

1987 December 4

[A LOIZOU, LORIS, STYLIANIDES, JJ]

EDMOND MAJID AOUN,

*Appellant,*

v

THE REPUBLIC,

*Respondent*

*(Criminal Appeal No 4839)*

*Sentence — Possessing narcotic drugs (1069 grams of heroin), contrary to sections 2, 3, 6(1)(2), 30 and 31 of the Narcotic Drugs and Psychotropic Substances Law, 1977, as amended and possessing the said heroin with intent to supply it to other persons, contrary to sections 2, 3, 6(1)(3), 30 and 31 of the said law — Appellant, a Lebanese man 64 years old suffering from osteoarthritis and prostate hypertrophy — Four years' imprisonment on the second count, no sentence on the first count — Sentence upheld*

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The appellant, a Lebanese 64 years old, was convicted upon his own plea for the aforementioned offences and, as a result, he was sentenced to four years' imprisonment on the second count, whilst no sentence was passed as regards the first count

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Counsel for the appellant confined his address to the question of the health of the appellant, who was found to suffer from osteoarthritis and prostate hypertrophy

Held, *dismissing the appeal* In another case brought before this Court today the sentence for possessing under similar circumstances less than half the quantity of heroin, which this appellant possessed, was one of 4 years' imprisonment This shows that by analogy this appellant was given a much lesser sentence It follows that considerable leniency was extended to this appellant due to his age and personal circumstances

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*Appeal dismissed*

*Cases referred to*

*El-Eta v Republic* (1985) 2 C L R 40

**Appeal against sentence.**

Appeal against sentence by Edmond Majid Aoun who was convicted on the 28th January, 1987 at the Assize Court of

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Lamaca (Criminal Case No 1/87) 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 29/77) and on one count of the offence of

5 possessing controlled drug 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 Papadopoulos P D C Constantinides S D J and Eliades, D J to four years' imprisonment on the second count with no sentence being passed on the first count

10 *A Paschalides*, 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 sentenced by the Lamaca Assize Court on two

15 counts. The first one was for possession of a controlled drug of Class A of Part 1 of the First Schedule, namely 1069 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

20 No 67 of 1983, without a permit from the Minister of Health. The second one was for possession of the said controlled drug with intent to supply it to other persons contrary to sections 2, 3 (1), (3), 30 and 31 of the said Law.

He was sentenced to four years imprisonment on the second

25 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 circumstances under which the appellant was found to be in possession of the said controlled drug are extensively set out in the judgment of the Assize Court on the basis of the evidence

30 adduced at the hearing of the case and as accepted by it in the light of the credibility of the witnesses. It is sufficient, however, for the purposes of this appeal against sentence - the appeal against conviction having been withdrawn - to refer to them briefly.

The appellant who is a Lebanese national is sixty-four years of

35 age, educated and a journalist by profession. He was one of the passengers on board the ship «Sunny Boat» which arrived at Lamaca Port in the morning of the 28th December 1986.

It was his intention to depart by air later the same day from Cyprus for Cleveland in the U S A as his ultimate destination. At

the Customs Control he was asked to open his suitcases. The appellant placed on the bench one of them which was opened and in which there were some personal effects. The Customs officer further asked the appellant to place on the bench and open the second suitcase he was carrying and on being opened he noticed that the walls of the suitcase were becoming thicker towards the lower part. The witness pierced the said part of the wall of the suitcase and noticed a white powder coming out which he suspected it to be a kind of a narcotic drug. Upon that he called his superior and informed the appellant that they were going to tear apart that side of the suitcase whereupon the appellant pulled and tore the lining of the side of the suitcase and indicated that there was nothing there. The Customs Officer however, noticed that there were double-walls and when with the help of a knife they opened them he discovered four bags with white powder which was later found to be the heroin, subject matter of the charge.

The Assize Court in imposing sentence referred to the judgment of this Court in *El-Etri and Others v. The Republic* (1985) 2 C.L.R. 40 where the seriousness of offences of this nature was stressed and took into account inter alia the age of the appellant as a mitigating factor.

Learned counsel appearing for him to-day, confined his address to the question of the health of the appellant who was found by the Prisons' Medical officer to suffer from osteoarthritis and prostate hypertrophy, which he must have had for some time. As regards his prostate problem he has been placed on the waiting list for operation at the Urological Department of the Nicosia General Hospital. The remaining condition of his health is good with his heart, the vascular, the breathing and digestive systems being normal.

We had several appeals before us to-day against the sentence imposed on charges relating to narcotics and we have noticed, to mention only one of them, that for possessing less than half the quantity of heroin discovered in his possession in more or less similar circumstances the sentence imposed on that accused was also one of four years imprisonment. This shows that in the case of the present appellant for about double that quantity he was given by analogy a much lesser sentence. That means that considerable leniency was extended to the appellant due to his age and his personal situation.

In the circumstances of this case, however, the condition of his health is not a matter justifying this Court to interfere on appeal with the sentence imposed.

The appeal is therefore dismissed.

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*Appeal dismissed.*