

1967
June 9

[VASSILIADES, P., JOSEPHIDES AND HADJIANASTASSIOU, JJ.]

ATTORNEY-
GENERAL
OF THE
REPUBLIC
v.
YIANNIS
PANAYIOTOU
MAVROMMATIS

THE ATTORNEY-GENERAL OF THE REPUBLIC,
Appellant,
v.
YIANNIS PANAYIOTOU MAVROMMATIS,
Respondent.

(Criminal Appeal No. 2908)

Criminal Law—Sentence—Causing death by want of precaution, contrary to section 210 of the Criminal Code, Cap. 154—Appeal against sentence by the Attorney-General as being manifestly inadequate—Trial Judge acted on a wrong principle in this case—No sufficient material on record, for the imposition of sentence by the Supreme Court—Case referred back to the trial Court, under Section 25 (3) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960), for sentence by another Judge, after hearing matter from both sides relevant to sentence.

Criminal Procedure—Appeal—Sentence—Appeal against sentence by the Attorney-General—Case referred back to the trial Court for sentence—Sentence wrong in principle—Manifestly inadequate considering the frequency of fatal road accidents—See, also, above under Criminal Law.

Road Traffic—Fatal accidents contrary to section 210 of the Criminal Code, Cap. 154—See above.

Fatal accidents—See above.

This is an appeal by the Attorney-General against a sentence of fine in the sum of £45.—imposed on the respondent in the District Court of Nicosia, for causing death by want of precaution in a road accident contrary to section 210 of the Criminal Code, Cap. 154, the ground of the appeal being that such sentence was manifestly inadequate considering the frequency of fatal road accidents.

The respondent pleaded guilty to the charge and after an opening of the facts by the prosecution, as usual, and after hearing counsel in mitigation, the Judge passed sentence on respondent, which he recorded in the following short note :

“ Accused to pay £45 fine. In view of the fact that accused is a first offender, I order no imprisonment or disqualification ”.

On appeal counsel for the Republic stressed the frequency of fatal road accidents

In allowing the appeal the Supreme Court

Held. (1) reading the decision of the trial Judge (*supra*) is sufficient to lead us to the conclusion that he acted on wrong principle in measuring the sentence imposed

(2) As we do not have sufficient material on which to impose the proper sentence we find ourselves compelled to have recourse to the wide powers with which this Court was vested by section 25 (3) of the Courts of Justice Law, 1960 (*supra*) and we make an order referring the case back to the District Court, to be dealt with for the purposes of sentence by another Judge. Prosecution and defence will then have the opportunity of placing before the Court of first instance all relevant matter. The seriousness of the offence, reflected, *inter alia*, in the punishment provided by the legislator, requires that the relevant matter must be adequately put before the Court for the purposes of sentence

Appeal allowed Sentence set aside Case referred back to the trial Court for sentence by another Judge

Cases referred to

Nicolaos Neurchou v The Police (1965) 2 C L R 34

Appeal against sentence.

Appeal by the Attorney-General of the Republic against the inadequacy of the sentence imposed on the respondent who was convicted on the 2nd May, 1967, at the District Court of Nicosia (sitting at Morphou) (Criminal Case No. 1760/67) on one count of the offence of causing death by want of precaution contrary to section 210 of the Criminal Code, Cap. 154 and was sentenced by Pitsillides, D.J. to pay a fine of £45.

A. Frangos, Counsel of the Republic, for the appellant.

Respondent, in person.

The judgment of the Court was delivered by :

VASSILIADES, P.: This is an appeal by the Attorney-General of the Republic against a sentence of £45 fine,

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imposed on the respondent in the District Court of Nicosia, for causing death by want of precaution contrary to section 210 of the Criminal Code (Cap. 154). The appeal is taken on the ground that "the sentence is insufficient in view of the seriousness, gravity and prevalence of the offence".

The case came before the Judge sitting at Morphou, on May 2, 1967, when the respondent in this appeal, presumably on the advice of his advocate who appeared with him, pleaded guilty to the charge.

After an opening of the facts by the prosecuting police officer, as usual, and after hearing counsel in mitigation, the Judge passed sentence on the respondent, which he recorded in the following short note :

"Accused to pay £45 fine. In view of the fact that accused is a first offender, I order no imprisonment or disqualification."

Against this sentence the Attorney-General of the Republic, took the present appeal, on the ground that, in the circumstances, the sentence is manifestly inadequate considering the frequency of fatal road accidents, due to careless driving. Learned counsel gave to this Court statistical figures in support of his submission, and expressed the anxiety of the Attorney-General for the loss of life on the road due to such driving.

Sentences of fine, counsel submitted, for this offence for which the punishment provided in the Criminal Code is two years' imprisonment, cannot have the deterrent effect which is one of the purposes of sentence in a criminal case. And in this connection he referred to *Nicolaos Nearchou v. The Police* which was discussed before this Court on appeal in April 1965, and is reported in (1965) 2 C.L.R. 34. That was an appeal against conviction, learned counsel added, but the observations made regarding the nature of the offence, and the sentence of three months' imprisonment imposed in that case, as they appear at pp. 46-47 may be useful in considering the case in hand.

We are inclined to agree with counsel that if the trial Judge had in mind that case, he might be assisted in dealing with the present case. Reading his decision, as quoted earlier, is sufficient to lead us to the conclusion that the learned Judge acted on wrong principle in measuring the sentence imposed. And on that ground the sentence

must be set aside. In view of the order which we find ourselves constrained to make in this appeal, we do not wish to say more in this connection.

Our difficulty lies in the fact that on the record before us, we do not have sufficient material on which to impose the proper sentence. The statement of the facts constituting the offence, and the circumstances under which the crime was committed, do not appear sufficiently from the note on record. The seriousness of the offence, reflected, *inter alia*, in the punishment provided by the legislator, requires that the relevant matter must be adequately put before the Court for the purposes of sentence.

We, therefore, find ourselves compelled to have recourse to the wide powers with which this Court was vested by section 25 (3) of the Courts of Justice Law, to enable the Court to deal with such difficulties ; and we make an order referring the case back to the District Court, to be dealt with for the purposes of sentence by another Judge. Prosecution and defence will then have the opportunity of placing before the Court of first instance all relevant matter. And will also have the possibility of exercising their right of appeal, if necessary. We need hardly add that the conviction which stands on respondent's own plea, has not been challenged ; and no facts inconsistent with such plea and the conviction based thereon, can be put forward by either side, for the purposes of sentence.

Order made under section 25 (3) of the Courts of Justice Law, 1960 (No. 14 of 1960) for the case to be returned to the District Court of Nicosia for sentence by another Judge, after hearing matter from both sides relevant to sentence, and not inconsistent with the plea of guilty and the conviction based thereon. The respondent to be summoned to attend the District Court on a day to be fixed the earliest possible, for the purposes of the above proceeding. It is not without difficulty that we considered it preferable, in the circumstances, to avoid committing the respondent to prison in the meantime.

Appeal allowed. Sentence set aside. Case referred back to the trial Court, under section 25 (3) of the Courts of Justice Law, 1960, for sentence by another Judge.

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