

1963
October 24

YUSUF
SULEIMAN
v.
THE POLICE

[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

YUSUF SULEIMAN,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 2674)

Criminal Procedure—Charge—Road Traffic—Driving without due care and attention contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332—Section 6 creates the offence and fixes the penalty—Additional powers given to the Court by section 13 (1) to disqualify the convicted driver from holding or obtaining a licence to drive—Section 13 (1) not mentioned in the charge-sheet—The omission is immaterial and does not offend the second part of section 39 (c) of the Criminal Procedure Law, Cap. 155.

Criminal Law—Sentence—Previous convictions and sentences—Effect of—The Court must be guided by the circumstances of the individual case—Penalties do not necessarily increase on a gradual scale.

Road Traffic—Sentence—Disqualification from holding or obtaining a driving licence—Driver by profession—Family circumstances and hardship to be taken into account—But the overriding consideration is the protection of the public.

Section 39 (c) of the Criminal Procedure Law, Cap. 155, reads as follows :

“The count in a charge shall describe the offence with which the accused is charged shortly in ordinary language, avoiding as far as possible the use of technical terms and without necessarily stating all the essential elements of the offence and it shall contain a reference to the section of the enactment creating the offence. When an offence consists of something which is forbidden by the joint effect of more enactments than one, the charge shall contain a reference to both such enactments and if the offence is defined by one enactment and punishment is provided for it by another enactment reference shall also be made to the enactment by which punishment is provided ;”

Section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332 provides :

“ If any person drives a motor vehicle on a road without due care and attention or without reasonable consideration

for other persons using the road, he shall be liable to imprisonment not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and fine :

Section 13 (1) of the same law provides :

“ Any Court before which a person is convicted under this Law may in any case and shall when so required by sections 5 and 7 of this law order such person to be disqualified from holding or obtaining a licence to drive a motor vehicle for such period as the Court thinks fit ”

The appellant, a driver by profession was convicted on his own plea of driving a motor lorry without due care and attention contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332 (*supra*) and sentenced to a fine of £15. In addition the trial Judge disqualified the accused (appellant) under section 13 (1) of that Law from holding or obtaining a driving licence for a period of one year. No reference of section 13 (1) was made in the charge-sheet. The accused appealed only in respect of the disqualification. It was argued on his behalf: 1. that the omission from the charge-sheet of section 13 (1) of Cap. 332 (*supra*) offends section 39 (c) of the Criminal Procedure Law, Cap. 155 (*supra*) and, therefore, the trial Judge had no power to impose the aforesaid disqualification ; 2. in any event, that the monetary penalty of £15 imposed was sufficient (a) on account of family circumstances and the hardship imposed on the accused, a driver by profession, as a result of the disqualification and (b) in view of the fact that the record of the accused showed a number of similar convictions upon which the respective penalties were the minimum fine and that, therefore, the penalties should be increased gradually.

The High Court:

Held : (1) Section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332, alone creates the offence charged and fixes the penalty. Section 13 (1) gives the Court the additional power to disqualify the convicted driver from holding or obtaining a driving licence. Therefore, that part of section 39 (c) of the Criminal Procedure Law, Cap. 155 quoted (*supra*) has no application. The count complied with the requirements of the first part of section 39 (c).

(2) Counsel for the appellant submitted that this monetary penalty of £15 imposed is sufficient in the circumstances because in respect of earlier convictions, the Court has been good enough to impose only the minimum fine, and that the penalty should be increased gradually. We are of the opinion that the Court should be guided by the circumstances of the individual case and penalties do not necessarily increase on a gradual scale.

(3) In this case we feel that the monetary penalty is not adequate inasmuch as the accused has had sufficient warnings as a result

1963
October 24
—
YUSUF
SULEIMAN
v.
THE POLICE

of the prosecutions which were taken against him in the years 1961, 1962 and 1963. The only really effective penalty appears to be, thus, the cancellation of his licence.

(4) We are not unaware of the hardship which this brings about in individual cases. The overriding consideration, however, is the protection of the public and this demands a disqualification in proper cases. That was a proper penalty in this case. But we think that a period of disqualification of three months should serve the public interest. The suspension, therefore, will be reduced from one year to three months.

