1979 July 13

[TRIANTAFYLLIDES, P., HADJIANASTASSIOU, DEMETRIADES, JJ.]

ARGYROS A. ARGYROU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 4048).

Criminal Law—Sentence—Causing death by want of precaution, driving at a speed likely to endanger human life and careless driving—Six months' imprisonment and two years' disqualification from driving—Approach to the question of sentence—Mitigating factors—Appellant a good citizen, a family man and a human being who has been gravely affected by the accident in question—Lot of weight given to previous convictions which were not really serious cases—Absence of material necessary for the assessment with the required certainty of the degree of negligence and of culpability generally of the appellant—Sentence of six months' imprisonment manifestly excessive in the circumstances of this case—Reduced—Sentence of disqualification affirmed in view of the reduction of the sentence of imprisonment and of the fact that appellant not a professional driver.

The appellant pleaded guilty to the offences of causing death by want of precaution, of driving a motor vehicle at a speed likely to endanger human life and of careless driving and was sentenced to six months' imprisonment and was further disqualified from holding or obtaining a driving licence for a period of two years.

The offences in question arose out of a traffic accident in the course of which the appellant, who was driving his car on the left-hand side of a road at Larnaca at about 18.45 hours and at a speed of about forty miles per hour, knocked down a lady who died in hospital a few hours later, and who at the time of the accident was walking on the same side of the road together with her daughter.

The appellant was thirty-one years old and was described as a good citizen and family man in the social investigation report. His driving record was not absolutely clean but his two previous convictions for careless driving—to which it seemed that the trial Judge has given a lot of weight—did not appear, from the sentences which were passed upon him, to have been really serious cases.

Upon appeal against sentence after observing, that, apparently, the police have not made available at the trial, by way of a sketch or photographs, sufficient material in order to enable the trial Judge to form a complete and accurate picture as regards how, actually, the accident happened, so that he could assess with the required certainty the degree of negligence, and of culpability generally, of the appellant and that in any event, a factor which had to be given due weight was that it was dark at the time when, and at the place where, the accident occurred, and the victim was wearing dark coloured clothes, the Court of Appeal:

Held, that not overlooking nor underestimating the fact that a human life has been lost this Court, in doing justice in this particular case, has to take into account, also, that the appellant is, too, a human being who has been gravely affected by the accident in question; that having given due consideration to all relevant aspects of this case, and without at all departing from the view that careless, and, particularly reckless, driving should be punished severely, because of the many lives that are being lost, more and more often, due to such driving, this Court has decided that the sentence of six months' imprisonment is manifestly excessive, in the context of the particular circumstances of the present case and that a sentence of four months' imprisonment is sufficient in order to reform the appellant as a driver, to punish him for what he has done, and, also, to deter others from driving in a careless manner; and that, therefore, the appeal must be allowed to that extent only, because, in view of the reduction of the period of the sentence of imprisonment and of the fact that appellant is not a professional driver, this Court has decided not to interfere in any way with the order of disqualification (approach adopted in, *inter alia*, *Attorney-General* v. *Pavlou* (1978) 2 C.L.R. 456 at p. 460 *endorsed*).

Appeal partly allowed.

Cases referred to:

Nearchou v. *The Police* (1965) 2 C.L.R. 34 at p. 47;

Kouma v. *The Police* (1967) 2 C.L.R. 230 at p. 235;

Eliades v. *The Police* (1971) 2 C.L.R. 200 at p. 202;

Kiamil v. *The Police* (1974) 2 C.L.R. 16 at p. 18;

Attorney-General of the Republic v. *Pavlou* (1978) 2 C.L.R. 456 at p. 460.

Appeal against sentence.

