

1974

Mar. 6

SHERIF KIAMIL

v.

THE POLICE

[TRIANTAFYLIDIS, P., STAVRINIDES, A. LOIZOU, JJ.]

SHERIF KIAMIL,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(Criminal Appeal No. 3551).

*Sentence—Causing death by want of precaution through dangerous driving—Section 210 of the Criminal Code, Cap. 154—Three months' imprisonment and twelve months' disqualification from driving—Judicial notice of great loss of life caused nowadays by dangerous driving—Sentence of imprisonment neither manifestly excessive nor wrong in principle—But regarding the disqualification order and in view of the personal circumstances of the Appellant—The latter should not have been prevented from driving after he will come out of prison by means of the said disqualification order—Appellant a professional driver with a rather good driving record—Said disqualification order renders overall punishment in this particular case, manifestly excessive—Order set aside.*

*Disqualification order—Whether such order should not be made when imprisonment is imposed—Matter depending on the particular circumstances of each case—See further supra.*

*Causing death by want of precaution—Contrary to section 210 of the Criminal Code, Cap. 154—Sentence—Disqualification order set aside—See supra.*

*Road accident—Fatal accident—See supra.*

The facts of the case sufficiently appear in the judgment of the Court, allowing this appeal against sentence and setting aside the disqualification order but sustaining the sentence of imprisonment for three months.

The Appellant, a professional driver, has taken this appeal against the sentence imposed on him by the District Court of Paphos in respect of the offence of causing death by want of precaution contrary to section 210 of the Criminal Code, Cap. 154, through dangerous driving. He was sentenced to three

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months' imprisonment and he was disqualified from holding or obtaining a driving licence for a period of twelve months. The Supreme Court allowing the appeal, sustained the sentence of imprisonment, but set aside the disqualification order in view of the personal circumstances of the Appellant and his rather good driving record.

*Held*, (1). Taking judicial notice of the great loss of life caused nowadays by dangerous driving and having in mind, *inter alia*, the case of *Rex v. Guilfoyle* [1973] 2 All E.R. 844 we are of the view that the sentence of imprisonment imposed by the trial Court is neither manifestly excessive nor wrong in principle; we refuse therefore, to interfere with it. (The case of the *Attorney-General v. Iacovides* (1973) 2 C.L.R. 344, *distinguished*).

(2) We do not wish to lay down a rule that when imprisonment is imposed in a case of this nature then there should not be made a disqualification order, too; it is a matter to be decided in the light of the circumstances of each particular case.

(3) But in the present case we cannot lose sight of the fact that the Appellant is a professional lorry-driver, fifty-one years of age, married, the father of six children four of whom are still supported by him, and that till now has had a substantial unblemished driving record.

(4) We cannot, therefore, think that the Appellant should have been prevented from driving, after he will come out of prison, for any further period by means of a disqualification order. We are of the view that this order renders the overall punishment in this particular case manifestly excessive. Disqualification order *set aside*.

*Appeal partly allowed.*

Cases referred to:

*Rex v. Guilfoyle* [1973] 2 All E.R. 844 *followed*;

*The Attorney-General v. Iacovides* (1973) 2 C.L.R. 344, *distinguished*.

**Appeal against sentence.**

Appeal against sentence by Sherif Kiamil who was convicted on the 29th January, 1974 at the District Court of Paphos,

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(Criminal Case No. 2944/73) 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 Laoutas, D.J. to three months' imprisonment and was further disqualified from holding or obtaining a driving licence for a period of twelve months.

*M. Aziz with E. Ulanay, for the Appellant.*

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

The judgment of the Court was delivered by:—

TRIANTAFYLLIDES, P.: The Appellant has appealed against the sentence imposed on him by the District Court of Paphos in respect of the offence of causing death contrary to section 210 of the Criminal Code, Cap. 154. He was sentenced to three months' imprisonment as from January 29, 1974, and he was disqualified from holding or obtaining a driving licence for a period of twelve months.

The loss of life occurred as a result of a violent collision, on the wrong side of the road in so far as the Appellant was concerned.

Taking judicial notice of the great loss of life caused nowadays by dangerous driving, such as that in the present case, and having in mind, *inter alia*, the case of *Rex v. Guilfoyle* [1973] 2 All E.R. 844, we are of the view that the sentence of imprisonment imposed by the trial Judge is neither manifestly excessive nor wrong in principle, and, therefore, we refuse to interfere with it.

It is correct that in the case of *The Attorney-General v. Iacovides*, (Cr. A. 3530, not reported yet)\* we found that it was not necessary to impose a sentence of imprisonment in relation to causing death contrary to section 210 of Cap. 154, and that an order of disqualification was sufficient; but, of course, each case has to be dealt with on the basis of its own merits and the *Iacovides* case is clearly distinguishable, in view of its own particular circumstances, from the present case.

What has presented us with some difficulty was how to approach the other part of the sentence, namely the disqualifi-

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\* Now reported in (1973) 2 C.L.R. 344.

cation order. We do not intend at all to lay down a rule that when imprisonment is imposed in a case of this nature then there should not be made a disqualification order, too; it is a matter to be decided in the light of the circumstances of each particular case; and in the present case we cannot lose sight of the fact that the Appellant is a professional lorry-driver, fifty-one years old, married, the father of six children, four of whom are still supported by him, and that till now he has had a substantially unblemished driving record, as his only previous conviction, in this respect, is one for careless driving in 1972 which, as is clearly indicated by the sentence then imposed, must have been an offence of not at all a serious nature.

We do not, therefore, think that the Appellant should have been prevented from driving, after he will come out of prison, for any further period, by means of a disqualification order. We are of the view that the disqualification order renders the overall punishment, in this particular case, manifestly excessive.

This appeal is, therefore, allowed to the extent of setting aside the disqualification order; the sentence of imprisonment is to run from the date on which it was imposed.

*Appeal partly allowed.*

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