1967
Sept. 28
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KOUMAS
GEORGHIOU
KOUMA
v.
THE POLICE

[VASSILIADES, P., JOSEPHIDES AND HADJIANASTASSIOU, JJ.]

KOUMAS GEORGHIOU KOUMA,

Appellant,

v.

THE POLICE,

Respondents

(*Criminal Appeal No* 2946)

Road Traffic—Accident—Causing death by want of precaution or by carelessness—Criminal Code, Cap 154, *section* 210—*Conviction—Receiving oral evidence concerning plan before admission of plan—Prejudice to defence—Negligence—Elements for conviction under section* 210—*Findings of trial Court*

Road Traffic—Sentence—Disqualification—Order for costs—Not usual to go with a sentence for imprisonment for one year—Reduction of period of disqualification order

Evidence in Criminal Cases—Road traffic cases—Plans to scale and plans not to scale—Observations by Court of Appeal

Criminal Law—Causing death by want of precaution or carelessness—See under Road Traffic above

The appellant was convicted on three counts of the offence of causing death to three persons by want of precaution or by carelessness, contrary to section 210 of the Criminal Code Cap 154 and was sentenced to one year's imprisonment, disqualified from holding or obtaining a driving licence for a period of two years and he was further ordered to pay £26 – costs of prosecution

He appealed against conviction on four grounds namely (*a*) that the trial Court irregularly received oral evidence in connection with a plan, before the plan was admitted in evidence (*b*) that the plan upon which the evidence connected with the collision, was discussed and considered by the trial Judge, was not a plan to scale, (*c*) there is no specific finding in the judgment regarding the careless act which resulted in the death of the deceased and (*d*) the evidence as accepted by the trial Judge is, in any case, insufficient to support the conviction

At the conclusion of counsel's address on the question of conviction the Court gave him the opportunity to touch upon the question of the order of disqualification and costs.

Held, (*1*), *on the question of conviction :*

(1) At the conclusion of the interesting and able argument of learned counsel for the appellant, we intimated that we did not find it necessary to call upon the respondent. Our reasons for this, very shortly, are that the plan was admitted at the end of the chief examination of the witness whose evidence in connection with the plan was admitted before he actually produced it, and counsel for the accused had, therefore, full opportunity to cross-examine the witness on the whole of his evidence, including the part connected with the plan, after this had been admitted, and was an exhibit in the case. Thus although the course followed was rather unusual, the irregularity did not prejudice the defence in a way which can affect the conviction.

(2) The second ground, that the plan produced, was not to scale, counsel for the appellant invited the Court to consider the difficulties which may arise in such important cases, from plans which are not to scale. Such difficulties depend, of course, in every case on the particular plan produced. There are plans to scale which may not be very helpful. And there are plans not to scale which are more helpful than no plan at all. Generally speaking one can say that a plan to scale, all other matters being equal, is preferable to a plan which is not to scale, because it presents a more correct picture. We have no doubt that where the officer responsible for the prosecution is able to appreciate this difference, will do all he can to put before the court the best available evidence and the best possible plan. This, of course, it is far from saying that plans which are not to scale are, generally speaking, useless. We have no doubt that the observations of defending counsel in this case, will be brought to the notice of the authorities concerned, by learned counsel for the prosecution.

(3) We now come to the third ground of appeal, that no specific finding of careless act appears in the Judgment. That is so. The trial Judge does not say that the negligence which he found in the appellant in this case, consisted of one or more specific acts. His Judgment, however, is perfectly clear as to a finding that the appellant was driving negligently at the material time. The Judge gives his reasons for not accepting the evidence of the appellant. And states the evidence upon which he found the accused guilty of the charge.

(4) The finding of negligence rests clearly on the established fact that the collision occurred on the wrong side of the road as far as the appellant was concerned, while the two vehicles were travelling at such a speed as to cause brake-marks on the road of the extent measured by the police witness and shown on the plan. These brake-marks on the road constitute real evidence which in a case of this nature is, much better and more reliable than the oral evidence of an eye witness.

(5) It is on the evidence as a whole, including the evidence of the appellant, that the conviction was apparently reached ; and not the evidence of witness 9, only, which one may say without hesitation, that it would hardly be sufficient to support a conviction, if it stood alone. The appeal against conviction must, therefore, fail ; and stands dismissed.

