1985 October 21

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

COSTAKIS EVAGOROU AGATHOCLI,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4663).

Road Traffic—Sentence—Permitting the use of a motor vehicle without a driving licence contrary to regs. 26(1) and 72 of the Motor Vehicles and Road Traffic Regulations 1984 and s. 19 of the Motor Vehicles and Road Traffic Law 86/72—Permitting the use of a motor vehicle without a policy in respect of third party risks contrary to s. 3 of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 as amended by s. 2(a)(b) of Law 7/60—Appellant, a professional man, hired a motor-bike to a foreigner, a boy of 16 years of age, knowing that the latter was not the holder of a driving licence—A fine of £20 for the first offence, £30 for the second and disqualification from holding or obtaining a driving licence for a period of 6 months—This sentence was in the circumstances appropriate.

The appellant hired a motor-bike to ex-accused 1, a foreigner of 16 years of age, knowing that he was not the holder of a driving licence. As a result the appellant was found guilty on his own plea on two counts, namely for permitting the use of a motor vehicle without a driving licence contrary to regs. 26(1) and 72 of the Motor Vehicles and Road Traffic Regulations 1984 and s.19 of the Motor Vehicles and Road Traffic Law 86/72 and for permitting the use of such vehicle without a policy in respect of third party risks contrary to s. 3 of the Motor

Vehicles (Third Party Insurance) Law, Cap. 333, as amended by s. 2(a) (b) of Law 7/60.

Both ex accused 1 and appellant were first offenders. The appellant did not say anything in mitigation of sentence. Though ignorance of the law is not a defence the trial Court took it seriously into consideration as a mitigating factor in passing sentence on ex accused 1 for committing the two offences which appellant was found to have permitted him to commit and fined him £5 on each count. The trial Court fined the appellant £20 on the first count, £30 on the second and disqualified him from holding or obtaining a driving licence for a period of six months. Hence the present appeal against sentence.

Held, dismissing the appeal (1) The differentiation made in the sentence imposed on ex-accused 1, a tourist boy of 16 years of age, and the appellant, a professional man who ought to know better, does not constitute a matter of disparity that deserves to be remedied.

(2) Offences of this nature where persons without being the holders of a driving licence are allowed and more so for a fee and as a matter of a profitable business, to drive vehicles on the roads and at that, as in the present case in a summer resort (Ayia Napa) are very serious. The sentence imposed by the Court was in the circumstances the appropriate one.

Appeal dismissed.

Observations made by the Court: Even in summary trials, trial Judges should keep precise records by recording in respect of each accused separately the plea he enters for each separate count.

Cases referred to:

Havadzia v. *The Police* (1980) 2 C.L.R. 195;

Assiotis v. *The Police* (1981) 2 C.L.R. 5.

Appeal against sentence.

Appeal against sentence by Costakis Evagorou Agathocli who was convicted on the 25th June, 1985 at the District Court of Famagusta (Criminal Case No. 2427/85) on one count of the offence of permitting the use of a motor vehicle without a driving licence contrary to regulations 26(1) and 72 of the Motor Vehicles and Road Traffic Regulations, 1984 and section 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86 of 1972) and on one count of the offence of permitting the use of a motor vehicle without a policy in respect of third party risks contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 (as amended by Law 7 of 1960) and was sentenced by Arestis, D.J. to pay £20.- fine on count 1, £30.- fine on count 2 and was further disqualified from holding or obtaining a driving licence for a period of six months.

E. Lemonaris, for the appellant.

No appearance for the respondents.

A. Loizou J. gave the following judgment of the Court. The appellant was found guilty on his own plea by a Judge of the District Court of Famagusta sitting at Paralimni, on two counts: The one that he permitted the use of a motor-vehicle without a driving licence, contrary to Regulations 26(1) and 72 of the Motor Vehicles and Road Trafic Regulations, 1984, and s. 19 of the Motor Vehicles and Road Traffic Law, 1972, (Law No. 86 of 1972) and the other that he permitted the use of such motor-vehicle without a policy in respect of third party risks, contrary to s. 3 of the Motor Vehicles (Third Party Insurance). Law, Cap. 333, as amended by s. 2 (a) (b) of Law No. 7 of 1960.

