1985 January 23

[L. LOIZOU, DEMETRIADES, SAVVIDES JJ.]

DEMETRIOS EVGENIOU IOANNOU,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4570).

Criminal Law—Forgery and uttering a false document—Sections 331, 333, 335 and 339 of the Criminal Code, Cap. 154—Ingredients of the offences—"Intent to defraud"—Meaning.

Criminal Law—Sentence—Forgery and uttering a false document—Mitigating factors—Delay in prosecuting—Trial Judge wrongly considered the persistent denial of the commission of the offence as an aggravating circumstance in sentencing—Sentence of 15 months' imprisonment reduced to 8 months' imprisonment.

On 28.2.1978 the appellant called at the office of a practicing advocate at Limassol and handed to him the original of a purchase agreement, concerning a piece of land, and gave him instructions to have same deposited with the D.L.O. Limassol for the purposes of the Sale of Land (Specific Performance) Law, Cap. 232. The advocate relying on his instructions deposited the contract with the D.L.O. on the same day. As soon as the contract was deposited he was requested by the appellant to take him to one Economides with a view to sell his shares in the land—subject-matter of the contract—which he purchased from his parents by virtue of the conrtact so deposited with the D.L.O. When the advocate came to know that the parents of the appellant alleged that they never sold the land in question to him he informed the appellant about this allegation whereupon the latter said the following:

"The document which I brought to you was not genuine and I want your advice."

On the following day the appellant himself attended the D.L.O. and withdrew the contract without any protest that such document was not deposited on his behalf and that it was not a genuine document. On the above facts the appellant was convicted on two counts of the offences of forgery and of uttering a false document and was sentenced to concurrent sentences of 15 months' imprisonment on each count. The appellant admitted before the trial Court that the document in question was a false document and the trial Court found that he was the maker of the document. Though the offences in question took place early in 1978 and were reported to the Police then the Police did not take any action against the appellant and they only did so after certain remarks were made by the trial Court in a civil action between the appellant and the complainants concerning the transactions on which the present charges were based.

The appellant was married with four children aged 11-16 years and was the sole supporter of his family. In passing sentence the trial Judge took into consideration as an aggravating factor "the attitude of the accused before, during and in the course of these proceedings, which was a mere denial and nothing more."

Upon appeal against conviction and sentence:

Held, (1) that the burden cast upon the prosecution in so far as the offences of forgery and of uttering a forged document are concerned is to prove to the satisfaction of the Court (a) the making and uttering of a false document, (b) that the accused was the maker of such document and the person who uttered same and (c) an intent to defraud; that the findings of the trial Court that the document in question was a false document and that the appellant was its maker were amply warranted by the evidence.

(2) *On the question whether an "intent to defraud"*

has been proved: Fraud does not involve the idea of economic loss; that "with intent to defraud" means "with intent to practise a fraud on someone or other and it need not be anyone in particular"; that it is no answer to a charge of forgery to say that there was no intent to defraud any particular person, because a general intent to defraud is sufficient to constitute the crime; that "intent to defraud" is presumed to exist whenever at the time the false document was made there was in existence a specific person, ascertained or unascertained, capable of being defrauded thereby; that bearing in mind the above legal principles the trial Judge correctly directed himself on the issue before him and that in the light of the evidence accepted by him his finding as to the guilt of the appellant on the count of forgery is correct.

(3) That, concerning the count of uttering a false document on the evidence accepted by the trial Judge, it was reasonably open to him to reach his finding that "the accused uttered the forged document, i.e. the original agreement from which exhibit No. 5 (the photocopy) must have emanated, to a practising advocate of Limassol, with instructions to deposit same with the D.L.O. Limassol, who, relying on the accused's instructions, deposited same on the same day for the purposes of specific performance"; accordingly the appeal against conviction must fail.

(4) That though offences of this nature and especially in circumstances like the ones for which the appellant was convicted, call for heavy sentences and that a term of imprisonment of 15 months on counts 1 and 2 is not manifestly excessive, long delay on behalf of the authorities in bringing an accused person before justice, is a matter which should be seriously taken into consideration in miti-

gation; that, further, though an admission of the commission of a crime is a valid reason for mitigation and will justify a reduction in the sentence the fact that an accused person persistently denies the commission of an offence, is not a factor which should, under any circumstances, be treated as an aggravating one; and that, therefore, the trial Judge wrongly considered such factor as amounting to an aggravating circumstance in sentencing because it was within the constitutional rights of the appellant to deny any implication in the commission of the offence, as the burden rested upon the prosecution to prove that he was guilty of the offence; and that, therefore, a sentence of 8 months' imprisonment on each count, to run concurrently, is the appropriate sentence and it is ordered accordingly.

