[VASSILIADES, P., JOSEPHIDES AND STAVRINIDES, JJ.]

CHRISTOS CHRYSOSTOMOU CHRYSAFIS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 2955)

Road Traffic—Driving a motor vehicle dangerously contrary to section 5 of the Motor Vehicles and Road Traffic Law, Cap. 332—Conviction—Sentence—Appellant's personal circumstances—Sentence measured on wrong principle—Set aside—Disqualification for two years from possessing or obtaining driving licence substituted therefor.

Criminal Procedure—Practice—Appeal—Further evidence—Application for further evidence under section 25 (3) of the Courts of Justice Law, 1960 (No. 14 of 1960), to attack the plea of guilty entered by the appellant at the trial—Refused—Case not brought within the decision in Kollias *v.* The Police (1963) 1 *C.L.R.* 52.

Practice—Appeal—Further evidence—See under " Criminal Procedure ".

Cases referred to :

Kollias v. *The Police* (1963) 1 C.L.R. 52.

Appeal against conviction and sentence.

Appeal against conviction and the sentence imposed on the appellant who was convicted on the 28.9.67 at the District Court of Famagusta (Criminal Case No. 4585/67) on one count of the offence of driving a goods vehicle dangerously contrary to section 5 of the Motor Vehicles and Road Traffic Law, Cap. 332 and was sentenced by Pikis, D.J., to pay a fine of £60.

L. Demetriades, for the appellant.

S. Georghiades, Counsel of the Republic, for the respondents.

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

VASSILIADES, P.: This is an appeal against conviction in the District Court of Famagusta, for driving a motor vehicle dangerously, contrary to section 5 of the Motor

Vehicles and Road Traffic Law, Cap. 332. The appeal is also directed against the sentence of £60 fine imposed by the trial Court.

At the opening of the appeal, counsel for the appellant submitted an application for leave to adduce further evidence under the provisions of section 25 (3) of the Courts of Justice Law in order to attack the plea of guilty entered by the appellant personally when charged before the Court on the 28th September, 1967. The application was refused on the ground that the appellant has not been able to bring his case within the decision in *Periklis Kolias* v. *The Police* ((1963) I C.L.R. p. 52), to which learned counsel for the appellant referred.

On the facts of this case, as they appear on the record, there can be no doubt whatsoever, that the appellant was able to appreciate the nature of his plea when he made it before the District Court. Very rightly, in our opinion, learned counsel did not press further the appeal against conviction after the ruling of the Court on his application for new evidence.

The only matter, therefore, which remains for us to decide is the question of sentence. The learned trial Judge in this connection took into consideration the mental condition of the appellant, as he expressly states in his note, and appellant's other personal circumstances. He also took into consideration that the driving licence of the appellant, who is a professional lorry driver, was withdrawn after this offence by the Licensing Authority.

We have not been informed of the exact reasons for which the Registrar of Motor Vehicles has withdrawn the driving licence of the appellant ; nor do we know when was that done. In the circumstances, we take the view that the learned trial Judge erred in declining to consider the question of disqualification in this case.

The record also shows that although the trial Court was informed that the vehicles involved in the collision were damaged, the Court was not informed of the extent of the damage caused either to the vehicle of the appellant, or to the other vehicles. Today, we have it from counsel that the extent of the damage to the lorry of the appellant, is £300 ; to a policeman's car about £45 ; and the damage to an electric pole another £10. The extent of this damage is, we think, one of the factors to be taken into consideration in connection with sentence.

Moreover, when the trial Judge considered according to his own note, the mental condition of the appellant, he did not go into this matter sufficiently so as to find the extent to which the mental condition of the appellant affected his conduct at the material time, considering the purposes for which a sentence is imposed in a case of this nature.

We are, therefore, inclined to the view that the learned trial Judge acted on wrong principle in measuring the sentence of this case. And we set the sentence aside. The responsibility now falls upon this Court to impose the proper sentence. In doing so, we take into consideration the fact that this appellant, aged 42, according to the record, and a professional driver for a period of 20 years, is a first offender.

At the same time we have to take into account that as he is a professional driver, he is likely to try again, to get his licence back. We certainly think that he should not do so until he is satisfied that he has overcome his mental difficulty ; and we also think that the appropriate authority should go into this matter if they have to deal, in the future, with an application from the appellant for a driving licence. In the meantime, we take the view that the appellant should be disqualified for a period of two years from today, from having or obtaining a driving licence.

Considering that he had no previous conviction ; that he sustained considerable loss in the way of damage ; and that he is being disqualified from carrying on his profession as a driver for two years, we do not think that we should impose, in the circumstances of this case, any additional fine or imprisonment.

In the result the appeal against conviction is dismissed ; the appeal against sentence is allowed ; the sentence of £60 fine is set aside ; and a sentence of disqualification for two years to possess or obtain a driving licence, is imposed.

Order accordingly.

Appeal against conviction dismissed. Appeal against sentence allowed ; sentence of £60 set aside ; disqualification sentence entered as aforesaid.