

1986 December 16

[A. LOIZOU, MALACHTOS, DEMETRIADES, JJ.]

MOUSTAFA HASSAN NAZIR,

Appellant,

v.

THE REPUBLIC.

*Respondent.**(Criminal Appeal No. 4790).*

Sentence—Attempt to kill contrary to section 214(a) of the Criminal Code, Cap. 154—Incident a spontaneous reaction—Some provocation on behalf of complainant—Appellant suffering from serious psychological problems due to alcoholism—Sincere repentance—Four years' imprisonment—No room for interference with such sentence. 5

During an altercation between the appellant and the complainant, the latter insulted the appellant, who thereupon stabbed the complainant on the chest with a knife causing him two deep wounds. In the early hours of the following day the appellant gave himself up to the police, confessing his crime. 10

In passing sentence the Assize Court took into consideration as mitigating factors appellant's serious psychological problems from alcoholism, that there was some provocation, and that the incident in question was a spontaneous reaction due to appellant's psychological state. 15

The appellant expressed to the Court of Appeal his repentance, adding that he had no reason to commit this offence against the complainant, who was his friend. 20

Held, dismissing the appeal, that on the principles governing interference with a sentence by this Court, there is no room for interfering with the sentence in question.

Appeal dismissed. 25

Appeal against sentence:

Appeal against sentence by Moustafa Hassan Nazir who was convicted on the 7th October, 1986 at the Assize Court of Limassol (Criminal Case: No. 22887/86) on one count of the offence of attempt to kill contrary to section 214(a) of the Criminal Code, Cap. 154 and was sentenced by Hadjitsangaris, P.D.C., Artemis, S.D.J. and Hadjihambis, D.J. to four years' imprisonment.

Appellant appeared in person:

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

A. LOIZOU J. gave the following judgment of the Court. The appellant was found guilty on his own plea of a charge of attempt to kill contrary to Section 214(a) of the Criminal Code, Cap. 154.

The appellant is 43 years of age, chair-maker by profession. He comes from Instinjo village of the District of Paphos and he has been residing in Limassol since 1983, after he came from the north part of the island. The complainant, Andreas Demetriou Metaxas, a mason thirty-nine years of age, comes from Paralimni, is married but separated from his wife and resides alone at Limassol in the same house in which the appellant is residing but in a separate room.

In the evening of the 31st July 1986, the complainant finished his work and went home to bed. Later that night he found his room too warm and went and slept outside in the garden. When the appellant returned home there ensued an altercation between the two and apparently the complainant uttered insulting words against the appellant who thereupon stabbed him twice on the chest with a knife causing him two deep stab-wounds. He was then taken to the Limassol Hospital where he was given medical treatment and fortunately his life was saved.

In the early hours of the 1st August the appellant gave himself up to the Police, confessed to having committed this crime and handed over to them the knife which he had used in its commission.

In passing sentence the Assize Court took into consideration the fact that the appellant suffers from serious psychological problems from alcoholism, that there was some provocation in the form of insults uttered by the complainant and that the whole incident was a spontaneous reaction due to the appellant's mental psychological state. It stressed, however, the seriousness of the offence which carries a maximum term of imprisonment for life and although it found that there was hardly any justification to put at such grave risk the life of anybody, it considered that there were mitigating factors both in the circumstances of the offence and the personal mental condition of the appellant and imposed on him a sentence of four years imprisonment to run from the date of his arrest and remand in custody.

The appellant today has expressed his sincere repentance and stated that he had no reason whatsoever to commit this offence against a friend of his as the complainant was and he has claimed that the sentence imposed on him is manifestly excessive and should be reduced.

We have given our best consideration to the totality of the circumstances of the case, including the nature and gravity of the offence, as well as the personal circumstances of the appellant. On the known, however, principles governing the interference by this Court on appeal with the sentence imposed on an accused person, which is no doubt the primary responsibility of trial Courts, we have come to the conclusion that there is no room for us to interfere with a sentence in respect of which the Assize Court duly took into account all relevant mitigating factors. Needless to say that this Court will not interfere with a sentence imposed merely because had it tried the case in the first instance itself it might have imposed a different sentence. This Court only interferes if the sentence is manifestly excessive or manifestly inadequate or wrong in principle.

For all the above reasons this appeal is dismissed

Appeal dismissed