Appeal against conviction dismissed. Appeal against sentence allowed.

Cases referred to:

Welham v. D.P.P. [1960] 44 Cr. App. R. 124; [1960] 1 All E.R. 805;

Scott v. *Metropolitan Police Commissioner* [1974] 60 Cr. App. R. 124; [1974] 3 All E.R. 302;

Rex v. *Allsop* [1977] 64 Cr. App. R. 29;

A.-G. Ref 1 of 1981 [1982] 2 All E.R. 417;

Georghiou v. *Republic* (1984) 2 C.L.R. 65;

Hyam v. *D.P.P.* [1974] 59 Cr. App. R. 91 at p. 110;

Temenos v. *Republic* (1984) 1 C.L.R. 425.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Demetrios Evgeniou Ioannou who was convicted on the 6th August, 1984 at the District Court of Limassol (Criminal Case No.

8533/84) on one count of the offence of forgery contrary to sections 331, 333(a) and 335 of the Criminal Code, Cap. 154, on one count of the offence of uttering a false document contrary, to sections 339, 331, 333 and 335 of the Criminal Code, Cap. 154 and on one count of the offence of obtaining registration of property by false pretences contrary to section 305 of the Criminal Code, Cap. 154 and was sentenced by Eleftheriou, D.J. to 15 months' imprisonment on each of counts 1 and 2 and to six months' imprisonment on count 3, all sentences to run concurrently.

A. Magos, for the appellant.

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

Cur. adv. vult.

L. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Savvides.

SAVVIDES J.: The appellant was found guilty by the District Court of Limassol in Criminal Case 8533/84 on a charge containing three counts, one for forgery, contrary to sections 331, 333(a) and 335 of the Criminal Code, Cap. 154 (count 1 on the charge), one for uttering a false document contrary to sections 339, 331, 333 and 335 of the Criminal Code, Cap. 154 (count 2 on the charge) and one for obtaining registration of property by false pretences contrary to section 305 of the Criminal Code, Cap. 154 (count 3, on the charge). The accused was found guilty on all counts and sentenced to 15 months' imprisonment on each of counts 1 and 2 and six months' imprisonment on count 3, all sentences to run concurrently. The present appeal is directed against both the conviction and the sentence imposed upon him.

The notice of appeal, which was filed by the accused whilst in prison, sets out the grounds on which the appeal is based in general terms, that is, that he is innocent and that the sentence imposed upon him is excessive. Counsel appearing for the appellant at the hearing of the appeal stated that the conviction was challenged on the following

two grounds: (1) That the trial Court erroneously interpreted the law. (2) That the conviction is not supported by the evidence before the trial Court.

The document on which counts 1 and 2 are founded, is a purchase agreement purporting to have been signed on 21st February, 1978, by Evgenios Ioannou Demetriades and Katerina Ioannou Evgeniou both of Ay. Tychonas village, as sellers of 2/5ths of a piece of land under Registration No. 9195 at Ay. Tychonas village and by the appellant, as purchaser, and by virtue of which it was shown that he purchased from the said persons the land in question for the sum of £66,000.—. Also that on the 28th February, 1978, knowingly and fraudulently uttered the said false document.

The burden cast upon the prosecution in so far as counts 1 and 2 are concerned, is to prove to the satisfaction of the Court: (a) The making and uttering of a false document, (b) that the accused was the maker of such document and the person who uttered same and (c) an intent to defraud.

As to the first element it is common ground that the document in question was a false document. This fact was admitted by the appellant in his unsworn statement from the dock and his advocate did not dispute its falsity at the hearing of this appeal. The learned trial Judge had this to say in this respect:

> "Having always in mind the totality of the evidence adduced before me and particularly the evidence of the complainants to the effect that they never signed such an agreement, that of P.W.3 to the effect that the signatures of the complainants are forged, as well as that of P.W.6 and not ignoring the fact that it is also the version of the accused that exhibit 5 is a false document, my finding is that exhibit 5 is a false document and thus a 'forged document' "

The case for the appellant is not as to the falsity of the document but a denial that he was the maker of the false document or he had uttered same or that he was in any way involved in the making or in the uttering of the document.

