[VASSILIADES, TRIANTAFYLLIDES AND MUNIR, JJ.]

PANAYIOTIS EFSTATHIOU MIRACHIS,

Appellant,

v.

THE POLICE,

Respondents

(*Criminal Appeal No.* 2759)

Motor Traffic—Motor Vehicles and Road Traffic Law, Cap. 332—*Careless driving and speeding contrary to sections* 6 *and* 4 *thereof—Disqualification from holding a driving licence being part of the punishment is discretionary and should be measured* with the rest of the sentence and is subject to an appeal

Criminal Law—Appeal—Sentence manifestly excessive and unjustified on principle

Judges—Sentence of imprisonment—Matters to be considered and weighed when imposing imprisonment—An occasional visit to the prisons advisable for Judges dealing with criminal matters

Constitutional Law—Articles 123 *and* 188 *of the Constitution—Provisions of Cap.* 332 *relating to disqualification to be read and applied modified under Article* 188 *of the Constitution so as to be brought in line with Article* 123

The appellant, a motor mechanic, was convicted of the offences of careless driving and speeding contrary to sections 6 and 4 (1) (2) respectively of the Motor Vehicles and Road Traffic Law, Cap. 332 and was sentenced to 4 months imprisonment. In addition he was disqualified by the trial Judge under section 13 (1) of that law for holding or obtaining a driving licence for a period of two years. He appealed against sentence on the ground that it is manifestly excessive in the circumstances of the case.

The Supreme Court in allowing the appeal held:

(1) *as regards disqualification:*

(1) A disqualification order made under section 13 of the Motor Vehicles and Road Traffic Law, Cap. 332 is considered as part of the punishment and is subject to an appeal to this Court both as part of the sentence and under the express provisions of section 13 (2) of Cap. 332.

The cases of (1) *Ahmed Musa* v. *The Police*, Criminal Appeal No. 2539, decided on 21.9.62, unreported, (2) *Georghios Onisiforou* v. *The Police*, Criminal Appeal No. 2628, decided on 21.3.63, unreported and (3) *Kypros Kyriakides* v. *The Police* (1963) 1 C.L.R. 80, followed.

(2) It may be noted in this connection that while for the offences in section 5 and section 7, the Statute provides for heavier punishment, and specifically refers to disqualification, no such reference is made in sections 4 and 6, under which the appellant was charged in this case. Furthermore, it may be recalled that disqualification being part of the punishment is, in all cases, discretionary ; and has to be measured together with the rest of the sentence in proportion with the gravity of the offence found in the circumstances of each particular case, the relative provisions of Cap. 332 being read and applied duly modified under Article 188 of the Constitution so as to be brought in line with the requirements of Article 12.3.

(*II*) *as regards sentence :*

(1) It seems to us that four months imprisonment together with disqualification to hold a driving licence for two years, upon a mechanic, in the circumstances of this case, is a manifestly excessive sentence. It cannot, we think, be justified on any of the principles governing sentence.

(2) Four months in prison, or any such short term, while sufficient to upset radically the offender's family life and business cannot operate on his mind and habits for purposes of rehabilitation ; short terms have, as a rule, proved of very little deterrent effect ; and are hardly justified as retribution. Moreover, they are undesirable as tending to disturb discipline and the proper mental attitude within the prison walls.

(3) Allowing the appeal against sentence in this case, on the ground that it is manifestly excessive and unjustified on principle, we substitute the one imposed in the District Court, by the following sentence :—

On the first count : Fifty pounds fine ;

On the second count : The appellant to be bound over in fifty pounds for one year to keep the Motor Vehicles and Road Traffic Law (Cap. 332) and the Regulations in force thereunder.

The disqualification order made on the 15.2.65 against the appellant to be discharged.

The appellant to be released forthwith ; and the warrant for his imprisonment to be indorsed and returned accordingly.

Per curiam : An occasional visit to prisons, even at long intervals, would be of considerable assistance to judges dealing with criminal cases, in appreciating these matters. Such visits have been recommended by this Court, more than once, in the past.

Observation : When all other alternatives are considered unsuitable to meet the particular case in hand, the Court may well have to resort to imprisonment. But in such a case, the sentence has to be justified upon one of the purposes to be served by such a sentence. Rehabilitation, mainly in the interest of the offender ; deterrence, mainly in the public interest and protection ; retribution in the proper enforcement of the law ; all these matters have to be considered and weighed together with the consequences and probable effect of imprisonment on the particular offender.

Appeal allowed. Sentence of imprisonment and disqualification order set aside. New order entered as aforesaid.

Cases referred to :

Ahmed Musa v. *The Police*, Criminal Appeal No. 2539, decided on 21.9.62, *unreported ;*

Georghios Onisiforou v. *The Police*, Criminal Appeal No. 2628, decided on 21.3.63, *unreported ;*

Kypros Kyriakides v. *The Police* (1963) 1 C.L.R. 80.

Appeal against sentence.

Appeal against the sentence imposed on the appellant who was convicted on the 15.2.65 at the District Court of Nicosia (Criminal Case No. 7350/64) on two counts of the offences of careless driving and speeding, contrary to sections 6 and 4 (1) and (2) of the Motor Vehicles and Road Traffic Law, Cap. 332, and was sentenced by Georghiou, D.J. to four months imprisonment on each count, the sentences to run concurrently, and was moreover disqualified from holding or obtaining a driving licence for a period of two years.

