

1987 May 21

[TRIANAFYLLIDES, P., LORIS AND STYLIANIDES, JJ.]

1. MOHAMAD KASSIM,
2. JAMAL MOHAMAD,

Appellants,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeals Nos. 4850 & 4851).

5 *Sentence — Possessing forged banknotes of 100 U.S.A. dollars contrary to sections 345 and 20 of the Criminal Code, Cap. 154 and uttering four forged banknotes of 100 U.S.A. dollars contrary to sections 339, 336 and 20 of the same Code — Four years' imprisonment for the first of the aforesaid offences and five years' imprisonment for the second — In each the trial Court should assess both the gravity of the facts and the personal circumstances of the offender — In the circumstances of this case the sentences will be reduced to two and a half years' imprisonment on each count, the terms of imprisonment to run concurrently as from conviction.*

10 On 15.1.87 the appellants visited two restaurants in Limassol and on each occasion they paid the relevant bill (£10 approximately) by means of a forged 100 U.S.A. dollars bank note, getting the change in Cyprus money. At about midnight on the same day they attempted to pay the bill of £28 of the cabaret, which they visited, by means of 2 forged bank notes of 100 U.S.A. dollars each. The person in charge of the cabaret, suspecting that the notes were
15 forged, informed the Police. As a result the appellants were arrested by the Police. On the following day the Police found 61 more forged banknotes of 100 U.S.A. dollars in the Z car in appellants' possession.

Eventually each of the appellants was convicted to the aforesaid sentences of imprisonment for the offences hereinabove referred to

20 Hence the present appeal against sentence. Both appellants are Lebanese subjects. The first appellant is 23 years of age, single. He comes from a poor family. He attended only the first grade of secondary education and thereafter left school in order to assist his father. The second appellant is 26 years old, married with two minor children of tender years. He is giving private lessons in
25 Lebanon, earning very little, but managed to complete 4 years studies up to

now in the American University of Beirut His wife does not work Both appellants have a clean criminal record and expressed their sincere apologies for what they have done

Held, allowing the appeal (1) This Court adopts the statement in *Kashawi v The Republic* (1985) 2 C L R 37 at 39 that «Forging, possessing and uttering false documents are of themselves very serious offences and in no way they should be treated in a manner that may appear to be encouraging their commission» Of course, in each case the gravity of the facts as well as the personal circumstances of the accused must be assessed

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(2) In this instance the trial Court attached undue weight to the number of the forged bank notes found in appellants' possession losing sight, on the one hand, that only two of them were used, and on the other hand, the personal circumstances of each accused The sentence of each appellant on each count will be reduced to two and a half years' imprisonment Sentences to run concurrently from conviction

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Appeals allowed Each sentence reduced to two and a half years' imprisonment Sentences to run concurrently as from date of conviction

Cases referred to

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Kashawi v The Republic (1985) 2 C L R 37

Appeals against sentence.

Appeals against sentence by Mohamad Kassim and Another who were convicted on the 13th February, 1987 at the Assize Court of Limassol (Criminal Case No 2359/87) on one count of the offence of possessing forged bank notes contrary to sections 354 and 20 of the Criminal Code Cap 154, on one count of uttering forged bank notes contrary to sections 339, 336, and 20 of the Criminal Code, Cap 154, on two counts of obtaining credit by false pretences contrary to sections 301(a), 297 and 20 of the Criminal Code, Cap 154 and on two counts of the offence of obtaining money by false pretences contrary to sections 297, 298 and 20 of the Criminal Code Cap 154 and were sentenced by Hadjtsangaris, P D C , Fr Nicolaidis, S D J and Hadjihambis, D J to four years' imprisonment each on count 1, to five years' imprisonment each on count 2, with no sentence being passed on the remaining four counts, the sentences to run concurrently

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Appellants appeared in person.

A Vassiliades, for the respondent

TRIANTAFYLIDIS P.: The judgment of the Court will be delivered by Loris, J.

LORIS J.: Both appeals, which were heard together, are directed against the sentences imposed by the Assize Court of
 5 Limassol, on each one of the appellants who pleaded guilty to the following six joint counts of the indictment in Limassol Criminal Case No. 2359/87:

10 (a) Possessing forged banknotes of 100 U.S.A. dollars contrary to sections 345 and 20 of the Criminal Code, Cap. 154 (Count 1)

(b) Uttering four forged banknotes of 100 U.S.A. dollars, contrary to ss 339, 336 and 20 of Cap. 154 (Count 2)

(c) Obtaining credit by false pretences contrary to sections 301(a), 297 and 20 of Cap. 154 (Counts 3 and 5).

