[HALLINAN, C.J., AND ZEKIA, J.]

(December 7, 1953)

CHRISTOS RAYAS OF MORPHOU, *Appellant*,

v.

THE POLICE, *Respondents*.

(*Criminal Appeal No.* 1963.)

Criminal Code section 204—"*culpable negligence*"—*Section not applicable to civil negligence—Motor-car Regulations*, 1951 *reg.* 56—*Driving without due care and attention—Proof of criminal negligence not necessary.*

Appellant, while driving a motor-car, had an accident and a passenger in the car was killed. Appellant was convicted under the Criminal Code (Cap. 13), section 204, and sentenced to 9 months' imprisonment. He appealed.

Held on appeal: (1) The expression "culpable negligence" in section 204 means the very high degree of negligence required in manslaughter.

(2) Only criminal negligence which amounts to more than negligence at civil law is punishable under section 204; the negligence of the appellant did not amount to criminal negligence.

(3) A negligent act or omission does not necessarily amount to criminal negligence so as to support a conviction under section 204 merely because it has been made an offence by statute or subsidiary legislation.

(4) It is not necessary to establish criminal negligence to support a conviction under the Motor Car Regulations, 1951, section 56, for driving "without due care and attention".

Conviction and sentence quashed. Appellant convicted under the Motor Car Regulations, 1951, section 56, and sentenced to two months' imprisonment from date of conviction.

Appeal by accused from the judgment of the District Court of Nicosia (Case No. 10624/53).

M. Triantafyllides for the appellant.

R. R. Denktash, Acting Solicitor-General, for the respondents.

The judgment of the Court was delivered by:—

HALLINAN, C.J.: In this case the appellant, who is a young man of about 20, drove his taxi against a culvert; the car overturned and one of the occupants was killed. The road at the place of the accident was broad and almost straight; the accident occurred at about 5 p.m. on a summer afternoon. The car while travelling at 45–50 miles per hour left the asphalt and travelled along the unasphalted margin (or "berm") of the road for 158 feet before colliding with the culvert. The speed at which the car was travelling was not excessive having regard to the locality, the road, and the traffic. The appellant gave no explanation of how the accident occurred; it was not due to any mechanical defect.

We may say at once that, in our view, in a civil action for negligence against the appellant the doctrine of *res ipsa loquitur* would apply and the appellant would be liable in damages; but the evidence is not sufficient to establish criminal liability unless the enactment under which the appellant is charged only requires the prosecution to prove that degree of negligence sufficient to establish civil liability. We also consider that had the appellant been charged under regulation 56 of the Motor Car Regulations, 1951, the evidence was sufficient to convict him under that Regulation which provides that " no person shall drive a motor-car on a road without due care and attention or without reasonable consideration for other persons using the road." The maximum penalty for a breach of any regulation under the Motor Car Law is six months imprisonment or a fine of £25. The provision in English Law which corresponds to our regulation 56 is section 12 of the Road Traffic Act, 1930. In *Andrews* v. *The Director of Public Prosecutions*, 26 Criminal Appeal Reports 34, at p. 48, Lord Atkin speaking of this section states: " This would apparently cover all degrees of negligence ". Lord Atkin's view was confirmed by a bench of five judges in the case of *Simpson* v. *Peat* (1952) 2 Q.B., 24, where Lord Goddard, C.J., stated of a defendant charged under section 12: " Was the defendant exercising that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances? If he was not, they (the Magistrates) should convict ..... " We, therefore, consider that negligence sufficient to establish civil liability is all that is required to support a conviction under our Regulation 56. In this judgment we shall refer to this sort of negligence as " negligence at civil law ".

However, the appellant was charged and convicted not under Regulation 56 but under section 204 of the Criminal Code which provides:

> " Any person who by want of precaution or by any rash or careless act, not amounting to culpable negligence, unintentionally causes the death of another person is guilty of a misdemeanour and is liable to imprisonment for two years, or to a fine not exceeding one hundred pounds."

The question which falls to be decided in this appeal is whether the want of precaution or the rash or careless act to which section 204 applies includes an act which is negligence at civil law only and which does not require to be the higher degree of negligence usually necessary to establish criminal liability.

