[VASSILIADES, MUNIR AND JOSEPHIDES, JJ.]

NICOLAOS NEARCHOU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 2760)

Criminal Law—Causing death by want of precaution or careless act, contrary to section 210 *of the Criminal Code, Cap.* 154*—Sufficient evidence to justify conviction "for want of precaution" or "careless act"—Finding of trial Court would not justify conviction of the lesser offence of careless driving under section* 6 *of the Motor Vehicles and Road Traffic Law, Cap.* 332.

Criminal Law—Negligence—Negligence resulting in the loss of human life—Categories of, a question of fact in each case—Offences the conviction for which necessitates proof of "culpable" negligence and negligence "not amounting to culpable negligence"—The Criminal Code, Cap. 154, *section* 205 *before and after its amendment by section* 5 *of the Criminal Code* (*Amendment*) *Law*, 1962, (*Law* 3 *of* 1962), *unpremeditated homicide and causing death by careless act contrary to section* 210.

Criminal Law—Decided cases—Observations on the classification of negligence made in Rayas *v.* The Police (19 C.L.R. 308).

Road Traffic—Careless driving—Negligence—Culpable and non-culpable negligence—Unpremeditated homicide contrary to section 205 *of the Criminal Code* (*as amended by Law* 3 *of* 1962)*—Causing death by a careless act contrary to section* 210 *of the Criminal Code—Careless driving contrary to section* 6 *of the Motor Vehicles and Road Traffic Law, Cap.* 332.

Section 205 of the Criminal Code, Cap. 154, as amended by section 5 of the Criminal Code (Amendment) Law, 1962, (Law 3 of 1962) reads as follows :—

" 205.—(1) Any person who by an unlawful act or omission causes the death of another person is guilty of the felony of homicide.

(2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty though such omission may not be accompanied by an intention to cause death.

(3) Any person who commits the felony of homicide is liable to imprisonment for life."

(*Editorial Note :* Section 210 of the Criminal Code, Cap. 154 is set out in the Judgment of JOSEPHIDES, J., at p. 41, post).

Section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332 reads as follows :—

" If any person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, he shall be liable to imprisonment not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and fine."

The appellant was convicted of the offence of unintentionally causing death by want of precaution and by a careless act, not amounting to culpable negligence (whilst driving his motor lorry on a road), contrary to section 210 of the Criminal Code, Cap. 154 and was sentenced to 3 months' imprisonment. He appealed against conviction mainly on two grounds :

(*a*) That the evidence was not sufficient to support the conviction that is to say, that there were material contradictions in many respects and that the evidence was not weighed properly by the trial Judge who drew unreasonable conclusions ; and

(*b*) That, in any event, even if the version of the prosecution were accepted, that is to say, that the cyclist was knocked down by the appellant's lorry, it did not amount to a careless act within the provisions of section 210 of the Criminal Code.

Held, (*I*) *per* JOSEPHIDES, J., VASSILIADES AND MUNIR, JJ., *concurring :*

(I) *on ground* (*a*) *:*

(1) There are no material contradictions in the evidence and the net result is that there was sufficient evidence on which the trial Judge could find that while the cyclist was on his correct side of the road, on the berm of the road, he was hit by the appellant's lorry.

(2) It is true that the evidence shows that the appellant was driving his lorry very slowly, at about 10 miles per hour, and that he did not hit the cyclist with the front part of the vehicle ; but, all the same, the fact remains that this was a compara-

tively wide road of 18 1/2 feet, that there was no other vehicle on the road at the time, and that the appellant drove so closely to the cyclist as to knock him down.

(3) On the whole we are satisfied that there was sufficient evidence on which the trial Judge could make the finding which he did.

(2) *on ground* (*b*) *:*

(1) Now it is always very difficult to lay down definite categories of negligence and I do not propose doing so in the present case. It is, I think, a question of fact in each case. Taking the facts of this particular case, as already stated, that is that the road was clear, that it was sufficiently wide, and that there was no necessity for the appellant to drive his lorry so closely to the cyclist who was on the berm of the road, I think that there was sufficient evidence of " want of precaution " or " careless act " to support a conviction under section 210 of the Criminal Code, and that the trial Judge would not be justified in finding the accused guilty only of the lesser offence of careless driving under section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332.

