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[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

COSTAS  
DRACOS  
v.  
THE POLICE

COSTAS DRACOS,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(Criminal Appeal No. 3054).

*Road Traffic—Insurance against third party risks—Appellant convicted on his own plea on a charge for permitting a person to drive his motor-car without having in force a policy in respect of third-party risks, contrary to section 3(1)(2) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333, as amended by Law 7 of 1960—Sentence—Inter alia, disqualification for holding or obtaining a driving licence for six months—Section 3(3) of Cap. 333 supra—“Special reasons” referred to in the said sub-section(3)—No such special reasons put before the trial Court—Burden on the accused to put before the trial Court the “special reasons” which would justify it to impose a disqualification less than six months—Section 3(3) of the said Law (supra)—“Special reasons” referred to in the aforementioned sub-section (3)—Meaning and scope—They include not only facts special to the offence but also circumstances peculiar to the offender—See, also, herebelow under Criminal Procedure ; Appeal.*

*Third Party Risks—Insurance in respect thereof—The Motor Vehicles (Third Party Insurance) Law, Cap. 333 (as amended by law 7/60) section 3(1) (2) and (3).*

*Insurance in respect of third party risks—See above.*

*Motor Vehicles—Insurance—See above.*

*Disqualification—Disqualification for holding or obtaining a driving licence—It forms part of the punishment—Section 3(1)(2) and (3) of Cap. 333 (supra).*

*Criminal Procedure—Appeal—Sentence—Facts to be considered by the Court of Appeal—Facts not put before the trial Court should not be introduced on appeal otherwise than upon an order of the Supreme Court allowing such fresh evidence to be adduced.*

*Criminal Procedure—Appeal—Fresh evidence—See immediately above and herebelow.*

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*Appeal—Sentence—Appeal against sentence—Facts not put before the trial Court, cannot be introduced on appeal otherwise than upon an order of the Supreme Court allowing such fresh evidence to be adduced—See, also, above.*

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*Fresh evidence—See above.*

*Evidence—Fresh evidence on appeal—See above.*

*Words and Phrases—“ Special reasons ” in section 3(3) of Cap. 333 (as amended by Law 7/60)—They include not only facts special to the offence but also circumstances peculiar to the offender—See, also, above under Road Traffic.*

The appellant pleaded guilty to, *inter alia*, permitting a person to drive his motor-car without having in force a policy of insurance in respect of third party risks contrary to section 3(1)(2) of Cap. 333 (*supra*). He was sentenced to £15 fine and disqualification for six months for holding or obtaining a driving licence. No “special reasons” were put before the trial Court. The Appellant is now taking this appeal on the ground that the sentence is excessive and/or not warranted by the personal circumstances of his.

Section 3(3) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 as amended by Law 7 of 1960 reads as follows :

“(3) Except in such cases as are provided for in sub-section (4), a disqualification under the provisions of sub-section (2), unless the Court for *special reasons* otherwise orders, shall be for a period not less than six months from the date of conviction, or for such longer period as the Court shall, in all the circumstances of the case, consider appropriate”.

Dismissing the appeal the Court—

*Held, per* JOSEPHIDES, J., (VASSILIADES, P. and TRIANTAYLLIDES, J., *concurring*) :

(1) It has been held in the case of *Stylianou v. The Police*, 1962 C.L.R. 152, that the disqualification forms part of the punishment, and that the “special reasons”, referred to in section 3(3) of the Law (Cap. 333 *supra*), shall include not only facts which are special to the offence but also circumstances peculiar to the offender.

(2) The burden is on the accused to put before the trial Court the "special reasons" which would justify the Judge to impose a disqualification less than six months. But he put no material whatsoever before the trial Court and today his counsel in his address sought to put before us facts which did not appear on record.

(3) This is an appellate Court and all proper evidence must be put in the first instance before the trial Court. Facts not put before the trial Court should not be introduced on appeal otherwise than upon an order allowing such fresh evidence to be adduced (*Attorney-General of the Republic v. Kyriakos Kouppis and Others*, 1961 C.L.R. 188 ; and *Kolias v. The Police* (1963) 1 C.L.R. 52).

(4) We, therefore, have to consider the present appeal on the merits as disclosed by the record. If the Judge had no special reasons put before him, I do not see how this Court can hold that he went wrong in principle in imposing a disqualification of six months or that such disqualification was excessive.

*Appeal dismissed.*

Cases referred to :

*Stylianou v. The Police*, 1962 C.L.R. 152 ;

*Attorney-General of the Republic v. Kyriakos Kouppis and Others*, 1961 C.L.R. 188 ;

*Kolias v. The Police* (1963) 1 C.L.R. 52.

### **Appeal against sentence.**

Appeal against sentence by Costas Dracos who was convicted on the 30th October, 1968, at the District Court of Nicosia (Criminal Case No. 21147/68) on two counts of the offences of permitting a person to drive his motor-car without the driver being the holder of a driving licence contrary to Regulations 27 (1) and 66 of the Motor Vehicles Regulations, 1959 to 1968, and of permitting a person to drive his motor-car without having in force a policy in respect of third party risks, contrary to section 3 (1) (2) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 (as amended by Law-7 of 1960) and was sentenced by Styliani-des, D.J. to pay a fine of £5 on count 1 and a fine of £15 on count 2 and he was further disqualified from holding or obtaining a driving licence for a period of six months.

