1985 September 26

[TRIANTAFYLLIDES, P., SAVVIDES, KOURRIS, JJ.]

TAKIS SKAROS,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4643).

Sentence—Common assault contrary to s.242 of the Criminal Code, Cap. 154 and assault causing actual bodily harm contrary to s. 243 of the said code—A denial of the offence cannot be treated as an aggravating factor—In this case the assault was not entirely unprovoked—In the circumstances the fines imposed by the trial Court, i. e. £75 and £200 respectively, are manifestly excessive—Reduced to £50 and £75 respectively.

Sentence—Principles of sentencing—Persistent denial of the commission of an offence is not in any circumstances an aggravating factor.

The first complainant Maria Spyrou Kyriacou is the wife of the second complainant Spyros Kyriacou. The appellant, who is a first cousin of the first complainant, is the owner of a garden at Ayia Napa with a house, in a room of which the parents of the first complainant had been accommodated by leave of the appellant and his wife.

On 4.7.1984 the complainants together with the first complainant's brother-in-law went to visit Maria's father for the purpose of discussing with him certain differences. There in the garden they met the mother of the first complainant who was with another of her daughters and the wife of the appellant. The father was not at the house.

A hot argument grew up between the first complainant

and her sister. As a result the children of the appellant and another child started crying, whereupon appellant's wife asked the complainants to get out, but they refused to comply with such request. The wife of appellant went and informed her husband who arrived there in his car and asked the complainants to leave his property. He then pushed back the first complainant who was pregnant at the time and who fell down. The second complainant intervened but he was also assaulted by the appellant. As a result he sustained a superficial scratch on his nose, a scratch on the neck and irritation on the forehead.

The appellant was eventually convicted for common assault, contrary to secion 242 of the Criminal Code, Cap. 154 (Count 1 on the charge) committed against the first complainant and for assault causing actual bodily harm, contrary to section 243 of the said Code (Count 2 on the charge), committed against the second complainant. He was sentenced to a fine of £75 on count 1 and £200 on count 2.

The trial Judge treated appellant's conduct as unprovoked and took into consideration that he remained adamant upto the end and did not express his regret for what happened.

The appellant is a first offender. The parties have now reconciled.

The appeal was originally directed both against conviction and sentence. In the course of the hearing the appeal against conviction was abandoned.

Held, (1) An admission of the commission of a crime is a valid mitigating factor. But a persistent denial of the commission of an offence is not in any circumstances an aggravating factor.

(2) This is not a case of an entirely unprovoked assault. The persistent refusal of the complainants to leave appellant's property after the request of appellant's wife and after a hot argument started between them and the sister

of the first complainant are not matters which should have been ignored by the Court.

(3) In the circumstances of the case the sentence is manifestly excessive and is reduced to a fine of £50 on count 1 and £75 on count 2.

Appeal allowed.
Sentence reduced.

Cases referred to:

Ioannou v. *The Police* (1985) 2 C.L.R. 14.

Appeal against sentence.

Appeal against sentence by Takis Skaros who was convicted on the 6th June, 1985 at the District Court of Famagusta (Criminal Case No. 3307/84) on one count of the offence of common assault contrary to section 242 of the Criminal Code, Cap. 154 and on one count of the offence of assault causing actual bodily harm contrary to section 243 of the Criminal Code, Cap. 154 and was sentenced by Arestis, D. J. to pay £75.- fine on count 1 and £200.- fine on count 2.

G. Pittadjis, for the appellant.

M. Photiou, for the respondents.

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

SAVVIDES J.: The appellant has been found guilty on a charge containing two counts, one for common assault, contrary to section 242 of the Criminal Code, Cap. 154 (count 1 on the charge) committed against one Maria Spyrou Kyriacou of Ayia Napa, and the other for assault causing actual bodily harm, contrary to section 243 of the Criminal Code, Cap. 154 (count 2 on the charge) committed against one Spyros Kyriacou of Ayia Napa, the husband

of the complainant in the first count. Appellant was sentenced to a fine of £75.- on count 1 and £200.- on count 2 and was ordered to pay £21.- costs of the prosecution.

