

1984 September 3

[LORIS, STYLIANIDES AND PIKIS, JJ.]

ANDREAS EVANGELOU MASTRAPPAS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 4537*).

5 *Causing death by want of precaution—Section 210 of the Criminal Code, Cap. 154—Not established that death of victim caused by the injuries received in the accident or that the death was either contributed to or precipitated by the said injuries as required by section 211 of Cap. 154—Conviction under s. 210 set aside—Conviction for driving without due care and attention, contrary to section 8 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72) substituted therefor—Section 145(1)(c) of the Criminal Procedure Law, Cap. 155.*

10 *Road Traffic—Careless driving—Fatal accident—Sentence—Appellant 60 years old, a first offender and required the driving licence in view of the condition of the health of his wife—£100 fine and 4 months' disqualification.*

15 *The appellant was convicted of the offence of causing death by want of precaution, contrary to s.210 of the Criminal Code, Cap. 154 and was sentenced to a fine of £100.— and was disqualified from holding a driving licence for a period of one year as from the date of his conviction.*

Upon appeal against conviction and sentence:

20 *Held, (1) that the finding of the trial Court as to the cause of death and its nexus with the proven negligence of the appellant was not warranted by the evidence adduced because the prosecution failed to establish that the death of the victim was caused by the injuries received in the accident or that his death*
25 *was either contributed to or precipitated by the said injuries,*

as required by section 211 of the Criminal Code, Cap. 154; accordingly the conviction of the appellant under s.210 of Cap. 154 must be set aside.

Held, further that the negligent driving of the appellant as found by the trial Court is warranted by the evidence adduced; that on this evidence the trial Court might and should have convicted the appellant of the offence of driving without due care and attention contrary to s.8 of Law 86/72; that in the circumstances the substitution of a new count under s.8 of Law 86/72 is ordered on which the appellant is convicted accordingly (see s.145(1)(c) of the Criminal Procedure Law, Cap. 155).

(2) That having taken into consideration the serious facts pertaining the negligent driving on the one hand and the personal circumstances of the appellant on the other, (including the fact that the 60 year old appellant is a first offender and the fact that he requires his driving licence in view of the condition of the health of his wife) the Court has decided to confine itself to imposing a substantial fine and a disqualification from holding a driving licence for a period of four months only; and that, accordingly, appellant is sentenced to pay a fine of £100 on the substituted as above count.

Appeal partly allowed.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Andreas Evangelou Mastrappas who was convicted on the 10th May, 1984 at the District Court of Limassol (Criminal Case No. 8484/83) 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 Fr. Nicolaidis, S.D.J. to pay £100.- fine and was further disqualified from holding or obtaining a driving licence for a period of one year.

A. Myrianthis with *P. Papademas*, for the appellant.

R. Gavrielides, Senior Counsel of the Republic, for the respondents.

The following judgment of the Court was read by:

LORIS J.: The appellant in the present appeal was convicted on 10.5.1984, by a Judge of the District Court of Limassol, in Limassol Criminal Case No. 8484/83 of the offence of causing

death by want of precaution, contrary to s. 210 of the Criminal Code, Cap. 154 and was sentenced to a fine of £100.— and was disqualified from holding a driving licence for a period of one year as from the date of his conviction. The appellant now
5 complains against his conviction and the Order by virtue of which he was *dispossessed of his driving licence for a period of one year.*

The appeal against conviction was rightly confined to challenging the finding of the trial Court as to the cause of death and
10 its nexus with the proven negligence of appellant.

After hearing counsel on both sides and having gone through the record and the judgment of the trial Court, we hold the view that the finding of the trial Court on this issue is not warranted by the evidence adduced; the prosecution failed to establish
15 that the death of the victim was caused by the injuries received in the accident or that his death was either contributed to or precipitated by the said injuries, as required by section 211 of the Criminal Code, Cap. 154. This was rightly conceded by the learned Counsel of the Republic appearing for the respondent.

20 For this reason, we consider that the conviction of the appellant under s. 210 of Cap. 154 should be set aside.

However we are satisfied that the negligent driving of the appellant as found by the trial Court is warranted by the evidence adduced; on this evidence the trial Court might, and in our
25 opinion should, have convicted the appellant of the offence of driving without due care and attention contrary to s. 8 of Law 86/72; in the circumstances we have decided, in the exercise of the powers vested in us under section 145(1)(c) of the Criminal Procedure Law, Cap. 155, to order the substitution of a new
30 count under s. 8 of Law 86/72 on which we convict the appellant accordingly.

Before proceeding to pass sentence, we would like to give an opportunity to counsel for appellant to add anything he deems appropriate for his plea in mitigation.

35 *Myrianthis* – My humble submission is that my client would have pleaded guilty if the charge was amended accordingly by the trial Court. My client suffered loss and he would not have been found in this position and file the present appeal

and incur more costs. In my humble submission he has been sufficiently punished.

LORIS J. The facts of this case, in connection with appellant's driving without due care and attention, as proven before the trial Court are very serious; whilst driving his saloon car at night time on a straight, comparatively wide asphalted road (width of the asphalt 20 feet with 3 feet useable berm on each side) and when only 20 to 25 meters away from an oncoming vehicle suddenly swerved to his right cutting off the path of the oncoming vehicle and causing thereby a violent head-on collision. 5 10

Having taken into consideration the serious facts pertaining the negligent driving on the one hand and the personal circumstances of the appellant on the other, (including the fact that the 60 year old appellant is a first offender and the fact that he requires his driving licence in view of the condition of the health of his wife) we have decided to confine ourselves to imposing a substantial fine and a disqualification from holding a driving licence for a period of four months only; in view of the fact that the appellant was effectively disqualified on 10.5. 1984 by virtue of the original sentence which has now been quashed, together with the respective conviction under s. 210, the term of disqualification will expire on 10.9.1984. 15 20

Appellant will pay on the substituted count as above £100.- fine. 25

The Order of the trial Court as to costs is only fair to be set aside; and the £53.- costs adjudged to be borne by the Republic.

Appellant is disqualified from holding a driving licence for a period of 4 months as above.

Order accordingly. 30