Appeal against sentence by Argyros A. Argyrou who was convicted on the 26th May, 1979 at the District Court of Larnaca (Criminal Case No. 9454/77) on one count of the offence of causing death by want of precaution, contrary to section 210 of the Criminal Code Cap. 154, on one count of the offence of driving a motor vehicle at a speed likely to endanger human life, contrary to section 6 of Law 86/72 and on one count of the offence of careless driving, contrary to section 6 of Law 86/72 and was sentenced by Michaelides, Ag. D.J. to six months' imprisonment and was further disqualified from holding or obtaining a driving licence for a period of two years.

A. Mathicolonis, for the appellant.

A.M. Angelides, Counsel of the Republic, for the respondents.

TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellant complains that the sentence of six months' imprisonment and of disqualification from holding or obtaining a driving licence for a period of two years, which was passed upon him, on May 26, 1979, after he had pleaded guilty to the offences of causing death by want of precaution, contrary to section 210 of the Criminal Code, Cap. 154, of driving a motor vehicle at a speed likely to endanger human life, contrary to section 6 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72), and of careless driving, contrary to section 6 of Law 86/72, is manifestly excessive.

The salient facts of this case, as they were found by the trial Judge, are as follows:-

On August 28, 1977, in Larnaca, at about 18.45 hours, the deceased, a lady sixty years old, was pushing a small cart in which there were two grandchildren of hers. She was walking

on her left-hand side of the road, together with her daughter, who is the mother of the two children..

The appellant was driving his car at a speed of about forty miles per hour coming from behind the victim, on the same side of the road.

His car struck the victim, who was thrown onto the windscreen of the car and then fell down into the road. The two children were, also, injured. The victim died in hospital a few hours later from internal haemorrhage.

We agree with the trial Judge that this was a case in which a sentence of imprisonment was warranted and we endorse, in this respect, the approach adopted by this Court in cases such as *Nearchou* v. *The Police*, (1965) 2 C.L.R. 34, 47, *Kouma* v. *The Police*, (1967) 2 C.L.R. 230, 235, *Eliades* v. *The Police*, (1971) 2 C.L.R. 200, 202, *Kiamil* v. *The Police*, (1974) 2 C.L.R. 16, 18, and *The Attorney-General of the Republic* v. *Pavlou*, (1978) 2 C.L.R. 456, 460.

In our view, the length of the sentence of imprisonment in a case of this nature must, surely, depend on its particular facts, including the personal circumstances of the offender.

In the present instance it is very unfortunate, indeed, that, apparently, the police have not made available at the trial, by way of a sketch or photographs, sufficient material in order to enable the trial Judge to form a complete and accurate picture as regards how, actually, the accident happened, so that he could assess with the required certainty the degree of negligence, and of culpability generally, of the appellant. In any event, a factor which had to be given due weight was that it was dark at the time when, and at the place where, the accident occurred, and the victim was wearing dark coloured clothes.

The appellant, who is thirty-one years old, is described, in very favourable terms, as a good citizen and family man, in a social investigation report, which was produced before the trial Judge.

It is true that his driving record is not absolutely clean, but his two previous convictions—to which it seems that the trial Judge has given a lot of weight—one in 1969 and one in 1974,

both for careless driving, do not appear, from the sentences which were passed upon the appellant at the time, to have been really serious cases.

We do not overlook, nor do we underestimate, the fact that a human life has been lost, but, on the other hand, we have, in doing justice in this particular case, to take into account, also, that the appellant is, too, a human being who has been gravely affected by the accident in question.

Having given due consideration to all relevant aspects of this case, and without at all departing from the view that careless, and, particularly, reckless, driving should be punished severely, because of the many lives that are being lost, more and more often, due to such driving, we have decided that the sentence of six months' imprisonment is manifestly excessive, in the context of the particular circumstances of the present case, and that a sentence of four months' imprisonment is sufficient in order to reform the appellant as a driver, to punish him for what he has done, and, also, to deter others from driving in a careless manner.

This appeal is, therefore, allowed to the above extent only, because, in view of the reduction of the period of the sentence of imprisonment and of the fact that the appellant is not a professional driver, we have decided not to interfere in any way with the order of disqualification.

Appeal partly allowed.