

1981 June 23

[TRIANTAFYLIDIS, P., L. LOIZOU, DEMETRIADES, JJ.]

ANDREAS COSTA ANDREOU,

Appellant.

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No. 4221*).

Criminal Law—Sentence—Careless driving—Damage to military property—Concurrent sentences of three months' and six months' imprisonment, respectively—Manifestly excessive in the special circumstances of this case—Reduced.

The appellant, a soldier, pleaded guilty to one count of the offence of careless driving and to two counts of the offence of negligently causing damage to military property and was sentenced to concurrent sentences of three months', six months' and two months' imprisonment respectively. The offences in question were committed whilst he was driving a military lorry on the Nicosia-Limassol road, at a speed of 40 m.p.h. instead of 20 m.p.h., which was the prescribed by the Military Authorities speed limit for the vehicle in question. At the material time he was driving the lorry in a military convoy and when he had temporarily lost contact with the convoy due to other traffic on the road he increased his speed in an effort to catch up with it; and when taking a bend at a speed of approximately 40 m.p.h. his lorry overturned and though nobody was injured damages to the extent of C£224.200 mils were caused to the lorry and foodstuffs worth C£17.250 mils, which were loaded thereon, perished.

The appellant was a first offender and he was punished disciplinarily in respect of the accident in question and sentenced to eight days' detention.

Upon appeal against sentence:

Held, that in the light of all relevant considerations all the three sentences of imprisonment which were imposed on the appellant are, in the context of the special circumstances of this case, *manifestly excessive and they will, therefore, be set*
 5 *aside; that no other sentence will be passed in their place upon the appellant because he has already been in prison for more than two months and he has been, thus, sufficiently punished for his carelessness.*

Appeal allowed.

10 Appeal against sentence.

Appeal against sentence by Andreas Costa Andreou who was convicted on the 6th April, 1981 by a Military Court sitting at Nicosia (Case No. 62/81) on one count of the offence of driving without due care and attention, contrary to sections
 15 8 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72) and section 5 of the Military Criminal Code and Procedure Laws, 1964–1979 and on two counts of the offence of negligently causing damage to military property, contrary
 20 to sections 88(A)(1) and 88(A)(3) of the Military Criminal Code and Procedure Laws, 1964–1979 and was sentenced to three months' imprisonment on the careless driving count and to six months' and two months' imprisonment, respectively, on each of the other two counts.

N. Panayiotou, for the appellant.

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

TRIANTAFYLIDIS P. gave the following judgment of the Court. The appellant, who is serving in the National Guard, is twenty-one years old and a first offender.

30 He was sentenced to three months' imprisonment, by the Military Court, after he had pleaded guilty to the offence of driving a lorry, on August 28, 1980, in the course of his military service, without due care and attention.

35 As a result of his negligent driving the lorry overturned on a bend of the Nicosia—Limassol main road and was damaged to the extent that it needed repairs costing C£224.200 mils, and, also, there perished foodstuffs, worth C£17.250 mils, which were loaded on the lorry.

In view of the above consequences of the overturning of the lorry, the appellant was charged, by means of two further counts, with offences of negligently causing damage to military property and he was sentenced to six months' imprisonment in respect of the damage to the lorry and to two months' imprisonment in respect of the destruction of the foodstuffs.

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The appellant, who has appealed against all the three aforementioned concurrent sentences, has been in prison since April 6, 1981.

Prior to appearing before the Military Court he was punished disciplinarily in respect of the accident in question and was sentenced to eight days' detention.

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Counsel appearing for the appellant has submitted that all three sentences are manifestly excessive in view of the young age of the appellant, his clean past record and of the circumstances in which the offences concerned were committed.

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When the appellant appeared before the Military Court he defended himself in person, without the assistance of counsel, and after he had pleaded guilty to all the three offences with which he had been charged he expressed his regret for what happened and asked for leniency.

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Today counsel for the respondent has very fairly submitted that at any rate, in so far as the sentence of six months' imprisonment is concerned, this is a manifestly excessive sentence in the light of the particular circumstances of this case; especially since the appellant, who was an obviously inexperienced driver and who possessed only a military driving licence, was entrusted with the driving of a military lorry on a main road.

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He was charged with negligent driving of the lorry because he was driving at a speed of 40 m.p.h., instead of 20 m.p.h., which is the prescribed by the Military Authorities speed limit for a vehicle such as the one which the appellant was driving.

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The appellant, who at the material time, was driving the lorry in a military convoy, had temporarily lost contact with the convoy due to other traffic on the road and he increased his speed in an effort to catch up with it; and when taking a bend at a speed of approximately 40 m.p.h. his lorry overturned. Fortunately nobody was injured as a result of the accident.

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In the light of all relevant considerations we are of the opinion that all the three sentences of imprisonment which were imposed on the appellant are, in the context of the special circumstances of this case, manifestly excessive and we, therefore, set them
5 aside. We do not propose to pass any other sentence in their place upon the appellant because he has already been in prison for more than two months and he has been, thus, sufficiently punished for his carelessness.

Appeal allowed.