

1967
June 29

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

ELEFThERIADES
GREGORIOS
v.
THE REPUBLIC

ELEFThERIADES GREGORIOS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 2932)

Military Service—Military Court—Road Traffic—Sentence—Appeal against sentence as manifestly excessive—Driving without due care and attention—Grounds upon which the Appellate Court would interfere with sentence imposed—None shown to exist—Appeal dismissed—The Military Criminal Code and Procedure Law, 1964, sections 5, 112, etc.

Criminal Procedure—Appeal—Sentence—Appeal against sentence—Grounds upon which the Appellate Court will interfere with sentence imposed—See above.

Road Traffic—Driving without due care and attention—Sentence—See above.

This is an appeal against a sentence of five months imprisonment imposed on the appellant by the Military Court of Nicosia for driving a military vehicle without due care and attention. The matter went before the Military Court because the appellant at the time of the commission of the offence was serving as a member of the military forces and was, therefore, subject to the provisions of the Military Criminal Code and Procedure Law, 1964, articles 5, 112, etc.

In dismissing the appeal the Court :

Held, (1) as pointed out in a number of cases, we cannot substitute ourselves for the trial Court in measuring their sentence.

(2) We can only intervene where it is shown that the sentence imposed is manifestly inadequate or excessive ; or that the trial Court acted on wrong principle.

(3) In the circumstances of this case none of such grounds has been shown to exist.

Appeal dismissed. Sentence to run from the date of conviction.

Appeal against sentence.

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Appeal against sentence imposed on the appellant who was convicted on the 26th May, 1967, at the Military Court, sitting at Nicosia, Case No. 97/67, on one count of the offence of driving a military vehicle without due care and attention, contrary to sections 6 and 13 of the Motor Vehicles and Road Traffic Law Cap. 332 and section 5 of the Military Criminal Code and Procedure Law, 1964 (Law 40/64), as amended by Law 77/65, and was sentenced to 5 months' imprisonment.

Chr. Artemides, for the appellant.

S. Georgiades, Counsel of the Republic, for the respondent.

The judgment of the Court was delivered by :

VASSILIADES, P.: This is an appeal against a sentence of five months' imprisonment imposed on the appellant by the Military Court of Nicosia for driving a military vehicle without due care and attention. The matter went before the Military Court because the appellant at the time of the commission of the offence was serving as a member of the military forces and was, therefore, subject to the provisions of the Military Criminal Code and Procedure Law, 1964 (Articles 5 ; 112, etc.).

The ground on which the appeal is taken is that the sentence was manifestly excessive in the circumstances of the case in hand.

After hearing learned counsel for the appellant on the material on record affecting sentence, we took the view that it was unnecessary to call on the respondent. The main facts constituting the offence charged (to which the appellant pleaded guilty) are that the appellant, while driving a heavy military vehicle at a road-crossing disregarded the traffic-lights, and entered the crossing before the green light came on. As a result, the military vehicle collided with a private car at the crossing, and caused considerable damage to the private car and injuries to some of its passengers ; one of them was seriously injured.

The Military Court consisting of the President and two senior officers, apparently taking a serious view of the offence, imposed a sentence of five months imprisonment.

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Before we can interfere with this sentence, the appellant has to satisfy this Court that in the circumstances of the case, the sentence imposed is manifestly excessive ; or, that the trial Court acted on wrong principle. As pointed out in a number of cases, we cannot substitute ourselves for the trial Court in measuring their sentence. We can only intervene in order to increase, reduce or otherwise alter the sentence, where it is shown that it is manifestly inadequate or excessive ; or that there are legal grounds making such intervention necessary.

In the circumstances of this case, none of such grounds has been shown to exist. We are not prepared to hold that five months imprisonment for such careless driving, is manifestly excessive. The appeal, therefore, fails.

Appeal dismissed, with directions for the sentence to run from the date of conviction.

*Appeal dismissed. Sentence
to run as above.*