1987 December 12

[A. LOIZOU, LORIS, STYLIANIDES, JJ.]

BIRUTA MARCO,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 4919).

Sentence — Mitigating factors — Co-operation with the Police leading to arrest of accomplice — Conduct deserving credit and warranting deferential treatment in favour of the appellant — Sentence of 3 1/2 years' imprisonment for possessing a controlled drug (872 grams of heroin) with intend to supply it to another person imposed on appellant, who had co-operated as aforesaid with the Police, and on ex accused 2 — Sentence on appellant reduced to 3 years' imprisonment

Sentence — Disparity of sentence — Sentencers should take into account factors warranting deferential treatment in favour of an offender — Co operation with the Police leading to arrest of an accomplice is such a factor — Same sentence (3 1/2 years imprisonment) imposed on both appellant and such an accomplice — Sentence on appellant reduced by 6 months

Sentence — Possession of narcotic drugs (872 grams of heroin) with intent to supply it to other persons — 3 1/2 years' imprisonment — Appellant a divorced woman of Austrian Nationality with a minor child — The sentence as such is not excessive — Personal circumstances should in cases of this nature, be given little weight — Fact that the drug was not intended for the people of this Country is not a factor that can be taken into consideration

The appellant, a divorced woman of Austrian Nationality with a minor child of 11 was caught at Larnaca Airport when she was about to leave for Athens, having in her possession 872 grams of heroin. On arrest, after having been cautioned she replied «I am sorry, they were given to me by a man and a lady somewhere in Larnaca, let me show the place»

As a matter of fact the appellant led the police to a Hotel and indicated the room, where the drug was handed over to her by the «lady» referred to in the aforesaid statement

As a result, the Police was able to arrest ex-accused 2, a nurse from Lebanon, who confessed that she had handed over the drug to the appellant. The appellant also gave to the Police the name of the brain behind this unlawful enterprise, who is a man in Spain.

The appellant as well as ex-accused No. 2 were sentenced by the Assize Court, on their own pleas of guilty to 3 1/2 years' imprisonment each

Counsel for the appellant complained inter alia that the sentence imposed on her is excessive, that her personal circumstances were not properly taken into consideration by the trial Court, and above all that she was punished with the same term of imprisonment as ex-accused 2 was punished.

Held, allowing the appeal, A. Louzou, J. dissenting: (A) Per Loris J. (1) The sentence is not excessive. The trial Court did not fail to individualise the sentence to the extent warranted by the circumstances.

(2) However, the trial Court lost sight of an important factor, notably disparity of sentence, which renders the sentence under consideration, wrong in principle and calls for our intervention The term «disparity» is used in the sense that the sentences ignored factors, warranting differentiation of the sentence in favour of the appellant.

(3) The factor warranting differentiation in favour of this appellant is her immediate confession to the Police and above all her full cooperation with the Police

(4) In the circumstances, the sentence should be reduced to 3 years' imprisonment

B) Per Stylianides J (1) The fact that the narcotic drug involved in this case was not intended for the people of this country, is not a factor that can be taken into consideration

(2) Having regard to the gravity and the prevalence of the offence and the personal circumstances of the appellant which in cases of narcotics though they cannot be overlooked, they are only in general a rather marginal factor the sentence of three and a half years is not excessive

(3) However, the fact that the offender has given information to the Police in connection with the investigation or prosecution of offences committed by other persons must be taken into account, where an offender, who has committed grave offences, discloses to the police information of value in the investigation of grave offences committed by others, or the involvement of others in the same offences, the sentencer may give credit to the offender by discounting the sentence to a substantial degree, but the extent of the discount is a matter to be decided in relation to the circumstances of a particular case

(4) This appellant is entitled to credit and justice will be done in this case, if the sentence is reduced by six months to three years' imprisonment.

Appeal allowed by majority.

