1984 July 31

[TRIANTAFYLLIDES, P., LORIS AND STYLIANIDES, JJ.]

EIT SIAFIK RAHMA,

Appellant,

v.

THE REPUBLIC,

Respondent

(*Criminal Appeal No.* 4548).

Criminal Law—Sentence—Assessment—Principles applicable—Plea of guilty—Weight to be attached to—Possession of narcotic drugs for the purpose of supplying them to others—Five years' imprisonment on appellant and four years' imprisonment on co-accused who confessed to the police and pleaded guilty—Seriousness of the offence which is an international one—No disparity of sentence in view of the confession and plea of guilty of co-accused—Sentence neither manifestly excessive nor wrong in principle.

The appellant was convicted by the Assize Court of Larnaca of the offence of unlawful possession of controlled drugs, to wit 2,034 grams of heroin, and possession of same for the purpose of supplying it to others; and was sentenced to 5 years' imprisonment on the second count but no sentence was passed on him on the first count. A co-accused, who confessed to the Police the commission of these offences and pleaded guilty in Court to both counts, received a sentence of 4 years' imprisonment on the second count.

Upon appeal against sentence counsel for the appellant mainly contended that there was a flagrant disparity between the sentence of the appellant and of his co-accused, especially having regard to their participation in the Commission of the offences and to the fact that appellant was illtreated by the Police in the course of the investigation into the commission of the offences. It was, also, contended, that the possession of the prohibited drug was not meant to be used or offered in this country but in a foreign country.

The appellant was a 36 years' old teacher from Lebanon and his co-accused came from the U.S.A. to Cyprus specifically for the purpose of receiving and conveying the illegal drug to U.S.A.

Held, (*after stating the principles governing the assessment of sentence and the weight to be given to a plea of guilty*) that there was no substantial difference in the participation of these two persons in the commission of the offences; that even though the narcotic drugs were not intended for use or disposal in this country the Courts of this country have to protect not only the people of Cyprus but the people of the world as this offence is an international one; that the argument of Counsel that there was a disparity of sentence loses its value in view of the confession in the statement to the Police by the co-accused and his conduct thereafter, including basically the plea of guilty; that in all the circumstances of the case there was no glaring difference between the treatment received to justify a real sense of grievance by the appellant; and that, therefore, the sentence imposed is not manifestly excessive or wrong in principle; and that, accordingly, the appeal must be dismissed.

Appeal dismissed.

Per curiam: The trial Court before which the allegations of ill-treatment were canvassed, did not pronounce on them as they were irrelevant to the issue before them. The statement obtained by the Police from the appellant was not sought to be adduced as evidence by the prosecution. We take this opportunity, however, to restate the position of the Courts. We deprecate any ill-treatment and any violation of the personal rights of persons in custody. The difficulty of the Police in checking and detecting crime does not in the least entitle them to use any inadmissible method and more so to illtreat persons in custody (See *Michael Vassili Votettos* v. *The Republic*, 1961 C.L.R. 169 at p. 181).

Cases referred to:

Sultan v. *Republic* (1983) 2 C.L.R. 121;

Cugullere (25.10.1971, 661/C/71);

Gomez, Cooper and Bovington (5.10.1972, 5238/B/71);

Drummond (4.7.1972, 2556/C/71);

Ieronymides v. *Republic* (1982) 2 C.L.R. 258;

Volettos v. *Republic*, 1961 C.L.R. 169 at p. 181.

Appeal against sentence.

Appeal against sentence by Eit Siafik Rahma who was convicted on the 2nd June, 1984 at the Assize Court of Larnaca (Criminal Case No. 2767/84) on one count of the offence of unlawfully possessing controlled drugs contrary to sections 2, 3, 6(1)(2), 26, 30 and 38 of the Narcotic Drugs Law (Law No. 29/77) and on one count of the offence of possessing controlled drugs for the purpose of supplying them to others contrary to sections 2, 3, 5(1), 6(1)(3), 26, 30, 31 and 38 of the Narcotic Drugs Law (Law No. 29/77) and was sentenced by Papadopoulos, P.D.C., Constantinides, S.D.J. and Arestis, D.J. to 5 years' imprisonment on count 2 with no sentence passed on count 1.

Chr. Pourgourides with *G. Savvides*, for the appellant.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: The appellant was convicted by the Assize Court of Larnaca of the offences of unlawful possession of controlled drugs, to wit, 2,034 grams of heroin, and possession of same for the purpose of supplying it to others, without the licence of the Minister of Health.

