1986 December 16

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

EMIR GHASSAN L/EMIR AMINE CHEHAB,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 4782).

Sentence—Possession of controlled drugs (52.4 grams of cocaine) with intent to supply it to another person—Clean record—Concealment of drug in the heels of appellant's shoes—Disastrous consequences for career of appellant—Case differentiated from cases, where the predominant feature is trading—Three years' imprisonment—Upheld.

The appellant, who comes from Lebanon and is 46 years of age, arrived in Cyprus on 27.8.86. The police and a Customs Officer found concealed in the heels of his shoes a substance weighing 52.4 grams with a content of 66% of cocaine. The appellant stated that he intended to take it to Geneva in order to supply with it a friend of his. He, further, admitted that he was himself a user of this drug. As he, also, stated the said drug could be more cheaply secured in Beirut than in Geneva.

The Assize Court differentiate this case from other cases where the predominant feature is that of trading in narcotics. The appellant has a clean record and is a member of the secret service of his country, and this predicament will bring an end to his career and loss of the benefits of many years of service. He complained that the sentence of three years' imprisonment is manifestly excessive.

Held, dismissing the appeal: (1) Notwithstanding the consequences that this sentence will entail for the ap-

pellant, the Court cannot ignore the meticulous concealment of the drug, admittedly with the intention of supplying it to another person.

(2) The Courts have a duty to stop the trafficking of narcotics through Cyprus and the sentences imposed should reflect our determination to do that service to our people and to other peoples and, also, to manifest our distaste for this horrible category of crimes.

Appeal dismissed.

Cases referred to:

Abdullah v. *The Republic* (1971) 2 C.L.R. 323;

Mao v. *The Republic* (1971) 2 C.L.R. 171;

Howell v. *The Republic* (1972) 2 C.L.R. 111;

Makki v. *The Republic* (1972) 2 C.L.R. 76;

Atia v. *The Republic* (1979) 2 C.L.R. 214;

Rahma v. *The Republic* (1984) 2 C.L.R. 363;

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

Kyriakides v. *The Republic* (1983) 2 C.L.R. 94;

Paraskeva v. *The Republic* (1983) 2 C.L.R. 85;

El-Etri and Others v. *The Republic* (1985) 2 C.L.R. 40;

Braidi and Another v. *The Republic* (1985) 2 C.L.R. 137;

Zreka and Others v. *The Republic* (1986) 2 C.L.R. 134;

Kabbara v. *The Republic* (1986) 2 C.L.R. 190.

Appeal against sentence.

Appeal against sentence by Emir Ghassan L/Emir Amine Chehab who was convicted on the 23rd September, 1986 at the Assize Court of Larnaca (Criminal Case No. 10011/86) on one count of the offence of possessing controlled drugs contrary to sections 2, 3, 6(1) (2), 30 and 31 of the Narcotic Drugs and Psychotropic Sub-

stances Law, 1977 (Law No. 29/77) and on one count of the offence of possessing controlled drugs with intent to supply them to others contrary to sections 2, 3, 6(1)(3), 30 and 31 of the above Law and was sentenced by Papadopoulos, P.D.C., Constantinides, S.D.J., and G. Nicolaou, D. J. to three years' imprisonment on the second count with no sentence being passed on the first count.

G. Georghiou, for the appellant.

A. M. Angelides, 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 on two counts, the first one for possession of controlled drug of Class A of Part I of the First Schedule namely 52.4 grams of cocaine, contrary to ss. 2, 3, 6(1)(2), 30 and 31 of the Narcotic Drugs and Psychotropic Substances Law, 1977 (Law No. 29 of 1977) as amended by Law No. 67 of 1983, without a permit from the Minister of Health, and the second one for possession of the said controlled drug with intent to supply it to other persons. He was sentenced to three years' imprisonment on the second count, but no sentence was passed on the first count, as it was held by the Assize Court to be covered by the second count.

