

MOUSTATA ARAS.

Appellant.

v.

THE POLICE

Respondents

(Criminal Appeal No. 2984)

--- --

*Criminal Law—Road Traffic—Want of care in driving a lorry—
Causing death by careless act not amounting to culpable ne-
gligence—Criminal Code, Cap. 154, section 210—Sentence—
Mitigating circumstances warranting a lesser sentence than
the one imposed by the trial Court—Sentence reduced*

*Sentence—Mitigating circumstances—Appeal against sentence—
Sentence reduced See above*

*Road traffic Want of care in driving a lorry Causing death by
careless act contrary to section 210 of the Criminal Code Cap.
154 Sentence - Mitigating circumstances See above*

The facts of the case sufficiently appear in the Judgment
of the Court whereby the appeal against sentence was allowed
and the sentence reduced

--- --

Appeal against conviction and sentence.

Appeal against conviction and sentence by Moustata
Aras who was convicted on the 20th December, 1967 at
the District Court of Paphos (Criminal Case No. 1933 '67)
on one count of the offence of causing death by a careless
act contrary to section 210 of the Criminal Code Cap. 154
and was sentenced by Pitsillides, D.J., to nine months'
imprisonment

E. M. Komodromov with I Dana, for the appellant

S. Georghuades, Counsel of the Republic, for the respondents

VASSILIADES, P. : The judgment of the Court will be
delivered by Mr. Justice Josephides.

JOSEPHIDES, J. : The appellant in this case was convicted
by the District Court of Paphos of causing the death of one

1968
Jan. 26
—
MOUSTAFÄ
ARAS
v.
THE POLICE

Emine Mehmet Daout unintentionally by a careless act, contrary to the provisions of section 210 of the Criminal Code, and he was sentenced to nine months' imprisonment. He appealed against conviction and sentence, but in the course of the argument today the appeal against conviction was abandoned, so that we now have to deal with the question of sentence only.

The facts, as found by the trial Judge, were that, while the appellant was driving his lorry backwards, he knocked down and killed the deceased. The careless act consists in the want of care in driving his lorry at a time when the driver owed a duty to the pedestrian to be careful.

The trial Judge referring to cases decided by this Court said : " The Court, having taken into consideration recent decisions of the Supreme Court as to the punishment for the offence on which accused has been found guilty, finds that imprisonment for 9 months would be the appropriate punishment ". In this case we are of the view that there are mitigating circumstances which do not justify the imposition of an imprisonment of nine months, and these circumstances lead us to the conclusion that the sentence was manifestly excessive.

The appellant was driving at a low speed and there is no other allegation of carelessness against him except that while he was reversing his lorry he did not take sufficient care to see that he did not knock down the deceased. The only eye-witness called by the prosecution did not see the dead been knocked down. He saw her lying on the road after the accident. This is a borderline case. The appellant has been a driver for twenty years and he has no previous convictions. He is forty years old, married and has five minor children.

In the circumstances of this case, we hold that an imprisonment of two months would meet the case. In the result the appeal against conviction is dismissed and the appeal against sentence is allowed. Sentence reduced to two months' imprisonment to run from the date of conviction.

Appeal against conviction dismissed. Appeal against sentence allowed. Sentence reduced as stated above.