

1981 September 17

[TRIANTAFYLIDIS, P., MALACHTOS, SAVVIDES, JJ.]

STELIOS SAVVA STYLIANOU,

Appellant.

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 4236*).

Criminal Law—Causing death by want of precaution—Section 210 of the Criminal Code, Cap. 154—Speeding—Section 6 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72)—Motorist driving on avenue—Knocking down cyclist who suddenly entered the avenue from side-road without stopping at the junction—Even if motorist was driving at 47 m.p.h. not guilty of the high degree of negligence required for the offence under said section 210—Conviction thereunder set aside—Substituted by conviction for careless driving, even if cyclist guilty of contributory negligence—Section 145(1)(c) of the Criminal Procedure Law, Cap. 155—Conviction for speeding upheld.

Criminal Law—Sentence—Careless driving resulting in death of cyclist—Fine of C£100—No disqualification.

On March 7, 1980, at about 6.30 a.m., the appellant was driving his car along Archangelos avenue, in the Parissinos area in the outskirts of Nicosia, and was proceeding towards Nicosia. At that time a cyclist was proceeding on a bicycle along a side-road towards the said avenue.

After the cyclist had entered the avenue and started cycling along it he came into collision with the car which was being driven by the appellant and which was coming from behind him, with the result that the cyclist was fatally injured. According to the only eye-witness who was present there and saw the accident, the cyclist entered the avenue without stopping at all at its junction with the side-road and without looking either to his left or to his right, and tried to proceed along the avenue, and then across it, in order to reach a petrol station on the opposite side of the avenue. At that time the said eye-

witness heard a car blowing its horn and saw it swerving to the right before it collided with the cyclist.

The appellant was prosecuted and found guilty of the offences of causing death by want of precaution, contrary to section 210 of the Criminal Code, Cap. 154 and of the offence of speeding; and in respect of the offence under section 210 he was sentenced to a fine of C£200 and was disqualified from driving for a period of six months. No sentence was passed on him for the offence of speeding. The trial Judge found that the appellant was guilty of the offence under section 210 because, just before the collision, he was travelling at about 47 m.p.h., and in the opinion of the Judge the great speed at which the appellant was driving his car prevented him from taking effective action in order to avoid knocking down the cyclist. In the circumstances, the trial Judge found that there had been established the want of precaution which was required to prove that the appellant, in causing the death of the cyclist, has committed the offence provided for by the aforesaid section 210.

Upon appeal against conviction and sentence:

Held, (1) that in the light of the high degree of negligence, which is required for the commission of the offence under section 210, above (see, *inter alia*, *McLeod v. The Police* (1973) 2 C.L.R. 63), and in the particular circumstances of this case, where the appellant was suddenly faced with a situation that the cyclist had entered the avenue without stopping at the junction with the side-road and was proceeding ahead of him along and across the avenue, the finding of the trial Court that the appellant was guilty of the aforementioned high degree of negligence was not warranted, even if he had been driving at a speed of 47 m.p.h. just before the accident; accordingly the conviction under section 210 of Cap. 154 and the sentence in relation to such conviction should be set aside.

(2) That even if the cyclist was guilty of contributory negligence, this does not absolve the appellant of all blame for the fatal collision; that this Court is in agreement with the trial Judge that the speed at which he was proceeding at the time disabled him from taking prompt avoiding action in order to avert colliding with the cyclist; that, therefore, the appellant was driving in a manner which rendered him guilty of careless driving, contrary to section 8 of Law 86/72 and, in the exercise

of its relevant powers, under section 145(1)(c) of the Criminal Procedure Law, Cap. 155, this Court has decided to convict the appellant of the offence under the said section 8.

5 (3) That taking into account that the appellant has remained disqualified from driving a car for a period of, approximately, three months, that is from June 11, 1981, when he was convicted and sentenced, until today, this Court has decided to pass upon him a sentence of only C£100 fine and not to couple such sentence with an order of disqualification.

10 (4) That as regards the commission by the appellant of the offence of speeding, the evidence on record establishing his guilt in this connection fully warranted his conviction of such offence; that this Court is in agreement with the trial Judge that, in the circumstances, as the offence of speeding was committed in the context of the events which have led to the traffic
15 accident in question, there should not be passed any sentence on the appellant in respect of that offence.

Appeal partly allowed.

Cases referred to:

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

Appeal against conviction and sentence.

25 Appeal against conviction and sentence by Stelios Savva Stylianou who was convicted on the 11th June, 1981 at the District Court of Nicosia (Criminal Case No. 18698/80) on one count of the offence of causing death by want of precaution, contrary to section 210 of the Criminal Code Cap. 154 and on one count
30 of the offence of speeding contrary to section 6 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86/72) and was sentenced by Nikitas, S.D.J. to pay a fine of C£200.—and was disqualified from holding or obtaining a driving licence for a period of six months on the first count and no sentence was passed upon him on the second count.