Cases referred to:

Alexandrou v The Director of Customs (1985) 2 C L.R. 47,

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

R v. Newton, 4 Cr App. R 8;

R. v. Hawkins and Others [1986] Cr. L.R 194;

R. v. Smith [1986] Cr. L R 641,

R. v. Walton [1987] Cr. L.R 512,

Pinkkis v The Republic (1985) 2 C L.R. 232;

Vryonis v. The Police (1986) 2 C.L R. 103;

Koukos v. The Police (1986) 2 C.L R. 1;

Georghiou and Others v. The Republic (1987) 2 C.L.R. 109;

R. v. Towle, The Times, 23.1.86,

R. v. Wintle, The Times, 23.1 86,

Azinas and Another v. The Police (1981) 2 C L.R 29;

Antoniades v The Police (1981) 2 C.L R. 29;

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

Loizou v. The Republic (1971) 2 C.L R. 196;

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

R v Lowe [1977] Cr App R 122,

R. v. Davies and Gorman [1978] 68 Cr App R. 319

Appeal against sentence.

Appeal against sentence by Biruta Marco who was convicted on the 15th October, 1987 at the Assize Court of Larnaca (Criminal Case No. 7185/87) 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 Substances Law, 1977 (Law No

29 of 1987 as amended by Law 67/83) and on one count of the offence of possessing controlled dug with intent to supply it to others 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 3 1/2 years' imprisonment on the second count with no sentence being passed on the first count.

E. Efstathiou with C. Kamenos, for the appellant.

A. M. Angelides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgments were read:

A. LOIZOU J.: I am afraid I cannot agree with approach of my learned Brethren in this appeal.

The Larnaca Assize Court found the appellant guilty on her own plea, of two counts. One of possessing a controlled drug, Class «A», of Part 1, of the First Schedule, namely 872 grams of Diamorphine, generally known as heroin without a permit from the Minister of Health, 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. This was Count 1, on the information The other was Count 2 on the information of possessing 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.

As regards the first count the appellant was jointly charged with one Rose Youssef Fahd, of Lebanon, a nurse forty-one years of age, hereinafter to be referred to as ex-accused 2, who was also charged on a separate count, - count 3 on the information, - with supplying on the 20th June 1987, to another person the said controlled drug

Ex-accused 2, pleaded also guilty to both counts 1 and 3. The appellant was sentenced to three and a half years imprisonment on the second count and ex-accused 2 to three and a half years of imprisonment on the third count. No sentence was imposed on both of them on the first count for possession as the offence was in substance contained in the other two counts. In support of this approach the Assize Court cited the case of *Alexandrou v. The Director of Customs* (1985) 2 C.L R 47 Needless to say that the

drug in question and the other exhibits used in the commission of the offence were forfeited

The facts of the case are briefly these. The appellant who is forty-two years of age, of Russian origin but Austrian nationality, resides and works since 1982 in Madrid as a mechanic of electronic calculators She came to Cyprus from Madrid and stayed at the «Sunhall» hotel Two or three days later, namely on the 21st June 1987, when she was about to depart from Larnaca airport for Athens, she was subjected to a personal search and the Customs and Police Authorities discovered part of the quantity of the said controlled drug packed in a prophylactic, and hidden in her genital organs The remaining quantity was carefully hidden in her handbag and the high-heeled shoes she was wearing The latter quantity was discovered by the Police when the appellant asked to change her shoes

Upon an analysis of the substance in question by the experts at the Government Laboratory it was ascertained that the pure content in heroin was 305 2 grams This is the quantity of heroin the Assize Court had in mind in passing sentence finding it, on the strength of the authority of *Mehmet v The Police* (1970) 2 C L R 62 that it was unnecessary to amend the particulars of the offence on the Information

The appellant gave valuable information to the Police, which led to the arrest of ex-accused 2 Indeed she went about with the Police pointed out the hotel-room in which the heroin was delivered to her by two foreigners, one man and a woman, that is the hotel in which ex-accused 2 was staying, who had arrived at Larnaca from Junieh Lebanon the day before Ex-accused 2 was arrested, later that day She gave a voluntary statement to the Police in which she referred in detail to the circumstances under which the transportation of the heroin from Lebanon was effected She said that she had taken delivery of it at Junieh from a person with whom they had prearranged to do so and who paid to her five-hundred dollars remuneration, the instructions being that she would deliver same to a Lebanese who would approach her upon her arrival at Larnaca Port In fact a young Lebanese unknown to her, but whom from the conversation she ascertained that he was to be the recipient of the heroin, met her at the port and they went together to the hotel where later the Lebanese brought the appellant to whom the delivery was effected

