[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

1969
Mar. 6

CHARALAMBOS EVRIPIDOU

v.

THE POLICE

CHARALAMBOS EVRIPIDOU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3045).

Criminal Law—Causing death by want of precaution whilst driving a motor-vehicle contrary to section 210 *of the Criminal Code Cap.* 154—" *Want of precaution* " *is a question of fact — Finding by the trial Judge of* " *want of precaution* " *on driver's part not sustained by the Court of Appeal—See, also, herebelow.*

Road Accident—Inevitable accident—Fatal accident—Pedestrian knocked down by appellant's vehicle while passing by the side of a stationary vehicle parked on the side of the road—Pedestrian knocked down in attempting to cross the road after emerging from behind the said parked vehicle and without taking the necessary precaution of looking out with care before attempting to cross the road—Appellant's speed neither excessive nor unreasonable—Pedestrian's failure to look out before crossing the road was the proximate and direct cause of the accident— Driver had no duty to apprehend an emergency of this nature— See, also, herebelow.

Road Traffic—Rule of the road based on the Rule of the Road Law, Cap. 334 *and the Motor Vehicles Regulations,* 1959 *regulation* 58(2)—*Drivers are required to drive on their left hand side of the road only when about to meet another oncoming vehicle travelling on the same road—But not when the road before them is clear of other traffic and there are no traffic markings indicating a particular path—See, also, herebelow.*

Road Traffic—Drivers and pedestrians—Duties of—They must make such careful and reasonable use of the road as is required for their own safety as well as for the safety of others who are likewise entitled to use the road.

Fatal accident—See above.

Inevitable accident—See above.

Rule of the road—See above.

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Drivers and pedestrians—Respective duties—See above.

Words and Phrases—'Rule of the road'—'Want of precaution' in section 210 of the Criminal Code, Cap. 154.

Cases referred to :

Triftarides v. *The Police* (1968) 2 C.L.R. 140.

The facts sufficiently appear in the judgment of the Court.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Charalambos Evripidou who was convicted on the 2nd October, 1968, at the District Court of Nicosia (Criminal Case No. 18053/68) 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 Vakis, D.J., to pay a fine of £100, was disqualified from holding or obtaining a driving licence for a period of 3 years and he was further ordered to pay £8.500 mils costs of prosecution.

Y. Agapiou, for the appellant.

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

The judgment of the Court was delivered by :—

VASSILIADES, P.: The appellant was convicted in the District Court of Nicosia on October 2, 1968, of causing the death of another person by want of precaution " contrary to section 210 of the Criminal Code and section 13 of the Motor Vehicles and Road Traffic Law, Cap. 332 ;" and was sentenced to a fine of £100 coupled with disqualification from holding a driving licence for 3 years. He now appeals both against conviction and sentence.

His grounds of appeal against conviction may be summed up in that the trial Judge erred (*a*) in the assessment of the facts ; and (*b*) in the application of the law on the facts of the case.

The appellant is a professional driver in the employment of a cabinet maker in Limassol. On the day of the offence, he drove his employer's van to Nicosia with a load of furniture and was returning to Limassol with a load of chairs.

Soon after 7 o'clock in the evening, while travelling on the main Nicosia–Limassol road with his headlights on and at a speed of about 45 mph. the appellant noticed at a distance of about 60 metres ahead of him, the small lights of a stationary car, parked at the side of the road, partly on the berm and partly on the asphalted surface. It was a taxi facing in the opposite direction and parked on its proper side. According to the police plan (*exhibit* 1) 16' 4" out of the 18' 3" of the asphalted surface of the road, was free. Seeing his path free, the appellant continued on his way, at the same speed at about the middle of the road.

