PANAYIOTIS FOKA KANNAS *alias* POMBAS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 2975)

Criminal Law—Causing death by careless act not amounting to culpable negligence, contrary to section 210 *of the Criminal Code, Cap.* 154*—Causing death within section* 210*—What amounts to "causing" death within section* 210 *is laid down in section* 211 *of the Code—Providing that a person is deemed to have caused the death of another, although his act is not the immediate or the sole cause of death—And even if his act or omission would not have caused the death unless it had been accompanied by an act or omission of the person killed or of other persons—Careless act or omission a "substantial" cause of the death (see R.v. Gould* [1964] 1 *W.L.R.* 145*)—See also herebelow.*

Road traffic—Causing death by careless driving—Section 210 *of the Criminal Code, Cap.* 154*—See above and below.*

Causing death—By careless act not amounting to culpable negligence—Sections 210 *and* 211 *of the Criminal Code, Cap.* 154*—See above.*

Criminal Procedure—Constitutional Law—Charge—Framing of charge—Sufficient details should be given of the nature and grounds of the charge preferred against the person charged—Test to be applied—Article 12.5 (a) *and* (b) *of the Constitution—Article* 6 (3) (a) *and* (b) *of the European Convention on Human Rights of* 1950*, forming part of the law of Cyprus by virtue of Article* 169.3 *of the Constitution, the Convention having been ratified by the European Convention on Human Rights (Ratification) Law,* 1962 *(Law No.* 39 *of* 1962*)—See, also, below.*

Human Rights—Article 12.5 (a) *and* (b) *of the Constitution—Corresponding to Article* 6 (3) (a) *and* (b) *of the European Convention on Human Rights, of* 1950*—The European Convention on Human Rights (Ratification) Law* 1962 *(Law No.* 39 *of* 1962*)—Article* 169.3 *of the Constitution—See above.*

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Charge—Framing of—Particulars to be given—Causing death by careless act contrary to section 210 *of Cap* 154 (supra)—*Particulars of the careless act given in the present case were simply "careless driving"—But in the circumstances of this case it is obvious that the accused knew from the start all necessary details—Therefore, he was not prejudiced in his defence—Furthermore his counsel did not apply, as he was entitled, for further particulars—See, also, above.*

Constitutional Law—Articles 12 5 (*a*) *and* (*b*) *and* 169 3—*See above*

Particulars—Charge—See above

The appellant was convicted by the District Court of Famagusta for causing the death of two persons by careless driving on the 25th April, 1967 The charge sheet contained two counts which both charged the appellant with causing death unintentionally "by a careless act, not amounting to culpable negligence, to wit, by careless driving" of his lorry, contrary to section 210 of the Criminal Code, Cap 154 The case for the prosecution was that the appellant was driving at the time his fully loaded lorry dangerously fast round a blind curve, without keeping to his proper side on a rather narrow road, with the result that a collision occurred between the lorry and a motor-car coming from the opposite direction and driven by one of the victims, the other victim being a passenger in the motor-car Both, driver and passenger of the motor-car, received in the aforesaid road-collision the fatal injuries The learned trial Judge convicted the appellant on both counts and sentenced him to 12 months imprisonment on each count the sentences to run concurrently The appeal, as originally filed, was directed both against conviction and sentence but at the hearing of the appeal the appeal against sentence was abandoned The appeal was fought on two main grounds --

(1) It was submitted that the convictions were bad in law because the counts on the charge-sheet were not framed in accordance with Article 12 5 (a) of the Constitution which provides that every person charged with an offence has the right "to be informed promptly and in a language which he understands and in detail of the nature and grounds of the charge preferred against him . It was submitted in this respect that it was not sufficient to state in the

particulars of the counts merely that the appellant had driven carelessly, but that it was necessary to give, also, details of the careless driving, a thing which was not done in this case.