Held, (II), on the question of sentence :

(1) At the conclusion of his address, the Court, however, gave counsel for the appellant the opportunity to touch on the question of sentence ; the part of the sentence regarding disqualification and costs. We appreciate the fact that in a case like this, counsel advising the appellant may not consider it safe to open the question of sentence by the notice of appeal. We would commend this caution because it often happens in cases of this nature, that when the sentence is challenged, the reopening of the matter may, if the circumstances justify it, lead to a heavier sentence. In this particular case, however, with a sentence of one year's imprisonment, the part reopened was the disqualification order and the order for costs.

(2) We have heard in this connection, learned counsel for the prosecution who rightly conceded that an order for costs does not usually, go with a sentence of imprisonment for one year. On the other hand, the disqualification order, counsel submitted, was justified in the circumstances of this case.

(3) Considering that we are here dealing with a professional driver who, according to the record, he has been a driver for the last 15 or 16 years without a conviction, and considering further that this driver found himself involved in a terrible accident of this kind, which must have shaken him, we are unanimously of the opinion that the disqualification order of two years, the effect of which will be to keep him out of his trade for more than a year after he will come out of prison, is manifestly excessive, to the extent of justifying interference

by this Court. We, therefore, vary the sentence by reducing the disqualification order to one year instead of two ; and we discharge the order for costs.

(4) In the result, the appeal against conviction fails and stands dismissed. Sentence is varied to one of one year imprisonment on each count to run concurrently ; and a disqualification order for one year ; both from the date of conviction. The Order for costs discharged.

Appeal against conviction dismissed. Appeal against sentence allowed ; sentence varied as above.

Appeal against conviction and sentence.

Appeal against conviction and sentence imposed on the appellant who was convicted on the 29th June, 1967, at the District Court of Famagusta (Criminal Case No. 5460/66) on 3 counts of the offence of causing death by carelessness contrary to section 210 of the Criminal Code Cap. 154 and was sentenced by Santamas, Ag. D.J., to one year's imprisonment on each count, the sentences to run concurrently, disqualified from holding or obtaining a driving licence for a period of two years and he was further ordered to pay £26 costs.

L. Clerides with *N. Pelides*, for the appellant.

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

The facts sufficiently appear in the judgment of the Court delivered by :

VASSILIADES, P.: This is an appeal against conviction in what is usually described a road accident case.

The appellant was convicted by the District Court of Famagusta on three counts under section 210 of the Criminal Code, Cap. 154, for causing death to three different persons. All three counts arise from the same set of facts. And the trial Judge approaching the case on this basis, imposed one concurrent sentence for all three counts.

The grounds of the appeal, as put in the notice and as summarised by learned counsel for the appellant at the end of his address, are : First, that the trial Court irregu-

larly received oral evidence in connection with a plan, before the plan was admitted in evidence ; this, counsel submitted, was a serious irregularity. The second ground is that the plan upon which the evidence connected with the collision, was discussed and considered by the trial Judge, was not a plan to scale. The third ground is that there is no specific finding in the judgment regarding the careless act which resulted in the death of the deceased. Therefore, counsel argued, there is no finding to establish one of the elements required for a conviction under section 210. And the fourth ground is that the evidence as accepted by the trial Judge is, in any case, insufficient to support the conviction ; the only eye-witness who was able to speak of the circumstances of the collision, apart from the appellant, was a witness who could not help the court owing to his state of mind following this violent collision.

At the conclusion of the interesting and able argument of learned counsel for the appellant, we intimated that we did not find it necessary to call upon the respondent. Our reasons for this, very shortly, are that the plan was admitted at the end of the chief examination of the witness whose evidence in connection with the plan was admitted before he actually produced it, and counsel for the accused had, therefore, full opportunity to cross-examine the witness on the whole of his evidence, including the part connected with the plan, after this had been admitted, and was an exhibit in the case. Thus although the course followed was rather unusual, the irregularity did not prejudice the defence in a way which can affect the conviction.

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The finding of negligence rests clearly on the established fact that the collision occurred on the wrong side of the road as far as the appellant was concerned, while the two vehicles were travelling at such a speed as to cause brake-marks on the road of the extent measured by the police witness and shown on the plan. These brake-marks on the road constitute real evidence which in a case of this nature is, much better and more reliable than the oral evidence of an eye witness.

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Considering that we are here dealing with a professional driver who, according to the record, he has been a driver for the last 15 or 16 years without a conviction, and considering further that this driver found himself involved in a terrible accident of this kind, which must have shaken him, we are unanimously of the opinion that the disqualification order of two years, the effect of which will be to keep him out of his trade for more than a year after he will come out of prison, is manifestly excessive, to the extent of justifying interference by this Court. We, therefore, vary the sentence by reducing the disqualification order to one year instead of two ; and we discharge the order for costs.

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