(2) It should be borne in mind that if the appellant's negligence was " culpable " then he would be convicted (prior to 1962) of manslaughter and now of homicide under the provisions of section 205 of the Criminal Code (as amended by Law 3 of 1962, section 5). Sub-section (2) of that section reads as follows :—

> " An unlawful omission is an omission amounting to culpable negligence to discharge a duty though such omission may not be accompanied by an intention to cause death."

To convict, therefore, a person of manslaughter now of unpremeditated homicide, the prosecution must prove four things :

(*a*) that the accused owed a duty to the victim to take care ;

(*b*) that the duty was not discharged ;

(*c*) that the default caused the death of the victim ; and

(*d*) that the accused's negligence was " culpable ", which has been interpreted in many cases as "criminal", "gross" or " wicked " negligence ; that is that the accused's negligence showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving of punishment (see *R.* v. *Bateman*,

(1925) 19 Cr. App. R. 8 ; and *Andrews* v. *D.P.P.* (1937) 26 Cr. App. R. 34).

(3) Consequently, if negligence is "culpable" then it is manslaughter or unpremeditated homicide ; if it is not "culpable" then depending on the facts, it may be causing death "by want of precaution or by any rash or careless act, not amounting to culpable negligence" under the provisions of section 210 of the Criminal Code.

(4) In the circumstances of this case the appellant was rightly convicted of the offence of causing death by want of precaution or by a careless act under the provisions of section 210 and I would, therefore, dismiss the appeal.

(II) per VASSILIADES, J., MUNIR, J., *concurring :*

(1) As already stated by my brother Mr. Justice Josephides, negligence is a question of fact in each case. Here the trial Judge found negligence in appellant's driving his big lorry so close to the deceased cyclist while overtaking him, as to show "want of precaution" or carelessness for the safety of the cyclist, who in this particular case, was cycling on the berm of the road when the body of appellant's lorry collided with him. The evidence does not show any reason for which the appellant had to drive his lorry so close to the cyclist while overtaking him. And I agree that the finding of negligence, sufficient to support a charge under section 210 of the Criminal Code, was fully justified upon the evidence on record.

(2) The elements constituting the offence are, in my view, clearly stated in the section by the legislator. They consist of—

(i) causing the death of another person,

(ii) (*a*) by want of precaution, or

(*b*) by any rash act, or

(*c*) by any careless act. Or, of course, a combination of these alternatives.

The qualification in the words "not amounting to culpable negligence" and "unintentionally", only show that even in such circumstances, causing the death of another person by negligence in omission or comission, is an offence under this section of the criminal code. And, same as in all criminal matters, the burden is cast on the prosecution to establish in each case, both these elements of the offence : (*i*) that the accused has caused the death of the alleged victim ; (ii) that he

did so by conduct amounting to one or more of the three alternative causes enumerated in the section ; or a combination of them.

(3) What amounts to causing the death of another person, is clarified by the legislator in section 211 (section 205 in the 1949—edition of our Statute Laws). And what amounts to culpable negligence is given in section 205 (2) of the Code (or section 197 of the 1949—edition).

(4) So causing the death of another person intentionally, constitutes the crime of premeditated murder under section 204 (the section corresponding to 198, for murder, in the 1949—edition) ; causing death unintentionally, by an unlawful act or omission amounting to culpable negligence, constitutes the crime of homicide under section 205 (corresponding to manslaughter under section 197 of the previous edition) ; and causing death unintentionally, by carelessness not amounting to culpable negligence, constitutes the offence under section 210 of the Criminal Code (or section 204 in the previous edition of our Statute Laws) under which the appellant was convicted in this case.

(5) The trial Court, upon the evidence before it, found as a fact, both that the victim's death was caused by the appellant ; and that it was the result of appellant's careless act and want of precaution in overtaking the victim too closely with his lorry. As already stated, the evidence, in my view as well, amply supports these findings.

(*III*) *per* MUNIR, J.:

With regard to the question of the application of the provisions of section 210 of the Criminal Code, Cap. 154, to the facts of this case, I also agree with the proposition that the facts of each case must be considered on their own merits, and I consider that the trial Judge in his careful judgment has correctly applied section 210 to the facts of this case.

