1969
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PAVLOS
IOANNOU
SPIRITOS
v.
THE POLICE

[VASSILIADES, P., STAVRINIDES, LOIZOU, JJ.]

PAVLOS IOANNOU SPIRITOS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3058).

Causing death by want of precaution or careless act whilst driving a reaping machine contrary to section 210 *of the Criminal Code Cap.* 154—*Degree of negligence required—Sentence—Disqualification for holding or obtaining a driving licence—Section* 13(1) *of the Motor Vehicles and Road Traffic Law, Cap.* 332—*Reaping machine is a "motor vehicle" within the definition of the statute Cap.* 332 *section* 2 (*as amended by Law* 52/68 *section* 2).

Findings of fact—Appeal—No sufficient reason for interfering with such findings made by the trial Judge.

Motor Vehicle—Definition—Reaping machine involved in this case is a "motor vehicle" within the statute Cap. 332, supra—*Consequently the trial Court had the powers to order disqualification for holding or obtaining a driving licence under section* 13(1) *of the said Law—See, also, hereabove.*

Appeal—Sentence—In the circumstances of this case the disqualification period of six months is reduced to three months—Particularly in view of the fact that such disqualification amounts practically to depriving the appellant a farmer of the use of the tools of his trade.

This is an appeal against conviction and sentence upon a charge of causing the death of another person unintentionally by a careless act not amounting to culpable negligence, contrary to section 210 of the Criminal Code Cap. 154.

The short facts of the case are that the appellant a farmer of the age of 44, while driving a reaping and threshing machine known as "combine" with the assistance of two other men caused the death of one of them when the machine overturned on the sloping land on which it was being driven by the appellant in the circumstances set out post in the judgment of the Court. The trial Judge convicted the appellant as charged

and imposed a sentence of £50 fine coupled with a disqualification to hold a driving licence for six months under section 13(1) of the Motor Vehicles and Road Traffic Law, Cap. 332.

Section 210 of the Criminal Code reads as follows :

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

Section 13(1) of Cap. 332 (*supra*) provides :

" 13(1). Any Court before which a person is convicted of any offence under this Law or any Regulation made under this Law or under any other Law in connection with the driving of a motor vehicle may in any case and shall when so required by sections 5 and 7 of this Law order such person to be disqualified for holding or obtaining a licence to drive a motor vehicle for such period as the Court thinks fit".

Counsel for the appellant, relying on *Rayas* v. *The Police*, 19 C.L.R. 308, argued that the conviction on section 210 of the Criminal Code could not stand. There may be some negligence sufficient to support a civil claim, counsel submitted, but such negligence is not enough to support a criminal charge on section 210. In any case counsel argued, the evidence did not support the finding of negligence upon which the conviction was based.

Against sentence the appeal was taken on the ground that the said disqualification to hold a driving licence cannot in law be sustained as section 13(1) of the Motor Vehicles and Road Traffic Law, Cap. 332 (*supra*) under which the disqualification was made, is only applicable to " motor vehicles " within the definition in section 2 of the statute (Cap. 332) ; and cannot be applied to a reaping and threshing machine such as the one involved in this case. For a person to be disqualified for holding or obtaining a driving licence under section 13(1) of Cap. 332 counsel went on he must be convicted either under that Law (Cap. 332) or under any other Law of the same genus ; therefore the section did not apply to a conviction under section 210 of the Criminal Code

(*supra*). In any event counsel submitted, the circumstances of the case did not warrant a disqualification order for a period of six months or at all.

Dismissing the appeal against conviction, but allowing partly the appeal against sentence the Court :

Held, (1). *On the appeal against conviction :*

(1) We have not been persuaded that there is sufficient reason for interfering with the findings of fact made by the trial Judge.

(2) *per* VASSILIADES, P. :

(*a*) The submission that the carelessness found by the trial Judge is insufficient to bring the case within section 210 of the Criminal Code (*supra*) was mainly based on the *Rayas* case (*supra*). The kind of carelessness or want of precaution required to sustain a charge under section 210 was considered and discussed recently in *Nearchou* v. *The Police* (1965) 2 C.L.R. 34. I find it unnecessary to go again into the same matter.

(*b*) In a criminal proceeding of this nature the prosecution has to satisfy the trial Court beyond reasonable doubt that the death of the victim was the result of—

(*a*) want of precaution, or

(*b*) any rash act, or

(*c*) any careless act;

on the part of the accused ; and of course any combination of these alternatives. The wording of the section (*viz.* section 210 of the Criminal Code *supra*) is perfectly clear ; and it must be given effect to.