The appeal was originally directed both against conviction and sentence but in the course of the hearing learned counsel for appellant, very rightly in our view, abandoned the appeal against conviction and pursued his appeal against sentence, contending that in the circumstances of the case the sentence imposed upon the accused is manifestly excessive.

The facts which culminated to the commission of the offences in respect of which the appellant has been convicted, are briefly as follows:

The appellant who is a first cousin of the complainant Maria Spyrou Kyriacou, is the owner of a garden at Ayia Napa with a house, in a room of which the parents of complainant Maria had been accommodated by leave of the appellant and his wife. In the afternoon of 4.7.1984 both complainants and the brother-in-law of complainant Maria, went by car to the house where the parents of the first complainant lived. The object of their visit, as it emanates from the evidence, was to discuss with the father of the complainant, certain differences between them and their father. They alighted from the car and went near the house which was in the garden of the appellant. There, they met the mother of the first complainant who was with another of her daughters and the wife of the appellant. The father was not at the house. A hot argument grew up between the first complainant and her sister who was with her mother as a result of which the children of the appellant and another child started crying. As a result, the wife of the appellant intervened and asked the complainants to get out of their property who, in response said that they were going to stay there till the return of the father of the first complainant. The wife of the appellant upon seeing that they refused to leave the property, went and informed her husband, the appellant, who arrived there in his car.

Upon getting out from the car, appellant asked them to leave his property and then he pushed back the first complainant who was pregnant at the time, and who fell down. Her husband, the second complainant, intervened at that stage, and he was assaulted by the appellant. Then the complainants left the scene. According to the evidence of the Government doctor, P. W. 1, who examined the second complainant, the bodily injuries which the second complainant suffered, were a superficial scratch on his nose, a scratch on the neck and irritation on the forehead.

The trial Judge in imposing sentence upon the appellant treated the conduct of the appellant as unprovoked and took also into consideration the fact that the accused remained adamant upto the end and did not express his regret for what happened. In fact, this is what the trial Judge said in this respect:

> "The accused upto last moment has shown no remorse for his act nor did he express any apology to the Court, he remained adamant in his stand, a fact which the Court is bound to take into consideration."

As we have pointed out in *Ioannou* v. *The Police* (1985) 2 C.L.R. 14 at pp. 32 and 33, 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 under any circumstances may be treated an aggravating one. In this respect, in "Principles of Sentencing" 2nd Edition by D.A. Thomas, at p. 50, 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 de-

fendant 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".

The trial Judge further treated this case as a case of an entirely unprovoked assault instigated by the dislike of the appellant towards the complainants, as he did not approve the marriage of the first complainant to the second complainant. We find ourselves unable to accept that this is a case of an entirely unprovoked assault, as the conduct of the complainants in persistenly refusing to leave the property after the request of the wife of the complainant and after a hot argument started between them and the sister of complainant (1), are not matters which should have been ignored by the Court.

In his judgment the trial Court said the following:

"The accused should, before proceeding to use force against the complainants, ask them to leave his property peacefully. The accused not only failed to do that but instantaneously with his demand that they should leave his property started pushing them."

The first complainant in her evidence stated that when the appellant arrived there he asked them to leave and in reply they said that they were going to stay there till the arrival of their father to have an explanation with him and then the appellant started shouting and pushing the second complainant.

The accused a man of 39 is a first offender, a fact which rightly was noted by the trial Judge. We had a statement from counsel for the appellant that the parties have now reconciled and they have informed him accordingly.

In the circumstances of the case and for the reasons we have explained above, we find that the sentence imposed on the appellant is manifestly excessive and that this is a proper case for this Court to reduce same. In the result, we allow the appeal and reduce the sentence on count 1 to a fine of £50.- and on count 2 to a fine of £75.-

Appeal allowed.
Sentence reduced.