G. Tornaritis with *E. Efstathiou*, for the appellant.

M. Spanos, counsel of the Republic, for the respondents.

The facts sufficiently appear in the judgment of the Court delivered by :

VASSILIADES, J.: At this stage the appeal is confined to the question of sentence. Towards the end of the hearing before us, learned counsel for the appellant, quite rightly, in our opinion, practically abandoned the appeal against conviction.

The remaining part of the appeal stands on the ground that the sentence imposed by the trial-judge, is manifestly excessive, in the circumstances of this case.

The appellant, a motor-mechanic running a repair-garage in one of the suburbs of Nicosia, aged 28 and a married man, was sentenced to four months imprisonment and was, moreover, disqualified for holding a driving licence of any type, for a period of two years, for careless driving and speeding.

Both charges were laid under Motor Vehicles and Road Traffic Law, Cap. 332 ; the former under section 6, and the latter under section 4, for the offences therein described. In both cases the punishment provided by the statute is imprisonment not exceeding six months, or a fine not exceeding one hundred pounds, or both such imprisonment and fine. In addition, the Court may, in such cases, exercising the powers conferred by section 13, order the offender to be disqualified for holding a licence to drive a motor vehicle for such period as the Court thinks fit. A disqualification order made under this section, is considered as part of the punishment (*Ahmed Musa* v. *The Police*, Criminal Appeal 2539, decided 21.9.62, unreported ; *Georghios Onisiforou*, v. *The Police*, Criminal Appeal 2628, decided 21.3.63, unreported ; *Kypros Kyriakides* v. *Police*, (1963) 1 C.L.R. 80 and is subject to an appeal to this Court, both as part of the sentence and under the express provisions of section 13 (2) of Cap. 332.

It may be noted in this connection, that while for the offences in section 5 and section 7, the statute provides for heavier punishment, and specifically refers to disqualification, no such reference is made in sections 4 and 6, under which the appellant was charged in this case. Furthermore, it may be recalled that disqualification being part of the punishment is, in all cases, discretionary ; and has to be measured together with the rest of the sentence, in proportion with the gravity of the offence found in the

circumstances of each particular case, the relative provisions of Cap. 332 being read and applied duly modified under Article 188 of the Constitution, so as to be brought in line with the requirements of Article 12.3.

In his considered judgment, the learned trial Judge found that at the material time, the appellant was driving on the main road, in a built up area, " at a speed well exceeding 30 m.p.h. " (page 9 C, of the record). His finding was made on the expert evidence of a Traffic Police Officer who, on inspection of the locus after the accident, estimated " the speed of the accused at the time of first applying his brakes " to have been 40 m.p.h. (p.6E) *i.e.* the speed charged in the second count. So the description of the speed as " well exceeding 30 m.p.h. " must be viewed in that light.

The careless driving was found in that " due to accused's high speed, he was not capable of having proper control of his vehicle so as to stop in time on a busy road, on which it was probable that an emergency might arise " (p. 10A).

It is, however, obvious, we think, from the part of the judgment regarding sentence (p. 10, D.) that the learned trial Judge would not have imposed this punishment, if it were not for the previous convictions of the appellant. Once, however, he decided, in the circumstances, to impose a severe sentence, the judge should proceed to balance it on the principles governing this very important function of the Court.

Apart of academic pronouncements regarding sentence, this Court has considered the matter from time to time, in several cases. We do not propose going into the question now. Quite properly, we think, the learned Judge made the sentences on each count to run concurrently, as both charges practically rest on the same set of facts. But it seems to us that four months imprisonment together with disqualification to hold a driving licence for two years, upon a mechanic, in the circumstances of this case, is a manifestly excessive sentence. It cannot, we think, be justified on any of the principles governing sentence.

When all other alternatives are considered unsuitable to meet the particular case in hand, the Court may well have to resort to imprisonment. But in such a case, the sentence has to be justified upon one of the purposes to be served by such a sentence. Rehabilitation, mainly in the interest of the offender ; deterrence, mainly in the public interest and protection ; retribution, in the proper enforce-

ment of the law ; all these matters have to be considered and weighed together with the consequences and probable effect of imprisonment on the particular offender.

Four months in prison, or any such short term, while sufficient to upset radically the offender's family life and business, cannot operate on his mind and habits for purposes of rehabilitation ; short terms have, as a rule, proved of very little deterrent effect ; and are hardly justified as retribution. Moreover, they are undesirable as tending to disturb discipline, and the proper mental attitude within the prison walls. An occasional visit to the prisons, even at long intervals, would be of considerable assistance to judges dealing with criminal cases, in appreciating these matters. Such visits have been recommended by this Court, more than once, in the past.

Allowing the appeal against sentence in this case, on the ground that it is manifestly excessive and unjustified on principle, we substitute the one imposed in the District Court, by the following sentence :

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The disqualification order made on the 15.2.65 against the appellant to be discharged.

The appellant to be released forthwith ; and the warrant for his imprisonment to be indorsed and returned accordingly.

Mr. Tornaritis applied for time to enable appellant to pay the fine.

Court : No warrant to issue for the collection of the fine on the first count, before the 15th of April, 1965 ; and thereafter to be withheld on production of Treasury voucher for the payment of ten pounds (£10) against the fine by the 15th day of every following month, until full payment of the whole amount of fifty pounds.

Appeal allowed. Sentence of imprisonment and disqualification order set aside.

New order to be entered as aforesaid.