

1986 April 29

[A. LOIZOU, DEMETRIADES, PIKIS. JJ.]

SOCRATIS CHARALAMBOUS,

Appellant,

v.

THE POLICE.

Respondents.

(Criminal Appeal No. 4729).

Sentence—Causing death by want of precaution contrary to s. 210 of the Criminal Code, Cap. 154—Excessive speed and lack of proper look-out—Appellant's car straying on the wrong side of the road—No opportunity of driver of on-coming vehicle to avoid the collision—Nine months' imprisonment and disqualification for six months to take effect upon expiration of the prison sentence—On the whole lenient. 5

Excessive speed, coupled with lack of proper look-out, diminished appellant's ability to exercise proper control over his car, which was allowed to stray on the wrong side of the road, leaving no opportunity to the driver of an on-coming vehicle to avoid collision. The collision resulted in the death of three persons, aged 47, 15 and 8 respectively. 10 15

The appellant was sentenced to concurrent terms of nine months' imprisonment on three counts of causing death by want of precaution, contrary to s.210 of Cap. 154; the appellant was further disqualified from holding a driving licence for a period of six months to take effect after the expiration of the prison sentence. 20

Counsel for the appellant argued that the negligence of the appellant was in the nature of a momentary inattention

and that as such it merited, on the sentencing principles approved in a number of cases*, a lesser custodial sentence, while disqualification was unjustified in view of his good driving record and the need he has of a driving licence to carry out his work.

Held, dismissing the appeal: (1) It is wrong to single out remarks and observations made in individual cases referable to particular facts and elevate them into sentencing rules of law (*Pamporis v. The Police* (1985) 2 C.L.R. 85 cited with approval).

(2) The sentence in question was on the whole lenient. This Court would have been disinclined to interfere, even if the sentence imposed had been one of 15 or 18 months' imprisonment. It is not without hesitation that this Court decided to refrain from increasing the sentence in question.

(3) The date of commencement of the disqualification is not stated with the necessary certainty. However, it is clear that the trial Judge contemplated disqualification to take effect immediately after the expiration of the imprisonment and last for a period of six months thereafter. As such it is upheld.

Appeal dismissed.

Cases referred to:

- R. v. Guilfoyle* [1973] 2 All E.R. 844;
 25 *R. v. Boswell and Others* [1984] 3 All E.R. 353;
A. G. v. Iacovides (1973) 2 C.L.R. 344;
Mylordis v. The Police (1981) 2 C.L.R. 219;
Pamporis v. The Police (1985) 2 C.L.R. 85;
Philippou v. The Republic (1983) 2 C.L.R. 245.

* See note (1) at p. 131.

Appeal against sentence.

Appeal against sentence by Socratis Charalambous who was convicted on the 16th January, 1986 at the District Court of Limassol (Criminal Case No. 27129/85) on three counts of the offence of causing death by want of precaution contrary to section 210 of the Criminal Code, Cap. 154 and was sentenced by Korfiotis, D. J. to concurrent terms of nine months' imprisonment on each count. 5

Y. Demosthenous with *G. Savvides*, for the appellant.

A. M. Angelides, Senior Counsel of the Republic, 10
for the respondents.

A. LOIZOU J.: Having heard counsel for the appellant, we consider it unnecessary to hear counsel for the respondents. Mr. Justice Pikis will give the judgment of the Court. 15

PIKIS J.: The appellant was sentenced to concurrent terms of nine months' imprisonment on three counts of causing death by want of precaution, contrary to the provisions of s. 210 of the Criminal Code. Because of his negligent driving, the car driven by the appellant collided with an on-coming vehicle on the Platres-Limassol road resulting in the death of three persons aged 47, 15 and 8 respectively. It is a tragic case that reminds of the fatal consequences negligent driving can produce, as well as the duty of the Court to help stem this social evil more so in view of the mounting number of fatal accidents. 20
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Examination of the facts preceding and surrounding the accident leads inexorably to the conclusion that appellant drove his vehicle with no proper regard to the safety of other users of the road. He was going at a speed at a part of the main thoroughfare that could not but expose the safety of other users of the road to foreseeable risks. 30

Excessive speed, coupled with lack of proper look-out, diminished the ability of the appellant to exercise proper control over his car with disastrous consequences on the fate of the driver and passengers of an on-coming vehicle.