The particulars of the offences and the facts as related to the Court by the prosecution in support thereof are that about 14.40 hours of the 18th June, 1985, along Nissi Avenue at Ayia Napa, in the district of Famagusta, ex accused 1, a foreigner, a boy of 16 years of age, was found riding a motor-bike under registration No. RM 525 without being the holder of a driving licence and consequently without being covered by a policy against third party risks. It was discovered that the appellant was the person res-

ponsible for the hiring of motor-bikes. and hired the said motor-bike to ex accused 1 knowing, as it was stated at the trial, that the said ex accused 1, was not the holder of a driving licence. The appellant as well as ex accused 1, were first offenders.

In passing sentence the trial Judge pointed out that the law provides that in addition to any other punishment disqualification from holding or obtaining a driving licence might be imposed on an offender unless the Court found that there are special reasons not to impose such a sentence. As regards ex accused 1. the trial Judge observed that he was a foreigner, 16 years of age and a pupil and that although ignorance of the law could not be a defence, he took it seriously into consideration as a mitigating factor in passing sentence on him for committing the two offences which appellant was found to have permitted him to commit and fined him £5.- on each count. As regards the appellant, the trial Judge observed that he had said that he did not wish to say anything in mitigation, a stand that deprived the Court of the possibility of knowing anything more than what had already been stated by the prosecution and was also apparent on the charge-sheet. But he took into consideration that the appellant was a first offender in so far as his personal circumstances were concerned other than his professional engagement and in the circumstances he fined him £20.- on the one count and £30.- on the other, and disqualified him from holding or obtaining a driving licence for a period of six months and directed that such disqualification be endorsed on his driving licence.

As against this sentence the appellant appealed on the ground that same was manifestly excessive, it was unreasonable and harsh, as counsel put it, in view of the personal circumstances of the offender and that the learned trial Judge did not direct his mind to the personal circumstances of the offender and the consequence of such disqualification upon him.

We have had the advantage of having before us counsel

appearing on behalf of the appellant, an advantage which did not exist at the trial and having listened to what he said, and gone through the record ourselves as no counsel for the Republic appeared, we have come to the conclusion that in the circumstances of this case we have not been persuaded that the sentence imposed on him by the trial Judge was either manifestly excessive or wrong in principle.

If anything the cases of *Havadzia* v. *The Police* (1980) 2 C.L.R. 195, and *Assiotis* v. *The Police* (1981) 2 C.L.R. 5, referred to by counsel for the appellant reveal the approach of this Court in matters which have a close relationship with the facts of the present case and in no way can the approach in the present case be considered as not being in conformity with the principles therein enunciated, or that the differentiations made in the sentence imposed on ex-accused 1, a tourist of sixteen years of age, and the appellant, a professional man who ought to know better, constitute a matter of disparity that deserves to be remedied.

Offences of this nature where persons without being the holders of a driving licence are allowed and more so for a fee and as a matter of a profitable business, to drive vehicles on the roads and at that, as in the present case in a summer resort, are very serious and the sentence imposed by the Court was, in the circumstances, the appropriate one and we find no reason to interfere with it. Persons in the vehicles hiring business should ensure before letting somebody take control of their vehicles that such person is duly qualified under the Law to do so and duly covered by an insurance policy.

Before concluding, we would like to make a brief observation as to the manner the record of the Court was kept. When both accused appeared before the learned trial Judge he simply recorded "accused present, charged, plead guilty", using the plural in Greek which indicates that the record referred to both of them and to both counts. We would like to draw the attention of trial Judges, however

overburdened they are daily with the heaps of criminal cases that they have to deal, that even in summary trials they should keep precise records by recording in respect of each accused separately, the plea he enters for each separate count.

For all the above reasons the appeal is dismissed.

Appeal dismissed.