There are to-day three categories of negligence in English Law: the very high degree of negligence (sometimes designated as " recklessness ") required in cases of manslaughter; the high degree of negligence required in other

crimes which we shall refer to in this judgment as " criminal negligence of the second degree "—in this category we do not include petty statutory offences such as Regulation 56 of the Motor Traffic Regulations, 1951, where it is apparent that negligence at civil law is enough—and lastly negligence at civil law which has no degrees, for once a plaintiff establishes that the defendant had a duty to take care and that he injured the plaintiff in such a way as an ordinary man might reasonably have foreseen, the degree of the defendant's negligence does not affect either liability or damages. These three categories are referred to in the short judgment of the Privy Council in the case of *Dabholkar* v. *The King* (1948) A.C. 224. The appellant in that case was charged with giving surgical treatment negligently and in a manner likely to endanger life or cause harm contrary to section 222 of the Penal Code of Tanganyika. This section corresponds with section 230 " reckless and negligent acts " of our Criminal Code. Lord Oaksey in delivering the judgment of the Privy Council at page 224 says :

> " The negligence charged in that section is not necessarily as grave, either in its nature or its consequences, as in the offence of manslaughter. The analogy between this section and section 11 of the English Road Traffic Act, 1930, is, in their Lordships' view, a true analogy, and just as in *Andrews* v. *Director of Public Prosecutions* the House of Lords explained the different degrees of negligence which the prosecution must prove to establish the offences of manslaughter and dangerous driving, so in the case of s. 222 the degree of negligence differs in cases of the felony of manslaughter and in cases of misdemeanour under section 222. The circumstances dealt with in the sub-sections of section 222 are all circumstances which in themselves involve danger and, although the negligence which constitutes the offence in these circumstances must be of a higher degree than the negligence which gives rise to a claim for compensation in a civil court, it is not, in their Lordships' opinion, of so high a degree as that which is necessary to constitute the offence of manslaughter."

The negligence which section 204 of our Criminal Code constitutes a misdemeanour and punishes with imprisonment up to two years is such as does not amount to " culpable negligence ". To understand the meaning of this phrase one must see what that phrase means in section 197 which provides :

> " Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter. An unlawful omission is an omission amounting to culpable negligence to discharge a duty

whether such omission is or is not accompanied by an intention to cause death or bodily harm."

This, it would appear, is nothing more or less than manslaughter at common law. Archbold (32 Ed., p. 889) defines manslaughter as " the unlawful and felonious killing of another without any malice either expressed or implied " ; at page 913 it is stated " the doctrine being well established that an act or omission arising from culpable neglect of duty and having a fatal result is manslaughter and if done with design or malice prepense would be murder ". Following the principle laid down in the case of *R.* v. *Haralambos Erodotou* decided in this Court on 29.11.1952,* since the statutory offence of manslaughter merely reproduces the common law, the decisions of the English Court of Appeal and of the House of Lords in *Andrews* v. *Director of Public Prosecutions* must be followed. The phrase " culpable negligence " in section 197 must mean that very high degree of negligence which is required to support a conviction for manslaughter at common law.

Now it is a principle of interpretation and it is reasonable to presume that the same meaning is implied by the use of the same expression in every part of a statute (Maxwell on Interpretation of Statutes, 9th Edition, p. 322–323). We conclude, therefore, that the expression " culpable negligence " has the same meaning in section 204 as it has in section 197 and that section 204 might without changing its meaning read as follows :

> " Any person who by want of precaution or by any rash or careless act, not amounting to the degree of negligence required in manslaughter, unintentionally causes the death of another person is guilty of a misdemeanour."

The next question to consider is whether the act or omission punishable under section 204 must be criminal negligence of the second category or whether it also includes negligence at civil law. We are clearly of opinion that only criminal negligence which amounts to more than negligence at civil law is punishable under section 204. Our first reason for this view is that to make negligence at civil law which results in death a misdemeanour would be a grave departure from the law of criminal liability for negligence in force in England and, so far as we are aware, in all other territories where criminal justice is based on British jurisprudence. In these circumstances, one would naturally expect that so serious an innovation would be in clear and unequivocal language and not merely left as a matter of possible inference.

* See p. 144 of this volume.