The second element which the prosecution had to prove was that the accused was the maker of such document. The learned trial Judge in his judgment after analysing at length the evidence of the 14 witnesses called by the prosecution and the unsworn statement from the dock of the appellant and after making reference to the contents of the numerous exhibits before him concluded as follows:

"I have watched the demeanour in the witness box of all witnesses who testified before me and I have examined with the utmost care the totality of evidence adduced before me.

From the evidence of P.W.3, I accepted that part of his evidence which relates to the effect that the signatures of the complainants appearing on exhibit No. 5, are forged and no more.

I was very well impressed by all other witnesses for the Prosecution, I find them accurate, reliable and truthful ones and I feel confident that I can safely act on their evidence without any hesitation whatsoever. P.W.6 Savvas Papakyriacou struck me as a witness who would be unwilling to answer any question unless certain about it . . . . . .

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The accused impressed me very little, I am not at all satisfied that he is telling the truth and it is without any hesitation whatsoever that I reject his evidence in toto . . . . . .

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The next issue to be considered is the identity of the maker: Bearing always in mind the above legal principles and particularly the evidence of P.W.6, to the effect that the accused told him 'The document I have given to you was not genuine and I want your advice', that the accused handed over to him the original with the instructions to deposit it for the purpose of specific performance, the fact that the accused withdrew such contract on 8.3.78 without any protest whatsoever to the effect that he was not aware with

the whole transaction, coupled with the fact that the only person who had an interest in the whole transaction was nobody else but the accused himself, I have not the slightest doubt in my mind that the maker of the exhibit No. 5 is the accused and nobody else

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Furthermore, I find that the accused uttered the forged document, i.e. the original agreement from which exhibit No. 5 (the photocopy) must have emanated, to P.W.6 Savvas Papakyriakou, a practising advocate of Limassol, with instructions to deposit same with the D.L.O. Limassol, who, relying on the accused's instructions, deposited same on the same day for the purposes of specific performance".

For the purpose of completing the picture as to the facts of the case, we shall briefly refer to the evidence of P.W.6 Savvas Papakyriacou, which is summarised in the judgment as follows:

"P.W.6, Savvas Papakyriacou, a practising advocate from Limassol, stated inter alia that on 28.2.78, the accused called at his office whereby he handed over to him the original of a purchase agreement (exhibit No. 5 being a copy of such agreement) and gave instructions to him to have same deposited with the D.L.O. Limassol for the purposes of the Sale of Land (Specific Performance) Law, Cap. 232 (as amended). Relying on his instructions he made the necessary arrangements and deposited the contract on the same day. As soon as the contract was deposited, he was requested by the accused to take him to Phaedon Economides, whom he knew very well and happened to be his client, with a view to sell his shares in the land in question, which he purchased from his parents by virtue of the contract so deposited with the D.L.O. On 7.3.78 P.W.10, Ph. Economides told him something when the witness accompanied by P.W.10 visited the complainants with whom they discussed the matter but on their way back to Limassol met the

accused who was driving along the opposite direction when all together went to the office of P.W.10. There and then the witness told the accused in the presence and hearing of P.W.10 that it is the version of his parents that they never sold the land in question to him and in answer the accused told him 'I want to tell you something in private'. With the permission of P.W.10, they went into another room of the office of P.W.10 where the accused told him 'To eggrafon pou sou efera den ito gnision ke thelo tin simvouli sou', when the witness explained to the accused that he could seek advice from somebody else and at the same time requested him to return to him exhibit No. 10, (the agreement entered into between the accused and Phaedon Economides Estates Ltd.) in order to cancel same when the accused left. As the accused failed to turn up he reported the case to the Police in about 1 to 2 days".

It is significant to note that the appellant himself attended the Land Registry Office on 8th March, 1978, and withdrew such contract against receipt without any protest that such document was not deposited on his behalf and that it was not a genuine document, thus associating himself with such document.

