cyprus, a statement revealing an inclination to attach limited importance to the absence of a record of previous convictions. As a matter of principle, no one can be deemed to be burdened with previous convictions unless same are strictly proved, in the absence of admission, like any other fact. This principle applies without distinction to foreigners as well. No presumption can be made that a foreigner committing an offence in Cyprus is bound to have committed similar offences in the country of his origin or anywhere else for that matter. Any such distinction would defeat the principle of equality before the law, safeguarded by Article 28 of the Constitution. This is not the only misdirection on the part of the trial Court. There is another misdirection, more substantive in nature, that merits comment and justifies our intervention.

In determining the seriousness of the offence from the statutory viewpoint, the trial Judge acted upon the premise that the offence

was punishable with 10 years' imprisonment, notwithstanding the fact that the offence, after the consent of the Attorney-General to its summary trial, was punishable with only 3 years' imprisonment. The Attorney-General may, in exercise of the powers vested in him by s.155 of the Criminal Procedure Law, consent to the summary trial of any indictable offences. Further, in cases of offences punishable with 7 years' imprisonment or less, he may likewise consent to their summary trial under the provisions of s.24(2) of the Courts of Justice Law—14/60. It was incorrect, therefore, on the part of the trial Judge, to describe the offence under trial before him as one punishable with 10 years' imprisonment. After the exercise of the statutory powers vested in the Attorney-General, the statutory gravity of the offence was reduced to one limited to 3 years' imprisonment. In his endeavour to establish the norm for the punishment of burglars, the trial Judge surmised that sentences vary from 2 to 6 years' imprisonment, probably the norm for burglars triable on indictment. The trial Judge premised his judgment on its statutory gravity, undiminished by the fact of reduction of the offence, to a summary one. The length of imprisonment was, so far as it may be gathered from the printed record, chosen, inter alia, by reference to—

(a) the statutory gravity of the offence, unmitigated by its reduction to a summary one, and

(b) the sentences approved in the past for the punishment of burglars tried on indictment.

In *Hinis* v. *Republic* (1963) 1 C.L.R. 14, the Supreme Court discerned no incompatibility between the provisions of s.24 defining the criminal jurisdiction of the District Court*, and those of s.155 of the Criminal Procedure Law—Cap. 155, empowering the Attorney-General to remit a case for summary trial despite its gravity under the law. Section 155, Cap. 155, constitutes a special enactment reconcilable with the provisions of s.24; thus, the Attorney-General has a discretion to sanction the summary trial of any indictable offence, provided he is satisfied that it is expedient to do so in all the circumstances of the case, including the punitive powers of the District Court. In other words, the Attorney-General is entitled to preview

* Section 24—Courts of Justice Law, 14/60.

the case and if of opinion that in the totality of its circumstances there is merit in reducing it to a summary one, he may sanction its summary trial, whereupon the offence becomes one punishable with no more than 3 years' imprisonment. It is an indirect process of re-classification of the statutory gravity of the offence by reference to the facts surrounding its commission.

The maximum punishment to which an accused is liable, is a factor of paramount importance in determining the length of a sentence of imprisonment. It is the maximum punishment to which the accused is liable that determines the outer end of the scale—the ceiling. And this is one of the starting points in the process of determining the sentence to be imposed. This principle is indirectly established by cases deciding when it is proper to met out the maximum punishment provided by law —a punishment permissible only in cases of hardened recidivists beyond social redemption—See, *Kakouris* v. *The Police* (1972) 2 C.L.R. 42. In the words of Triantafyllides, P., the maximum punishment is only permissible if "all hope of reforming the appellant and protecting society from him" has disappeared. More recently, in *Antoniou* v. *The Police* decided on 27.10.1983 —*Criminal Appeal No.* 4464 (as yet unreported),* the point was explicitly made that an indictable offence remitted for summary trial in exercise of the powers of the Attorney-General, becomes a summary offence for sentencing purposes. And any sentences to be imposed, must be reconciled and be compatible with this reality. Therefore, consecutive sentences of imprisonment for burglaries, committed at about the same time, adding up to 2 years 9 months, approaching the maximum sentence permissible in law, were reduced, on account of the fact, inter alia, that appellant was not an irredeemable recidivist. The ratio of the above case is that indictable offences reduced to summary ones by the Attorney-General become, for purposes of sentences, summary offences, forfeiting their statutory gravity.

We are of opinion, in view of the foregoing, that the trial Judge failed to appreciate the gravity of the offence in a correct perspective, a failure that led him to an error of principle respecting the gravity of the offence in law. This misdirection was further compounded by the failure of the trial Judge to treat the appellant as a first offender for all purposes, and attach

* Now reported in (1983) 2 C.L.R. 319.

proper weight to this mitigating factor. Our intervention is necessary in order to remedy the fallacious approach of the trial Court as to the gravity of the offence and the mitigating effects of the fact that appellant was a first offender. This misapprehension of the legal and factual context of the case led the trial Court to impose a sentence manifestly excessive in the circumstances of the case. The sentence is reduced to one of 12 months' imprisonment from the date of conviction.