(*c*) In this case the trial Judge found that the overturning of the machine was the result of want of precaution and of carelessness on the part of the driver of the machine the appellant. And that the appellant has thus unintentionally caused the death of the victim. This, in my opinion, is quite sufficient to bring the case within section 210 ; and I do not think that I need repeat here the reasons which led me to the conclusion in the *Nearchou* case (*supra*)

that the intention of the legislator was disregarded in *Rayas case* (*supra*) which in my opinion was wrongly decided. For the same reasons I think that the present appeal can find no support in *Rayas* case.

(3) *Per* STAVRINIDES, J. :

(*a*) With some difficulty I have come to the conclusion that on the trial Judge's findings of fact the appellant was guilty of " want of precaution not amounting to culpable negligence " within section 210 of the Criminal Code as interpreted in *Rayas*' case (*supra*).

(*b*) As on those facts the appellant is a *fortiori* liable if that case is no longer law, I find it unnecessary to go into the question whether it has been overruled by any later decision.

(4) *Per* LOIZOU, J. :

(*a*) I am satisfied that upon the facts found by the trial Judge there was sufficient evidence of " want of precaution " or " careless act " to support a conviction under section 210 of the Criminal Code.

(*b*) Having come to this conclusion I consider it unnecessary to go into the now controversial decision in the *Rayas* case (*supra*) as it is of no consequence, for the purposes of the present case whether the decision in that case is or is not still good law.

Held, (II). *On the appeal against sentence :*

(1) Regarding the disqualification order made under section 13(1) of the Motor Vehicles and Road Traffic Law, Cap. 332 we are clearly of the opinion that section 13(1) applies to any conviction in connection with the driving of a " motor vehicle "; and the reaping and threshing machine involved in this case comes within the definition of " motor vehicle " as set out in section 2 of the Law (Cap. 332 *supra*) (as amended by Law No. 52 of 1968 section 2).

(2) *Per* VASSILIADES, P., (STAVRINIDES *and* LOIZOU, JJ. *concurring*) *:*

Had the attention of the trial Judge been drawn to what was said in *Stylianou* v. *The Police*, 1962 C.L.R. 152 it is very

doubtful whether he would have proceeded to make a disqualification order in addition to the fine imposed in the present case. Taking all matters into consideration particularly the fact that depriving the appellant, a farmer 44 years of age, of his licence to operate the farming machine in question as well as all other agricultural machinery of the same nature, amounts practically to depriving him of the tools of his trade as a farmer, upon which he and his family depend for their living, we do not think that there is sufficient justification for such a sentence. We have, therefore decided to reduce the period of the disqualification-order to three months. We allow the appeal against sentence to this extent and vary the disqualification-order accordingly.

Appeal against conviction dismissed; appeal against sentence of disqualification allowed; disqualification order reduced to three months from conviction.

Cases referred to :

Lambides v. *The Police* (1967) 2 C.L.R. 142 ;

Paspalli v. *The Police* (1968) 2 C.L.R. 108 ;

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

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

Stylianou v. *The Police*, 1962 C.L.R. 152.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Pavlos Ioannou Spiritos who was convicted on the 12th November, 1968, at the District Court of Nicosia (Criminal Case No. 19802/68) on one count of the offence of causing death by want of precaution contrary to section 210 of the Criminal Code, Cap. 154 and section 13 of the Motor Vehicles and Road Traffic Law, Cap. 332, and was sentenced by Hji Tsangaris, Ag. D.J., to pay a fine of £50 and he was further disqualified from holding or obtaining a driving licence for a period of 6 months.

G. Ladas with *M. Christofides*, for the appellant.

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

Cur. adv. vult.

The following judgments were read :—

VASSILIADES, P.: This is an appeal against conviction and sentence upon a charge of causing the death of another person, unintentionally by a careless act, not amounting to culpable negligence, contrary to section 210 of the Criminal Code, Cap. 154. The appeal against conviction is taken on the ground that (*a*) no negligence was established by the evidence ; and (*b*) in any case, the degree of negligence found by the trial Court was insufficient to bring the case " within the ambit of section 210 " as put in the notice of appeal.