(2) It was, further, contended by counsel for the appellant that the conviction was bad because the trial Judge failed to address his mind to the manner of driving of the driver of the motor-car with which the appellant collided ; and that, had the Judge done so, he might have not convicted the appellant because he might have found then that the collision was caused by the manner in which the motor-car was being driven.

In dismissing the appeal and affirming the conviction, the Court :—

Held, (*1*) *as to ground* (1) *supra* :

(1) Our Article 12.5 (a) (*supra*) is in every material respect similar to Article 6 (3) (a) of the European Convention on Human Rights, of 1950 which provides that everyone charged with a criminal offence has the right "to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusations against him". On the other hand the convention forms part of the law of Cyprus, in the sense envisaged by Article 169.3 of the Constitution, since its ratification by the European Convention on Human Rights (Ratification) Law, 1962 (Law No. 39 of 1962).

(2) Therefore, in considering whether the charges on which the appellant has been convicted were sufficiently detailed as required by Article 12.5 (a) of the Constitution and by Article 6 (3) of the Convention, it is quite pertinent to bear in mind the relevant jurisprudence of the European Commission of Human Rights, set up and functioning under the Convention

(3) It appears from a review of the relevant cases (quoted infra) that, in deciding if a charge is sufficiently detailed, what has to be examined is whether or not an accused person has been deprived, through the omission from the charge of any element, of the possibility of adequately preparing his defence ; and in this connection regard must be had to any circumstances showing that such accused person had in fact knowledge of the essential elements of the offence with which he was charged.

(4) (*a*) Applying the above test to the present case we find that, though the appellant was only told, by means of the particulars of the two counts on which he has been convicted, that his "careless act" was "careless driving" and he was not given in the said counts any details regarding his "careless driving", nevertheless, the appellant, having been present when the police took relevant measurements on the spot, after the accident, and having seen the real evidence discovered there, such as length and direction of the marks on the asphalt left by the tyres of his lorry, must have known—and been in a position to instruct his counsel accordingly—of the essential elements constituting his "careless driving"; thus, the appellant was not deprived of the possibility of adequately preparing his defence because of lack of any details in the charges.

(*b*) Moreover, the appellant, at the commencement of the trial, did not apply, as he was fully entitled to do, for further particulars of the charges; apparently, such a course was not deemed necessary by counsel defending him.

Held, (II) as to ground (2) *(supra)*:

(1) There can be no doubt at all that the manner of driving of the appellant on this occasion was such as to render him liable to be convicted under section 210 of the Criminal Code.

(2) We cannot agree with counsel for the appellant that the trial Judge failed to take duly into account the way the motor-car was being driven by one of the victims; he may not have devoted a specific part of his judgment to this aspect, but he more than once refers to this matter in analysing the explanation given by the appellant for the collision.

(3) But even if the driver of the motor-car were to be blamed to a certain extent for the collision, the appellant was still properly convicted for causing the death of such driver and his passenger. What amounts to "causing" death within section 210 of the Criminal Code is laid down in the following section 211, which provides that a person is deemed to have caused the death of another person, although his act is not the immediate

or the sole cause of death, and even if his act or omission would not have caused the death unless it had been accompanied by an act or omission of the person killed or of other persons ; and on the basis of the facts in this case it cannot be seriously argued that the death of the two occupants of the motor-car in question were not "caused", in the sense of section 211, through the careless driving of the appellant.

(4) The trial Judge in his judgment referred, in this respect, to the test laid down in *R. v. Gould* [1964] 1 W.L.R. 145 to the effect that the driving of the accused should be the "substantial" cause of the death of the deceased but need not be the sole cause of such death. Even if we were to apply such a test in the case before us we would unhesitatingly say that the careless driving of the appellant was a substantial cause of the fatal accident in question.

Appeal dismissed. Sentence to run from the date of conviction.