It may be mentioned here that in the course of the address in mitigation of learned counsel for the appellant, facts contradicting the version of the prosecution as contained in the voluntary statement of the appellant, Exhibit 2, were alleged. As the difference, however, between those facts was substantial, in so far as the appropriate sentence to be imposed was concerned, the Assize Court heard evidence in order to be in a position to ascertain the correct factual background for the purposes of sentence. It rightly directed itself on the law and referred in that respect to the cases of *R. v. Newton*, 4 Cr. App. R. (S) 8; *R. v. Hawkins and Others* [1986] Crim L. R. 194; *R. v. Smith* [1986] Crim. L. R. 641; *R. v. Walton* [1987] Crim. L.R. 512 and to the judgments of this Court in *Pirikkis v. The Republic* (1985) 2 C.L.R. 232 and *Georghios Vryonis v. The Police* (1986) 2 C.L.R. 103.

On the other hand the appellant was approached in Madrid by a Lebanese by the name of Rihana, who promised her employment, a fact that would allow her to have additional income. Since she was in need of money, being divorced from her husband, she accepted. It was he who approached her again on the 10th or 12th of June and instructed her to come to Cyprus and take delivery of narcotics from a man who would telephone to her at the «Sunhall» hotel where she would stay. He gave her 160,000 Pasetas and the balance of her remuneration amounting to 300,000 Pasetas would have been paid to her when she would deliver the «staff» there. The equivalent in Cyprus money was in all £1,500.

The Assize Court then examined the conflicting versions and made its own findings preferring her statement to the Police. Her counsel stressed in particular in his address the fact that she gave decisive assistance to the Police and also to the fact that since January last she was undergoing psychiatric treatment with favourable results. A good conduct certificate was produced to the effect that she has no criminal record in Spain. It was also urged that she became the victim of persons who exploited her financial needs which were caused by her activities in the casino.

The Assize Court observed that both the appellant and ex-accused 2, were organs of others. It may, however, be said that without the cooperation of people like the appellant and ex-accused 2, the smuggling of narcotics would have been limited immensely. The Assize Court then went on to say that the manner

the first appellant acted by hiding the heroin in her genital organs, shows how determined she was to succeed in her mission and that people should not be permitted to solve their financial problems in such a manner that ultimately condemns other fellow human beings to a slow and degrading death.

I may at the outset say that the sentence imposed on the appellant is not as such excessive in the circumstances and that her personal circumstances including her cooperation with the Police to trace ex-accused 2, were duly taken into consideration by the Assize Court which indeed individualized the sentence it imposed as the case called for.

It may be pertinent to quote here form the text-book of G. M. Pikis, «Sentencing in Cyprus», at p. 27 where it is said:

> «It has been repeatedly held that admission of the crime upon arrest is a valid reason for mitigation. The weight that may be attached to confessions will depend on the stage at which an admission is made, other evidence in the hands of the police supporting the charge and generally the motive behind the confession. Certainly, greater weight is attached to a confession made out of remorse than a belated confession solely designed to improve the position of the accused.»

Moreover one should not lose sight of the fact that heroin is one of the most dangerous narcotics, it is easily concealable and of a great street value once its quantity can be increased and turned into small doses in this way and because of its addictive nature it fetches great profits so there is a wide margin for corruption and attraction of collaborators. It is for these reasons that this Court has upheld on appeal sentences of imprisonment ranging from four to six years as regards this category of narcotics and I agree with my brother Loris, J., who has just said that he «did not hesitate saying that the sentence under consideration viewed from this angle is not excessive at all; It is rather on the lenient side, in particular if we bear in mind that the narcotic in question is heroin».

It is with the approach of my learned brethren on the question of disparity of sentence that my disagreement rests.

