

1980 February 15

[TRIANTAFYLIDIS, P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

LEONIDAS NICOLA,

Appellant.

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 4097.*)

*Criminal Law—Sentence—Causing death by want of precaution—
 Six months' imprisonment and twelve months' disqualification—
 Mitigating factors—Deep remorse of the appellant—Lack of
 element of selfish disregard for the safety of others—Family
 circumstances and clean past traffic record of the appellant— 5
 Though sentences not wrong in principle sentence of imprisonment
 manifestly excessive—Reduced—Sentence of disqualification affi-
 rmed.*

The appellant pleaded guilty to the offence of causing death
 by want of precaution and was sentenced to six months' imprison- 10
 ment and was disqualified from holding or obtaining a driving
 licence for a period of twelve months. The fatal accident
 occurred whilst the appellant was driving a tractor pulling a
 carriage behind it and he allowed the victim, a boy of twelve
 closely related to him, to have a ride on the tractor, during 15
 which he fell off the tractor and was killed.

The appellant, was forty-two years old, married with children
 and without any previous convictions as regards traffic offences.
 He was a person of good character and according to expert 20
 medical opinion he has been gravely upset psychologically
 by the fact that due to his own conduct there was killed a child
 who happened to be a close relative of his; as a result he was
 suffering from depression and his stay in prison aggravated
 his condition.

Upon appeal against sentence: 25

Held, that though the sentence of imprisonment and of disqua-

lification is not considered as wrong in principle, because conduct such as that of the appellant should be deterred as far as possible, taking into account that there is lacking here the element of selfish disregard for the safety of others and attributing due weight to the deep remorse of the appellant for what has happened, the length of the sentence of imprisonment which was passed on him is manifestly excessive; that, therefore, the sentence of imprisonment will be reduced to one of three months' imprisonment and the sentence of disqualification will be affirmed.

Appeal partly allowed.

Cases referred to:

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

Attorney-General v. Iacovides (1973) 2 C.L.R. 344.

15 Appeal against sentence.

Appeal against sentence by Leonidas Nicola who was convicted on the 24th November, 1979 at the District Court of Larnaca (Criminal Case No. 7469/79) 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 Constantinides, D.J. to six months' imprisonment and was further disqualified from holding or obtaining a driving licence for a period of twelve months.

A. Georghiou, for the appellant.

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

TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellant was sentenced to six months' imprisonment and was disqualified from holding or obtaining a driving licence for a period of twelve months, by the District Court of Larnaca, after he had pleaded guilty to the offence of causing death by want of precaution, contrary to section 210 of the Criminal Code, Cap. 154. The fatal accident occurred on June 5, 1979, in the village of Tersefanou and the victim was a boy twelve years old who was closely related to the appellant.

35 At the time the appellant was driving a tractor pulling a carriage behind it and he allowed the deceased and two other children to have a ride on the tractor, during which the deceased fell off the tractor and was killed.

Counsel for the appellant has submitted that the sentence

of imprisonment is, in the circumstances of this case, manifestly excessive and wrong in principle; he, also, argued that the sentence of disqualification is manifestly excessive in view of the fact that the appellant needs the driving licence for his work as a farmer.

5

Counsel for the respondents has very fairly stated that he regards the length of the sentence of imprisonment as excessive.

We have considered all relevant factors in this case without losing sight of the fact that it is the trial Court which has the primary responsibility to assess sentence in each case and that we can only intervene if we find that the sentence is either manifestly excessive or inadequate, or wrong in principle.

10

We agree with the trial Court that those who drive tractors should be particularly careful and should not allow other persons to be carried on them in an unsafe manner, as has happened in this case. On the other hand, we cannot overlook that, as shown by a social investigation report, the appellant, who is forty-two years old, is a married man with children and without any previous convictions as regards traffic offences. He is a person of good character and according to expert medical opinion he has been gravely upset psychologically by the fact that due to his own conduct there was killed a child who happened to be, also, a close relative of his; as a result he is suffering from depression and his stay in prison aggravates his condition.

15

20

25

We do not consider the sentence of imprisonment and of disqualification, in this case, to be wrong in principle, because conduct such as that of the appellant should be deterred as far as possible, but on the other hand, taking into account that there is lacking here the element of selfish disregard for the safety of others (see *R. v. Guilfoyle*, [1973] 2 All E.R. 844, which which has been cited in, *inter alia*, *The Attorney-General of the Republic v. Iacovides*, (1973) 2 C.L.R. 344), and attributing due weight to the deep remorse of the appellant for what has happened, we are of the opinion that the length of the sentence of imprisonment which was passed on him is manifestly excessive and, therefore, we reduce it to one of three months' imprisonment; we do not, however, propose to interfere with the sentence of disqualification.

30

35

This appeal is allowed in part accordingly.

40

Appeal partly allowed.