1987 December 4

[A LOIZOU LORIS STYLIANIDES JJ]

MICHAEL NICOLA CHANINE,

Appellant,

v

THE REPUBLIC,

Respondent

(Criminal Appeal No 4920)

Sentence — Possession of narcotic drugs (543 grams of heroin) contrary to sections 2, 3 6(1)(2), 30 and 31 of the Narcotic Drugs and Psychotropic Substances Law 29/77 as amended by Law 67/83 and possession of the said drug with intent to supply it to another person, contrary to sections 2, 3, 6(1)(3), 30 and 31 of the said law — Appellant a Lebanese 24 years' old with unfortunate family circumstances — Personal circumstances are in cases such as this of minor importance — 4 years' imprisonment on the second count, no sentence on the first count — Sentence upheld

The appellant, a Lebanese man 24 years' old, was convicted for the aforesaid offences and sentenced to 4 years' imprisonment on the second count, whilst no sentence was passed on the first count

The appellant admitted that he had agreed in consideration of a payment of 2 000 U S Dollars to take the drug in question at Junieh port in Lebanon and delivered it in Chechoslovakia

Counsel for the appellant complained that the trial Court failed to approach the question of sentence with the principle of individualisation in mind, he, also argued that in view of the unfortunate family circumstances of the appellant, there is still room for more leniency

Held, dismissing the appeal (1) Personal circumstances and the misfortunes of a person engaged in the transportation of narcotics are relatively of minor importance in view of the prevalence of the offence

(2) The personal circumstances of the appellant as well as the circumstances relating to the offence were duly taken into consideration by the Assize Court

(3) Whatever the sentiments of this Court may be for the plight of his family, the innocent victims of his own criminal activity, we cannot interfere with the sentence imposed

Appeal dismissed

Cases referred to

Mehmet v The Police (1970) 2 C L R 62,

Abdullah v The Republic (1971) 2 C L R 232,

Maos 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,

Kynakides 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 Others v The Republic (1985) 2 C L R 137,

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

Nazir v The Republic (1986) 2 C L R 194,

Pankian v The Republic (1987) 2 C L R 223

Appeal against sentence.

Appeal against sentence by Michael Nicola Chanine who was convicted on the 10th October, 1987 at the Assize Court of Larnaca (Criminal Case No 7786/87 on one count of the offence of possessing a controlled drug contrary to sections 2, 3, 6(1)(2), 30 and 31 of the Narcotic Drugs and Psychotropic Substances Law, 1977 (Law No 29/77 as amended by Law 67/83) and on one count of the offence of possessing a controlled drug with intent to supply it to another person contrary to sections 2, 3, 6(1)(3), 30 and 31 of the above Law and was sentenced by Nikitas, P D C , Laoutas, S D J and G Nicolaou, D J to four years' imprisonment on the second count with no sentence being passed on the first count

Chr Triantafyllides, 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 of two charges, one of possessing a controlled drug Class A, of Part (1), of the First Schedule namely, 543 grams of Diamorphine, generally known as heroin, contrary to Sections 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 other of possessing the said controlled drug with intent to supply it to another person contrary to Sections 2, 3, 6(1)(3), 30 and 31 of the said Law.

He was sentenced to four years imprisonment on the second count which carries a maximum term of imprisonment of fourteen years. No sentence was passed on the first count as in substance it was contained in the second one. Furthermore the narcotics and the money seized were forfeited.

The appellant who is a Lebanese national, twenty-four years of age, married, with a child nine months old, an electrician by profession arrived by boat at Larnaca Port on the 30th June, 1987, coming from Junieh Lebanon. After a Customs and Police search, he was found to have hidden in the soles of his shoes quantities of a white powder rapped up in a nylon cover. He was further discovered to have hidden in the same way in another pair of shoes which he was carrying in his luggage more white substance, making a total quantity of 543 grams and in the particulars of the offences on the information that was the quantity mentioned. Upon, however, examination of the substance in question by the Government Laboratory it was found that its content in Diamorphine - heroin - was only 20%, that is a 108.6 grams but the Court directed its attention to the matter and correctly proceeded with this in mind without amending the particulars of the offence which was not necessary in the light of the authority of *Mehmet v. The Police* (1970) 2 C.L.R. 62.

The appellant originally pretended ignorance of the possession of the drug in question but later admitted the offence and said that it was given to him by two unknown persons at Junieh Port before the departure therefrom. They were acting also on behalf of somebody else who had earlier approached him for the same purpose. He also admitted to have received U.S.$200 as down

payment, the remaining U S $1,800, were to be paid to him as soon as he delivered the heroin in question in Czechoslovakia In fact apart from an amount of six dollars which he spent on the boat, the remaining down payment was found on him and seized by the Police

This Court has on many occasions pronounced on the seriousness of the offences regarding the possession of narcotics and possession of same with intent to supply them to others and on numerous cases it made known its views as to the appropriate sentences to be imposed on those committing such offences on numerous cases (See inter alia *Niazi Abdullah v The Republic* (1971) 2 C L R 232, *Maos 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, 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 (1986) 2 C L R 134, Cr App 4790 Moustafa Hassan Nazir v The Republic, judgment delivered on the 16th December 1986* *

Reference may also be made to Criminal Appeal No 4874 *Araxie Grikor Pankian v The Republic* (judgment delivered on the 30th October 1987, as yet unreported)** in which the Supreme Court took the opportunity to say that the personal circumstances and the misfortunes of a person engaged in the transportation of narcotics are relatively of minor importance in view of the prevalence of the offence

It is to be noted that these drug traffickers, these merchants of death, as they should be more appropriately described take advantage of people living in poverty and in tragic circumstances and from among them they recruit their couriers for the execution of their illicit trade

It is with much regret that the sentences so far imposed by the Courts in Cyprus for those trying to use our country as a transit station for their horrible trade have not discouraged them from doing so

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* *Reported in (1986) 2 C L R 194*

** *Reported in (1987) 2 C L R 223*

In the present case there has been argued by learned counsel for the appellant that the Assize Court failed to approach the question of sentence with the principle of individualization in mind. We are afraid we cannot agree with that. It is obvious from the judgment of the Assize Court that the personal circumstances of the appellant as well as the circumstances relating to the offence were duly taken into consideration and the Assize Court expressly said so.

For an offence which is prevalent and particularly so with regard to persons coming from Middle East countries, it imposed less than one third of the maximum sentence provided by the Law which shows the extent of the individualization made in this case.

Learned counsel for the appellant further argued that there was still room for more leniency, in view of the unfortunate family circumstances of the appellant. Whatever our sentiments may be for the plight of this family, the innocent victims of his own criminal activity, we cannot interfere with the sentence imposed. The sad truth is that the innocent members of ones family inevitably pay the bitter price for the crimes committed by those who should normally be their supporters.

For all the above reasons the appeal is dismissed.

Appeal dismissed.