1980 March 12

[TRIANTAFYLLIDES, P., A. LOIZOU, SAVVIDES, JJ.]

GEORGHIOS IOANNOU MYLORDIS,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4116).

Criminal Law—Causing death by want of precaution while driving motor-car—Section 210 *of the Criminal Code, Cap.* 154*—Degree of negligence required for a conviction thereunder—Existence of want of precaution necessary to support a conviction mostly a question of fact—Driving in the dark on a road that was not lit, at a speed of thirty-five miles per hour in an inhabited area and with head-lamps dipped so that he did not manage to see victim in time—Sufficient in order to establish appellant's guilt under said section* 210.

Road traffic—Fatal accident—Brake marks—Conviction upheld even though expert evidence was not adduced to establish their significance.

Criminal Law—Sentence—Causing death by dangerous driving—Assessment of sentence—Principles applicable—Four months' imprisonment and eighteen months' disqualification—Mitigating factors—Appellant married with two children and the sole supporter of his family—Trial Judge taking an exaggerated view of speed at which appellant was driving—Sentence manifestly excessive—Reduced.

The appellant was convicted of the offence of having caused the death of another person by want of precaution while driving his motor car, contrary to section 210 of the Criminal Code, Cap. 154 and was sentenced to four months' imprisonment and was disqualified from driving for a period of eighteen months. The offence in question was committed whilst the appellant was driving his car along Kantara Avenue in Nicosia.

It was dark and the road was not lit and yet the appellant was driving with his head-lamps dipped so that the limit of his visibility was only ninety-seven feet ahead.

The road at the place where the accident happened was thirty-one feet wide and the victim, an old man, walking with the aid of a crutch, was crossing the road from right to left, in relation to the direction in which the appellant was driving. 5

According to his version the appellant was driving at a speed of thirty-five miles per hour and as soon as he noticed a pedestrian ahead of him he applied fully his brakes but he did not manage to avoid hitting him, with the result that he received fatal injuries and died instantly. At the time the victim had already covered a distance of twenty-seven feet in proceeding across the road. 10

Upon appeal against conviction and sentence: 15

Held, (1) that though it is correct that for a conviction under section 210 of Cap. 154, there has to be established a degree of negligence beyond that which is required for liability at civil law (see, *inter alia, McLeod* v. *The Police* (1973) 2 C.L.R. 63), the existence of want of precaution necessary to support a conviction, under section 210, is mostly a question of fact in each particular case; that in the present case, this Court is not prepared to hold, on appeal, that it was not reasonably open to the trial-Judge to find that such want of precaution on the part of the appellant had been established by the evidence before him, even though expert evidence was not adduced (see, *inter alia*, *HjiGeorghiou* v. *The Police* (1972) 2 C.L.R. 86) to explain the significance of the brake-marks left by the car of the appellant as regards the speed at which his car was travelling at the material time; that it was sufficient in order to establish the guilt of the appellant under section 210 of Cap. 154, that he was driving in the dark at a road that was not lit, at a speed, on his own admission, of thirty-five miles per hour, which exceeded the speed limit of thirty miles per hour in an inhabited area, and with his head-lamps dipped so that the range of his vision was considerably curtailed with the result that he did not manage to see the victim in time so as to avoid knocking him down and killing him; accordingly the appeal of the appellant against conviction must be dismissed. 20 25 30 35

(2) (*After stating the principles applicable to the assessment of sentence in cases of causing death by dangerous driving*) that though this is not a border line case, nor a case in which there are no aggravating circumstances or in which the death was caused by momentary inattention, nevertheless the sentence of four months' imprisonment and the disqualification from driving for eighteen months are manifestly excessive and ought to be reduced, in view of the strong mitigating factors relating to the appellant, who is a married man, aged thirty-one years old, with two minor children, and who, by working as a mason, is the sole supporter of his family; and that, therefore, the appeal against sentence must be allowed and the imprisonment passed on the appellant will be reduced to two months' imprisonment and the period of his disqualification from driving will be reduced from eighteen months to twelve months.

Held, further, that in deciding to reduce the sentence this Court has taken into account that the trial Judge in imposing such sentence took what appears to be an exaggerated view of the speed at which the appellant was driving his motor car and seems to have formed the impression, without sufficient evidence to warrant it, that the appellant was driving recklessly at a very high speed.

Appeal against conviction dismissed.
Appeal against sentence allowed.