Cases referred to :

Kouma v. *The Police* (1967) 2 C.L.R. 230 ;

R. v. *Gould* [1964] 1 W.L.R. 145 ;

Nearchou v. *The Police* (1965) 2 C.L.R. 34 ;

Offner against *Austria*, Yearbook No. 3 of the European Convention on Human Rights at p. 344 ;

Nielsen against *Denmark*, Yearbook No. 4 of the Convention at p. 490 ;

Note : The immediately preceding two cases are cases considered by the European Commission of Human Rights.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Panayiotis Foka Kannas *alias* Pombas who was convicted on the 11th November, 1967, at the District Court of Famagusta (Criminal Case No. 5450/67) on two counts of the offence of causing the death of two persons by careless driving contrary to section 210 of the Criminal Code, Cap. 154, and was sentenced by Pikis, D.J., to 12 months' imprisonment on each count the sentences to run concurrently.

L. Clerides, with *G. Tornaritis*, for the appellant.

S. Georghiades, Counsel of the Republic, for the respondents.

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VASSILIADES, P.: The judgment of the Court will be delivered by Triantafyllides, J.

TRIANTAFYLLIDES, J.: The appellant was convicted by the District Court of Famagusta, on the 11th November, 1967, for causing the death of two persons by careless driving on the 25th April, 1967.

The charge-sheet contained two counts, both under section 210 of the Criminal Code, Cap. 154 : each count in respect of the death of the person named therein, who died from injuries received in a road collision between a fully-loaded lorry, driven by the appellant, and a motor-car, driven by one of the two victims, who had the other victim as a passenger sitting next to him. Both counts charged the appellant with causing death unintentionally " by a careless act, not amounting to culpable negligence, to wit, by careless driving " of the lorry.

The case for the prosecution was that the appellant caused the collision by driving dangerously fast round a blind curve, without keeping to his proper side on a rather narrow road ; the main Famagusta-Karpass road, outside Tavrou village.

The appellant's case was that he was driving his lorry round the bend in question, keeping to the middle of the road, and at a speed of 25–30 m.p.h., when he suddenly saw, very close to and in front of him, at a distance of about twenty feet, the motor-car coming, fast, from the opposite direction. He tried to take avoiding action, by applying his brakes and swerving to his left, but the distance between the two vehicles was so close that there was no time for either of them to avoid the collision, which occurred almost head-on, causing heavy damage to the smaller vehicle, and fatal injuries to its two passengers. Appellant's version of the events was given in a statement to the Police, made on the date of the collision, and from the witness-box at the trial.

The learned trial Judge, in a carefully considered judgment, dealt first with the legal aspect of the case, and then, having analysed the evidence before him, he found that " the prosecution discharged the onus cast on them of proving their case beyond any reasonable doubt ". He convicted the accused on both counts, and sentenced him to 12 months' imprisonment on each count, the sentences to run concurrently.

Earlier on in his judgment the Judge described the curve of the road as a sharp bend ; he had inspected the locus in

the course of the trial, as provided in section 87 of the Criminal Procedure Law, Cap. 155, and he had before him a set of photographs of the locus taken by the Police for the purposes of the case. The Judge found that the appellant showed considerable carelessness by driving his heavily-loaded lorry at a speed of 25-30 m.p.h. when about to negotiate such a sharp bend, whilst occupying the wrong side of the road, from where the visibility round the bend was less than from his proper side of the road ; the Judge further found that the fact that the appellant had sounded his horn just before approaching the bend did not help him in the circumstances.

The appeal, as originally filed, was directed both against conviction and sentence. At the hearing before us, however, the appeal against sentence was abandoned ; and was withdrawn by leave of the Court. We think that counsel for the appellant took a prudent course in doing so because the sentence imposed could scarcely be deemed to be too severe in a case of such seriousness.

Learned counsel for the appellant have submitted that the conviction of their client on both counts was bad in law in view of the fact that such counts were not framed in accordance with Article 12.5 (*a*) of the Constitution, which provides that every person charged with an offence has the right "to be informed promptly and in a language which he understands and in detail of the nature and grounds of the charge preferred against him". It was submitted that it was not sufficient to state in the particulars of the counts that the appellant had driven carelessly, but that it was necessary, to give, also, details of the careless driving.

