

1966  
June 22

[VASSILIADES, TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

ANDREAS  
GEORGHIOU  
v.  
THE POLICE

ANDREAS GEORGHIOU,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(*Criminal Appeal No. 2817*)

*Criminal Procedure—Trial in criminal cases—Accused's statement to police—Failure of the prosecution to make such statement available to the defence during trial—Incumbent upon prosecution, in the circumstances of this case, to make the statement available to the defence—Failure, however, in that regard did not affect in any way the conviction of the accused in this case.*

*Criminal Law—Road traffic—Driving without due care and attention, contrary to sections 6 and 13 of the Motor Vehicles and Road Traffic Law, Cap. 332—On the established facts it was open to the trial Court to draw the inferences upon which it based conviction—Sentence—Fine imposed reduced as being manifestly excessive.*

*Criminal Procedure—Appeal—Appeal against conviction—Notice of appeal allowed during the hearing of the appeal to be amended as to cover also an appeal against sentence.*

**Appeal against conviction and sentence.**

Appeal against conviction and sentence imposed on the appellant who was convicted on the 9th May, 1966, at the District Court of Larnaca (Criminal Case No. 410/66) on one count of the offence of driving a motor car on a road, without due care and attention, contrary to sections 6 and 13 of the Motor Vehicles and Road Traffic Law, Cap. 332, and was sentenced by Vassiliades, D.J. to pay a fine of £15.

*L. Demetriades*, for the appellant.

*L. Loucaides*, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :

VASSILIADES, J.: This is an appeal against conviction and sentence on a charge of driving without due care and

attention. The facts of the case on which the conviction rests appear sufficiently in the judgment ; and they are a matter of inference rather than of direct evidence.

The careless driving found by the trial Judge was that the appellant-driver, while driving his van out of a car-park in the town, came into collision with a motor-cyclist coming from behind him at an angle, on the off side of the van. The collision occurred at about the middle of the road which, as shown on the Police sketch on record, exhibit 1, was 22 feet wide. The carelessness consisted in the driver's failure to take sufficient care as he drove out of the car-park. There is no complaint as to the conduct of this driver at the material time, in any other respect.

It is sufficiently established by the evidence that this driver's view on the off side of the van was not only obstructed by the vehicle itself, but also by another car which was stationary on the side of the road, at the entrance of the car-park, obstructing apparently the view in the direction from which the motor-cyclist was coming. It is not alleged against the appellant that he failed in any other respect in his duty of care towards other users of the road. And, it was fairly conceded on the part of learned counsel for the prosecutor, that the driver of the motor-cycle involved in the collision, must have been also careless. Upon conviction, the trial Court imposed a fine of £15 in these circumstances.

The original notice of appeal was against conviction only ; but during the hearing of the appeal the notice was amended so as to cover also an appeal against sentence. This amendment was facilitated by learned counsel for the Police, whose attitude in the matter was as it should be expected.

Dealing with the conviction, we do not think that we need enter into much detail, as we take the view that on the established facts, it was open to the trial Judge to draw the inferences upon which he reached his conclusion.

As to the sentence, however, we are unanimously of the opinion that in the circumstances, a fine of £15 is manifestly excessive. Careless driving can be a serious matter ; and as pointed out by learned counsel for the Police, it is an offence punishable with six months imprisonment, or £100 fine, or both. But, the sentence in every case depends to a great extent on the facts of that particular case. As already pointed out, the lack of care on the part of this

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appellant—a matter of inference in this case—consists of his failure to take sufficient care for himself, as well as for the driver of the motor-cycle, who apparently was also carelessly driving his vehicle. In the circumstances of this case we take the view that a fine of £3 would be an appropriate sentence.

Before concluding the appeal, we would like to touch again on a point raised on behalf of the appellant, both at the trial and here. This was the request of counsel for the accused to inspect during the trial, the statement of his client to the Police, in connection with this case.

For reasons which do not appear on the record, the Police declined to make the statement available to the defence ; and the Court ruled against the advocate's request to inspect the statement of his own client to the Police.

This Court has repeatedly made the position of Police prosecutors in such circumstances quite clear. It is the duty of the prosecutor, particularly in summary trials, to place all the facts before the Court ; including the facts which may help the accused. And this applies a *fortiori* to accused's own statement.

We take the view that unless there are special reasons to the contrary, to the satisfaction of the Court, the prosecution must make available to counsel for the defence any statement in their hands taken from the accused. The prosecution may withhold such a statement if, for instance, they intend to use it at a later stage of the trial ; and they have reasons to keep it until such later stage. But in this particular case, apparently the prosecution never intended making any use of accused's statement as part of their case, or otherwise. In such circumstances it was, we think, incumbent upon the prosecuting officer to make the statement available to counsel.

We do not think, however, that the failure of the prosecution to make accused's statement available to the defence affected in any way the conviction in this case ; and we came to the conclusion that we should not interfere with the conviction. But the appeal against sentence must be allowed ; and the sentence be substituted by one of £3 fine.

There will be judgment and order accordingly.

*Appeal against conviction dismissed. Appeal against sentence allowed. Sentence substituted by one of £3 fine.*