1986 December 19

[A. LOIZOU, LORIS, PIKIS, JJ.]

IACOVOS ANTONIOU,

Appellant,

v.

THE POLICE,

Respondents

(Criminal Appeal No. 4820)

Sentence—Causing death by want of precaution—The Criminal Code Cap. 154, section 210—Accident not due to momentary inattention, but to reckless driving—Three months imprisonment and six month's disqualification from holding and/or obtaining a driving licence—Order for the payment of £25 - costs of the prosecution—Appellant a poor man and a breadwinner of his family, i.e. his wife and 3 minor children—In the circumstances the aforesaid sentence was affirmed, but the order of costs set aside

At about 6.05 p.m. of the 18.11.85 P.W. 3 who was driving his motor-cycle along Makarios III Avenue at K. Lakatamia, having as a pillion rider a young man of 19 years of age, stopped at the junction of the said avenue with Anexartisias Street, giving priority to oncoming vehicles, as he was intending to turn right. The appellant, who was driving his motor vehicle along the same direction as P.W. 3, knocked at the rear of the stationary motor-cycle and, as a result, the pillion rider was seriously injured and eventually died.

The scene of the accident was amply lit at the material time. The lights of the appellant's vehicle were capable to illuminate a distance of 67 feet ahead in dipped position. The motor-cylce had no rear lights. The collision was violent, the resultant position of the car was 49 feet after the point of impact and no traces of brake marks were found. The appellant stated to the police that he did not notice the motor-cycle until he heard the bang of the collision.

The trial Judge sentenced the appellant for the offence of causing death by want of precaution contrary to s. 210 of the Criminal Code to 3 months' imprisonment, disqualification from holding and/or obtaining a driving licence for six months and ordered him to pay £25 -costs of the prosecution.

As a result the appellant, a poor man and the breadwinner of his family, consisting of his wife and three minor children one of whom a daughter aged 13 is mentally retarded and in need of extra care, filed the present appeal against sentence.

Held (1) In view of the lighting of the scene of the accident, the adequate lighting of appellant's vehicle, his statement to the police and the real

evidence, the inference that the collision was not due to a momentary inattention or miscalculation, but to reckless driving, as the trial Judge held, was unavoidable

(2) This Court feels sympathy for the suffering of appellant's family, but cannot overlook his reckless driving and selfish disregard for the safety of other road users

(3) The order as to costs is rather unusual in the circumstances and would be set aside

Sentence of imprisonment and disqualification affirmed
Order for costs set aside

Cases referred to

Charalambous v The Police (1986) 2 C L R 128,

Attorney-General v Stavrou and Others, 1962 C L R 274,

Christofakis v The Police (1963) 1 C L R 33

Nicolaou v The Republic (1966) 2 C L R 60

Appeal against sentence.

Appeal against sentence by Iacovos Antoniou who was convicted on the 8th December, 1986 at the District Court of Nicosia (Criminal Case No 26332/86) 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 E. Papadopoulou (Mrs) Ag.D J. to three months' imprisonment and was further disqualified from holding or obtaining a driving licence for a period of six months; he was further ordered to pay £25 - costs of prosecution

P Polyviou with C Pamballis, for the appellant

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

A LOIZOU J The judgment of the Court will be given by Loris, J

LORIS J The present appeal is directed against the sentence passed on the appellant by a Judge of the District Court of Nicosia (Mrs E. Papadopoulou, Ag D J) in Nicosia Criminal Case No

26332/86, upon his plea of guilty to a single count of causing death by want of precaution contrary to s.210 of the Criminal Code; the appellant was sentenced to three months' imprisonment and was further disqualified from holding and/or obtaining a driving licence for a period of six months from the date of sentence; the sentence also includes an order for the payment of £25.- costs of the prosecution.

The salient facts of the case under appeal are briefly as follows:

At about 6.05 p.m. of the 18th November 1985 (the sun sets at 4.40 p.m.) P.W.3 who was driving motor cycle under Regn. No. P.M. 681 along Makarios III Avenue at K. Lakatamia having as a pillion rider the 19 year-old victim of this accident, namely Petros Gavriel, stopped his said motor-cycle at the junction of Makarios III avenue and Anexartissias street giving priority to oncoming vehicles, as he was intending to turn right. The appellant who was driving at the material time motor light goods vehicle under Regn. No. MX 272 along Makarios III Avenue following the same direction as the motor-cyclist, knocked at the rear of the stationary motor-cycle and as a result both the driver of the motor-cycle as well as the pillion rider were flung off the motorcycle on the asphalt and were injured. The pillion rider died two days later in Hospital as a result of the injuries he received in the aforesaid accident.

