

1967
June 9

[VASSILIADES, P., JOSEPHIDIS, HADJIANASTASSIOU, JJ.]

THE ATTORNEY-
GENERAL
OF THE
REPUBLIC
v.
ANDREAS
NICOLAOU

THE ATTORNEY-GENERAL OF THE REPUBLIC,
Appellant,
v.
ANDREAS NICOLAOU,
Respondent.

(Criminal Appeal No. 2909)

Criminal Law—Sentence—Causing death by want of precaution contrary to section 210 of the Criminal Code, Cap. 154—Appeal against sentence by the Attorney-General on the ground that it is manifestly inadequate and that the judge acted on wrong principle—Sentence increased by the Supreme Court.

Criminal Procedure—Appeal—Sentence—Appeal against sentence taken by the Attorney-General on the ground that the sentence imposed is wrong in principle and manifestly inadequate—Sentence increased by the Supreme Court.

Road Traffic—Fatal accident contrary to section 210 of the Criminal Code, Cap. 154—See above

Fatal accident—See above.

The Supreme Court allowed this appeal taken by the Attorney-General against the sentence of £25 fine imposed in this case on the ground that same was wrong in principle and, considering, *inter alia*, the prevalence of the fatal road accidents due to want of precaution, manifestly inadequate. The Supreme Court in allowing the appeal :

Held, (1) it is apparent to us, on the face of the record, that the trial Judge, in measuring the sentence, acted on wrong principle.

(2) And it is equally clear that in the circumstances in which the offence was committed, the sentence imposed is manifestly inadequate

(3) We, therefore, allow the appeal and set aside the sentence, including the order for costs which was, apparently meant to form part of the sentence. In lieu thereof we pass on the respondent a sentence of nine months' imprisonment from today.

Appeal allowed. Sentence including order for costs, set aside. A sentence of nine months' imprisonment from today substituted therefor.

Cases referred to :

Nicolas Nearchou v. The Police (1965) 2 C.L.R. 34.

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Appeal against sentence.

Appeal by the Attorney-General of the Republic against the inadequacy of the sentence imposed on the respondent who was convicted on the 26th April, 1967, at the District Court of Nicosia (sitting at Morphou) (Criminal Case No. 414/67) on one count of the offence of causing death by want of precaution, contrary to section 210 of the Criminal Code Cap. 154 and was sentenced by Pitsillides, D.J., to pay a fine of £20.

A. Frangos, Counsel of the Republic, for the appellant.

M. Kyprianou, for the respondent.

The judgment of the Court was delivered by :

VASSILIADES, P.: The Attorney-General of the Republic has taken this appeal against a sentence of £25 fine imposed in the District Court of Nicosia by the Judge sitting at Morphou, on the respondent (the accused at the trial) for causing the death of the person named in the charge, by want of precaution contrary to section 210 of the Criminal Code (Cap. 154). The appeal is taken on the ground that "the sentence is insufficient in view of the seriousness, gravity and prevalence of the offence".

After hearing eight witnesses called for the prosecution and the evidence of the respondent who went to the witness-box for the defence, the learned trial Judge convicted the respondent. The reasons for this decision appear in the considered judgment read two days after the closing of the case, in the presence of the accused and his advocate. The conviction is not challenged. We are only concerned with the sentence, in this appeal. The part of the judgment which deals with the sentence reads as follows :

"I have taken into consideration that accused may lose his permanent employment if he is absent from work for 6 or more days, and I do not order his imprisonment or disqualification from driving.

In passing sentence upon accused, I have taken into consideration all the mitigating factors put forth by accused's counsel, and also that he has suffered for being himself injured and that he may still suffer

financially as a result of his want of precaution, that he underwent a bitter experience for being himself thrown in the precipice with the bus of which he was the driver and that he will have to pay £15,300 mils costs."

Learned counsel for the Attorney-General submitted that this sentence is untenable, both on the ground that it was based on wrong principles and that it is manifestly inadequate considering the seriousness of the offence and the circumstances under which it was committed. Statistical figures, to which learned counsel referred, justify the grave concern, he said, of the Attorney-General for the loss of human life on the road; in consequence of careless driving; and the apparent failure of sentences of fine to have any deterrent effect on drivers who use their vehicles on the public roads without due care and attention.

Disbelieving respondent's version of the facts as given from the witness-box, the learned trial Judge found that, had the respondent "turned the steering wheel to the left, went round the bend in order to follow the direction of the road, the bus would not have fallen into the precipice". And the Judge found the respondent guilty of driving without due caution and thus causing the death of the person named in the charge.

The respondent was driving the bus in question with a number of passengers returning to their village after work. He was driving uphill, on a narrow road, full of bends on the side of the hill; and failed to keep the bus on the road, when negotiating a nearside bend. The bus went down the precipice on the offside, as it was going round the bend.

The driver's explanation for what happened, was that his steering mechanism developed a defect immediately before the accident. This allegation was disproved by positive evidence called for the prosecution; and was discarded by the trial Judge. There is nothing on the record to explain this terrible occurrence other than the driver's lack of precaution. The punishment provided in the Criminal Code for this offence is two years' imprisonment, or a fine not exceeding £100.

Learned counsel for the prosecution referred to *Nicolaos Nearchou v. The Police* (1965) 2 C.I.R. 34, where the nature of this crime was discussed, and certain observations were made regarding the appropriate punishment.

It is apparent to us, on the face of the record, that the trial Judge, in measuring his sentence, acted on wrong principle. And it is equally clear to this Court that, in the circumstances in which the offence was committed, the sentence imposed is manifestly inadequate.

We, therefore, allow the appeal and set aside the sentence, including the order for costs which was, apparently meant to form part of the sentence. In lieu thereof, we pass on the respondent a sentence of nine months' imprisonment from today. One may even think that this is a rather lenient sentence.

There will be judgment and order accordingly.

Appeal allowed. Sentence, including order for costs, set aside. A sentence of nine months' imprisonment, from today, substituted therefor.

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