Having carefully considered the arguments advanced by counsel for the appellant and in the light of all material before us and the evidence accepted by the learned trial Judge as true, we are satisfied that the findings of the trial Court that the accused was the maker of the said document are amply warranted by the evidence. Therefore, the ground argued by counsel for the appellant that the conviction is not supported by the evidence before the trial Court fails.

We now come to the third element which the prosecution had to establish and which turns upon the first ground of appeal advanced and argued by counsel for the appellant, that is whether an intention to defraud has been proved.

It was the contention of counsel for the appellant that the prosecution failed to prove that there was any intention on the part of the appellant to defraud any particular person

or that in fact any person was defrauded or prejudiced by the making of the said document.

The learned trial Judge in dealing with this matter and after reviewing relevant case law on the subject concluded as follows:

> "It is not necessary to establish that the person defrauded was by deceit deprived of some economic advantage or had some economic loss inflicted upon him; but it must be established that he was prejudiced in some way by the deceit; it is not necessary to prove an intent to defraud any particular person. It is sufficient to prove that the accused did the act charged with the requisite intent. If a person is actually defrauded as the necessary concequence of the accused's act, that is sufficient evidence of intent... Although in the instant case such an intention may be inferred, still my finding is that the intention of the accused was to prejudice the interests of the complainants by preventing them to exercise their vested right as registered owners of the land in question to sell same and consequently effect registration in the name of a prospective purchaser and also by selling it for a higher price and thus make a profit for himself, and also those of P.W.10 Phaedon Economides by offering a higher price for the purchase of the same land assuming that he purchased same previously from the complainants at the agreed amount of £60,000.— whereas at a later stage agreed to buy the same land at the agreed amount of £64,000.— from the accused".

The expressions "with intent to defraud" and "fraudently" have long been used at common law to denote a state of mind required for particular offences, e.g. forgery. They are still frequently to be found in statutory offences whether codifying the common law or not although the modern tendency is to use the word "dishonestly". (See Archbold Criminal Pleading Evidence and Practice 41st Edition at p.1011). The meaning of intent to defraud has been expounded recently in a number of English cases. See in this respect *Welham* v. *D.P.P.* [1960] 44 Cr. App. R. 124,

[1960] 1 All E.R. 805, *Scott* v. *Metropolitan Police Commissioner* [1974] 60 Cr. App. R. 124, [1974] 3 All E.R. 302, *Rex* v. *Allsop* [1977] 64 Cr. App. R. 29, *A.—G. Ref. 1 of 1981* ([1982] 2 All E.R. 417) and the recent decision of this Court in *Georghiou* v. *The Republic* (1984) 2 C.L.R. 65.

In *Welham's* case, the House of Lords was concerned with the meaning of "intent to defraud" in the Forgery Act, 1913 and drew the distinction between "intent to deceive" and "intend to defraud".

Lord Radcliffe in giving his opinion about the meaning of the word "defraud" had this to say at p.141:

> "Now I think that there are one or two things that can be said with confidence about the meaning of this word 'defraud'. It requires a person as its object: that is, defrauding involves doing something to someone. Although in the nature of things it is almost invariably associated with the obtaining of an advantage for the person who commits the fraud, it is the effect upon the person who is the object of the fraud that ultimately determines its meaning. This is nonetheless true because since the middle of the last century the law has not required an indictment to specify the person intended to be defrauded or to prove intent to defraud a particular person.
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> . . . . . .There is nothing in any of this that suggests that to defraud is in ordinary speech confined to the idea of depriving a man by deceit of some economic advantage or inflicting upon him some economic loss".

And at page 146, he had this to add:

> "It was objected that, if defrauding was treated as meaning something so wide as any deceiving of another to his injury his detriment or his prejudice, it provided a dangerously wide definition of a crime. It was said, for example, that by such a definition the writing of a faked letter to another giving him a

fictitious appointment would constitute the crime of forgery. I do not know that I should regard this as so startling a result as to lead me to reconsider what seems to be the long accepted definition of defrauding: after all, the crime in question only exists if there is the making of a false document in order that it may be used as genuine, which is itself dishonest and a cheat".