As regards disparity I had the occasion to deal with the matter and refer to a number of authorities in the case of *Koukos v. The Police* (1986) 2 C.L.R. 1, at pp. 10-12, which approach was adopted in the case of *Georghiou and Others v. The Republic*

(1987) 2 C L R 109 at pp 118-119 I need not therefore repeat them here Suffice it to say that as pointed but by Thomas on Principles of Sentencing at pp 69-70, « a dilemma arises when the Court is of the opinion that the sentence passed on the appellant is correct and those passed on his co-defendants are inadequate To reduce the sentence passed on the appellant would result in a further incorrect sentence In the face of this situation the Court will not normally reduce the longer sentence unless the disparity is particularly gross »

Reference may also be made to the case of *Regina v Towle* and *Regina v Wintle*, The Times 23 1 1986, where it was held that «when a Court was considering an appeal against sentence based on disparity, what was relevant was whether right-thinking members of the public, knowing all the facts and looking at what had happened, would say 'something has gone wrong here in the administration of justice which has resulted in one or more convicted persons being treated unfairly' The fact that particular persons had a sense of grievance was neither here nor there »

It is obvious that the sentence imposed on the appellant is in the circumstances of the case not manifestly excessive nor is there any disparity as regards the sentence imposed on her in comparison to that imposed on ex-accused 2, so as to be considered that something has gone wrong in the administration of justice which has resulted in her being treated unfairly and justify the reduction of her sentence by this Court on appeal

For all the above reasons I dismiss the appeal

LORIS J The present appeal is directed against the sentence of 3 1/2 years' imprisonment imposed on the appellant by the Assize Court of Larnaca (Larnaca Cr Case No 7185/87) after she was found guilty, on her own plea, of the offences of possessing (Count I) narcotic drugs viz 872 grams of heroin without the authority of the Director of Medical Services, and for possessing the same narcotics with intent to supply them to others (count II) contrary to the provisions of the Narcotic Drugs and Psychotropic Substances Law 1977, (Law No 29 of 1977) as amended by Law No 67 of 1983

The salient facts of this case are briefly as follows

The appellant aged 42 of Austrian Nationality, divorced, with a minor child 11 years of age, was residing and working ever since

1982 in Madrid. She arrived in Cyprus by air. via Athens, on 18.6.1987, and stayed at the Sun Hall Hotel at Larnaca.

On 21.6.87 at 13 hours when she was at Larnaca airport about to depart for Athens, she was searched and the quantity of the aforesaid narcotic drugs was found carefully concealed in her private parts, her shoes and her bag. On arrest, after having been cautioned she replied: «I am sorry, they were given to me by a man and a lady somewhere in Larnaca, let me show the place.»

As a matter of fact the appellant at the same time led the Police to a hotel in Larnaca town, the name of which she did not know, and indicated to the Police room No. 1 of the said Hotel as the room where the 'Lady' she had referred to after caution, handed over to her the quantity of the narcotic drugs in question. The said Hotel was «Kallithea» Hotel and room No. 1 thereof, was occupied by ex-accused No. 2 in this case who had arrived in Cyprus from Lebanon on 20.6.1987.

Ex-accused No. 2, a nurse of Lebanon, was traced by the Police that very afternoon, she was arrested and she confessed that she did hand over to the appellant the narcotic drugs in question which she had brought with her from Lebanon; ex-accused No. 2 admitted that she arrived from Lebanon on 20.6.87 and that she stayed at «Kallithea» Hotel-room No. 1 - where she delivered the narcotic drugs in question to the appellant.

The appellant also gave to the Police the name of the brain behind this unlawful enterprise, in Spain.

As a result of the immediate confession of the appellant to the Police and the information she has furnished in respect of ther collaborator in Cyprus ex-accused No. 2 was arrested and brought to justice for possessing (Count I) and supplying to the appellant - ex accused No. 1 - (Count II) the narcotic drugs in question.

The appellant as well as ex-accused No. 2 were sentenced by the Assize Court, on their own pleas of guilty, to 3 1/2 years' imprisonment each.

Ex-accused No. 2 did not file an appeal against the sentence imposed on her.