In the result, the appeal is allowed and the sentence is reduced accordingly.

TRIANTAFYLLIDES P. This is an appeal against the sentence of eighteen months' imprisonment which was passed upon the appellant, who is an eighteen years old sailor from Syria, and who pleaded guilty to the offence of burglary and theft, contrary to section 292 (a) of the Criminal Code Law, Cap. 154.

I have had the privilege of reading in advance the judgments prepared by my brother Judges Malachtos J. and Pikis J. and I do not intend to state once again in my own judgment all the salient facts of this case which are not really in dispute and which are adequately referred to in the said two judgments.

The appellant, who has insisted on presenting his appeal without the assistance of counsel, even though he was informed that such assistance could be made available to him at public expense, has contended that the sentence of eighteen months' imprisonment is manifestly excessive.

I agree with Malachtos J. that the sentence which was passed on the appellant should not be interfered with and, consequently, I cannot agree with Pikis J. that it should be reduced. I am of the opinion that, in view of the nature of the offence for which the appellant has pleaded guilty and the circumstances in which it was committed, the sentence that was imposed on him, even though it may be severe, is not manifestly excessive or wrong in principle and, therefore, this Court as an appellate tribunal cannot intervene in his favour (see, inter alia, *Esper* v. *The Republic*, (1972) 2 C.L.R. 73, *Varnava* v. *The Police*, (1975) 2 C.L.R. 129 and *Karydas* v. *The Police*, (1978) 2 C.L.R. 102).

I have carefully considered the reasons for which it has been propounded that the sentence should be reduced to twelve

months' imprisonment but I regret that I cannot agree with them:

I cannot regard the statement in the judgment of the trial Court that the appellant "has no previous convictions in Cyprus" as revealing that the appellant was not actually treated as a first offender when the sentence that was passed on him was assessed. The appellant is an alien and no material was placed before the trial Court showing whether or not he had any previous conviction elsewhere. Thus, when the trial Court—quite properly in my opinion—stated that the appellant had no previous convictions in Cyprus it cannot be regarded as having espoused the view that, because the appellant is an alien, he was expected to prove himself that he had no previous convictions elsewhere and that, not having done so, he was not treated as having a clean record.

In the absence of any information given, in this respect, either by the prosecution or by the appellant, his record elsewhere than in Cyprus was entirely irrelevant as it was totally unknown to the trial Court; and I am not of the view that the trial Court was affected in favour or against the appellant by its lack of knowledge about such record.

Furthermore, I cannot agree with the proposition that the trial Court in assessing sentence erroneously treated the offence in question as being punishable with ten years' imprisonment even after the Attorney-General of the Republic, in the exercise of his powers under section 155(b) of the Criminal Procedure Law, Cap. 155, had consented that the case should be tried summarily, with the result that a sentence of imprisonment exceeding three years could not be passed upon the appellant.

The said section 155(b) of Cap. 155 reads as follows:

> "155. Whenever any person shall have been committed for trial on information, the Attorney-General may-
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> (a) ----------
>
> (b) if he is of opinion that the case may suitably be dealt with summarily under the powers possessed by a Court of summary jurisdiction, direct that such case be tried and determined by any such Court, notwithstanding that such offence could not otherwise be triable by such Court".

In my opinion the action taken by the Attorney-General under the above quoted section 155(b) did not reduce the maximum punishment which was provided by law, that is ten years' imprisonment under section 292(a) of Cap. 154, but it only rendered the case triable summarily with the result that a punishment of only up to three, out of the said ten, years' imprisonment could be imposed on the appellant; consequently, if the trial Court had decided to send the appellant to prison for a period of three years it could not have been said that there had been passed upon the appellant the maximum sentence envisaged by law for the offence in question, but only the maximum part of such sentence which could have been imposed summarily.

Section 155(b) of Cap. 155 can only be regarded as a provision allowing the Attorney-General, in a case in which he thinks that the proper punishment—if the accused person is convicted—need not exceed the three years sentence of imprisonment that can be imposed by a Court of summary jurisdiction, to remit the case for summary trial since from the punitive point of view no useful purpose would be served if the case was tried by an Assize Court.

I, therefore, cannot accept as correct the view that the trial Court was not entitled to evaluate the seriousness of the case before it bearing in mind not only the maxium punishment of ten years provided by law for the offence which the appellant had committed but, also, the fact that sentences of two to six years' imprisonment are usually imposed for such an offence, which has, unfortunately, become more prevalent recently than before.

For all the foregoing reasons this appeal has to be dismissed. I would like, however, to conclude by observing that as the appellant is an alien and he has shown genuine repentance for what he has done, and as, moreover, it seems that his health has deteriorated while he has been in prison, this seems to be a suitable case for consideration by the competent organs with a view to remission of sentence, at an early date in the future, under Article 53.4 of the Constitution (see, inter alia, the cases of *Esper* and *Varnava*, supra).

Court: In the result this appeal is dismissed by majority.

Appeal dismissed by majority.