The Assize Court sentenced him to 5 years' imprisonment on count No. 2 but passed no sentence on count No. 1.

A co-accused, who confessed to the Police the commission of these offences and pleaded guilty in Court to both counts, received a sentence of 4 years' imprisonment on the second count.

He appealed both against his conviction and sentence but this morning with the leave of the Court he withdrew the appeal against conviction.

Learned counsel for the appellant argued that the sentence is manifestly excessive; the degree of culpability of the co-accused was more serious and this is not reflected in the sentence;

there is a flagrant disparity between the sentence of this appellant and of his co-accused, especially having regard to their participation in the commission of the offences; the appellant was illtreated by the Police in the course of the investigation into the commission of the offences; and the possession of the prohibited drug was not meant to be used or offered in this country but in a foreign distant country.

The appellant is a 36 years old teacher from Lebanon and his co-accused came from the U.S.A. to Cyprus specifically for the purpose of receiving and conveying the illegal drug to U.S.A. The Police on information, on 11.2.1984, closely watched the rooms of the two accused at Sun Hall Hotel at Larnaca; they followed their movements and on a search of the room of the co-accused they found a suitcase which was carried by the appellant to the room of the co-accused in which the drug was well concealed in 11 plastic sacks, some of which were hidden in the covers of two photo albums. Thus, two foreigners came from two different countries, the one from Lebanon on 11.2.1984 and the other from the U.S.A. via Greece, to Larnaca, a pre-arranged meeting place for the delivery and transportation of heroin to another country for disposal to others. Neither of the two accused planned this crime; they simply acted—apparently on reward—for the implementation of a well planned international trafficking of narcotics by persons beyond the jurisdiction.

Both culprits were arrested but the co-accused escaped from lawful custody and unlawfully caused grievous bodily harm to a police constable on duty. He was rearrested on 15.2.1984 and in a voluntary statement he made a clean breast. He pleaded guilty before the Assize Court to all counts on the information.

The sentencing of offenders is mainly in the domain of the trial Court. In the assessment of the extent of sentence the seriousness of the offence, as reflected in the punishment provided by the law, the prevalence of the offence, the evil that it causes to society, the circumstances pertaining to its commission and, certainly, the personal and family circumstances of the accused are taken into consideration. In the treatment of an offender the sentence may be individualized. The remorse and the

confession, the help one renders for the detection of the crime and his behaviour with regard to the crime and the law at all stages, upto and including the trial, are matters to be taken into consideration.

Cyprus nowadays, due to the plight that befell on Lebanon, is used as a transit camp for narcotics and this offence, especially in the Larnaca area, is a prevalent one. The Supreme Court has repeatedly stressed that the Courts of this country, even though the narcotic drugs are not intended for use or disposal in this country, have a duty towards international society, and from this duty they should never flinch—(*Ahmad Hassan Sultan* v. *The Republic*, (1983) 2 C.L.R. 121).

The appellant, who was enlisted to carry the narcotics from Lebanon to Cyprus, cannot be allowed to say that the evil of his act would not adversely affect the people of Cyprus. The Courts of this country have to protect not only the people of Cyprus but the people of the world as this offence is an international one.

Where two or more offenders are concerned in the same offence, a proper relationship should be established between the sentence passed on each offender. A difference in the degree of culpability, or the presence of mitigating factors affecting one offender only, should be reflected in a distinction between their sentences. The fact that one accused has pleaded guilty or given information which has led to the prosecution of his accomplices justifies a differential. Confessions coupled with the element of repentance have always been held to weigh in favour of an accused person. This, however, is not absolute and should be viewed in the circumstances of each case.

A plea of guilty may properly be treated as a mitigating factor, indicating remorse, and will justify a reduction in the sentence below the level appropriate to the facts of the offence; but the defendant who contests the case against him, while not entitled to that mitigation, may not be penalized for the manner in which his defence has been conducted by the imposition of a sentence above the ceiling fixed by the gravity of the offence.

In *Cugullere*, 25.10.1971, 661/C/71, it was said that an accused could not pray in aid in mitigation a plea of guilty because he

fought the case tooth and nail; that, of course, is no ground for increasing the sentence but it deprived him of what was really about the only form of mitigation.