Our Article 12.5 (*a*) is in every material respect similar to Article 6.3 (*a*) of the European Convention on Human Rights, of 1950, which provides that everyone charged with a criminal offence has the right " to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusations against him ".

The Convention forms part of the law of Cyprus, in the sense envisaged by Article 169.3 of the Constitution, since its ratification by the European Convention on Human Rights (Ratification) Law, 1962 (Law 39/62).

In examining whether the charges on which the appellant has been convicted were sufficiently detailed, as required by Article 12.5 (*a*) of our Constitution—as well as by

Article 6.3 (*a*) of the Convention—it is quite useful to bear in mind the relevant jurisprudence of the European Commission of Human Rights, set up and functioning under the Convention :

In the case of *Ofner against Austria* (Appl. 524/59) the Commission, when deciding on the admissibility of the application, has stated, *inter alia*, the following (see Yearbook No. 3 of the Convention at p. 344) :—

> " Whereas this information on the nature of and grounds for the accusation seems all the more necessary as under paragraph 3 (*b*) of Article 6, any accused person has the right ' to have adequate time and facilities for the preparation of his defence ' ; whereas, in fact, there is a logical connection between paragraphs 3 (*a*) and 3 (*b*) of Article 6 ; whereas, consequently, the information on the nature of and grounds for the accusation should contain such particulars as will enable the accused to prepare his defence accordingly."

—and paragraphs 3 (*a*) and 3 (*b*) of Article 6 of the Convention correspond to paragraphs 5 (*a*) and 5 (*b*) of Article 12 of our Constitution.

In the case of *Nielsen against Denmark* (Appl. 343/57) (see Yearbook No. 4 of the Convention at p. 490) the applicant had been charged with robbery before a Danish Criminal Court ; in the particulars of the indictment it was stated that he was being charged with robbery " in that he had instigated and planned the robbery committed by the accused Hardrup ", a co-accused of the applicant.

It was contended before the Commission that the text of the indictment was not sufficiently detailed, as required by Article 6.3 (*a*) of the Convention, as it was not stated therein that Nielsen " instigated " Hardrup to commit the robbery by means of " hypnotic influence " —that being the prosecution's case against him.

In dealing with this point the Commission had this to say, *inter alia*, in its Report :

> " It is for the Commission to state whether it considers that the information concerning the accusation against an Applicant, and, in particular the indictment, complies with the requirement in Article 6 that a person charged with a criminal offence has the right to be informed in detail of the nature and cause of the charge against him. It considers in the first place that the

object of an indictment is to serve as a framework of the trial. The Commission will be obliged to examine the question whether the omission in the indictment of any element alleged by the applicant to be essential deprived him of the possibilities of adequately preparing his defence."

The Commission proceeded, then, to find that the term "instigation" was sufficient in the circumstances of that case to cover the concept of hypnotic influence; the circumstances of the case being that counsel for the applicant knew in advance of the trial that Hardrup had been subjected to a psychiatric examination, had been furnished with copy of the report of such examination and appreciated the possible significance of this step with regard to the criminal proceedings against the applicant. Actually, at the commencement of the trial counsel for the applicant had asked the Public Prosecutor to state whether the term "instigation" covered the notion of "hypnotic influence", but the Prosecutor refused to give further particulars of the indictment and the Commission took the view that "the Public Prosecutor's refusal to give this explanation did not justify the applicant in presuming that the concept of hypnotic influence was excluded by employment of the term 'instigation'.

The Report of the Commission on this point concludes by stating :—

> "The Commission is thus of the opinion that the applicant was informed of the nature and cause of the accusation against him in sufficient detail and that in this respect there was no violation on the part of the respondent Government of Article 6, paragraph (3) (*a*) of the Convention."