The appellant in his statement to the police mentioned that he did not notice the motor-cycle until he heard the bang of the collision.

The scene of the accident was amply lit at the material time by two fluorescent lamps fixed on poles which lay 163 feet away from each other.

The lights of appellant's vehicle, tested by police, proved to be capable of illuminating a distance of 67 feet ahead in a dipped position.

It is quite clear to us that inspite of the fact that the motor-cycle of P.W.3 had no rear lights, it ought to have been easily discernible by the appellant, taking into consideration the lights of appellant's vehicle on the one hand and the ample street lighting at the scene of the accident on the other.

The learned trial Judge in her carefully considered judgment held that the accident was due to the reckless driving of the appellant and his selfish disregard of the safety of other road users, and not to a momentary inattentiveness or miscalculation.

Having carefully gone through the record we are in agreement with her. Such an inference is unavoidable in view of the lighting of the scene of the accident, the adequate lighting of appellant's vehicle, the real evidence placed before the trial Court - which we had the opportunity to examine - and the statement of the appellant to the police to the effect that he did not notice the motor-cycle until he heard the bang of the collision.

It is apparent from the sketch produced that the speed of appellant's vehicle must have been unreasonably high at the time and the collision on the stationary motor-cycle very violent in view of the fact that the motor-cycle was dragged forward at considerable distance away from the point of impact leaving scratches on the asphalt up to its resultant position, whilst it is obvious that the appellant did not apply brakes in time- in fact no traces of break marks whatever, were found - and the resultant position of his car is 49 feet after the point of impact.

The learned trial Judge after directing her mind to the principles of sentencing applying in cases of this nature and examining the facts and circumstances of this case, as well as the circumstances befitting the appellant, who is a professional driver employed with a building company and the breadwinner of a family consisting of his wife and three minor children, passed on the appellant a sentence of three months imprisonment disqualifying him at the same time from holding and/or obtaining a driving licence for a period of six months from the date of sentence; the sentence also includes an/order for the payment of £25.- costs of the prosecution.

The main complaint in this appeal is the sentence of imprisonment. The learned leading counsel appearing for the appellant argued forcefully against the sentence of imprisonment relying mainly on the personal circumstances of the appellant who is a poor man and the breadwinner of a family consisting of his wife and three minor children aged 15, 13 and 8 years respectively laying stress on the fact that appellant's daughter aged 13 is mentally retarded and in need of extra care.

We feel sympathy for the suffering of appellant's family but at the same time we cannot overlook that the reckless driving of the appellant and his selfish disregard for the safety of other road users resulted in the loss of life of a young man aged only 19. In this respect I fully endorse what was stated in the Appeal of *Socratis Charalambous v. The Police*, on a similar occasion by my brother Judge Pikis: (Cr. Appeal 4729 - judgment delivered on 29.4.86 - still unreported)*.

«It is a tragic case that reminds of the fatal consequences negligent driving can produce, as well as the duty of the Court to help stem this social evil more so in view of the mounting number of fatal accidents».

In the circumstances we have decided that we should not interfere either with the sentence of imprisonment or with the disqualification order although we hold the view that the sentence passed is rather on the lenient side.

The sentence however includes also an order for the payment of £25.- costs of the prosecution. We hold the view that such an order is rather unusual in the circumstances *(A.G. v. Georghios Stavrou & others*, 1962 C.L.R. 274 - *Costas Christou Christofakis v. The Police* (1963) 1 C.L.R.33 - *Lambros Costa Nicolaou v. The Republic* (1966) 2 C.L.R. 60.

We are unanimously of the opinion that to this extent the appeal should be allowed and the order for the payment of costs be set aside.

In the result the sentence of imprisonment and the disqualification order are hereby affirmed.

The order for the payment of costs is hereby discharged.

Appeal partly allowed.
Order for costs discharged.

* *Reported in (1986) 2 C L R. 128*