

1973  
Dec. 27

[TRIANTAFYLIDIS, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

THE ATTORNEY-  
GENERAL OF  
THE REPUBLIC

THE ATTORNEY-GENERAL OF THE REPUBLIC,

*Appellant,*

v.

ALKIS I.  
IACOVIDES

ALKIS I. IACOVIDES,

*Respondent.*

(Criminal Appeal No. 3530).

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*Sentence—Causing death by want of precaution—Section 210 of the Criminal Code, Cap. 154—Sentence of £100 fine—Road Traffic accident—Appeal against sentence taken by the Attorney-General on the ground of its inadequacy—Loss suffered as a result of wrecking of Respondent's car and high cost of medical treatment he has had to undergo, not factors relevant to the question of punishment, as paid by Respondent's father—Mitigating factors—Grave injuries suffered by Respondent—Sentence of imprisonment might result in his being deprived of his status as a University student—Respondent a young student with a clean driving record—Spared of a sentence of imprisonment—Disqualified for two years, in addition to the said fine instead.*

*Sentence—Principles of sentencing.*

*Causing death by want of precaution—Sentence—See supra.*

*Appeal against sentence—Appeal by the Attorney-General on the ground of inadequacy of the sentence—See supra.*

*Fatal accident—Sentence—See supra.*

*Road Traffic Accident—Fatal accident—Sentence—See supra.*

The facts sufficiently appear in the judgment of the Court, allowing this appeal against sentence taken by the Attorney-General on the ground of its inadequacy.

Cases referred to:

*The Attorney-General v. Nicolaou* (1967) 2 C.L.R. 194;

*Eliades v. The Police* (1971) 2 C.L.R. 200;

*R. v. Guilfoyle* [1973] 2 All E.R. 844, at p. 845.

## 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 12th November, 1973 at the District Court of Larnaca (Criminal Case No. 7623/73) of the offence of causing death by want of precaution, contrary to section 210 of the Criminal Code, Cap. 154 and was sentenced by Orphanides, S.D.J. to pay a fine of £100.

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

*G. Achilles*, for the Respondent.

The judgment of the Court was delivered by:

TRIANAFYLLIDES, P.: The Attorney-General has appealed in respect of the sentence of a £100 fine which was imposed on the Respondent when he was convicted, on his own plea of guilty, of the offence of causing death by want of precaution, contrary to section 210 of the Criminal Code, Cap. 154.

The offence was committed on the 4th August, 1973, on the Larnaca-Dhekelia road; as the Respondent was driving towards Dhekelia he tried, just before a bend, to overtake a motor-car and a motor-lorry which were proceeding ahead of him and, at that time, there appeared coming from the opposite direction another vehicle with which a collision occurred; as a result the driver of the other vehicle was killed.

The Respondent was, at the time, driving his father's car which was damaged extensively; he was very severely injured, the main injury being a broken right hip socket; he is still suffering, though fortunately not seriously, from the after effects of his injuries.

We cannot agree with the learned trial Judge that the loss suffered as a result of the wrecking of the car, which the Respondent was driving, and the high cost of the medical treatment, which he has had to undergo, are factors relevant to the question of the punishment of the Respondent for the offence concerned: The car belonged to his father and so it was he who sustained financial loss in this respect and, also, the cost of the medical treatment of the Respondent was borne by his father.

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The main consideration which can be taken into account in favour of the Respondent, as a mitigating factor, are his grave injuries, which must have caused him severe pain and suffering.

It should, also, not be lost sight of that the Respondent is a young man, twenty-two years old, who is studying abroad at a university and who has had in the past a clean driving record.

This is, indeed, because of its nature, a very serious case; unfortunately, fatal traffic accidents are becoming more and more frequent. On the other hand, it has been quite often pointed out that on each occasion the personal circumstances of the accused should always be taken into account, too, in assessing sentence.

As it appears from our case-law (such as *The Attorney-General of the Republic v. Nicolaou* (1967) 2 C.L.R. 194, and *Eliades v. The Police* (1971) 2 C.L.R. 200) in cases of causing death by want of precaution sentences of imprisonment have either been upheld by this Court or have been substituted on appeal in the place of less severe sentences.

In the present case, however, bearing in mind all the aforementioned relevant considerations, as well as the stand taken by counsel for the Appellant, who has very fairly pointed out that a sentence of imprisonment might result in the Respondent being deprived of his status as a university student, we have decided to spare him a sentence of imprisonment.

Some guidance, as to the appropriate sentence in cases of causing death by dangerous driving may be derived from *Rex v. Guilfoyle* [1973] 2 All E.R. 844, where Lawton L.J. stated the following (at p. 845):-

“ In the judgment of this Court an offender who has been convicted because of momentary inattention or misjudgment and who has a good driving record should normally be fined and disqualified from holding or obtaining a driving licence for the minimum statutory period or a period not greatly exceeding it, unless of course there are special reasons for not disqualifying. If his driving record is indifferent the period of disqualification should be longer, say two to four years, and if it is bad he should be put off the road for a long time. For those who have caused a fatal accident through a selfish disregard for the safety of other road users or their passengers or who have driven

recklessly, a custodial sentence with a long period of disqualification may well be appropriate, and if this kind of driving is coupled with a bad driving record the period of disqualification should be such as will relieve the public of a potential danger for a very long time indeed”.

With all the foregoing in mind, we have decided to impose, in addition to the monetary sentence already imposed on the Respondent, a sentence of disqualification from possessing or obtaining a driving licence for a period of two years from now.

The appeal is, therefore, allowed and the sentence of £100 fine is supplemented by a disqualification order as above.

*Appeal allowed.*

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