It appears from the foregoing that, in deciding if a charge is sufficiently detailed, what has to be examined is whether or not an accused person has been deprived, through the omission from the charge of any element, of the possibility of adequately preparing his defence ; and in this connection regard must be had to any circumstances showing that such accused person had in fact knowledge of the essential elements of the offence with which he was charged.

Applying the above test to the present case we find that, though the appellant was only told, by means of the particulars of the two counts on which he has been convicted, that his "careless act" was "careless driving", and he

was not given in the said counts any details regarding his " careless driving ", nevertheless, the appellant, having been present when the police took relevant measurements on the spot, after the accident, and having seen the real evidence discovered there, such as the length and direction of the marks on the asphalt left by the tyres of his lorry, must have known—and been in a position to instruct his counsel accordingly—of the essential elements constituting his " careless driving " ; thus, the appellant was not deprived of the possibility of adequately preparing his defence because of the lack of any details in the charges.

Moreover, it is worth drawing, in this respect, attention to the fact that the appellant, at the commencement of the trial, did not apply, as he was entitled to do, for further particulars of the charges ; apparently, such a course was not deemed necessary by his counsel.

We are of the opinion, therefore, that in the circumstances of the present case no contravention of Article 12.5 (*a*) of the Constitution has taken place.

We pass on, next, to deal with the law applicable in this case :—

The appellant has been convicted, under section 210 of the Criminal Code, Cap. 154, of having caused death by a careless act, not amounting to culpable negligence.

As pointed out by Josephides, J. in *Nearchou* v. *The Police* (1965) 2 C.L.R. 34, whether the negligence involved is such as to support a conviction under section 210 is always a question depending on the facts of each particular case.

There can be no doubt at all, in our opinion, that the manner of driving of the appellant on this occasion was, as properly found by the trial Judge on the evidence before him, such as to render him liable to be convicted under section 210.

Counsel for the appellant have submitted that his conviction is bad because the trial Judge failed to address his mind to the manner of driving of the driver of the motor-car with which the appellant's lorry collided ; and that, had the Judge done so, he might have not convicted the appellant, having found that the collision was caused by the manner in which the motor-car was being driven.

First, we cannot agree that the trial Judge failed to take duly into account the way the motor-car was being driven ;

he may not have devoted a specific part of his judgment to this aspect, but he more than once refers to this matter in analysing the explanation given by the appellant for the collision.

Secondly, even if the driver of the motor-car were to be blamed to a certain extent for such collision, the appellant was still properly convicted for causing the death of such driver and his passenger.

What amounts to "causing" death in the sense of section 210 is to be found laid down in section 211 of Cap. 154, which provides that a person is deemed to have caused the death of another person, although his act is not the immediate or the sole cause of death, and even if his act or omission would not have caused the death unless it had been accompanied by an act or omission of the person killed or of other persons; and on the basis of the facts of this case it cannot be seriously argued that the deaths of the two occupants of the motor-car were not caused, in the sense of section 211, through the careless driving of the appellant.

The trial Judge in his judgment referred, in this respect, to the test laid down in *R.* v. *Gould* (1964, 1 W.L.R. p. 145); in that case it was decided that the driving of the accused should be "a substantial" cause of the death of the deceased but need not be the sole cause of such death. Even if we were to apply such a test in the case before us we would unhesitatingly say that the careless driving of the appellant was a substantial cause of the fatal accident in question.

In concluding we would point out that a useful precedent, where the negligence of the appellant caused death contrary to section 210, without being entirely the sole cause of death, but, where, nevertheless, the appellant was convicted, and properly so, under section 210, is to be found in *Kouma* v. *The Police* (1967) 2 C.L.R. 230.

For all the above reasons we are unanimously of the opinion that this appeal fails and has to be dismissed, but we direct that the sentence should run from the date of conviction.

Appeal dismissed. Sentence to run from date of conviction.