Lord Denning in delivering the leading speech with which all other members of the Appellate Committee of the House of Lords concurred, after making elaborate historical examination of the meaning of "intend to defraud" under the Common Law and the Forgery Act, as emanating from the English Case Law, said the following at pp. 153, 155:

"Much valuable guidance is to be obtained from the dictum of Buckley J. in Re LONDON & GLOBE FINANCE CORPORATION [1908] 1 Ch. 728, but this has been criticised by modern scholars. It has even been hinted that it conceals within it the fallacy of the illegitimate antistrophe, which sounds, I must say, extremely serious. These scholars seem to think they have found the solution. 'To defraud', they say, involves the idea of economic loss. I cannot agree with them on this. If a drug addict forges a doctor's prescription so as to enable him to get drugs from a chemist, he has, I should have thought, an intent to defraul, even though he intends to pay the chemist the full price and no one is a penny the worse off.

Seeing, therefore, that the words of the statute are of doubtful import, it is, I think, legitimate to turn for guidance to the previous state of the law before the Act; and here I would say at once that the phrase 'with intent to defraud' has been the standard usage of lawyers in defining forgery for over 160 years. In 1796 all the judges of England laid down the definition of forgery as 'the false making of a note or other instrument with intent to defraud' , see PARKES AND BROWN, 2 Leach 775, at p. 785, East's Pleas of the Crown, Vol. II, 765: and ever since that time

it has been held that the very essence of forgery is an intent to defraud and it must be laid in the indictment, see East's Pleas of the Crown (1803) Vol. II, p. 988, Chitty's Criminal Law (1826) Vol. III, pp. 1039, 1042a. I cannot help thinking that when Parliament in section 4(1) of the 1913 Act used a phrase so hallowed by usage, it used it in the sence in which it had been used by generations of lawyers. It was never by them confined to the causing of economic loss.

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. . . . . The important thing about this definition is that it is not limited to the idea of economic loss, nor to the idea of depriving someone of something of value. It extends generally to the purpose of fraud and deceit. Put shortly, 'with intent to defraud' means 'with intent to practise a fraud' on someone or other. It need not be anyone in particular someone in general will suffice. If anyone may be prejudiced in any way by the fraud, that is enough".

And Lord Denning concluded as follows at page 156:

"It has long been ruled that it is no answer to a charge of forgery to say that there was no intent to defraud any particular person, because a general intent to defraud is sufficient to constitute the crime. So also it is no answer to say that there was no intent to defraud the recipient, if there was intent to defraud somebody else (see TAYLOR (1979) 1 Leach 214; 2 East P.C. 960)".

In *Scott* v. *Metropolitan Police Commissioner* (supra) the question arose as to whether "inter to defraud" required the risk of economic loss to another, and the House of Lords unanimously agreed that proof of "deceit" was unneccessary when a person is charged on conspiracy to defraud. In his speech Viscount Dilhorne after reviewing the case law on the matter, had this to say at page 130:

"I have not the temerity to attempt an exhaustive definition of the meaning of 'defraud'. As I have said, words take colour from the context in which

they are used, but the words 'fraudulently' and 'defraud' must ordinarily have a very similar meaning. If, as I think, and as the Criminal Law Revision Committee appears to have thought, 'fraudulently' means 'dishonestly' then to 'defraud' ordinarily means in my opinion to deprive a person dishonestly of something which is his or of something to which he is or would or might but for the perpretation of the fraud, be entitled".

And concluded as follows at page 131:

. . . . . in my opinion it is clearly the law that an agreement by two or more by dishonesty to deprive a person of something which is his or to which he is or would be or might be entitled and an agreement by two or more by dishonesty to injure some proprietary right of his suffices to constitute the offence of conspiracy to defraud".

In *Rex* v. *Allsop* [1977] 64 Cr. App. R. 29 (C.A.) in which the appellant was convicted of conspiracy to defraud by false hire purchase applications, Shaw, L.J. in delivering the judgment of the Court of Appeal dismissing the appeal, said the following at page 31:

"Generally the primary objective of fraudsmen is to advantage themselves. The detriment that results to their victims is secondary to that purpose and incidental. It is 'intended' only in the sense that is a contemplated outcome of the fraud that is perpetrated. If the deceit which is employed imperils the economic interest of the person deceived, this is sufficient to constitute fraud even though in the event no actual loss is suffered and notwithstanding that the deceiver did not desire to bring about an actual loss".

