

KYRIACOS STYLIANOU,

Appellant,

v.

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KYRIACOS
STYLIANOU
v.
THE POLICE

THE POLICE,

Respondents.

(*Criminal Appeal No. 3230*).

Causing death by want of precaution—Section 210 of the Criminal Code, Cap. 154—Death occurring through collision of motor vehicles coming from opposite directions—And when victim's vehicle tried to stop in order to avoid another vehicle which appeared abruptly and blocked part of its own side of the road—Court of Appeal not satisfied, beyond reasonable doubt, that the position in the road of Appellant's car was, also, a cause of the fatal collision in the sense of section 210 (supra).

Road traffic—Accident—Causing death by careless driving—See above under Causing death by want of precaution.

Cases referred to:

Kannas v. The Police (1968) 2 C.L.R. 29 at pp. 38, 39.

Appeal against conviction.

Appeal against conviction by Kyriacos Stylianou who was convicted on the 20th January, 1971 at the District Court of Limassol (Criminal Case No. 10697/70) on one count of the offence of causing death by want of precaution contrary to section 210 of the Criminal Code Cap. 154 and was sentenced by Loris, D.J. to pay £75.— fine and was further disqualified from holding or obtaining a driving licence for a period of one year.

Y. Agapiou, for the Appellant.

Cl. Antoniadou, Counsel of the Republic, for the Respondents.

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The judgment of the Court was delivered by:—

TRIANTAFYLLIDES, P.: The Appellant appeals against a conviction by the District Court of Limassol, on the 20th January, 1971, on a count charging him with causing the death of a six years old boy by want of precaution, contrary to section 210 of the Criminal Code, Cap. 154.

The salient facts of the case may be stated briefly as follows:—

On the 14th January, 1970, at about 3.30 p.m., the deceased was a passenger in his father's car, No. CA813, which was being driven from Nicosia to Limassol.

At a point between the 43rd and 44th milestones of the road they met with a lorry, No. CY803, which was coming from the opposite direction and was being driven by the Appellant.

It is not in dispute that, at the time, the Appellant was driving the lorry more or less in the middle of the road, occupying about two feet of the width of the road beyond his own proper side.

As the two vehicles were approaching each other, a van, No. DS135, which was parked on the righthand side of the road when one faces towards Nicosia and in the middle of a line of other cars parked on that side of the road, pulled out suddenly into the road, blocking the way of the car, in which the deceased was travelling, to an extent of about three feet.

When the father of the deceased saw his own side of the road being so blocked by the van he swerved to the right and applied his brakes at the same time as, in consequence of the sudden entry into the road of the van, there was not much space left for him to pass between the two vehicles in front of him, the lorry and the van.

The surface of the road being wet, the car skidded, turned about and hit with its nearside the middle of the front of the lorry, rather towards the nearside of the lorry.

It has been stated clearly in evidence by the father of the deceased that he had seen the lorry coming, but had not taken any avoiding action, because the lorry left him enough room to pass; what made him change direction suddenly and try to stop was the abrupt appearance of another vehicle blocking part of his own side of the road.

The driver of the van was tried together with the Appellant, was convicted of the same offence, viz. causing death contrary to section 210 of Cap. 154, and both he and the Appellant were ordered to pay a fine of £75 each, and were disqualified from holding or obtaining a driving licence for one year.

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Bearing in mind the evidence of the father of the deceased as well as the manner in which the car collided with the lorry, it appears that the collision did not occur while the father of the deceased was making an effort to drive his car in such a way as to pass between the lorry and the van, in which case the offside of the car would have collided with the offside of the lorry; thus, it could not be said, beyond reasonable doubt, that the position in the road of the lorry of the Appellant was, also, a cause, in the sense of section 210 (see, *inter alia*, *Kannas v. The Police* (1968) 2 C.L.R. 29, at pp. 38, 39), of the fatal collision.

We have, therefore, reached the conclusion that, on the evidence before him, the learned trial Judge was not warranted to find the Appellant guilty of the offence of causing the death of the deceased contrary to the said section 210.

In the result the appeal is allowed, the conviction is quashed and the sentence imposed on the Appellant is, consequently, set aside.

Appeal allowed.