

LOIZOS COSTA,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 3700).

5 *Criminal Law—Sentence—Driving whilst under the influence of drink—
Sections 9(1)(2) and 19 of the Motor Vehicles and Road Traffic
Law, 1972 (Law 86 of 1972)—45 days' imprisonment and dis-
qualification from driving for 6 months—Personal circumstances
of appellant, a professional driver—Similar previous conviction—
Sentence neither manifestly excessive nor wrong in principle.*

*Criminal Law—Sentence—Multiple sentences—No sentence should
have been imposed on a count which was within the ingredients
of another count in which appellant had been sentenced.*

10 The appellant was sentenced to 45 days' imprisonment and
was disqualified from holding or obtaining a driving licence for
a period of 6 months upon his conviction of the offence of driving
a motor vehicle whilst under the influence of drink. He was,
also, fined in the sum of £10.—and bound over on the sum of
15 £100 for committing 3 other driving offences. Whilst driving as
aforesaid he collided with a motorcycle driven from the opposite
direction and as a result the motor-cyclist was injured. He had,
inter alia, a previous conviction for driving whilst under the
influence of drink for which he was fined £40 coupled with dis-
qualification for one year.

20 Upon appeal against sentence, which was mainly directed
against the sentence of imprisonment and disqualification,
counsel for the appellant complained that the trial Judge did not
pay due regard to the personal circumstances of the appellant,
25 that is to say, that he was a displaced person, he was unemployed,
his parents were ill and he was a professional driver.

Held, (1) no doubt the personal circumstances of an accused
person are one of the criteria to be taken into consideration as

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well as the protection of society, deterrence etc. but far from saying that the trial Judge disregarded these considerations it is clear from the judgment that he did have them in mind. We have not been persuaded that the sentence imposed by the trial Court is either excessive or in any way wrong in principle as to warrant interference by this Court. 5

(2) The count relating to failing to keep to the left or near side of the road is within the ingredients of the count of driving without due care and no sentence should have been passed on this count. Subject to this the appeal will be dismissed. 10

Appeal dismissed.

Appeal against sentence.

Appeal against sentence by Loizos Costa who was convicted on the 27th February, 1976 at the District Court of Nicosia (Criminal Case No. 28827/75) on four counts of the offences of (a) driving without due care and attention contrary to sections 8 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86/72), (b) driving whilst under the influence of drink contrary to sections 9(1)(2) and 19 of the above Law, (c) failing to keep the left or near side of the road contrary to regulation 57(2)(a) of the Motor Vehicles Regulations, 1973 and (d) driving without a motor vehicle licence in force contrary to regulations 16 and 71 of the Motor Vehicles Regulations, 1973 and was sentenced by Laoutas, D.J. to pay £10.- fine on count 1, to go to prison for forty-five days and was also disqualified from holding or obtaining a driving licence for a period of six months on count 2 and bound over in the sum of £100.- for one year to keep the traffic law and regulations on counts 3 and 4. 15 20 25

L. Papaphilippou, for the appellant. 30

Cl. Antoniaides, Counsel of the Republic, for the respondent.

The judgment of the Court was delivered by:-

L. LOIZOU, J.: This is an appeal against the sentence imposed on the appellant in Criminal Case No. 28827/75 by the District Court of Nicosia. The appellant was charged on four counts as follows: (1) for driving a motor vehicle on a road without due care and attention contrary to ss. 8 and 19 of the Motor Vehicles and Road Traffic Law (No. 86/72); (2) for driving a motor vehicle whilst under the influence of drink contrary to ss. 9(1)(2) and 19 of the same law; (3) for failing to keep the 35 40

left or near side of the road contrary to regulation 57(2)(a) of the Motor Vehicles Regulations, 1973; and (4) for driving a motor vehicle without its licence being in force, contrary to regulations 16 and 71 of the Motor Vehicles Regulations, 1973.

5 The said offences were committed on the 24th August, 1975, in the afternoon whilst the appellant was driving along Niki-foros Fokas Street in Nicosia. The result was that he collided with a motor cycle which was being driven from the opposite direction and as a result the motor cyclist was seriously injured.
10 There is no question that he was under the influence of drink and unfit to have the control of a motor vehicle. The sentence imposed on count 1 was £10.- fine, on count 2 he was sentenced to 45 days' imprisonment and was also disqualified from holding or obtaining a driving licence for a period of six months; and
15 on each of counts 3 and 4 he was bound over in the sum of £100 for one year to keep the traffic law and regulations.

The sole ground of appeal as it appears in the notice of appeal is that the sentence is excessive and illogical having regard to the facts of the case and special circumstances of the appellant.

20 Learned counsel for the appellant argued his case with particular emphasis on count 2, his main complaint being that the trial Judge did not pay due regard to the personal circumstances of the appellant, that is to say, to the fact that he is a displaced person, he is unemployed, his parents are ill and that he is a
25 professional driver; and he submitted that the sentence of imprisonment on this count, coupled with the disqualification were wrong in principle and manifestly excessive. The only assistance that the Court can derive from the authorities in so far as sentence is concerned is with regard to general principles,
30 as each case has to be decided on its own merits. No doubt the personal circumstances of an accused person are one of the criteria to be taken into consideration as well as the protection of society, deterrence etc., but far from saying that the trial Judge disregarded these considerations it is clear from the
35 judgment that he did have them in mind.

There is nothing wrong in a person having a drink, especially if in the psychological condition that he is, he feels the need for a drink; and the appellant has not been punished merely for having consumed the alcohol that he did but for driving
40 his vehicle in a public road whilst incapable, through drink, of

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having proper control thereof with the result that he became a menace and a danger to other users of the road.

The appellant has one previous conviction, in December, 1971, again for driving without due care and attention, and for driving whilst under the influence of drink. He was then fined £10.— on count 1 and £40.— coupled with disqualification for one year on the count for driving whilst under the influence of drink.

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Having heard learned counsel for the appellant today, we have not been persuaded that the sentence imposed by the trial Court is either so excessive or in any way wrong in principle as to warrant interference by this Court. There is, however, one point which has come to our notice, and that is that the third count, *i.e.* the count relating to failing to keep to the left or near side of the road is within the ingredients of the first count, and no sentence should have been imposed on count 3. Therefore, the binding over of the appellant on counts 3 and 4 will only relate to count 4. Subject to this, the appeal is dismissed.

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Appeal dismissed.