Shaw, L.J. in concluding his judgment at p. 32 adopted and applied the view expressed by Lord Diplock in *Hyam* v. *D.P.P.* [1974] 59 Cr. App. R. 91, 110, where he said·

"...no distinction is to be drawn in English law between the state of mind of one who does an act because he desires it to produce a particular evil

consequence, and the state of mind of one who does the act knowing fully that it is likely to produce that consequence although it may not be the object he was seeking to achieve by doing the act. What is common to both these states of mind is willingness to produce the particular evil consequence; and this, in my view is the mens rea needed to satisfy a requirement, whether imposed by statute or existing at common law, that in order to constitute the offence with which the accused is charged he must have acted with 'intent' to produce a particular evil consequence"

In *Georghiou* v. *The Republic* (supra) Pikis J. in delivering the judgment of the Court of Appeal affirming the conviction of the accused by the Assize Court on a charge of forgery, after reviewing the authorities, concluded as follows:

"To our mind the principal object to forgerers possessed of the requisite criminal intent, is to alter a picture of things to their advantage. If, by virtue of this deception, another person is induced to act to his detriment, as earlier defined, then the crime of forgery is committed.

The statutory presumption as to the existence of an intent to defraud, established by s.334 — Cap. 154, throws ample light on the concept of 'intent to defraud' in the context of the crime of forgery, defined by section 331. Intent to defraud is presumed to exist whenever at the time the false document made 'there was in existence a specific person, ascertained or unascertained, capable of being defrauded thereby'. The presumption is not rebutted, as provided in s. 334, by proof that the forgerer took measures to prevent such persons being defrauded. Section 334 clearly suggests that the concept of 'intent to defraud' in the context of the definition of 'forgery' is identical to the concept of 'intent to defraud' under English law on the subject of forgery".

Bearing in mind the legal principles as explained above, we have come to the conclusion that the learned trial Judge correctly directed himself on the issue before him and that

in the light of the evidence accepted by him his finding as to the guilt of the appellant on count 1 is correct.

Concerning count 2, on the evidence accepted by the learned trial Judge, it was reasonably open to him to reach his finding that "the accused uttered the forged document, i.e. the original agreement from which exhibit No. 5 (the photocopy) must have enamated, to P.W.6, Savvas Papakyriacou, a practising advocate of Limassol, with instructions to deposit same with the D.L.O. Limassol, who, relying on the accused's instructions, deposited same on the same day for the purposes of specific performance"

The particulars of offence of count 3, as set out in the charge are —

> "The accused on the 8th day of March, 1978, at Limassol, in the District of Limassol, did wilfully procure for himself a certificate of registration of a land No. 7564, Sheet-Plan LIV 45, at the Locality 'Lakkos tou Stokkou', area of Ayios Tychonas".

The facts in support of such count on which the prosecution relied, are briefly, as follows:

The complainants who are the parents of the appellant were negotiating the sale of their property to Phaedon Economides Estates Ltd. and in fact on 7.3.1978 they entered into an agreement for the sale of such property to them. On 18.3.1978, the complainants, relying on a representation from the appellant that there was a certain purchaser, namely, Lordos, who was ready to buy such property for a higher price, through him, were induced to transfer their property to the appellant by way of gift, for the purpose of selling it for their account to Lordos at such higher price and thus avoid their contract with Phaedon Economides Estates Ltd. The appellant after acquiring registration of the property, instead of selling it to Lordos, sold it to Phaedon Economides Estates Ltd.

The learned trial Judge made the following finding in this respect:

> "I further find that the reason that made the complainants to part with their property and thus donate

same to the accused, is the promise given by the accused to the complainants that he could find another purchaser for a higher amount and that he knew a certain Lordos whom they could never approach and that he could only do so himself and that he was going to give them the proceeds of such sale. Lastly I find that the accused at the material time of making such a promise had no intention of performing it, but his intention was to become the registered owner of the land in question at any rate and sell it to a third party for his own benefit, as he has actually done, by selling it to Phaedon Economides P.W.10, for more money than his parents (the complainants) had done at a previous occasion, with purchaser the same witness. I also find that the complainants did not donate such property to the accused freely and voluntarily".

We are satisfied that the finding of the trial Judge in respect of this count was amply warranted by the evidence before him and that there is no valid reason for interfering with his verdict.