(*IV*) In the result this appeal fails and is unanimously dismissed. Sentence to run according to law, from today.

Appeal dismissed. Sentence to run according to law.

Observations by Vassiliades, J., regarding (*a*) the classification of negligence made in *Rayas* v. *The Police*, 19 C.L.R. 308, (*b*) Civil negligence *viz*. the Civil Wrong in section 51 *et seq.* of the Civil Wrongs Law, Cap. 148 and (*c*) the inadequacy of the sentence imposed by the trial Court.

Cases referred to :

R. v. *Bateman* (1925) 19 Cr. App. R. 8 ;

Andrews v. *D.P.P* (1937) 26 Cr. App. R. 34 ;

Rayas v. *The Police*, 19 C.L.R. 308.

Appeal against conviction.

Appeal against conviction by the appellant who was convicted on the 2nd March, 1965 at the District Court of Nicosia (Criminal Case No. 18635/63) 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 Georghiou, D.J. to 3 months' imprisonment.

K. Michaelides, for the appellant.

A. Frangos, counsel of the Republic, for the respondents.

The following judgments were delivered :

VASSILIADES, J.: In this case the first judgment will be delivered by Mr. Justice Josephides.

JOSEPHIDES, J.: In this case the appellant was convicted of unintentionally causing death by want of precaution or by a careless act, not amounting to culpable negligence, (whilst driving his motor-lorry on a road), contrary to section 210 of the Criminal Code, and he was sentenced to three months' imprisonment. He now appeals against conviction only.

The appeal, which was very ably argued before us today by Mr. Michaelides, was mainly based on two grounds : (*a*) that the evidence was not sufficient to support the conviction, that is to say, that there were material contradictions in many respects and that the evidence was not weighed properly by the trial Judge who drew unreasonable conclusions ; and (*b*) that, in any event, even if the version of the prosecution were accepted, that is to say, that the cyclist was knocked down by the appellant's lorry, it did not amount to a careless act within the provisions of section 210 of the Criminal Code

The trial Judge in a careful judgment made the following findings : that two witnesses (P.W. 6 and 7) saw the deceased cycling along the berm of the road on his correct

side which is not disputed by the appellant ; that there was no traffic on the road and that the road was quite clear, the width of the asphalted portion being 18 feet 7 inches ; and that, in the circumstances and having regard to the absence of any traffic on the road, there was no need at all for the accused to go so much to the edge of the asphalt as to hit the cyclist, as he had a clear road of 18 feet 6 inches. In spite of that, the appellant knocked down the cyclist who was cycling on the berm of the road on his correct side.

Mr. Michaelides for the appellant, challenged mainly the evidence of witness No. 7 for the prosecution, Anastasis Demou, submitting that he was making a mistake as to how the collision occured. He referred to two parts of his evidence ; first, to the examination-in-chief, (at page 13C), where this witness said—

> " Immediately after the body of the motor-lorry cleared the cyclist, the cyclist fell on the edge of the asphalted portion of the road ;"

and to the cross-examination of this witness (at page 14C) where he said :—

> " The cyclist fell on the ground because the body of the accused's motor-lorry hit him. He fell on the ground immediately the body of the motor-lorry cleared him. The body (kashia) of the vehicle hit the cyclist. The front of the body hit accused. It hit him on the right shoulder. Immediately he was hit his body leaned on the body of the motor-lorry, and he fell on the ground when the body of the vehicle moved and cleared (passed) him. It was the side of the body which hit deceased and not the corner. It was the " kochi " of the front part of the body which hit the deceased (cyclist). The motor-lorry did not hit the bicycle. The body of the deceased when hit, turned and rested on the body of the motor lorry and when the motor-lorry passed he fell on the ground. '

Learned counsel, in pointing to these extracts from the evidence, submitted that there were material contradictions in the evidence of this witness. Having read the evidence of this witness as a whole and having weighed it against the whole evidence in the case, we are of the view that there are no material contradictions in the evidence of this witness who was giving his evidence some 18 months after the accident. The net result is that there was sufficient

evidence on which the trial Judge could find that while the cyclist was on his correct side of the road, on the berm of the road, he was hit by the appellant's lorry.