The appellant filed the present appeal complaining inter alia that the sentence imposed on her is excesive that her personal circumstances were not properly taken into consideration by the

trial Court, and above all that she was punished with the same term of imprisonment ex-accused 2 was punished; on this latter issue learned counsel for the appellant emphasized the fact that had it not been for the information furnished by the appellant, her accomplice in Cyprus, ex-accused No. 2, would have never been brought to justice. Learned counsel for the appellant elaborated at length on disparity of sentence citing in this connection the case of *Azinas & Another v. The Police* (1981) 2 C.L.R. 9 at pp. 138-142, and invited us to reduce the term of imprisonment imposed on his client.

Learned counsel appearing for the Republic in his able address pointed out that there was no failure on the part of the trial Court to individualise sentence to the extent warranted in the circumstances, and stressing the prevalence of the offences of this nature nowadays and the need of meeting them sternly, invited us to uphold the sentence of the trial Court.

Before going into the merits of this appeal I find it necessary to repeat that our task on appeal is to review the sentence and not to assess it; the assessment of the sentence is the province of the trial Court (*Antoniades v. The Police* (1983) 2 C.L.R. 21 at p. 23).

I am not satisfied that the sentence is excessive in view of the psychological problems of the appellant; these problems together with all other factors relevant to the person of the appellant were duly taken into account by the trial Court who did not fail to individualise sentence to the extent warranted in the circumstances.

On the other hand offences of this nature should be faced sternly by Courts; and I am in full agreement with my brother Judge Stylianides who stated in *Sultan v. Republic* (1983) 2 C.L.R. 121 at p. 124:

> «The Courts of this Country have to impose severe sentences of imprisonment to stamp out the social evil of narcotics for the protection not only of people of Cyprus but of the people all over the world, as this offence is an international one.....»

And I do not hesitate saying that the sentence under consideration viewed from this angle is not excessive at all; it is rather on the lenient side, in particular if we bear in mind that the narcotic in question is heroin.

Obviously bearing in mind the above, it seems that the learned Judges of the trial Court lost sight of another important factor, notably disparity of sentence, which renders the sentence under consideration, wrong in principle and calls for our intervention

I have used the term disparity of sentence in the sense that «the sentencers (in this case) in imposing the same sentence have ignored factors which warrant a differential in favour of the appellant (vide Principles of Sentencing by D A Thomas 2nd ed p 71)

And in the case under consideration the factor which warrants differentiation between the appellant and Ex-accused 2 is the immediate confession of the appellant and above all the simultaneous disclosure of her accomplice in Cyprus (ex-accused 2) who was arrested and brought to justice only on account of appellant's readiness to disclose her It is transparent from the record that ex-accused 2 brought with her the narcotics in question, from Lebanon to Cyprus on 20 6 87 without having been detected by the police, on the same day she delivered to the appellant the quantity of the said narcotics at 'Kallithea' Hotel in Larnaca - room No 1 -, where she was staying, and she was not detected either, and it was only after the appellant confessed and gave information to the Police leading the police at her own request to 'Kallithea' Hotel that ex-accused 2 was arrested and eventually brought to justice

Undoubtedly such a conduct on behalf of the appellant, which exposed her to tremendous risks from ruthless traders of narcotics, is a factor which warrants deferential by the sentencer in favour of the appellant, a deferential which is well settled by our case Law

Thus in the case of *Georghios Loizou v The Republic* (1971) 2 C L R 196, a case of narcotic drugs, the learned President of this Court delivering the unanimous judgment of the Court of Appeal, reduced the sentence of the appellant, who provided the police with information as a result of which his co-accused were arrested, from 5 to 4 years, stating (at p 199)

> «We take the view that, in the interest of the effort to fight crime persons who have committed offences together with others, should be encouraged to help the police to discover their accomplices, and they can be so encouraged by relatively less severe than otherwise sentences»

The above principle was reiterated in *Rahma v. Republic* (1984) 2 C.L.R. 363, where the following are stated at p. 367 of the report:

«Where two or more offenders are concerned in the same offence, a proper relationship should be established between the sentence passed on each offender. A difference in the degree of culpability, or the presence of mitigating factors affecting one offender only, should be reflected in a distinction between their sentences. The fact that one accused has pleaded guilty or given information which has led to the prosecution of his accomplices justifies a differential.»

