

1978 May 16

[TRIANTAFYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

POLYMNIA GEORGHIOU,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 3853).

Criminal Law—Sentence—Causing death by want of precaution or careless act not amounting to culpable negligence—C£150 fine and disqualification for 15 months—Not wrong in principle—Personal circumstances of appellant—Due to a heart affliction in need of her car for carrying out her duties as a housewife and a mother—In view of said affliction weight of punitive aspect of sentence ought to have been put rather on monetary part of sentence than on disqualification—Sentence varied by increasing fine and reducing period of disqualification. 5

The appellant knocked down and killed a pedestrian while she was driving her car along Severis avenue, in Nicosia. She pleaded guilty to the offence of causing death by want of precaution or careless act not amounting to culpable negligence and was sentenced to pay a fine of C£150 and was disqualified from holding or obtaining a driving licence for a period of fifteen months. Due to a heart affliction she apparently had to drive her car in the course of carrying out her usual duties as a housewife and a monther. 10 15

Upon appeal against sentence:

Held. that though it was not wrong in principle to punish appellant by means of both a fine and a disqualification order the weight of the punitive aspect of the sentence ought, in view solely of the said affliction of the appellant, to have been put rather on the monetary part of the sentence than on the duration of the disqualification order; and that, accordingly, the sentence passed upon the appellant will be varied by increasing 20 25

the fine to the sum of C£250 and by reducing the period of disqualification to ten months.

Appeal partly allowed.

Appeal against sentence.

5 Appeal against sentence by Polymnia Georghiou who was convicted on the 8th February, 1978 at the District Court of Nicosia (Criminal Case No. 24526/77) on one count of the offence of causing death by want of precaution or by careless act not amounting to culpable negligence, contrary to section
10 210 of the Criminal Code, Cap. 154 and was sentenced by Michaelides, D.J. to pay a fine of C£150.- and was further disqualified from holding or obtaining a driving licence for a period of fifteen months.

G. I. Pelaghias, for the appellant.

15 *R. Gavrielides*, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by:

20 TRIANTAFYLIDIS P.: In this case we are dealing with an appeal against the sentence of a fine of C£150 and disqualification for holding or obtaining a driving licence for a period of fifteen months, which was imposed on the appellant after she had pleaded guilty to the offence of having caused death by want of precaution or careless act not amounting to culpable negligence, contrary to section 210 of the Criminal Code, Cap. 154. The maximum sentence for this offence is two years
25 imprisonment or a C£1,000 fine.

The salient facts, which are not in dispute, is that the appellant, on March 23, 1977, at about 6.50 p.m., knocked down and killed a pedestrian, the late Nicolas Loizou of Nicosia, while she was driving her car along Severis avenue, in Nicosia. By
30 her plea of guilty she has admitted that she had been driving at the time of the accident with that high degree of criminal negligence which is needed in order to commit the offence in question under section 210. We are, therefore, of the opinion that since she was not sent to prison for having driven in such
35 a manner with fatal results, it was not wrong in principle to punish her by means of both a fine and a disqualification order.

What has presented us with some difficulty in this case is the fact that though the learned trial Judge has said, as he has

stated in his judgment, due regard to, inter alia, the personal circumstances of the appellant, he does not appear to us to have adjusted sufficiently to such circumstances the sentence which he imposed on the appellant; in our opinion no adequate weight was attributed to the appellant's heart affliction, due to which she apparently does need to drive her car in the course of carrying out her usual duties as a housewife and a mother. 5

Without underestimating in the least the gravity of the offence committed by the appellant, we are of the opinion that the weight of the punitive aspect of the sentence ought, in view solely of the aforesaid affliction of the appellant, to have been put rather on the monetary part of the sentence than on the duration of the disqualification order; and we have, therefore, decided to vary the sentence passed upon the appellant by increasing the fine to the sum of C£250 and by reducing the period of disqualification to ten months. 10 15

This appeal is, therefore, partly allowed accordingly.

Appeal partly allowed.