It is true that the evidence shows that the appellant was driving his lorry very slowly, at about 10 miles per hour, and that he did not hit the cyclist with the front part of the vehicle ; but, all the same, the fact remains that this was a comparatively wide road of 18 1/2 feet, that there was no other vehicle on the road at the time and that the appellant drove so closely to the cyclist as to knock him down. On the whole we are satisfied that there was sufficient evidence on which the trial Judge could make the finding which he did.

The *second* ground of appeal was that assuming that the cyclist fell as a result of the collision, as a result of being knocked down by the lorry, this did not warrant a conviction under section 210 of the Criminal Code which reads as follows :

> " 210. Any person who by want of precaution or by any rash or careless act, not amounting to culpable negligence, unitentionally 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 '

Counsel for the appellant, in submitting that there was no evidence to support a conviction under section 210 referred to the case of *Christos Rayas* v. *The Police* (1953) 19 C.L R. 308, and submitted that the high degree of negligence, which was necessary to support a conviction under section 210 was lacking. Now it is always very difficult to lay down definite categories of negligence and I do not propose doing so in the present case. It is, I think, a question of fact in each case. Taking the facts of this particular case, as already stated, that is that the road was clear, that it was sufficiently wide, and that there was no necessity for the appellant to drive his lorry so closely to the cyclist who was on the berm of the road, I think that there was sufficient evidence of " want of precaution " or " careless act " to support a conviction under section 210 of the Criminal Code, and that the trial Judge would not be justified in finding the accused guilty only of the lesser offence of careless driving under section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332, as submitted by appellant's counsel.

It should be borne in mind that if the appellant's negligence was "culpable" then he could be convicted (prior to 1962) of manslaughter and now of homicide under the provisions of section 205 of the Criminal Code (as amended by Law 3 of 1962, section 5). Sub-section (2) of that section reads as follows :

> "(2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty though such omission may not be accompanied by an intention to cause death."

To convict, therefore, a person of manslaughter now of unpremeditated homicide, the prosecution must prove four things :

(*a*) that the accused owed a duty to the victim to take care ;

(*b*) that the duty was not discharged ;

(*c*) that the default caused the death of the victim ; and

(*d*) that the accused's negligence was "culpable", which has been interpreted in many cases as "criminal", "gross" or "wicked" negligence ; that is, that the accused's negligence showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving of punishment (see *R.* v. *Bateman* (1925) 19 Cr. App Rep. 8 ; and *Andrews* v. *D.P.P.* (1937) 26 Cr. App Rep. 34)

Consequently, if negligence is "culpable" then it is manslaughter or unpremeditated homicide; if it is not "culpable" then, depending on the facts, it may be causing death "by want of precaution or by any rash or careless act not amounting to culpable negligence" under the provisions of section 210 of the Criminal Code.

In the circumstances of this case the appellant was rightly convicted of the offence of causing death by want of precaution or by a careless act under the provisions of section 210 and I, would therefore, dismiss the appeal

Vassiliades, J. : I agree. The position in this case as regards the facts was made quite clear by the findings of the trial Judge. He went carefully into the evidence ; and notwithstanding able argument by learned counsel on behalf of the accused (appellant herein) the Judge found negligence.

As already stated by my brother Mr. Justice Josephides, negligence is a question of fact in each case. Here the trial Judge found negligence in appellant's driving his big lorry so close to the deceased cyclist while overtaking him, as to show "want of precaution" or carelessness for the safety of the cyclist, who in this particular case was cycling on the berm of the road when the body of appellant's lorry collided with him. The evidence does not show any reason for which the appellant had to drive his lorry so close to the cyclist while overtaking him. And I agree that the finding of negligence, sufficient to support a charge under section 210 of the Criminal Code, was fully justified upon the evidence on record.

Section 210 is found in part V of the Criminal Code which deals with "Offences against the person"; and comes under the heading of "Murder and Manslaughter" or, as the Code stands now amended by Law No. 3 of 1962 (The Criminal Code (Amendment) Law, 1962) under the heading: "Premeditated murder and homicide", covering sections 203 to 213 inclusive. The essence of the offences in these sections, lies in the loss of human life. Section 203, as the marginal note indicates, deals with premeditated murder; section 205, with homicide; section 209, with infanticide; and section 210, with causing death by want of precaution or carelessness.

