

COURT OF CRIMINAL APPEAL

Judge:

The Hon. Mr Justice Vincent De Gaetano LL.D.

**Sitting Number XLIV G
To-day 27th April, 2001**

Appeal No. 45/2001 G

The Police

v.

**Udas Kindu
[recte: Udas Kundu]
I.D. no. 21203A**

The Court,

Having seen the charges preferred by the Executive Police against Udas Kindu, to wit the charges of having, on the 5 May, 2000, at about 11.00 p.m., at Marsalforn Road, Victoria, Gozo (1) driven motorcycle FAB-157 without having been in possession of a driving licence issued by the Commissioner of Police and thus not covered by a policy of insurance in respect of third party risks, and (2) with having permitted Kottomnalayil Sibukumon from Marsalforn to be a pillion rider on the said motorcycle without wearing a crash helmet; the first court was requested to disqualify the offender from holding or obtaining a driving licence for a period of not less than twelve months;

Having seen the judgement of the Court of Magistrates (Gozo) of the 14 February, 2001, whereby that court acquitted the accused in respect of the second charge on the ground that it was time barred, but found him guilty of the first charge and sentenced him to a fine (multa) of three hundred liri (Lm300) and ordered that he be disqualified from holding or obtaining a driving licence for period of one year;

Having seen the application of appeal filed by the said Udas Kindu on the 2 March, 2001;

Having seen the record of the case and having heard counsel for the prosecution and for the appellant; considers:

In view of a minute entered by counsel for appellant, Dr. Anton Refalo, in the record of the case during the sitting of the 10 April, 2001, to the effect that appellant was limiting his appeal to the question of the punishment inflicted,

this Court has only to consider whether the punishment inflicted by the first court was the appropriate punishment in this case.

The first charge, of which appellant was found guilty, comprises two separate offences. The first is the offence contemplated in Section 15(1)(a) of the Traffic Regulation Ordinance, that is the offence of driving a mechanically powered vehicle without the appropriate driving licence; the other offence, which is more serious, is that contemplated in Section 3 of the Motor Vehicle Insurance (Third-Party Risks) Ordinance, that is the offence of driving a motor vehicle without the appropriate insurance cover. In view of the fact that appellant has no previous criminal record – the police conviction record was exhibited by the Attorney General at the request of the Court – this Court is of the opinion that the punishment should be awarded in its minimum. In doing so, this Court is also applying the rule as to the concurrence of punishments found in Section 17(f) of the Criminal Code.

For these reasons, the Court allows the appeal with regard to the punishment inflicted, and consequently varies the judgement of the Court of Magistrates (Gozo) of the 14 February, 2001 in the abovementioned names in the sense that it revokes and varies that part of the judgement whereby that court sentenced appellant to a fine (multa) of three hundred liri, and instead sentences appellant to a fine (multa) of two hundred and fifty five liri (Lm255) (convertible into fifty-one days imprisonment if it is not paid according to law); and confirms the remaining part of that judgement. The period of disqualification shall commence to run from to-day.

(ft) Maureen Xuereb
Deputat Registratur