

PAVLOS NICOLAOU,

*Appellant.*

v.

THE POLICE,

*Respondents.*

(*Criminal Appeal No. 2788*)

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*Criminal Procedure—Appeal—Statement by Respondents' Counsel of his intention not to support conviction—Appeal allowed.*

*Adjournments—Delays in hearing of cases—Observations in Nicola v. Christofi and another, reported in (1965) 1 C.L.R. 324, regarding delays in civil actions, applicable with still greater force in criminal cases.*

The appellant in this appeal stood charged in the Court below of (1) causing death by want of precaution, contrary to section 210 of the Criminal Code, Cap. 154, and (2) of driving a land-rover dangerously, contrary to sections 5 (1) and 13 of the Motor Vehicles and Road Traffic Law, Cap. 332, as amended by Laws 25/59, 2/62 and 8/64. He was acquitted by the trial Court on the 1st count and was convicted on the second count and was bound over in the sum of £100 for two years to keep the law and he was further disqualified from holding or obtaining a driving licence for a period of one year.

He appealed against conviction on such count on the following grounds :—

“ 1. The learned Judge in the Court below in finding the appellant guilty on count 2 misdirected himself as to the law applicable to the case being tried.

2. The learned Judge in the Court below in convicting the appellant failed, as sub-section 1 of section 5 of Law, Cap.332 directs, ‘ to have regard to all the circumstances of the case ’ as found by the learned Judge himself.

3. The conviction of the appellant on count 2 was unreasonable and/or cannot be supported having regard to the evidence.

4. The learned Judge in the Court below failed to realise that in substance and in fact the two counts with which the appellant was charged were alternative ones each referring

to facts which took place simultaneously and that consequently the appellant having been acquitted on count 1 should be acquitted on count 2.”

At the commencement of the hearing of this appeal counsel appearing on behalf of the prosecution on being asked by the Court stated that he did not intend to support the conviction.

Arising out of the delay in filing the charge and trying the case the Court of appeal made observations regarding delays in the hearing of cases and held :

(1) We take the view that this is a proper course for counsel to take, in the circumstances of this case. In fact, perhaps, we could go a little further and say that this is the only course, having regard to the record and the judgment of the trial Court.

(2) The appeal will be allowed : and the conviction on count 2 be set aside, together with the sentence and disqualification order made thereon.

*Observations regarding delays in hearing of criminal cases :*  
We may, perhaps, take the opportunity to repeat what we have just said in the judgment in the Civil Appeal No. 4500 just delivered\*. We think that what was stated in that case regarding delays in civil matters applies with still more strength in criminal cases. My brother Mr. Justice Josephides draws attention to the fact that this charge was filed six months after the motor car accident had occurred; and was tried 15 months later. A very unsatisfactory state of affairs indeed. We need not say more, except that we hope that we shall have no cause to make such observations in future.

*Appeal allowed. Conviction on count 2 set aside together with the sentence and disqualification order made thereon.*

Cases referred to :

*Nicola v. Christofi and another*, (1965) 1 C.L.R. 324.

#### **Appeal against conviction.**

Appeal against conviction by the appellant who was convicted on the 23rd June, 1965, at the District Court of Limassol (Criminal Case No. 5015/64) on one count of the offence of driving a land-rover dangerously, contrary to sections 5 (1) and 13 of the Motor Vehicles and Road Traffic Law, Cap. 332, as amended by Laws 25/59, 2/62 and 8/64 and was bound over, by Loris, D.J. in the sum of £100 for 2 years to keep the Motor Vehicles and Road

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\* *Nicola v Christofi and Another* reported in (1965) 1 C.L.R. 324.

Traffic Law (*supra*), was ordered to pay £7 costs and was further disqualified from holding or obtaining a driving licence for a period of one year.

A. *Anastasiades*, for the appellant.

L. G. *Loucaides*, counsel of the Republic for the respondents.

VASSILIADES, J.: Mr. Loucaides, we have considered the record; and this morning we have discussed it before coming into Court. We thought that it might save time if we asked you whether you think that the judgment of the trial Court can be supported.

MR. LOUCAIDES: I do not intend to support this conviction, Your Honours.

VASSILIADES, J.: That is very wise of you, Mr. Loucaides.

The judgment of the Court was delivered by:

VASSILIADES, J.: We take the view that this is a proper course for counsel to take, in the circumstances of this case. In fact, perhaps, we could go a little further and say that this is the only course, having regard to the record and the judgment of the trial Court.

The appeal will be allowed; and the conviction on count 2 be set aside, together with the sentence and disqualification order made thereon.

We may, perhaps, take the opportunity to repeat what we have just said in the judgment in the Civil Appeal No. 4500 just delivered.\* We think that what was stated in that case regarding delays in civil matters applies with still more strength in criminal cases. My brother Mr. Justice Josephides draws attention to the fact that this charge was filed six months after the motor car accident had occurred; and was tried 15 months later. A very unsatisfactory state of affairs indeed. We need not say more, except that we hope that we shall have no cause to make such observations in future.

*Appeal allowed. Conviction on count 2 set aside together with the sentence and disqualification order made thereon.*

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\* *Nicola v. Christofi and another*, (1965) 1 C.L.R. 324.