The elements constituting the offence are, in my view, clearly stated in the section by the legislator. They consist of—

(i) causing the death of another person,

(ii).—(*a*) by want of precaution, or

(*b*) by any rash act, or,

(*c*) by any careless act. Or, of course, a combination of these alternatives.

The qualification in the words "not amounting to culpable negligence" and "unintentionally", only show that even in such circumstances, causing the death of another person by negligence in omission or commission, is an offence under this section of the criminal code. And, same as in all criminal matters, the burden is cast on the prosecution to establish in each case, both these elements of the offence; (i) that the accused has caused the death of the alleged victim; and (ii) that he did so by conduct amounting to one or more of the three alternative causes enumerated in the section; or a combination of them.

What amounts to causing the death of another person, is clarified by the legislator in section 211 (section 205 in the 1949-edition of our Statute Laws.) And what amounts to culpable negligence is given in section 205 (2) of the Code (or section 197 of the 1949-edition).

So causing the death of another person intentionally, constitutes the crime of premeditated murder under section 204 (the section corresponding to 198, for murder, in the 1949-edition) ; causing death unitentionally, by an unlawful act or omission amounting to culpable negligence, constitutes the crime of homicide under section 205 (corresponding to manslaughter under section 197 of the previous edition) ; and causing death unintentionally, by carelessness not amounting to culpable negligence, constitutes the offence under section 210 of the Criminal Code (or section 204 in the previous edition of our Statute Laws) under which the appellant was convicted in this case.

The trial Court, upon the evidence before it, found as a fact, both that the victim's death was caused by the appellant ; and that it was the result of appellant's careless act and want of precaution in overtaking the victim too closely with his lorry. As already stated, the evidence, in my view as well, amply supports these findings.

Learned counsel for the appellant referred us to *Rayas* v. *The Police* (19 C.L.R. p. 308) and particularly to a passage in the judgment at p. 311 regarding the degree and nature of the negligence required according to that case, to support a charge under this section of the Criminal Code. And he argued that even if the victim's death was caused by the appellant, the latter's negligence in this particular case, same as in Rayas' case, was not sufficient in degree, to support a conviction.

Having found it unnecessary to call upon the respondent on the facts, and having heard no argument from him on Rayas' case, we did not think that we should reserve judgment for that purpose. But having had to consider the judgment in *Rayas* v. *The Police* (*supra*) on several occasions and upon the facts of numerous cases ever since, I think that, with all respect, I must now express my reservations regarding the judgment in that case.

It seems to me that the question of negligence was considered there, apart and independently of the consequent death ; while without such death, the case would not have

come under this particular section of the Code at all. The same negligent driving, but without causing death, might amount to an offence under section 236 (section 230 in the 1949-edition) of the Code ; or under the Motor Vehicles and Road Traffic Law (Cap. 332) and the Regulations made thereunder ; but it could never amount to the offence under section 210. Same as an assault causing actual bodily harm or grievous harm, but without causing death, may amount to one or more of the offences in the Code under the heading of offences endangering Life or Health, or under the heading of Assaults ; but if death ensues therefrom, even after the lapse of considerable time, the very same assault may well amount to the crime of homicide under section 205 ; or even to that of murder under section 203.

As stated in Rayas' case (*supra*) the crime in section 210 (section 204 in the 1949-edition) of our Criminal Code, is not peculiar to Cyprus. Reference was made to a similar section in the Indian Criminal Code. I believe it is found also in several other such enactments. Reference was also made in Rayas' case to the degree of negligence sufficient to give rise to a civil claim for compensation, but not sufficient, it was thought, to support a prosecution under section 210 (at that time section 204).

I am afraid I cannot see how civil negligence, *viz.* the civil wrong in section 51 *et seq.* of the Civil Wrongs Law, Cap. 148, can affect the question of guilt in criminal proceedings for the consequences of negligent conduct punishable under the criminal code. Surely different considerations apply to these two different matters, as provided in the respective statutory provisions. The proofs and the defences are so different.

