

1980 February 5

[TRIANAFYLLIDES, P, HADJIANASTASSIOU, SAVVIDES, JJ.]

GEORGHIOS TH GEORGHIADES,

Appellant,

v.

THE POLICE,

Respondents

(*Criminal Appeal No. 4108*).

*Criminal Law—Sentence—Causing death by want of precaution—
Nine months' imprisonment—Circumstances of the offence—
Failure to pay due regard to the personal circumstances of the
appellant, a professional driver, a married man with two children
and with no previous convictions—Punishment should fit both
the offence and the offender—Sentence reduced*

The appellant was sentenced to nine months' imprisonment after pleading guilty to the offence of causing death by want of precaution. The victim was knocked down by appellant's car whilst walking on the same side of the road on which the appellant was driving. It seemed that immediately before the accident the appellant was dazzled by the lights of a car coming from the opposite direction and he had to dip his own lights with the result that his visibility was severely reduced. The appellant was a professional driver, a married man with two children and had no previous convictions.

The trial Judge found that appellant was driving with selfish disregard for the safety of other road users because he was driving at a very high speed, but there was no expert evidence from which there could be safely deduced the speed at which the appellant was driving at the time (see *Hjt Georghiou v The Police* (1972) 2 C.L.R. 86 at pp. 87-88).

Upon appeal against sentence.

Held, that the punishment should fit both the offence and the offender, that the trial Judge has failed to pay due regard to the personal circumstances of the appellant; that the proper

sentence in this case would be a sentence of three months' imprisonment; and that, therefore, the sentence will be reduced accordingly.

Appeal allowed.

Cases referred to:

R. v. Guilfoyle [1973] 2 All E.R. 844;

Attorney-General of the Republic v. Iacovides (1973) 2 C.L.R. 344;

HjiGeorghiou v. Police (1972) 2 C.L.R. 86 at pp. 87-88.

Appeal against sentence.

Appeal against sentence by Georghios Th. Georghiades who was convicted on the 9th January, 1980 at the District Court of Nicosia (Criminal Case No. 21193/79) on one count of the offence of causing death by want of precaution, contrary to section 210 of the Criminal Code Cap. 154 (as amended by Law 4/74) and section 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86/72) and was sentenced by Artemides, D.J. to nine months' imprisonment.

E. Efsthioiu with *A. Soupashis*, for the appellant.

R. Gavrielides, Counsel of the Republic, for the respondents.

TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellant has pleaded guilty to the offence of having caused by want of precaution, on June 17, 1979, on the Nicosia—Anayia road, the death of another person. He was sentenced to nine months' imprisonment; and he has appealed against this sentence as being manifestly excessive.

The facts of this case, as they appear from the record before us, are briefly as follows:

The appellant was driving towards Nicosia. The time was 9.40 p.m. and the victim, a young national guardsman, nineteen years old, was walking towards Nicosia, ahead of the appellant, on the same side of the road as that on which the appellant was driving; apparently the victim was walking on the asphalted part of the road and was not using the berm. It seems, also, that immediately before the accident the appellant was dazzled by the lights of a car coming from the opposite direction and he had to dip his own lights with the result that his visibility was severely reduced.

Counsel for the respondents has very fairly agreed with counsel for the appellant that, in the circumstances of this case, the sentence is manifestly excessive and we are inclined to share this view.

5 The principles governing the assessment of sentence in a case of this nature were expounded in *R. v. Guilfoyle*, [1973] 2 All E.R. 844, which was cited with approval by our Supreme Court in, *inter alia*, *The Attorney-General of the Republic v. Iacovides*, (1973) 2 C.L.R. 344.

10 In the present case, as it appears from his judgment, the trial judge has taken the view that the appellant was, at the material time, driving with selfish disregard for the safety of other road users. The Judge based this view on his opinion that the appellant must be presumed to have been driving at
15 a very high speed because his car, after hitting the victim, dragged him along for about 50 feet and then it went on for another 30 feet before coming to a stop.

There was not, however, before the trial Court any expert evidence from which there could be safely deduced the speed
20 at which the appellant was driving at the time; and, in this respect, we would like to draw attention to what has been observed, on a similar occasion, in *HjiGeorghiou v. The Police*, (1972) 2 C.L.R. 86 (see pp. 87-88).

The appellant is a professional driver, a married man with
25 two children and has no previous convictions. We have often stressed that the punishment should fit both the offence and the offender. In this case it seems to us that the trial Judge has failed to pay due regard to the personal circumstances of the appellant.

30 Taking all the aforesaid factors into consideration we have reached the conclusion that the proper sentence in this case would be a sentence of three months' imprisonment as from the date when the appellant was sent to prison, and his sentence is, therefore, reduced accordingly.

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Appeal allowed.