In view of our conclusions as above, the appeal against conviction fails.

We come now to consider whether the sentence imposed upon the appellant is manifestly excessive.

The mitigating factors which were put before the Court by the appellant who defended the case in person, were the following: He is married with four children aged 11-16 years and he is the sole supporter of his family. That for the 18 months preceding his trial he was in Greece where he had an employment at the Airport in Athens which he had to abandon to come to Cyprus in connection with this case — obviously meaning a civil action regarding his claim on the property which was pending before the District Court of Limassol between him and the complainants. That any sentence of imprisonment would ruin him and his family and that his dependents will lose their sole supporter. Counsel for the appellant reiterated before us the said mitigating factors to which he added the fact that the wife of the appellant who was pregnant and expected a

child, had a miscarriage fifteen days before the hearing of the appeal and contended that in the circumstances of the case the sentence was manifestly excessive.

We have not the slightest hesitation in repeating once again that offences of this nature and especially in circumstances like the ones for which the appellant was convicted, call for heavy sentences and that a term of imprisonment of 15 months on counts 1 and 2 is not manifestly excessive.

The personal circumstances of the appellant were in the mind of the Judge when imposing sentence. There are, however, certain factors which militate for a more lenient sentence in the present case. As it appears in the record, the offences for which the appellant is charged, took place early in 1978 and according to the evidence before the trial Court, they were reported to the Police then. The Police did not take any action against the appellant and they only did so after certain remarks were made by the trial Court in its judgment in a civil action between the appellant and the complainants concerning the transactions on which the present charges were based.

It has been held time and again by this Court that long delay on behalf of the authorities in bringing an accused person before justice, is a matter which should be seriously taken into consideration in mitigation.

In a very recent decision of this Court in Criminal Appeal 4565 *Temenos* v. *The Republic* (1984) 2 C.L.R. 425 at pp. 429-430 L. Loizou, J. had this to observe in this respect:

> "Another matter that we take into serious consideration in mitigation of the sentence in the present case is the unreasonably long delay on behalf of the authorities in bringing the appellant to justice. Had he been prosecuted within a reasonable time after the commission the offences, the subject-matter of the charges in these case, and even assuming that the same sentence was imposed on him, he would have served his sentence long before these proceedings were instituted against him. Useful reference may be made, in this respect, to *Nicolas Christodoulou alias Fafaros* v. *The Republic* (1963) 1 C.L.R. 36; and *Nicos Cha-*

ralambous Terlas v. *The Republic* (1970) 3 C.L.R., 30."

We wish also to observe, that going through the record of the proceedings. we have noticed that the learned Judge in considering what the appropriate sentence should have been, took into consideration as an aggravating factor the persistent denial by the appellant both prior and during the trial.

The learned trial Judge had this to say in this respect:

> "I also took into consideration the attitude of the accused before, during and in the course of these proceedings. which was a mere denial and nothing more."

We are of the opinion that the trial Judge wrongly considered such factor as amounting to an aggravating circumstance in sentencing. It was within the constitutional rights of the appellant to deny any implication in the commission of the offence, as the burden rested upon the prosecution to prove that he was guilty of the offence.

It is well settled and it has been repeatedly held by this Court that an admission of the commission of a crime is a valid reason for mitigation and will justify a reduction in the sentence. The fact, however, that an accused person persistently denies the commission of an offence, is not a factor which should, under any circumstances, be treated as an aggravating one. In "Principles of Sentencing", 2nd Edition by D.A. Thomas at p. 50, under the heading, "The relevance of the offender's conduct during the proceedings", it reads:

> "The principles governing the extent to which a sentencer may take into account the offender's behaviour during the course of the proceedings against him are well settled. 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".

With all the above in mind, we have come to the conclusion that in the circumstances of the present case a sentence of eight months' imprisonment is the appropriate one and we order accordingly.

In the result, the appeal against conviction fails but the appeal against sentence succeeds to the extent that the sentence of the accused is reduced to eight months' imprisonment on each of counts 1 and 2. The sentence on count 3 is not disturbed. Sentences to run concurrently as from the 6th August, 1984.

Appeal against conviction dismissed. Appeal against sentence allowed. Sentence on counts 1 and 2 reduced to eight months' imprisonment.