Once negligence is established in an action, under the Civil Wrongs Law, the degree of such negligence is immaterial in measuring damages ; culpable or not culpable, negligence will give rise to a civil claim for compensation ; and the question of measuring the degree of negligence, will only arise in cases where it has to be considered against contributory negligence from the other side.

In criminal proceedings on the other hand, the legislator expressly described and qualified the negligence required to contribute the offence under the particular provision of the statute. Regarding negligence resulting in the loss of human life, the legislator classified it into culpable negligence, and negligence short of that degree ; or " not amounting to culpable negligence ". And re-

garding offences not involving loss of life, he qualified it as conduct " so rash or negligent as to endanger human life or to be likely to cause harm to any other person " (section 236 of the Code) ; or as driving " rashly or recklessly or in a manner which is dangerous to the public " (section 5 (1) of Cap. 332) ; or as driving " without due care and attention or without reasonable consideration for other persons using the road " (section 6 of Cap. 332). The nature of negligence was left by the legislator as a question of fact in each particular case, to be established by the prosecution to the satisfaction of the Court, beyond reasonable doubt. Moreover the degree of accused's negligence in each case, varying widely according to the particular circumstances, is one of the material facts to be considered in measuring the sentence in that case.

As at present advised, I am afraid I cannot see either legal or practical justification in the legal classification of negligence made in Rayas' case (*supra*). Neither can I see the difference, outside the facts in the respective case, between the sentence of two months' imprisonment imposed by the Court of Appeal for " driving without due care and attention contrary to Regulation 56 of the Motor Traffic Regulations, 1951 ", in Rayas' case (*supra*) on one hand, and the sentence of three months' imprisonment imposed by the trial Court in the present case, on the other.

I confess that I really cannot see how the appellant Rayas, could be found guilty of driving his motor car without due care and attention to such an extent as to deserve a sentence of two months' imprisonment under Reg. 56, for his careless driving, and yet when such careless driving resulted in the death of another person, appellant's conviction under section 204 (now 210) for unintentionally causing such death by want of precaution or careless driving could be set aside. And I leave the matter at that.

Coming now to the question of sentence, I should like to lay again stress on the observations made recently in a case before this Court under the Motor Vehicles and Road Traffic Law, Cap. 332, *Panayiotis Mirachis* v. *The Police* (reported in this Part at p. 28 *ante*) regarding sentence. There is no appeal against sentence in this case, and therefore the question hardly arises. But we have here again a sentence for a short term of imprisonment, which, in my opinion, calls for comment.

" When all other alternatives are considered unsuitable

to meet the particular case in hand—it was said in Mirachis' case (*supra*)—the Court may well have to resort to imprisonment. But in such a case the sentence has to be justified upon one of the purposes to be served by such a sentence. Rehabilitation ..... deterrence ...... retribution ...... all these matters have to be considered and weighed together with the consequences and probable effect of imprisonment on the particular offender."

Three months' imprisonment on this lorry-driver of about 45 years of age, while sufficient to upset considerably his family life, can hardly operate on his mind and habits, for purposes of rehabilitation ; or have much deterrent effect on other careless drivers on the road, endangering human life and public safety. When all other alternatives are considered unsuitable to meet the case, let the term of imprisonment to be imposed, bear a proper proportion to the grave consequence of the driver's carelessness ; and let it also serve at least some of the purposes to be served by such a sentence.

MUNIR, J.: I agree with the conclusion reached by my learned brother Judges that this appeal must be dismissed and I do not really wish to add anything to the reasons which they have given for coming to this conclusion. I would simply observe that with regard to the findings of fact I am not satisfied, having given careful consideration to the able argument of learned counsel for the appellant, that this is a case in which this Court should upset the findings of fact made by the learned trial Judge, particularly as in this case he has done so relying on the evidence of two eye-witnesses, whom he has had the opportunity of seeing and judging their demeanour and the manner in which they gave their evidence.

With regard to the question of the application of the provisions of section 210 of the Criminal Code, Cap. 154, to the facts of this case, I also agree with the proposition that the facts of each case must be considered on their own merits, and I consider that the trial Judge in his careful judgment has correctly applied section 210 to the facts of this case.

VASSILIADES, J.: In the result this appeal fails and is unanimously dismissed. Sentence to run according to law, from today.

Appeal dismissed. Sentence to run according to law.