

[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

POLICE,

v.

NICOS STAVROU,

Accused.

(Question of Law Reserved No. 141)

1962
May 30
POLICE
v.
NICOS STAVROU

Constitutional Law—Courts—Composition of Court in criminal cases where the accused and the person injured belong to different communities—Article 159. 4 of the Constitution.

Motor traffic—In a case of driving without due care and attention, the provisions of article 159. 4 of the Constitution are applicable if there is in fact an injured person of a different community from that of the accused—And irrespective of whether or not the fact that there has been injury or damage is mentioned on the charge—The form of the charge does not affect the position arising out of article 159 of the Constitution.

Criminal procedure—The words "Thereby collided with the motor car and caused damage to it" contained in the particulars of the offence on a charge of driving without due care etc., etc., do not make the charge bad in law—The Criminal Procedure Law, Cap. 155, section 39.

Criminal procedure—Question of Law reserved—The Criminal Procedure Law, Cap. 155, section 148.

Article 159.2 of the Constitution provides: "A court exercising criminal jurisdiction in a case where the accused and the person injured belong to the same Community, or where there is no person injured, shall be composed of a judge or judges belonging to that Community".

Article 159. 4 of the Constitution provides: "Where in a criminal case the accused and the person injured belong to different Communities the Court shall be composed of such judges belonging to both Communities as the High Court shall determine".

In this case the accused (a member of the Greek community) was charged with driving without due care and attention. The words "Thereby collided with motor car BB 447 and caused damage to it" appeared in the particulars of the offence so

charged. Admittedly motor car BB 447 belonged to a person of the Turkish Community. The question arose as to the right composition of the trial Court in the present case in view of the provisions of article 159 of the Constitution (*supra*).

Upon a question of law reserved for the opinion of the High Court under the Criminal Procedure Law, Cap.155, section 148:—

Held : (1) The purpose of the provisions in article 159 (paragraphs 2 and 4) is that where conduct amounting to a criminal offence causes injury or damage to another person the case must be tried by a Court composed as provided in that article.

(2) The form of the charge cannot affect the position arising under article 159.

(3) (a) Under section 39 of the Criminal Procedure Law, Cap.155 the particulars in every count charged must give to the accused sufficient notice of what the prosecution intend to prove on such count without causing confusion or embarrassment to the defence.

(b) On a charge of driving without due care and attention the words "*Thereby collided with motor car BB 447 and caused damage to it*" contained in the particulars of the offence do not make the charge bad in law and do not have to be struck out.

(4) Therefore, the provisions of article 159. 4 of the Constitution have to be applied in this case.

Question of Law reserved under s.148 of Cap. 155.

Question of law reserved by the District Court of Nicosia (Emin and Georghiou, D.J.J.) (Cr. Case No. 962/62) under s.148 of the Cr. Procedure Law, Cap. 155, for the opinion of the High Court of Justice, in the course of the trial of accused for "driving without due care and attention".

V. Aziz for the Republic.

Nicos Rolandis for the accused.

The judgment of the Court was read by :—

VASSILIADES, J. : The difficulty in this case originated

in what may be described as a technicality. One of the members of a mixed bench in the District Court of Nicosia, before whom the case was being tried, took the view that in a charge for "driving without due care and attention," brought under bye-law 13(p) of the Nicosia Municipal (Traffic) Bye-Laws, 1952 to 1956, there cannot be a "person injured" within the scope of article 159 of the Constitution, inasmuch as the offence consists of the careless driving, regardless of whether, or not, such driving caused injury to another person, or damage to property. Therefore, the learned judge thought, the charge should make no reference to the injured party, where there was one (such as there happens to be in this case); and, without reference to an injured party in the charge, article 159 of the Constitution regarding the composition of the Court, cannot be applied, according to the view in question.

The other member of the Court did not share this view; but he agreed that there was a question of law, to be reserved for the opinion of this Court, under s.148 of the Criminal Procedure Law (Cap. 155). So, questions (a), (b) and (c) in paragraph 7 of the case stated by the District Court, were before us for consideration.

Learned counsel on both sides agreed that the matter must be resolved on the substance; and not on the form of the charge. Both counsel submitted that as in fact there is an injured party in this case, the provisions of article 159 of the Constitution must be applied.

In our opinion the matter presents no difficulty. The relevant parts of article 159, are paragraphs 2 and 4 which read :—

"2. A court exercising criminal jurisdiction in a case where the accused and the person injured belong to the same Community, or where there is no person injured, shall be composed of a judge or judges belonging to that Community"

"4. Where in a criminal case the accused and the person injured belong to different Communities, the court shall be composed of such judges belonging to both Communities as the High Court shall determine".

The purpose of the provisions in this article, seems to us

1962
May 30
POLICE
v.
NICOS STAVROU
Vassiliades, J.

perfectly clear. Where conduct amounting to a criminal offence, causes injury or damage to another person, the case must be tried by a Court composed as provided in this article 159.

There may, of course, be cases of careless driving without an injured party. But where there is an injured party or damage to the property of another, (as it is more frequently the case in prosecutions of this nature) the form of the charge cannot affect the position arising under article 159.

As regards the form of the charge, the matter is governed by the provisions in section 39 of the Criminal Procedure Law (Cap.155). The particulars in every count charged, must give to the accused sufficient notice of what the prosecution intend to prove on such count ; without causing confusion or embarrassment to the defence.

Reading the charge before us in this case, we find nothing that could be objected to on the part of the Court.

This is sufficient to dispose of the proceeding before us. From what has already been said, the answers to the three questions stated by the District Court, are :—

- (a) the words “thereby collided with motor car BB447 and caused damage to it”, contained in the particulars of the offence, do not make the charge bad in law ; and do not have to be struck out ;
- (b) the answer is in the affirmative regarding a charge of driving “without due care and attention” brought under bye-law 13(p) of the Nicosia Municipal Corporation (Traffic) Bye-Laws, 1952 to 1956. There is no count under s.6 of the Motor Vehicles and Road Traffic Law, (Cap. 332) in this case ; and the question cannot, therefore, arise, as far as that Law is concerned.
- (c) the answer to the first alternative in the question, is in the affirmative. The case should be tried by a court composed of judges belonging to both Communities as provided in paragraph 4 of article 159. This disposes of the second alternative in the question, as well.