Against sentence the appeal is taken on the ground that the sentence of £50 fine coupled with a disqualification to hold a driving licence for six months, cannot be sustained, as section 13 of the Motor Vehicles and Road Traffic Law (Cap. 332) under which the disqualification was made, is not applicable to the machinery involved in the case in hand.

Learned counsel for the appellant submitted that the evidence adduced, did not establish criminal negligence ; and relying on *Christos Rayas* v. *The Police*, 19 C.L.R. 308, he argued that the conviction on section 210 could not stand. There may be some negligence sufficient to support a civil claim, counsel submitted, but such negligence is not enough to support a criminal charge under section 210.

As regards the disqualification order, the submission for the appellant was that section 13 of the Motor Vehicles and Road Traffic Law (Cap. 332) is only applicable to motor vehicles within the definition of " motor vehicle " in the statute (Cap. 332) ; and cannot be applied to a threshing machine such as the one in the present case, the overturning of which caused the death of the deceased. In any case, counsel argued, the evidence before the trial Judge did not support his finding of negligence upon which the conviction was based.

After hearing counsel for the appellant at considerable length, we had no difficulty in deciding that the findings of the trial Judge should not be disturbed. We have not been persuaded that there is sufficient reason for interfering with them in any way. (*Lambides* v. *The Police*, (1967) 2 C.L.R. 142 ; *Paspalli* v. *The Police*, (1968) 2 C.L.R. 108). Speaking for myself, the longer I heard the submissions against the trial Judge's findings, the more I agreed with his conclusions.

The short facts of the case are that the appellant, a farmer of the age of 44, while driving a reaping machine known as " combine " with the assistance of two other men, caused the death of one of them when the machine overturned on the sloping land on which it was being driven by the appellant.

The learned trial Judge, after dealing with the evidence before him (including the statement of the appellant to the Police which was adopted by the appellant at the trial), decided the case on his findings on two issues of fact which he posed on two questions : (*a*) whether the death of the deceased was due to the overturning of the machine ; and (*b*) whether the accused drove the machine " negligently *i.e* by want of precaution ".

As to (*a*) — the judgment reads — " the evidence is completely clear and positive ; the deceased died as a result of this accident almost instantaneously ".

As to (*b*), the trial Judge found—

> " that the accused who was driving on a slope having two persons at the back of his combine, as soon as he realised that an obstruction was lying before him, and before attempting two or three times to overtake it with the power of his combine, had to make sure that it was safe to do so by getting off the combine and looking carefully as to the cause of the obstruction. Instead accused proceeded and this tragic accident occurred. Accused ought to be extremely careful when driving on the slope ; and even more careful to see what the obstruction was before proceeding. The nature of terrain and the fact that he was twice warned by the engine ought to make him realise the danger and to take the necessary precautions."

Upon the evidence before him, I think that his description of the material cause of the overturning of the machine is perfectly correct ; and that the Judge's assessment of the position is quite right. Far from being persuaded that the findings of the trial Judge should not be sustained, I can see no reason whatsoever for disturbing them.

I now come to deal with the submission that the carelessness found by the trial Judge is insufficient to bring the case within section 210 of the Criminal Code. As already stated, this submission was mainly based on the *Rayas*

Case (supra). The kind of carelessness or want of precaution required to sustain a charge under section 210 was considered and discussed in *Nicolas Nearchou* v. *The Police* (1965) 2 C.L.R. 34. I find it unnecessary to go again into the same matter. In a criminal proceeding of this nature the prosecution has to satisfy the trial Court beyond reasonable doubt that the death of the victim was the result of—

(*a*) want of precaution, or

(*b*) any rash act, or

(*c*) any careless act ;

on the part of the accused ; and, of course, any combination of these alternatives. The wording of the section is perfectly clear on the point ; and it must be given effect to.

In this case the trial Judge found that the overturning of the machine was the result of want of precaution and of carelessness on the part of the driver of the machine, the appellant in this case. And that the appellant has thus, unintentionally caused the death of the person named in the charge. This, in my opinion, is quite sufficient to bring the case within section 210 ; and I do not think that I need repeat here the reasons which led me to the conclusion in the *Nearchou case* (supra) that the intention of the legislator was disregarded in the *Rayas case* (supra) ; that the legal issue therein, was wrongly approached ; and that the case was, in my opinion, wrongly decided. For the same reasons, I think that the present appeal can find no support in *Rayas case*. In my judgment the appeal against conviction must fail both on the facts and on the legal issues raised on behalf of the appellant. No question of *mens rea* arises in the application of the provisions of section 210 beyond the intention to commit the act which constitutes the carelessness that caused the unintentional death of the victim.

