

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. 46/2001 G

The Police

v.

**Kottamnalayil Sibikumon
[recte: Kottammalayil Sibikumar]
I.D. no. 21198A**

The Court,

Having seen the charges preferred by the Executive Police against Kottamnalayil Sibikumon, to wit the charges of having on the 5 May, 2000, at about 11.00 p.m., in Marsalforn Road, Victoria, Gozo (1) as the licensee of motorcycle FAB-157, permitted Udas Kindu from Marsalforn, Gozo, to drive the said motorcycle when he was not in possession of a driving licence issued by the Commissioner of Police, and (2) with having been a pillion rider on the said motorcycle without wearing a crash helmet;

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

Having seen the application of appeal filed by the said Kottamnalayil Sibikumon on the 2 March, 2001;

Having seen the record of the case, and having heard the evidence as well as counsel for the prosecution and for the defence; considers:

During the sitting of the 10 April, 2001 counsel for appellant, Dr. Anton Refalo, withdrew appellant's first grievance, that is the grievance relative to the way in which appellant's name is properly spelled.

As for the other grievances, these essentially boil down to one grievance, that is to say that the first court applied the wrong provisions of the law and, consequently, also the wrong punishment. This grievance is fully justified. In its judgement the first court quoted Section 15(1) of Chapter 65 without distinguishing between the various paragraphs of the said subsection (1); and moreover quoted also Section 3 of Chapter 104. Now, the charge in respect of which appellant was found guilty refers to the offence, and only to the offence, contemplated in paragraph (c) of subsection (1) of the said Section 15 of the Traffic Regulation Ordinance. Chapter 104 has nothing to do with the first charge as preferred. The punishment for the offence of suffering or permitting one's motor vehicle to be driven by a person not duly licensed is of a fine (multa) not exceeding one hundred liri or to imprisonment not exceeding three months. Moreover – as was rightly pointed out by appellant – the suspension of the driving licence in respect of this offence can only be ordered by the court if there is a request to this effect by the prosecution (S. 15(3)), and in this case there was no such request. In the circumstances it is quite clear that the punishment awarded by the Inferior Court was not according to law, being in excess of what is allowed by law.

This Court has taken into consideration the fact that appellant has an entirely clean criminal record. In the circumstances a fine of twenty-five liri would be appropriate.

The Court therefore allows the appeal, and consequently varies the judgement of the Court of Magistrates (Gozo) of the 14 February, 2001 in the above names by revoking that part of the judgement whereby appellant was sentenced to a fine of three hundred liri and disqualified from holding or obtaining a driving licence for a period of one year, and instead sentences appellant to a fine (multa) of twenty-five liri, convertible into five days imprisonment if the said fine is not paid according to law; and confirms the remaining part of that judgement.

(ft) Maureen Xuereb
Deputat Registratur