5 The car of the appellant was allowed to stray on the wrong side of the road in a way obstructing the passage of the on-coming vehicle, leaving little or no opportunity to the driver of the other vehicle to avoid the collision that followed. The accident was precipitated by the negligent driving of the appellant and the collision that followed was the result thereof.

Mr. Savvides who argued the case for the appellant, submitted that the sentence of nine months' imprisonment was excessive and the six-month disqualification imposed to take effect after the expiration of the prison sentence, unmerited. Notwithstanding its consequences, counsel argued, the negligence of the appellant was not of a reckless kind; it was more in the nature of an act of momentary inattention. As such it merited, on the sentencing principles approved in a number of English and Cyprus cases⁽¹⁾, a lesser custodial sentence, while disqualification was unjustified in view of his good driving record and the need he has of a driving licence to carry out his work. Moreover, the date of commencement of disqualification was fraught, as counsel indicated, with uncertainty.

Recently in *Pamporis v. The Police*⁽²⁾, we had occasion to review the caselaw relevant to the punishment of drivers offending against the provisions of s. 210 of the Criminal Code, and indicate the principles that should guide the trial Courts in the sentencing process. It is wrong, as we pointed out, to single out remarks and observations made in individual cases referable to the particular facts of the

⁽¹⁾ He cited, inter alia, *R. v. Guilfoyle* [1973] 2 All E.R. 844; *R. v. Boswell and Others* [1984] 3 All E.R. 353; *A.G. v. Iacovides* (1973) 2 C.L.R. 344; *Mylordis v. The Police* (1981), 2 C.L.R. 219..

⁽²⁾ (1985) 2 C.L.R. 85..

case and elevate them into sentencing rules of law. The tenor of the judgment in *Pamporis* clearly suggests it is undesirable to pigeon-hole acts of negligence for sentencing purposes and divorce them from the general context of the case in a manner fettering the discretion of the Court to meet out punishment fitting the overall effect of the facts of a case. 5

Far from agreeing that the sentence imposed on the appellant was excessive, we incline to the view it was on the whole lenient. We would be disinclined, let us note, to interfere with the sentence of imprisonment even if its length extended to 15 or 18 months. The negligence of the appellant could not be described as anything other than gross. The inescapable inference is that appellant drove his vehicle in a manner exposing other users of the road to foreseeable grave risks. His speed and lack of proper lookout made loss of control of the car a distinct possibility. Lack of precaution against that possibility made collision with vehicles driven from the opposite direction probable indeed as well as the fatal consequences that ensued. Because in that eventuality occurring, little or no margin would be left to the driver of the other vehicle to avoid the collision and the predictably catastrophic consequences likely to result therefrom. 10
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It is not without hesitation that we shall refrain from increasing the sentence imposed. Our unwillingness to interfere with sentence is a reflection of our awareness of and adherence to the principles upon which the Court of Appeal may legitimately interfere with sentence summarized, inter alia, in *Philippou v. The Republic*(1). 25
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There is some justification in the submission that the date of commencement of disqualification, itself part of the sentence, is not stated with the certainty necessary for the specification of the punishment. Nevertheless, it is clear that the trial Judge contemplated disqualification to take effect immediately after the expiration of the sentence 35

(1) (1983) 2 C.L.R. 245.

of imprisonment and consequential release of the appellant from prison and last for a period of six months thereafter. As such we uphold it. As a matter of principle it is desirable that the commencement of every kind of sentence should be fixed with exactness to avoid confusion and uncertainty.

The appeal is dismissed.

Appeal dismissed.