Cases referred to:

McLeod v. *The Police* (1973) 2 C.L.R. 63;

Evripidou v. *The Police* (1969) 2 C.L.R. 71 at p. 76;

HjiGeorghiou v. *The Police* (1972) 2 C.L.R. 86;

Constantinou v. *The Police* (1972) 2 C.L.R. 89;

Lazarou v. *The Police* (1970) 2 C.L.R. 18 at p. 21;

Alecou v. *The Police* (1979) 2 C.L.R. 218 at p. 220;

R. v. *Guilfoyle* [1973] 2 All E.R. 844;

Attorney-General of the Republic v. *Iacovides* (1973) 2 C.L.R. 344;

Kaloghirou v. *Police* (1978) 2 C.L.R. 442;

Georghiades v. *The Police* (1980) 2 C.L.R. 199;

Nicola v. *The Police* (1980) 2 C.L.R. 202;

R. v. *Bruin* (1979) R.T.R. 95 at p. 97;

R. v. *Hudson* (1979) R.T.R. 401 at p. 403;

R. v. *Davis* [1979] Crim. L.R. 259;

Aras v. *The Police* (1968) 2 C.L.R. 13.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Georghios Ioannou Mylordis who was convicted on the 15th February, 1980 at the District Court of Nicosia (Criminal Case No. 24194/79) 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 Artemides, D.J. to four months' imprisonment and was disqualified from holding or obtaining a driving licence for a period of eighteen months.

G. I. Pelaghias, for the appellant.

A. M. Angelides, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. On February 15, 1980, the appellant was found guilty by the District Court of Nicosia of having caused, contrary to section 210 of the Criminal Code, Cap. 154, the death of another person by want of precaution while driving his motor car; and he was sentenced to four months' imprisonment and was disqualified from driving for a period of eighteen months.

He has appealed against both the conviction and the sentence passed upon him.

The salient facts of this case appear from the record before us to be as follows:

On June 7, 1979, at about 7.30 p.m., the appellant was driving his car in Nicosia, along Kantara Avenue. It was dark and the road was not lit and yet the appellant was driving with his head-lamps dipped so that the limit of his visibility was only ninety-seven feet ahead.

The road at the place where the accident happened was thirty-one feet wide and the victim, an old man, walking with the aid of a crutch, was crossing the road from right to left, in relation to the direction in which the appellant was driving.

According to the version of the appellant himself, he was

driving at a speed of thirty-five miles per hour and as soon as he noticed a pedestrian ahead of him he applied fully his brakes but he did not manage to avoid hitting him, with the result that he received fatal injuries and died instantly. At the time the 5 victim had already covered a distance of twenty-seven feet in proceeding across the road.

It is correct that for a conviction under section 210 of Cap. 154, there has to be established a degree of negligence beyond that which is required for liability at civil law (see, *inter alia*, 10 *McLeod* v. *The Police*, (1973) 2 C.L.R. 63); and counsel for the appellant has submitted that in this case there has not been established such degree of negligence on the part of his client.

As pointed out in, *inter alia*, *Evripidou* v. *The Police*, (1969) 2 C.L.R. 71, 76, by Vassiliades P. the existence of want of 15 precaution necessary to support a conviction, under section 210, is mostly a question of fact in each particular case and, in the present case, we are not prepared to hold, on appeal, that it was not reasonably open to the trial Judge to find that such want of precaution on the part of the appellant had been 20 established by the evidence before him, even though expert evidence was not adduced (see *HjiGeorghiou* v. *The Police*, (1972) 2 C.L.R. 86 and *Constantinou* v. *The Police*, (1972) 2 C.L.R. 89) to explain the significance of the brake-marks left by the car of the appellant as regards the speed at which 25 his car was travelling at the material time.

It was sufficient, in our opinion, in order to establish the guilt of the appellant under section 210 of Cap. 154, that he was driving in the dark at a road that was not lit, at a speed, on his own admission, of thirty-five miles per hour, which 30 exceeded the speed limit of thirty miles per hour in an inhabited area, and with his head-lamps dipped so that the range of his vision was considerably curtailed with the result that he did not manage to see the victim in time so as to avoid knocking him down and killing him.

35 The appeal, therefore, of the appellant against conviction is dismissed.

As regards the appeal against sentence we do think that, in the circumstances of this case, a custodial sentence, coupled with the disqualification order, was justified.

As has been rightly pointed out by Josephides J. in *Lazarou* v. *The Police*, (1970) 2 C.L.R. 18, 21, a sentence of imprisonment appears to be appropriate as deterrent punishment in cases of such a nature as the present case, in view of the increasing number of motor car accidents which endanger human life. 5

Also, in *Alecou* v. *The Police*, (1979) 2 C.L.R. 218, A. Loizou J. stated (at p. 220):-

> "No doubt, offences relating to safety on the road are of a serious nature. The disregard of the rules and regulations aimed at having safe and orderly use of the roads 10 by both drivers and pedestrians, coupled with the density of the traffic on our roads, have brought about a frequent and disturbing occurrence of accidents resulting both in damage to property and injury and death to persons. For these reasons, road users and in particular those in charge 15 of motor-vehicles, should always observe the relevant rules and regulations for their own safety and that of others".