Appeal allowed in part. Period of disqualification reduced from one year to three months.

Appeal against sentence of disqualification.

The appellant was convicted on the 26th September, 1963, at the District Court of Larnaca (Cr. Case No. 2581/63) on 2 counts of the offences of : 1. Driving motor lorry without due care and attention contrary to s. 6 of the Motor Vehicles and Road Traffic Law, Cap 332 ; and 2. Driving an unlicensed motor lorry contrary to regulations 18 and 66 of the Motor Vehicles Regulations, 1959, and was sentenced by Halil, D.J., to pay a fine of £15 on count 1, and a fine of £5 on count 2 and he was further disqualified from holding or obtaining a driving licence for a period of 1 year.

G. Achilles for the appellant.

V. Aziz for the respondents.

The judgment of the Court was delivered by :

WILSON, P. : This is an appeal from a portion of the sentence imposed by the District Court of Larnaca on September 26, 1963.

The accused, who was not represented by a counsel at the trial, had pleaded guilty to two offences : 1. Driving a motor lorry without due care and attention contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332 ; 2. Driving the same motor lorry on a road without a motor lorry licence in force for the third quarter of 1963.

The learned Judge imposed a fine of £15 in respect of the first conviction, and from this there is no appeal. In respect of driving his motor lorry without a licence for the third quarter of 1963, he imposed a penalty of £5 fine,

or in default, one month's imprisonment. In addition and in respect of count No. 1, the learned Judge disqualified the appellant from holding or obtaining a driving licence for a period of one year from the date of conviction. It is in respect of the disqualification only that this appeal is taken.

1963
October 24
—
YUSUF
SULEIMAN
v.
THE POLICE

It was argued that the learned Judge had no power to impose the disqualification order, and also that the Court ought to have taken into account the family circumstances and the hardship imposed on the accused as a result of the disqualification, because he is a professional driver of motor vehicles.

With respect to the point first mentioned, namely, that the learned Judge had no power to disqualify the accused, it was argued that the following provision of para. 2 of section 39 (c) of the Criminal Procedure Law, Cap. 155 applies :

“ When an offence consists of something which is forbidden by the joint effect of more enactments than one, the charge shall contain a reference to both such enactments and if the offence is defined by one enactment and punishment is provided for it by another enactment reference shall also be made to the enactment by which punishment is provided.”

However, section 6 of the Motor Vehicles and Road Traffic Law alone creates the offence charged in count 1 and fixes the penalty. Section 13 (1) gives the Court the additional power to disqualify the convicted driver from holding or obtaining a licence to drive a motor vehicle for such period as the Court thinks fit. Therefore that part of section 39 (c) of the Criminal Procedure Law quoted has no application.

The count complied with the requirements of the first part of section 39 (c).

The learned Judge, therefore, did have the power to impose the suspension referred to above. However, having said this, we should also consider the severity of the punishment. Counsel for the appellant has admitted that there is no appeal against the fine of £15. He submits, however, that this is sufficient in the circumstances because in respect of earlier convictions, the Court has been good enough to impose only the minimum fine, and that the penalty should be increased gradually.

1963
October 24
—
YUSUF
SULEIMAN
v.
THE POLICE

With due respect to this submission, we are of the opinion that the Court must be guided by the circumstances of the individual case and penalties do not necessarily increase on a gradual scale. The accused has had sufficient warning as a result of the prosecutions which were taken against him in the years 1961, 1962 and 1963.

We feel that the monetary penalty is not adequate. The only really effective penalty appears to be the cancellation of licence. We are, however, not unaware of the hardship which this brings about in individual cases. The overriding consideration is the protection of the public and this demands a disqualification in proper cases. We think that that was a proper penalty in this case ; but we respectfully take the view that a period of suspension of three months should serve the public interest. We allow the appeal to the extent of altering that portion of the penalty.

The suspension will be reduced from one year to three months. The disqualification will run from the date of conviction.

Appeal partly allowed.