Our learned brother Pikis in his treatise «Sentencing in Cyprus» dealing with the subject of «repentance after arrest» states the following at page 28:

«It is in the public interest to encourage offenders to confess their crimes; naturally, the extention of leniency to them is a practical reward intended to encourage confessions and make the path of surrender not unattractive. Repentance will be more convincing if accompanied by the surrender of the tools of the crime if any, to the police and by the disclosure of the names of accomplices.»

In the appeal under consideration the appellant as well as ex-accused No. 2 were sentenced to 3 1/2 years imprisonment each; the sentencers obviously ignored the factor of repentance shown by the appellant who did not only confess in order to make her position better, but also gave information which led the police to the arrest and prosecution of ex-accused 2 who would otherwise go scot-free.

In the circumstances I hold the view that we should intervene and substitute the sentence of the appellant by a less severe sentence compared with the sentence imposed on ex-accused 2.

Having given to the matter my best consideration, I have decided that the sentence of appellant should be reduced from 3 1/2 years to 3 years, to run from the day she was first arrested i.e. the 21st June 1987, and that the present appeal should be allowed accordingly.

STYLIANIDES J.: The appellant was prosecuted before the Larnaca Assizes for possession of a controlled drug, Class «A», namely 872 grams of Diamorphine, known as heroin, without a

permit from the Minister of Health, 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; and for possession of the same drug with intent to supply it to another person contrary to sections 2, 3, 6(1)(3), 30, 31 of the same Law.

Another person, a nurse from Lebanon, was accused No. 2 in the same case. She was prosecuted for possession of the same drug and with supplying of same to another person - the present appellant.

Both accused pleaded guilty to the counts on the information.

The Assize Court imposed sentence of three and a half years of imprisonment on each one of the accused on the count of possession with intent to supply and supplying, respectively, but no sentence on the count of possession was passed, as this offence was contained in the other counts, on the basis of the decision of this Court in *Alexandrou v. Director of Customs* (1985) 2 C.L.R. 47.

This appeal is directed against the sentence.

The facts were set out in the Judgment of my brother Judge Loris and I need not repeat them.

Learned counsel for the appellant submitted that the sentence, in view of the personal circumstances of the appellant, was manifestly excessive and stressed that the personal circumstances of the appellant were not duly taken into consideration; and that the trial Court did not do a discount on the fact that the appellant had helped the police in the investigation, detection and prosecution of the offences committed by ex-accused 2.

It is well settled that the assessment of sentence is primarily the province of the trial Courts and that the task of this Court is only to review it.

The offences involving narcotic drugs are of grave nature.

The fact that the narcotic drug, involved in this case, was not intended for the people of this country, is not a factor that can be taken into consideration.

In *Sultan v. Republic* (1983) 2 C.L.R. 121, it was said at p. 124:-

«The Courts of this country have to impose severe sentences of imprisonment to stamp out the social evil of narcotics for the protection not only of the people of Cyprus but of the people all over the world, as this offence is an international one. The Supreme Court time and again stressed that offences involving narcotic drugs have to be faced sternly by the Courts. The possession, trafficking and dealing with narcotics is a social evil against which an international compaign is being waged.»

Having regard to the gravity and the prevalence of the offence and the personal circumstances of the appellant, which in cases of narcotics, though they cannot be overlooked, they are only in general a rather marginal factor, the sentence of three and a half years is not excessive.

The Courts in imposing sentence have to take account, however, of the fact that the offender has given information to the police in connection with the investigation on prosecution of offences committed by other persons.

Where an offender who has committed grave offences discloses to the police information of value in the investigation of grave offences committed by others, or the involvement of others in the same offences, the sentencer may give credit to the offender by discounting the sentence to a substantial degree: but the extent of the discount is a matter to be decided in relation to the circumstances of a particular case.

The organized society has an interest in the prevention, detection and prosecution of crime.