The relevant principles applicable to the assessment of sentence in cases of causing death by dangerous driving have been 20 expounded by the Criminal Division of the Court of Appeal in England in *R.* v. *Guilfoyle*, [1973] 2 All E.R. 844, and have been adopted by this Court in cases such as *The Attorney-General of the Republic* v. *Iacovides*, (1973) 2 C.L.R. 344, *Kaloghirou* v. *The Police*, (1978) 2 C.L.R. 442, *Georghiades* v. *The* 25 *Police*, (1980) 2 C.L.R. 199 and *Nicola* v. *The Police*, (1980) 2 C.L.R. 202.

Useful reference may, also, be made, in this respect, to Thomas on Principles of Sentencing, 2nd ed., p. 87, and Pikis on Sentencing in Cyprus, p. 114. 30

We have duly borne in mind that it is not always appropriate to pass a prison sentence in cases of causing death by dangerous driving:

In *R.* v. *Bruin*, (1979) R.T.R. 95, Lord Widgery C.J. said (at p. 97):- 35

> "One comes to ask oneself what the sentence should have been in a case of this kind, with a man of good character, in those circumstances. It is urged before us that nowadays

an immediate prison sentence is not normally regarded as necessary for causing death by dangerous driving unless there are aggravating factors in the offence; for example, if the driver has been drinking, if he has exceeded the speed
5 limit by a serious amount or otherwise has created hazards for himself, then he may well find himself going to prison if he kills someone by his dangerous driving, even though the offence is a first offence. But this is not that case. Here we have a man of good character. Although I have
10 described our assessment of the natural hazards at this point, there was nothing else to indicate that danger was more likely than normal.

There being no aggravating circumstances, we cannot see how an immediate prison sentence was justified in
15 this case".

In *R.* v. *Hudson* (1979) R.T.R. 401, Geoffrey Lane L.J. stated (at p. 403):

"The problem of sentencing in these cases is always very difficult. But when five people have died, to start with,
20 the temptation, if one may use that expression, is to impose a sentence of imprisonment. If we may say so respectfully, the recorder was right in circumstances such as these— it was a momentary lapse inattention in effect—not to take such a course. A fine was correct".

25 In *R.* v. *Davis*, [1979] Crim. L.R. 259, a sentence of nine months' imprisonment and disqualification from driving for five years for causing death by reckless driving were not upheld in so far as the imprisonment was concerned, which was reduced to three months' imprisonment suspended for two years; it
30 was pointed out that cases of reckless driving varied from those where the reckless driving was almost deliberate to those at the other end of the scale which were cases of little more than bad luck.

In *Aras* v. *The Police*, (1968) 2 C.L.R. 13, the appellant was
35 sentenced to nine months' imprisonment for causing death contrary to section 210 of Cap. 154, and in reducing, on appeal, the sentence to two months' imprisonment, our Supreme Court decided to adopt such a course in view of the mitigating circum-

stances existing in the particular case and, especially, as it appeared to be a border line case of negligence coming within the ambit of section 210, above.

In the present instance, and having taken everything into account that has been submitted by counsel for the appellant, as well as the very fair, indeed, stand adopted by counsel for the respondents, we have reached the conclusion that, though this is not a border line case, nor a case in which there are no aggravating circumstances or in which the death was caused by momentary inattention, nevertheless the sentence of four months' imprisonment and the disqualification from driving for eighteen months are manifestly excessive and ought to be reduced, in view of the strong mitigating factors relating to the appellant, who is a married man, aged thirty-one years old, with two minor children, and who, by working as a mason, is the sole supporter of his family.

Moreover, we have taken into account, in deciding to reduce the sentence, that the trial Judge, in imposing such sentence took what appears to be an exaggerated view of the speed at which the appellant was driving his motor car and seems to have formed the impression, without sufficient evidence to warrant it, that the appellant was driving recklessly at a very high speed.

In the result, we have decided to allow the appeal against sentence and to reduce the imprisonment passed on the appellant to two months' imprisonment and the period of his disqualification from driving from eighteen months to twelve months.

This appeal is, therefore, allowed accordingly.

Appeal against conviction dismissed. Appeal against sentence allowed.