There is no suggestion in this case that the Assize Court imposed on this appellant a more severe sentence because he has contested his guilt, anything beyond what was the appropriate sentence for the offences of which he was convicted. The trial Court, however, was entitled to give very substantial weight in the scale to the co-accused's plea of guilty which has saved a trial and demonstrated the remorse and regret for what he had done.

From a number of English decided cases it is suggested that a bare plea of guilty, without any further mitigation, may justify a reduction in sentence of between one-quarter and one-third of the net figure established by reference to the facts of the offence. The cases do not suggest that it is proper to reflect a plea of guilty by anything other than a reduction in the quantum of the sentence—(*Principles of Sentencing by D.A. Thomas*, 2nd Edition, p. 52).

In *Gomez, Cooper and Bovington*, 5.10.1972, 5238/B/71, three appellants were sentenced to varying terms for handling stolen property, following their convictions by the jury. One complained that his sentence of five years was excessive by comparison with that of a fourth co-defendant, who was described as "the brains behind this criminal enterprise" but received only three and half years' imprisonment. Justifying this differential the Court stated that "it has long been a principle in our Courts that the man who pleads guilty can expect less severe punishment than one who pleads not guilty".

In *Drummond*, 4.7.1972, 2556/C/71, a first offender was sentenced after a contested trial to four years' imprisonment for his part in a substantial fraud involving large numbers of stolen traveller's cheques; co-accused whose responsibility and previous histories were similar received three years on their pleas of guilty. The Court justified this distinction as "a discount on a sentence on account of a guilty plea", which was "well established" as a "perfectly proper approach to sentencing".

Useful reference on the plea discount may be made to *Ieronymides* v. *The Republic*, (1982) 2 C.L.R. 258, and the cases cited therein.

We see no substantial difference in the participation of these two persons in the commission of the offences: the one conveyed the suitcase with the narcotics from Lebanon and committed the offences of which he was found guilty in Cyprus, and the other committed the second act in the process of trafficking of this narcotic from Lebanon to the U.S.A. They are two participants in a relay race of this destructive drug. The argument of counsel that there is a disparity of sentence loses its value in view of the confession in the statement of the Police by the co-accused and his conduct thereafter, including basically the plea of guilty. In all the circumstances of the case there is no glaring difference between the treatment received to justify a real sense of grievance by the appellant.

Counsel strenuously argued that the appellant was illtreated by the Police whilst in custody.

The trial Court before which these allegations were canvassed, did not pronounce on them as they were irrelevant to the issue before them. The statement obtained by the Police from the appellant was not sought to be adduced as evidence by the prosecution. We take this opportunity, however, to restate the position of the Courts. We deprecate any ill-treatment and any violation of the personal rights of persons in custody. The difficulty of the Police in checking and detecting crime does not in the least entitle them to use any inadmissible method and more so to illtreat persons in custody. It is worth repeating what was said by Vassiliades, J., as he then was, in *Michael Vassili Volettos* v. *The Republic*, 1961 C.L.R. 169, at p. 181:-

> "Fully appreciating the difficulties in their fight against the criminal, I consider that the Police deserve, and are fully entitled, to the assistance of every good citizen; and to the support and protection of the law-courts of the country.
>
> But same as in the case of all other men, policemen are not all perfect. They have their shortcomings; their human weaknesses. They may be overzealous in the detection of crime; hard in their handling of the potential

criminal; or dangerously certain of the correctness of their suspicions.

It is therefore incumbent upon the criminal Courts, to watch vigilantly the methods of police officers in the detection of crime; and to stand as a firm barrier against abuse of authority, on their part. If the Courts flinch in this duty, it is very difficult to say what amount of hardship, of injustice, and of damage to the community, may result".

Furthermore, a victim of illtreatment has a number of remedies provided by the Constitution and the Law of this country against his assailants and even, in a proper case, the Republic for any wrongful act or omission causing damage committed in the exercice or purported exercice of the duties of officers of the Republic.

It is not permissible on the ground of this allegation to disturb the sentence imposed by the trial Court.

We are not satisfied that the sentence imposed is manifestly excessive or wrong in principle and we would dismiss this appeal.

The appellant, a 36 years old teacher, is the victim of the misery and plight of his native country, Lebanon. It is upon the executive power to decide whether the appellant will be kept in this country to serve the sentence of imprisonment imposed by the trial Court or would be deported to the land of his origin.

In the result the appeal is dismissed.

Appeal dismissed.