We have been referred to the Indian Penal Code where the language of section 304A is somewhat similar to that of our section 204. Section 304A is as follows:

> " Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both."

The expression " culpable homicide " is defined in section 299 of the Indian Code; it includes voluntary manslaughter and may (in the circumstances set out in section 300) include murder. Section 304A applies to cases of involuntary manslaughter by " any rash or negligent act ". In the notes to the section contained in *Ratanlal* and *Thakore* (20th Ed.) at p. 240 this expression is explained with reference to the Indian cases. The author's note clearly shows that the expression refers to criminal rashness and criminal negligence. With regard to rashness they say " the criminality lies in running a risk of doing such an act with recklessness or indifference in the consequences." And they proceed:

> " Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted."

The language of section 304A and of the learned commentators is very similar to the language of our section 204, yet section 304A obviously does not apply to negligence at civil law.

If section 204 were to apply to acts or omissions negligent at civil law a most anomalous position would arise where a person might be guilty of an offence under section 204 yet not guilty of a reckless or negligent act under section 230. Our section 230 is similar to the Tanganyika section 222 and analogous to section 11 of the English Motor Traffic Act, 1930. Where death occurs through the negligence of a motorist, he can be charged under any of these sections and the degree of negligence which the prosecution must establish is criminal negligence of the second degree. If then the motorist could be convicted under our section 204 upon proof that he was negligent at civil law, the position would be that if a motorist seriously injures someone through negligence at civil law, he could not be convicted under section 230; but if the injured person happens to die, although the motorist still could not be convicted under section 230 he could be convicted under section 204. Now if a man kills another through

negligence it may well merit a greater punishment than if he merely injures him, but it should not lower the standard of proof; surely the proper way to protect human life is to increase the penalty if necessary, but not to tamper with the onus of proof—to do so is to confuse the concept of criminal liability with that of punishment.

Mr. Denktash for the Crown argued that the conclusions so far reached in this judgment were correct, namely, that the phrase culpable negligence in section 204 means the criminal negligence necessary to establish manslaughter under section 197 and that the want of precaution or the rash or careless acts referred to in section 204 must be something more than negligence at civil law; it must be criminal negligence in the second degree. But, he submits, the category of criminal negligence should be enlarged to include all negligent acts or omissions which have been made offences by statute or subsidiary legislation. Thus, in the present case, the appellant has committed an offence under the Motor Car Regulations by driving without due care and attention; therefore, he argues, he has been guilty of a statutory criminal negligence sufficient to support a conviction under section 204. We are unable to accept this submission. It is, we consider, an arbitrary extension of the category which has been referred to in this judgment as criminal negligence in the second degree—an extension which has, so far as we know, no parallel in other British codes of criminal law, and which cannot be reasonably inferred from the language of section 204 itself. *Andrew's* case is a clear authority for the proposition that a motorist can commit an unlawful act by driving dangerously contrary to section 11 of the Motor Traffic Act, 1930, and yet when his unlawful act results in death, he is not necessarily guilty of manslaughter; the fact that he is guilty of an unlawful act of negligence in one degree does not make him guilty of another offence requiring proof of a higher degree of negligence merely because his unlawful act caused death. In our view this Court should also hold that where a motorist is guilty of an unlawful act of negligence (where the negligence to be proved only amounts to negligence at civil law) he is not, merely because his act caused death, guilty of an offence under section 204 which requires proof of a higher degree of negligence. Were we to accept the submission made on behalf of the Crown, a situation might arise when guilt or innocence under section 204 depended on whether the negligent act was done in one municipality where the act constitutes a petty offence or in another municipality where it did not.

For the reasons stated above, we consider that the conviction and sentence under section 204 *of the appellant should be set aside.* However, the trial Court might, and

in our opinion should, have convicted the appellant of an offence of driving without due care and attention contrary to Regulation 56 of the Motor Traffic Regulations, 1951. We, therefore, convict the appellant under Regulation 56. Bearing in mind that careless driving is a prevalent offence often fraught with fatal consequences and that the appellant is a taxi driver with a special duty to take care, we do not consider that a fine would be appropriate in this case; *We sentence him to two months imprisonment to run from the date of his conviction.*