In *R. v. Lowe* [1977] 66 Cr. App. R. 122, Roskill L. J. said:-

«Unless credit is given in such cases there is no encouragement for others to come forward and give information of invaluable assistance to society and the police which enables these criminals — and these crimes are all too prevalent.... — to be brought to book. Those are the considerations this Court has to have in mind.»

And further down:-

«For those matters we thing the appellant is entitled to greater credit than that which the learned judge allowed, much as we respect the reasons the learned judge gave for the sentence he passed.

In those circumstances and bearing in mind the sentences passed in comparable cases we think justice will be done in this case if we reduce the sentence passed.»

Sentence of ten years was reduced to a total of five years.

In *R. v. Davies and Gorman* [1978] 68 Cr. App. R. 319, Lord Widgery C.J., said:-

«It is already established in recent authority, and more especially in the case of *Lowe* amongst other things, that it is proper to allow a substantial discount in serious crimes of this kind where one of those charged and found guilty has rendered significant assistance to the police in the course of their inquiries. Of course this does not apply to all crime. It does not apply to minor crime.

.....

But, as has been pointed out in *Lowe*, public policy does require that criminals who are prepared to turn over and assist the police ought to be encouraged in that regard.»

In *Rahma v. Republic* (1984) 2 C.L.R. 363, at p. 367 it was said:-

«Where two or more offenders are concerned in the same offence, a proper relationship should be established between the sentence passed on each offender. A difference in the degree of culpability, or the presence of mitigating factors affecting one offender only, should be reflected in a distinction between their sentences. The fact that one accused has pleaded guilty or given information which has led to the prosecution of his accomplices justifies a differential».

Offenders who have committed offences together with others should be encouraged to help the police to discover their accomplices. They can be so encouraged by relatively less severe that other ones' sentences. This is conducive to the effort to combat crime, especially so the crime involving narcotics.

In *Georghios Loizou v. The Republic* (1971) 2 C.L.R. 196, the sentence of the appellant was reduced from five to four years, on the ground that the appellant provided the police with information, as a result of which his co-accused was arrested.

In *Davies and Gorman* case (supra), Gorman had received a sentence of nine years and it was argued on his behalf that the

sentence of Davies, who received ten years by the first instant Court, should not be reduced for consideration of assisting the police in order to provide Davies with the substantial discount, if the result is going to be to reduce the sentence on Davies, to below that passed on Gorman. Lord Widgery, C.J. said the following:-

«We have considered this argument and we reject it. It seems to us the only logical way to approach this matter is, as I have said, to assess all the sentences as they would be if treated individually. Then, if as a result one finds that criminal A, who had the heavier sentence than criminal B, turns out with a lower sentence by reason of the adjustment for assisting the police, so be it. We do not see any other way in which the matter could be more fairly disposed of than by a simple approach of that kind.»

The sentence of Davies was reduced to seven years and the sentence of Gorman was upheld.

In the present case accused No. 2, who brought from Lebanon the prohibited heroin, was arrested and brought to justice only on account of appellant's information and assistance given to the police. The crime of ex-accused 2 was detected on the information given by her, who took pains to accompany the police round Larnaca town.

In this particular case this appellant did not only disclose to the police information, but she took part in the operation, to go round Larnaca to the hotel where the transaction of the handing over took place, to give further information, and, due to all the assistance given by this appellant to the police, the woman from Lebanon was found and finally prosecuted. Had it not been for the assistance rendered by this appellant to the police authorities, the person who did import this narcotic in Cyprus for transportation to the west, would not have been detected and would not have been prosecuted.

The trial Court, obviously, disregarded the factor of repentance shown by the appellant and the information and help that she has given to the police, as aforesaid.

I am of the opinion that this Court should interfere, as the appellant is entitled to credit, and that justice will be done in this case, if we reduce the sentence passed by six months, to three years to run from the date of the appellant's arrest, 21st June, 1987.

A. LOIZOU J.: In the result the appeal is allowed by majority and the sentence on the appellant is reduced to one of three years to run from the date of her arrest.

Appeal allowed by majority. Sentence reduced.