Coming now to the question of sentence, and particularly to the disqualification order made under section 13 of the Motor Vehicles and Road Traffic Law, Cap. 332, I am clearly of the opinion that the statute in question, in its present form, fully covers this case. The definition of "motor vehicle" in section 2, was amended more than once in the course of time ; and the last amendment by Law 52 of 1968, makes the statutory definition wide enough to cover machinery such as the reaping machine in this case, as rightly conceded by learned counsel for the appellant.

The question, however, still arises whether in the circumstances of this case, as found by the trial Judge, the disqualification order was justified as part of the sentence. We have carefully considered this matter and we take the view that had the attention of the trial Judge been drawn to what was said in this connection in *Stylianou* v. *The Police*, 1962 C.L.R.—152, it is very doubtful whether he would proceed to make a disqualification order in addition to the fine imposed, in the present case. Taking all relevant matters into consideration, particularly the fact that depriving the appellant, a farmer 44 years of age, of his licence to operate the farming machine in question as well as all other agricultural machinery of the same nature, amounts practically to depriving him of the tools of his trade as a farmer, upon which he and his family depend for their living, we do not think that there is sufficient justification for such a sentence in the circumstances of this case. We have, therefore, decided to reduce the period of the disqualification-order to three months from the date on which it was made, November 12, 1968, due to expire in a few days. I would allow the appeal against sentence to this extent, and vary the disqualification-order accordingly.

STAVRINIDES, J.: With some difficulty I have come to the conclusion that on the learned trial Judge's findings of fact, which are not disputed, the appellant was guilty of "want of precaution not amounting to culpable negligence" within section 210 of the Criminal Code as interpreted in *Rayas*' case.

As on these facts the appellant is a *fortiori liable* if that case is no longer law, I find it unnecessary to go into the question whether it has been overruled by any later decision.

With regard to the disqualification, having regard to the object of section 13(1) of the Motor Vehicles and Road Traffic Law, Cap. 332, it is clear that the offence of which the accused was convicted was one "in connection with the depriving of a motor vehicle" and therefore the Judge did have power to impose it.

It remains to consider whether in the circumstances of this case that punishment was excessive, and on this point I agree with the learned President of this Court that while this disqualification was justified, its duration should be reduced to three months from the date of conviction.

LOIZOU, J. : I am in full agreement that the appeal against conviction should be dismissed.

The facts, as found by the learned trial Judge, appear at p. 12 of the record and such findings are based on sufficient and creditable evidence. On the issue of whether the appellant drove negligently *i.e.* by want of precaution the learned Judge had this to say :

> " I find that accused who was driving on a slope having two persons on the back of his combine as soon as he realized that an obstruction was lying before him and before attempting two or three times to overtake it with the power of his combine had to make sure that it was safe to do so by getting off the combine and looking carefully as to the cause of the obstruction. Instead accused proceeded and this tragic accident occurred. Accused ought to be extremely careful when driving on the slope and even more careful to see what the obstruction was, before proceeding. The nature of the terrain and the fact that he was twice warned by the engine ought to make him realize the danger and take the necessary precautions ".

I am satisfied that upon these facts there was sufficient evidence of " want of precaution " or " careless act " to support a conviction under section 210 of the Criminal Code. Having come to this conclusion I consider it unnecessary to go into the now controversial decision in the *Rayas case* as it is of no consequence, for the purposes of the present case, whether the decision in that case is or is not still good law.

With regard to the power of the Court to order disqualification under section 13(1) of the Motor Vehicles and Road Traffic Law, Cap. 332, learned counsel for the appellant has submitted that for a person to be disqualified for holding or obtaining a driving licence he must be convicted either under that law *i.e.* Cap. 332, or under any other law of the same genus, as he put it, and that the section did not apply to a conviction under section 210 of the Criminal Code.

I find myself quite unable to agree with this submission. In my view section 13(1) applies to any conviction in connection with the driving of a " motor-vehicle "; and the

vehicle involved in the present case quite obviously comes within the definition (as set out in section 2 of Law 52 of 1968).

Regarding sentence I agree, for the reasons given in the judgments just delivered, that the period of disqualification should be limited to three months from the date of conviction.

Appeal against conviction dismissed; appeal against sentence of disqualification allowed; disqualification order reduced to three months from conviction.