The appellant comes from Lebanon, is 46 years of age, married and lives in Beirut. He arrived in Cyprus through Larnaca Port on the 27th August, 1986, from June on board the ship "Empress". He stated at the Passport Control that he would be leaving on the same day through Larnaca airport for Geneva. There was, however, information about him in the possession of the Authorities to the effect that he might be involved in narcotics hence, he was subjected to a very thorough examination. A search of his luggage by the Customs revealed nothing and a personal search was decided upon. It was noticed at that stage that the heels of his shoes were somehow high and they bore new nails whilst the shoes were old. The Police then were brought in and together with the Customs Officer, suspecting that something might be concealed therein they opened the heels and found neatly tacked

therein a bag containing a white powder which, on subsequent scientific examination it proved to weigh 52.4 grams with a content of 66% of cocaine

The appellant was thereupon arrested and he gave a statement to the police in which he mentioned, inter alia, that he intended to take this to Geneva in order to supply with it a friend of his, being, however, himself also a user of that narcotic drug The appellant has no previous record, he is a member of the Secret Services of his Country and this predicament will bring to an end his career and loss of the benefits of many years of service

The Assize Court decided to differentiate this case from other cases in which the predominant feature is that of trading in narcotics where profit is the motivation and for that reason it felt that greater leniency was justified It stressed, however, that offences relating to narcotics in general are of a serious nature and drew atttention to the fact that in the case of the second count there was contained the element of the intention to supply narcotics to a third person for which offence the Law provides a maximum sentence of fourteen years imprisonment, it referred, however, to the cases of *Niazi Abdullah* v *The Republic* (1971) 2 C L R 323 where this principle was expounded, and to the cases of *Mao* v *The Republic* (1971) 2 C L R. 171, *Howell* v *The Republic* (1972) 2 C L.R 111, *Imbrahim Makki* v *The Republic* (1972) 2 C.L.R 76 and *Atia* v *The Republic* (1979) 2 C L R 214 in order to show the trend of sentences Indeed the reporting of appeals against sentence offers such a material and I feel that this is a good opportunity to complete in some way this list of cases by referring to the more recent ones, inter alia *Rahma* v *The Republic* (1984) 2 C L R. 363; *Sultan* v *The Republic* (1983) 2 C L R 121; *Kyriakides* v *The Republic* (1983) 2 C L.R 94 *Paraskeva* v *The Republic* (1983) 2 C.L R 85, *El-Etri and Others* v *The Republic* (1985) 2 C L R 40; *Braidi and Another* v. *The Republic* (1985) 2 C L R 137. *Ahmed Hassan Zreka and Others* v *The Republic* Cr Apps. Nos. 4705 etc, judgment delivered on the 20th June, 1986* and Cr App 4781 *Kamil Mohamet Said*

* Reported in (1986) 2 C L R 134

Kabbara v. The Republic, judgement delivered on the 16th December 1986.*

We have given due consideration to what has been argued on behalf of the appellant by his counsel in this Court, which in effect is on the same line along which the address in mitigation was pursued before the Assize Court. The totality therefore of the circumstances that were relevant to the question of the Assize Court determining the appropriate sentence that it had to impose on the appellant, were all before it and in fact highlighted in this Court in an effort to persuade us that the sentence appealed from was manifestly excessive.

We are afraid we have not been persuaded that that is so. Much as we feel sorry for the predicament of the appellant and the consequences that this sentence will entail on him and on his career, we cannot ignore the fact that this hard drug was meticulously concealed in the heels of his shoes and was being transported across Europe for use by him, but admittedly with the intention of supplying same to another person—a friend of his in Switzerland—and that was done because it could, as he stated in his own statement—be more cheaply secured in Beirut than in Geneva. Characteristically it may be mentioned that whereas for one gram of cocaine he paid in Geneva S. Fr. 200.- in Lebanon he bought 40 grams of cocaine for U. S. $1,000.-. It is this trafficking of narcotics that Courts have a duty to stop going through Cyprus and the sentences imposed by our Courts should reflect both our determination to do that service to our people and to other peoples and also to manifest our distaste for this horrible category of crimes.

For all the above reasons this appeal is dismissed.

Appeal dismissed.

* Reported in (1986) 2 C.L.R. 190.