15 (d) Obtaining money by false pretences contrary to sections 297, 298 and 20 of Cap. 154 (Counts 4 and 6)

20 Each accused was sentenced to 4 years' imprisonment on Count 1 and five years' imprisonment on Count 2; terms of imprisonment to run concurrently. No sentence was imposed on the remaining four counts as they referred substantially to the same facts relied upon in Count 2.

Each one of the appellants filed personally separate appeals complaining that the sentences aforesaid are manifestly excessive.

The facts of the case are very briefly as follows:

25 Both appellants arrived from Lebanon to Larnaca airport on 13.1.87 and they were given permit to stay in Cyprus as visitors up to 19.1.87. On the day of their arrival they stayed at «EFTYHIA» Hotel in Larnaca; on the next day at Larnaca they hired a «Z» car by means of which they travelled to Limassol on 15.1.87; in
 30 Limassol on 15.1.87 they visited successively at about 2.00 p.m. - 2.30 p.m. two restaurants where they had food and drinks, paying on each occasion the relevant bill (around £10) by means of a forged 100 U.S.A. dollars bank note getting at the same time, on each occasion, the balance in Cyprus money. At about midnight of
 35 the same day they visited a cabaret in Limassol and after consuming several drinks they attempted to pay off the bill of £28.- by asking for change of 2 forged bank notes of 100 U.S.A. dollars each; the person in charge of the cabaret suspecting that

the 2 banknotes were forged pretended that he would go to a bar opposite in order to get change and getting out from the cabaret informed the Police Shortly afterwards both appellants were arrested and confessed A search in their hotel in Lamaca revealed nothing, but on the next day, whilst both appellants were in custody 61 more forged banknotes of 100 U S A dollars were traced in the «Z» car hired by the appellants in Lamaca Both appellants admitted having in their possession the aforesaid forged banknotes as well 5

Both appellants are Lebanese subjects Appellant in Criminal Appeal No 4850, who will be referred to hereinafter as the first appellant. (whilst appellant in Cr App 4851 will be referred to as the second appellant) is 23 years of age, single He is one of 11 children of a poor Lebanese family, he attended only the 1st grade in secondary education and thereafter he left school in order to assist his father in his work The second appellant is 26 years old, he is married with two minors, according to the social investigation report his wife aged 24 is a housewife, their minor children are aged 3 and 1 years respectively The Second appellant is giving private lessons in Lebanon earning very little and at the same time he is studying medicine in the American University of Beirut, he has managed to complete 4 years studies in the aforesaid University up to now 10 15 20

Both appellants have no criminal record

In spite of the fact that before the commencing of the hearing of these appeals we have made it clear to them that they could have legal aid if they so wished, they both insisted that they wanted to support their appeals personally The first appellant further indicated clearly that he wished to adopt whatever the second appellant would say 25 30

The second appellant addressing us in English referred to the offences in question, and submitted that the sentences imposed are manifestly excessive, he referred to his personal circumstances including his family and his minor children and offering his sincere apology he invited us to reduce the sentence imposed by the Assize Court 35

The first appellant endorsed the address of the second and added few words about his personal circumstances expressing at the same time his repentance and sincere apology

Learned counsel appearing for the Republic conceded that the sentences were manifestly excessive.

5 We have considered the facts and circumstances of these cases; we have also considered the personal circumstances of both appellants.

10 It is true that the offences of possessing forged bank notes and uttering same, are of a very serious nature; their seriousness is reflected by the maximum punishment each one carries; thus the punishment for possession is 7 years whilst for uttering the law envisages up to life imprisonment.

15 We are in full agreement with the statement in *Kashawi v. The Republic* (1985) 2 C.L.R. 37 at 39 that «Forging, possessing and uttering false documents are of themselves very serious offences and in no way they should be treated in a manner that may appear to be encouraging their commission.....»

Of course in each particular case of such nature the gravity of the facts of the case must be assessed, as well as the personal circumstances of the accused; and the trial Court must impose a sentence befitting the crime as well as the offender.

20 We feel that in this particular instance the trial Court attached undue weight to the number of the forged bank notes found in the possession of the appellants, losing sight, on the one hand, that only two forged bank notes were in fact used, and on the other hand failed to assess properly the personal circumstances of each
25 appellant including the fact that they are both first offenders, that they have made clean breast of the offences in question and that they have pleaded guilty at their trial by the Assize Court.

30 In the circumstances we hold the view that learned counsel appearing for the Republic rightly conceded that sentences imposed on both appellants were manifestly excessive; we have decided therefore to intervene:

The sentence of each accused on each count is hereby reduced to 2 1/2 years; terms of imprisonment to run concurrently from conviction.

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Appeals allowed accordingly.