A. Dikigoropoulos, for the appellant.

35 *A. Frangos*, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

TRIANTAFYLIDIS P. read the following judgment of the Court. The appellant was convicted by the District Court of Nicosia

of the offences of causing death by want of precaution, contrary to section 210 of the Criminal Code, Cap. 154, and of speeding, contrary to section 6 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72).

In respect of the offence under section 210 he was sentenced to pay a fine of C£200 and was disqualified from holding or obtaining a driving licence for a period of six months and in respect of the offence of speeding it was not deemed necessary by the trial Judge to pass upon him a separate sentence. 5

The appellant has appealed against both his conviction and the above sentence. 10

As it appears from the material before us, on March 7, 1980, at about 6.30 a.m., the appellant was driving his car along Archangelos avenue, in the Parissinos area in the outskirts of Nicosia, and was proceeding towards Nicosia. 15

At that time a cyclist was proceeding on a bicycle along a side-road towards the said avenue.

After the cyclist had entered the avenue and started cycling along it he came into collision with the car which was being driven by the appellant and which was coming from behind him, with the result that the cyclist was fatally injured. 20

According to the only eye-witness who was present there and saw the accident, and who was called as a witness for the prosecution, the cyclist entered the avenue without stopping at all at its junction with the side-road and without looking either to his left or to his right, and tried to proceed along the avenue, and then across it, in order to reach a petrol station on the opposite side of the avenue. At that time the said eye-witness heard a car blowing its horn and saw it swerving to the right before it collided with the cyclist. 25 30

Counsel for the appellant has submitted that as the cyclist, after he was wounded, was removed to the Nicosia General Hospital, where he died about a week later, and as nobody identified him at the scene of the accident, there was no evidence to connect the late Sofocles Flouros, who died at the Nicosia General Hospital, on March 14, 1980, with the cyclist who was knocked down by the appellant in the traffic accident in question. 35

We have perused all the evidence which is relevant to the issue of the identification of the victim of the said accident and we agree with the trial Judge that the identity of such victim was established beyond reasonable doubt, especially as the
5 daughter of Flouros identified the bicycle of her father from photographs which the police took of the bicycle which was found knocked down at the place where the accident occurred.

The trial Judge found that the appellant was guilty of the offence under section 210 because the appellant, just before
10 the collision, was travelling at about 47 m.p.h., and in the opinion of the Judge the great speed at which the appellant was driving his car prevented him from taking effective action in order to avoid knocking down the cyclist; and, in the circumstances, the trial Judge found that there had been established the want
15 of precaution which was required to prove that the appellant, in causing the death of the cyclist, had committed the offence provided for by the aforesaid section 210.

In the light of the high degree of negligence, which is required for the commission of the offence under section 210, above
20 (see, *inter alia*, *McLeod v. The Police*, (1973) 2 C.L.R. 63), and in the particular circumstances of this case, where the appellant was suddenly faced with a situation that the cyclist had entered the avenue without stopping at the junction with the side-road and was proceeding ahead of him along and across
25 the avenue, we do not think that there was warranted the finding of the trial Court that the appellant was guilty of the aforementioned high degree of negligence, even if he had been driving at a speed of 47 m.p.h. just before the accident.

We have, therefore, decided to set aside the conviction of the
30 appellant under section 210 of Cap. 154, as well as the sentence passed upon him in relation to such a conviction.

On the other hand, on the basis of the circumstances in which the appellant knocked down the cyclist, and to which we need not refer again, we find that even if the cyclist was guilty of
35 contributory negligence, this does not absolve the appellant of all blame for the fatal collision; and we do agree with the trial Judge that the speed at which he was proceeding at the time disabled him from taking prompt avoiding action in order to avert colliding with the cyclist.

We have decided, therefore, that the appellant was driving in a manner which rendered him guilty of careless driving, contrary to section 8 of Law 86/72 and, in the exercise of our relevant powers, under section 145(1)(c) of the Criminal Procedure Law, Cap. 155, we have decided to convict the appellant of the offence under the said section 8. 5

We have taken into account that the appellant has remained disqualified from driving a car for a period of, approximately, three months, that is from June 11, 1981, when he was convicted and sentenced, until today, and we decided to pass upon him a sentence of only C£100 fine and not to couple such sentence with an order of disqualification. 10

As regards the commission by the appellant of the offence of speeding, the evidence on record establishing his guilt in this connection fully warranted his conviction of such offence. 15

We agree with the trial Judge that, in the circumstances, as the offence of speeding was committed in the context of the events which have led to the traffic accident in question, there should not be passed any sentence on the appellant in respect of that offence. 20

In the result this appeal is partly allowed accordingly.

Appeal partly allowed.