

DIRAN DER AVEDISIAN,

Appellant,

v.

THE POLICE,

Respondents.

DIRAN DER
AVEDISIAN
v.
THE POLICE

(Criminal Appeal No. 3063).

Sentence—Careless driving contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332—Appellant first offender—Degree of negligence and age not sufficiently taken into account—Fine reduced by the Court of Appeal.

Sentence—Appeal—Sentence reduced—See above.

Road Traffic—See above.

The facts sufficiently appear in the judgment of the Court.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Diran Der Avedisian who was convicted on the 29th November, 1968, at the District Court of Nicosia on one count of the offence of driving without due care and attention contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332, and was sentenced by HjiTsangaris, D.J., to pay a fine of £8 and he was further ordered to pay £2 costs of prosecution.

E. Vrahimi (Mrs.), for the appellant.

A. Frangos, Senior Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :—

VASSILIADES, P.: This is an appeal against conviction in the District Court of Nicosia on a charge of driving without due care and attention contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332 ; and the sentence of £8 fine and £2 costs, imposed on the appellant.

The grounds of appeal were directed against conviction ; but in the course of the hearing the Court, on the application of the appellant, allowed that the appeal be treated as one directed against sentence as well.

1969
Feb. 21

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The four grounds upon which the conviction was challenged in the formal notice, may be summarised into one : that the conviction is against the weight of evidence. The sentence is challenged on the ground that, in the circumstances, it is manifestly excessive.

The case arises from the collision between two motor vehicles, a taxi and a private car, in a town street in Nicosia. The short facts of the case, taken from the judgment of the trial Court, are : Appellant's private car was parked at the side of a 30 ft. wide road in a line of other cars, likewise parked on that same side of the road. The sketch drawn by the traffic police, and produced as exhibit 1, sufficiently and clearly describes the position. The car was facing in the direction in which the appellant intended to proceed ; and that was his offside of the road. In order to take to his proper side, the appellant had to drive across the path of the oncoming traffic. Indicating his intention to do so, with his trafficator, the appellant started moving out of the line of stationary cars. The driver of another car proceeding in the opposite direction (to which we shall refer as the second car) apparently having noticed appellant's manoeuvring and kindly wishing to facilitate him stopped close to the line of stationary cars and signalled to the appellant to move out as he intended while, presumably, the second car gave him the opportunity to do so by delaying the oncoming traffic. As the appellant drove off, however, and was about to clear the front of the second car, a taxi coming from behind it and apparently failing to realise the object for which the second car was stationary tried to overtake it on its offside, and in doing so, came face to face with appellant's car. Both drivers tried unsuccessfully to avoid the collision, but the two vehicles collided, the taxi hitting appellant's car on its off side. Fortunately without any serious consequences.

In his statement to the police, which was admitted at the trial, as exhibit 2, the appellant, stated that he did not see the taxi coming behind the second car until it was too late. The taxi driver's evidence on the point, was that appellant's car came suddenly into his path while he was overtaking the stationary second car.

The trial Judge found the appellant guilty of careless driving in that—

- (a) he had parked his car on his wrong side of the road
“ which meant that when he was to leave he had to

drive across the path of oncoming vehicles which certainly have precedence”, as the trial Judge put it ; and

- (b) he failed in his duty “to insure that there were no other vehicles even behind the stationary car” ; notwithstanding the courtesy of the driver of the second car.

In the course of the hearing, learned counsel for the appellant, practically abandoned the appeal against conviction ; and we think that she rightly did so. The learned trial Judge referred in his judgment to the “impatience” of the taxi driver which “might have contributed to this accident” ; and that was a finding in appellant’s favour on which she could well rely.

What very probably happened, was that trying to ascertain that there was no traffic coming behind him at the material time, the appellant looked back and failed to notice the taxi coming from the other side, behind the second car. On the other hand, the “impatience” of the taxi driver which contributed to this collision was, we think, a very mild description of his contribution. We are not here concerned with the taxi driver’s carelessness ; but, as rightly noted by the trial Judge, it was one of the factors which should be taken into consideration in connection with sentence ; and for that purpose it has to be duly assessed.

As we have already said, the appeal against conviction was in the end, practically abandoned. In the circumstances the conviction must be sustained.

On the other hand, as regards the sentence, learned counsel for the Police, quite fairly and rightly, in our opinion, agreed that the sentence imposed, apparently not taking sufficient account of the carelessness of the taxi driver, is, in the circumstances, manifestly excessive. Considering the nature of appellant’s carelessness, the degree of negligence, his age (51 years old) and that he is a first offender, we think that the appropriate sentence in addition to the order for £2 costs, is a nominal fine of £1.

In the result, the appeal against conviction fails ; and the conviction stands affirmed. The appeal against sentence is allowed ; and the sentence is varied to one of £1 fine and £2 costs.

Appeal against conviction dismissed ; appeal against sentence allowed ; sentence reduced to one of £1 and £2 costs.