

1982 February 19

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

SAVVAS POLYCARPOU,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(Criminal Appeal No. 4291).

5 *Criminal Law—Standard of proof—Doubt as to whether appellant found guilty beyond reasonable doubt or only on the balance of probabilities—Evidence amply warranted conviction—Conviction sustained by applying the proviso to section 145(1)(b) of the Criminal Procedure Law, Cap. 155.*

10 *Road Traffic—Overtaking a vehicle while another vehicle was coming from the opposite direction—Sentence—Three months' disqualification—Though not wrong to make a disqualification order no sufficient weight given to appellant's unblemished long past record as a professional driver—Period of disqualification reduced.*

15 The appellant was convicted on two counts of the offence of overtaking a vehicle while another vehicle was coming from the opposite direction and of the offence of behaving in a manner which might cause a breach of the peace because while overtaking the other vehicle he made an indecent gesture to the driver of that vehicle. He was disqualified from possessing or obtaining a driving licence for a period of three months on the first count and was sentenced to pay a fine of C£20.— and was bound over in the sum of C£200.— for two years on the second count.

20 The appellant was not identified by the other driver, only the registration number of his vehicle was taken by him; and in spite of his assertion on oath that he did not commit the offences in question the trial Judge reached the conclusion that on the basis of the totality of the circumstances before him it  
25 was warranted to convict the appellant of the said offences,

because the appellant had not denied that he had been driving his lorry on that road on that day and it was not alleged that at any material time the lorry had been driven by somebody else.

*Upon appeal against conviction and sentence:* 5

*Held*, (1) that though this Court has been faced with the problem that the trial judge expressed himself, in reaching his verdict, in a manner which might give rise to some doubt as to whether, especially as regards the vital issue of the identification of the appellant as the offender, he found the appellant 10 guilty of the offences in question beyond reasonable doubt or only on the balance of probabilities it has, eventually, reached the conclusion that, in any event, the evidence amply warranted the conviction of the appellant of the offences charged and, therefore, this is one of the cases in which we have to sustain 15 his conviction in respect of such offences by applying the proviso to section 145(1)(b) of the Criminal Procedure Law, Cap. 155, on the ground that no substantial miscarriage of justice has actually occurred in convicting the appellant.

(2) That though in the light of the circumstances in which 20 the offence of overtaking was committed it was not wrong to make a disqualification order no sufficient weight was given to the unblemished long past record of the appellant as a professional driver and, in the circumstances, as he is a first offender, ' he should not have been treated so severely; accordingly the 25 duration of the disqualification order will be reduced to six weeks.

*Appeal partly allowed.*

**Appeal against conviction and sentence.**

Appeal against conviction and sentence by Savvas Polycarpou 30 who was convicted on the 31st December, 1981 at the District Court of Larnaca (Criminal Case No. 4625/81) on one count of the offence of overtaking a vehicle while another vehicle was coming from the opposite direction contrary to regulations 57(1)(ie) and 71 of the Motor Vehicles Regulations, 1973 and 35 section 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72) and on one count of the offence of behaving in a manner which might cause a breach of the peace contrary to section 188(d) of the Criminal Code Cap. 154 and was sent-

enced by Eliades, D.J. to pay £20.— fine and bound over in the sum of £200.— for two years on the second count and was disqualified from possessing or obtaining a driving licence for a period of three months on the first count.

5       *A. Koukounis*, for the appellant.

*A. Vladimirov*, for the respondents.

          TRIANTAFYLIDIS P. gave the following judgment of the Court. The appellant was convicted of the offence of overtaking on the Nicosia—Limassol main road a vehicle while another vehicle  
10       was coming from the opposite direction.

          He was, also, found guilty of behaving in a manner which might cause a breach of the peace, because while overtaking the other vehicle he made an indecent gesture to the driver of that vehicle.

15       He was, in respect of the latter offence, sentenced to pay a fine of C£20 and was bound over in the sum of C£200 for two years; and in respect of the first of the said offences he was disqualified from possessing or obtaining a driving licence for a period of three months as from the date of his conviction;  
20       that is as from 31st December 1981.

          The appellant, who was driving a lorry and overtook another lorry at an uphill part of the road, was not identified as the driver of the other lorry; only the registration number of his lorry was noted by the other driver and the trial judge reached  
25       the conclusion, in spite of the assertion on oath of the appellant that he did not commit the offences in question, that on the basis of the totality of the circumstances before him it was warranted to convict the appellant of the said offences, because the appellant had not denied that he had been driving his lorry  
30       on the road on that day and it was not alleged that at any material time the lorry had been driven by somebody else.

          In examining the judgment of the trial court we were faced with the problem that the trial judge expressed himself, in reaching his verdict, in a manner which might give rise to some doubt  
35       as to whether, especially as regards the vital issue of the identification of the appellant as the offender, he had found the appellant guilty of the offences in question beyond reasonable doubt or only on the balance of probabilities.

We have, eventually, reached the conclusion that, in any event, the evidence amply warranted the conviction of the appellant of the offences charged and, therefore, this is one of the cases in which we have to sustain his conviction in respect of such offences by applying the proviso to section 145(1)(b) of the Criminal Procedure Law, Cap. 155, on the ground that no substantial miscarriage of justice has actually occurred in convicting the appellant. 5

The appellant has, also, complained that the sentence passed upon him, in respect of the first of the aforesaid offences, that is the disqualification order, is manifestly excessive. 10

In the light of the circumstances in which the offence of overtaking was committed we do not agree that this is a case in which it was wrong to make an order of disqualification. On the other hand, as regards the length of the period of disqualification we feel that no sufficient weight was given to the unblemished long past record of the appellant as a professional driver and, in the circumstances, as he is a first offender, he should not have been treated so severely. We do feel that a disqualification order for a period of six weeks was sufficient to meet the situation in the present case, and we, therefore, reduce the period of the duration of the disqualification order accordingly. 15 20

Consequently, this appeal is allowed to that extent.

*Appeal partly allowed. Period of disqualification reduced to six weeks.* 25