*A. Paikkos*, for the appellant.

*A. Frangos*, Senior Counsel of the Republic, for the respondents.

VASSILIADES, P.: Mr. Justice Josephides will deliver the first judgment.

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JOSEPHIDES, J.: In this case the appellant pleaded guilty to (1) permitting a person to drive his motor-car without the driver being the holder of a driving licence, contrary to Regulations 27 (1) and 66 of the Motor Vehicles Regulations, 1959 to 1968, and (2) permitting a person to drive his motor-car without having in force a policy in respect of third-party risks, contrary to section 3 (1) (2) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333, as amended by Law 7 of 1960.

The record is very brief and it reads as follows :—

“ Prosecution : The accused No. 2 is owner m/car Reg. No. BC635. Accused on 3.6.68 permitted to accused No. 1, his son, not holder of any licence to drive that car on a road in Aglandjia village. As accused 1 was not holder of a driving licence the Insurance did not cover him. Accused No. 2 was in the car with his son when Police checked and asked for papers of accused 1.”

The accused, who was not represented by counsel, said nothing in mitigation of punishment. The trial Judge then proceeded to impose the following sentence : on the first count £5 fine ; on the second count £15 fine, and disqualification for holding or obtaining a driving licence for six months.

This appeal is taken before us on the ground that the sentence is excessive and/or not warranted by the personal circumstances of the appellant. Before we consider this ground of appeal, I think we should refer to the provisions of the law with regard to third-party risks. Sub-section (3) of section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap. 333, as amended by section 2 of Law 7 of 1960, reads as follows :

“ (3) Except in such cases as are provided for in sub-section (4), a disqualification under the provisions of sub-section (2), unless the Court for special reasons otherwise orders, shall be for a period of not less than six months from the date of conviction, or for such longer period as the Court shall, in all the circumstances of the case, consider appropriate.”

It has been held, in the case of *Stylianou v. The Police*, 1962 C.L.R. 152, that the disqualification forms part of

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the punishment, and that the "special reasons", referred to in section 3 (3) of the Law, shall include not only facts which are special to the offence but also circumstances peculiar to the offender. In the present case, as I see it, the burden was on the accused to put before the Court the "special reasons" which would justify the Judge to impose a disqualification less than six months. He put no material whatsoever before the trial Court and today his learned counsel in his address sought to put before us facts which did not appear on record.

It should be borne in mind that this is an appellate Court and that all proper evidence must be put in the first instance before the trial Court. In considering whether the sentence is manifestly excessive or manifestly inadequate, this Court has to confine itself to the facts as they appear on the record before the trial Court. Facts not put before the trial Court should not be introduced on appeal otherwise than upon an order of this Court allowing such fresh evidence to be adduced (*Attorney-General of the Republic v. Kyriakos Kouppis and Others*, 1961 C.L.R. 188 ; and *Kolias v. The Police* (1963) 1 C.L.R. 52). We, therefore, have to consider the present appeal on the merits as disclosed by the record. If the Judge had no special reasons put before him, I do not see how this Court can hold that he went wrong on principle in imposing a disqualification of six months, or that such disqualification was excessive.

With regard to the fine, there again, although I am inclined to think that it is rather on the high side, there is no material at all to justify us in coming to the conclusion that the sentence was manifestly excessive.

For these reasons I would dismiss the appeal.

VASSILIADES, P.: I agree. On the face of it, it appears to me that the punishment imposed on the appellant is much on the severe side. But the responsibility for imposing sentence rests primarily with the trial Court ; and in this case, no mitigating circumstances have been put before the trial Judge either in connection with the disqualification order or otherwise.

The disqualification order in the present case was made under section 3 of the Motor Vehicles (Third Party Insurance) Laws, 1954 to 1960. In the absence of special reasons as required by the section, properly put before him, I cannot see how the trial Judge could impose less than the

disqualification provided by the statute. Together with it, as punishment, the Judge imposed also a fine. Again in this connection, there is no material before this Court upon which one could argue that the fine imposed was, in the circumstances, so manifestly excessive as to justify intervention by this Court. I agree that the appeal must be dismissed.

TRIANTAFYLIDES, J.: I also agree that this appeal must be dismissed.

I would like to add only that even if this Court were to take into account what has been put forward today in favour of the appellant—and I do agree that we cannot do so in the circumstances—namely, that the appellant's nineteen years old son persuaded his father to allow him to drive, I do think, still, that this is indeed a case which merited the severe treatment it has received ; because it is not a case where a father allowed his son, who was of an age at which he could obtain a driving licence, to drive at an out-of-the-way place for the sake of gaining experience in driving, or for any other morally defensible reason, but this is a case where the father, the appellant, gave way to the whim of his son and allowed him to drive in a build-up area, Aglandjia, a suburb of Nicosia.

It appears that this offence, of allowing people who have no driving licence—and therefore are not covered by the necessary policy of insurance—to drive, is a rather prevalent offence and it is high time that, after so many years when the legislation in question has been in force, people should be made to comply with the law.

VASSILIADIS, P.: In the result the appeal is dismissed.

*Appeal dismissed.*

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Vassiliades, P.