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Jan. 23

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

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SAVVAS  
LAZAROU  
v.  
THE POLICE

SAVVAS LAZAROU,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(Criminal Appeal No. 3146).

*Sentence—Concurrent sentences of one month imprisonment for offences against section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 and Law No. 7 of 1960, and against sections 3 and 6 of the Motor Vehicles and Road Traffic Law, Cap. 332 and Regulations 27 (1), 50 (n) and 66 of the Motor Vehicles Regulations, 1959–1969—Appellant first offender—Sentences inappropriate—Reduced to a fine of £50 which in the circumstances is the appropriate sentence.*

*Sentence—Disqualification from driving—This is part of the sentence and therefore, is covered by the appeal against sentence taken by the offender—Disqualification order for three months for using a motor vehicle on a road without third-party insurance being in force—Section 3 of Cap. 333 and Law No. 7 of 1960, supra—Manifestly inadequate—Disqualification increased to six months.*

*Sentence—Imprisonment—When to be resorted to—Deterrence in the public interest and protection—Short terms of imprisonment, as a rule, should be avoided.*

*Imprisonment—Principles applicable—Very short terms of imprisonment rarely justified—See supra.*

*Disqualification from driving a motor vehicle—It is part of the sentence—Therefore, once a sentence is opened by the appeal against sentence (in this case, by the offender), the whole matter comes under consideration—Court, therefore, entitled under its powers to increase the period of disqualification—Period increased from three to six months.*

*Road Traffic—See hereabove.*

Cases referred to :

*Mirachis v. The Police* (1965) 2 C.L.R. 28, followed ;

*Dracos v. The Police* (1969) 2 C.L.R. 16.

This was an appeal by the offender against sentences imposed on him by the trial Court for certain traffic offences. The appellant was sentenced to concurrent sentences of one month's imprisonment. In addition the trial Court issued a disqualification order whereby the accused-appellant was disqualified for three months from driving a motor vehicle. The appellant by his appeal was complaining that the sentences of imprisonment were manifestly excessive. There was no complaint for the order of disqualification. The Supreme Court considering that disqualification is part of the sentence held that once a sentence is opened by the appeal, the whole matter comes under consideration ; and the Court, while reducing the sentence of imprisonment to a fine of £50 on the contrary considering the three months' period of disqualification as inadequate, increased it to a period of six months.

The facts sufficiently appear in the judgment of the Court.

### **Appeal against sentence.**

Appeal against sentence by Savvas Lazarou who was convicted on the 13th January, 1970, at the District Court of Nicosia (Criminal Case No. 16526/69) on 4 counts of the offences of, *inter alia*, using a motor vehicle on a road without a third-party insurance contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 and Law 7 of 1960 and was sentenced by Pantelides, Ag. D.J., to one month's imprisonment on each count, the sentences to run concurrently, and he was further disqualified from holding or obtaining a driving licence for a period of 3 months.

*L. Papaphilippou*, for the appellant.

*Cl. Antoniadis*, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :—

VASSILIADES, P.: This is an appeal against a sentence of one month's imprisonment imposed on the appellant in the District Court, Nicosia, for using a motor vehicle on a public road without a third-party insurance, contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap. 333, and Law 7/1960. The appellant was, moreover, disqualified from holding a driving licence for three months. The same term of imprisonment, running concurrently, was imposed

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on the appellant on three other counts in the same charge, arising out of the same road accident. These were for driving with an expired licence ; driving without due care and attention ; and driving with defective brakes. All counts were preferred under the relevant provisions of the Motor Vehicles Regulations 1959 to 1969, and the Motor Vehicles and Road Traffic Law, Cap. 332. The appellant pleaded guilty to all these counts ; and was convicted accordingly.

The short facts of the case are that the appellant, a quilt-maker, of 32 years of age, having decided to change trade, acquired a lorry and became an owner-driver. Some time later, and before he had his papers in order, the appellant while driving the lorry in question on the main Nicosia-Limassol road, attempted to overtake another vehicle by violating the white traffic line on a right-hand bend and came up against a car travelling in the opposite direction. The two vehicles collided (fortunately without very serious consequences) and when the traffic police investigated the matter they collected the evidence upon which the appellant was charged and convicted as stated above.

The trial Judge taking the view that driving without insurance cover was a "very serious offence", becoming alarmingly prevalent, imposed a sentence of one month's imprisonment on each count concurrently, together with a disqualification for three months. Disqualification being part of the sentence (see *Panayiotis Efsthathou Mirachis v. The Police* (1965) 2 C.L.R. 28 ; *Dracos v. The Police* (1969) 2 C.L.R. 16), once a sentence is opened by the appeal, the whole matter comes under consideration.

Disqualification, in a proper case, is a useful and drastic punishment ; and should be duly and carefully considered in all cases where the circumstances require or permit its use. In the case before us we think that the circumstances call for a disqualification order ; but the period of three months is, we think, manifestly inadequate in this particular case. It should be at least twice as much ; and we increase it accordingly.

Coming now to the imprisonment, speaking for myself, I find no justification for the short term imposed, in the circumstances of this case ; when no other form of sentence can fit the circumstances of a case (including those pertaining to the accused), imprisonment has to be resorted to ; and in such a case must be measured on the considerations attaching to such sentence. The matter was discussed from

time to time in several cases; one of which is the *Mirachis* case referred to above. As pointed out in that case, for more than one reasons, very short terms are rarely justified upon any of the purposes which a sentence of imprisonment is intended to serve.

In the circumstances of this case, and dealing with a person of the character of the appellant, we think that a fine of £50, together with a disqualification order for six months, is an appropriate sentence.

JOSEPHIDES, J.: I agree but I would like to add that what weighed most with me in setting aside—not without some hesitation—the sentence of imprisonment in this case was the fact that the appellant was a first offender, in addition to the other facts of the case.

I should state, however, that having regard to the increasing number of motor-car accidents, which are now a daily occurrence, we have reached a stage where, save in exceptional circumstances, the only deterrent punishment in the public interest and protection would appear to be a sentence of imprisonment in the case of careless drivers who endanger human life or who still fail to take out an insurance against third-party risks.

STAVRINIDES, J.: I agree to the result, although not without some reluctance in so far as the imprisonment is set aside.

VASSILIADES, P.: In the result, appeal against sentence allowed. Sentence on count 4 varied to one of £50 fine payable within one month, or three months' imprisonment in default. Moreover, appellant disqualified from holding a driving licence for six months from today. No sentence on the other counts.

*Appeal allowed in part.*

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