CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

ON APPEAL
AND
IN ITS ORIGINAL JURISDICTION

Cyprus Law Reports

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1988 January 8

(A LOIZOU, DEMETRIADES, PIKIS, JJ.)

ALI ASLAN,

Appellant,

v.

THE POLICE,

Respondent.

(Criminal Appeal No. 4959).

Sentence — Disparity — Principles applicable.

Sentence — Criminal trespass contrary to section 280, drunkeness and disturbance contrary to sections 94 and 95 of the Criminal Code — Three months' imprisonment for the first count and binding over in the sum of £500 for two years to keep the law and be of good behaviour on the remaining counts — Sentence of imprisonment

made to run concurrently with an earlier sentence of imprisonment imposed on appellant for another offence — Sentence, far from being manifestly excessive, is on the lenient side.

The facts of this case sufficiently appear from the judgment of the Court.

Appeal dismissed.

Cases referred to:

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

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

Marco v. Republic (1987) 2 C.L.R. 188.

Appeal against sentence.

Appeal against sentence by Ali Aslan who was convicted on the 27th November, 1987 by the District Court of Nicosia (Criminal Case No. 2501/87) on one count of the offence of Criminal trespass contrary to sections 280 and 20 of the Criminal Code, Cap. 154, on one count of the offence of drunkeness contrary to section 94(1) of the Criminal Code, Cap. 154 and on one count of the offence of disturbance contrary to section 95 of the Criminal Code, Cap. 154 and was sentenced by Kallis, D. J. to three months' imprisonment on the first count and was further bound over in the sum of £500.- for a period of two years to keep the law and be of good behaviour on the other two counts.

A. Christofidou (Miss), 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 jointly charged with Djelil Sousamis, who hereinafter will be referred to as ex-accused 1, of the offences of, criminal trespass, contrary to sections 280 and 20 of the Criminal Code, Cap. 154, drunkenness and disturbance, contrary to ss. 94 and 95 of the Code respectively. They both pleaded guilty and the facts related to the Court in support of the offences in question were briefly these:

On the 29th December, 1986, at about 5:45 p.m. whilst the complainant, who resides in Pentadaktylos Street next to her coffee-shop, was in her house, she noticed the appellant and ex-accused 1, pushing violently the door and entering therein. Ex accused 1, threatened her with stabbing, but she called out for help. Her husband with a friend of his, who were in another part

of the house, came out, got the accused and ex-accused 1 out of the house and notified the Police. The incident of disturbance relates to their conduct after the commission of criminal trespass.

The Police arrived promptly and arrested the appellant and his accomplice and eventually the trial Court had to consider the appropriate sentence to be imposed on them.

The appellant who is single and has no other relatives and comes from Turkey, is twenty-two years of age and arrived in the occupied part of Cyprus some two years ago. After, however, spending some time there he came to the free part of the Republic and he has been working as a builder. He resides at Ymittos Street in a rented room.

The sentence imposed on the appellant and ex-accused 1, was one of three months' imprisonment on the first count and bound over in the sum of £500.- for a period of two years to keep the Law and be of good behaviour on the remaining counts. The learned trial Judge in his meticulous approach to the case further noted that both accused on the 23rd September, 1987, following a hearing after a plea of not guilty were found guilty of other offences and sentenced to imprisonment. He further noted that they had been asked on that day by prosecution whether they were prepared to plead guilty to the present case so that it would be taken into consideration but their stand was negative, apparently, as he observed, on account of their having no legal advice For that reason their sentence of imprisonment in the present case was made to run from that date, that is, concurrently with the sentence of imprisonment they were and still are serving.

Learned counsel for the appellant in her address in mitigation raised three points: The first that the sentence imposed on the appellant was manifestly excessive; the second that there has been disparity of sentence with his co-accused, because of the different degree of their complicity in the offence and that there had been no individualization.

Considering the totality of the circumstances before us we find that not only it was not manifestly excessive but the sentence imposed on the appellant was on the lenient side and in fact very fairly approached by the learned trial Judge in the circumstances. Disparity of sentence does not exist as there is no such grave difference in the degree of complicity between the two culprits, and we need not really elaborate on the point. Suffice it to say that

the question of disparity and the principles governing it were dealt by this Court in numerous cases. (See *Koukos v. Police* (1986) 2 C.L.R. 1; *Georghiou and Others v. Republic* (1987) 2 C.L.R. 109, and more recently in *Marco v. Republic* (1987) 2 C.L.R. 188). As regards individualization certainly the learned trial Judge went beyond his way to do so by even crediting the accused with the lack of legal advice in their refusal to take advantage of the opportunity to have this case taken into consideration when passing sentence in the case in which they had already been found guilty and sentenced by the Court.

For all the above reasons the appeal is dismissed.

Appeal dismissed.