As his van was about to pass by the side of the stationary car, the appellant saw a person emerging from behind the car in an attempt to cross the road, cutting appellant's path, some 5 or 6 metres in front of the travelling van. Faced with that sudden emergency, the appellant found himself unable to take any avoiding action. " I could not do anything " he said from the witness-box. Before he had time to think what to do, the pedestrian came into collision with the front part of his van and was thrown on the bonnet. The appellant applied his brakes and brought his vehicle to a standstill about 30 yards further away, leaving on the asphalted surface brake-marks measuring 34 ft. 6 ins. for the nearside wheels and 38 ft. for the offside. The victim fell on the road unconscious ; and died soon after on the way to hospital having never recovered consciousness. He was an old man of about 80 years of age who, according to the post-mortem evidence, died of intercranial haemorrhage resulting from a head injury. The traffic police were on the spot very soon after the accident ; and in due course took measurements and prepared a plan produced later at the trial as *exhibit* 1.

As already stated, the appellant was charged under section 210 of the Criminal Code for causing the death of the old man by want of precaution. The case for the prosecution was that the appellant was guilty of carelessness in failing to reduce his speed and to drive with more caution while passing by the side of a stationary vehicle ; also that he was driving in the middle of the road. The prosecution moreover called evidence to show that the brakes of appellant's vehicle were found defective, after the accident. The defence was that of inevitable accident caused by the carelessness of the deceased in attempting to cross the road without taking the proper care.

The learned trial Judge took the view that the appellant had a duty when approaching the stationary vehicle, " to

take his proper side of the road and also slow down or, in any event, proceed with increased caution "; and held that the appellant was, therefore, guilty of want of precaution. "No reason or explanation was given", the trial Judge went on to say, "by the accused why he was driving at that position on the road ; and his continued driving at the same speed, particularly when carrying a load which, as he ought to know, would effect his ability or power to control the vehicle or stop it, would any emergency arise, cannot but be treated as lack of proper care or want of precaution". And upon that view of the matter, he found the appellant guilty of the charge.

Incidentally, the Judge considered also the question of the brakes of appellant's vehicle ; and making certain calculations in connection with thinking time and length of brake-marks, based mostly on evidence of opinion by a prosecution witness, reached the conclusion that the condition of the brakes was connected with the accident and supported the view that the appellant had failed to take sufficient precaution to meet such an emergency. The Judge made it clear, however, that he would reach the same conclusion as to appellant's guilt even apart of any defect in the brakes.

With all respect, we take unanimously a different view of appellant's liability under section 210, in the circumstances. It is not suggested that appellant's speed on that straight piece of main road without any other moving traffic at the time when he noticed the stationary vehicle, well at the side of the road, was excessive or unreasonable ; and we cannot see why, in the circumstances, he should not drive in the middle of the road which gave him a clear safety margin between the stationary vehicle and his path. The rule of the road, based on the Rule of the Road Law, Cap. 334, and regulation 58 (2) of the Motor Vehicles Regulations, 1959, requires him to take to his proper side when about to meet another vehicle travelling on the same road. This is obviously so in order to enable both vehicles to make safe use of the public road. But, in our judgment, the regulations do not require a driver to drive on his left hand side of the road, or for that matter, on any particular part of it, when the road before him is clear of other traffic and there are not traffic markings indicating a particular path.

We, moreover, fail to see a duty on the part of a driver in appellant's position, to apprehend in such circumstances, that the emergency of this nature would arise from the

vehicle parked on the side of the road. We take the view that before the appellant can be found guilty of the offence under section 210, the prosecution have to establish to the satisfaction of the court, that he caused the death of the victim by a rash or careless act or by want of precaution. No rash or careless act is suggested in this case. The trial Judge found want of precaution in that the appellant failed to reduce his speed and take to his left side of the road. But the proximate and direct want of precaution which brought the passing vehicle and the old man into the fatal collision, was obviously the old man's failure to take the elementary necessary precaution of looking with care before attempting to cross the road.

On the evidence, there can be no doubt whatsoever that had the old man taken that elementary precaution, as it was his duty to do, he could not fail to see the approaching vehicle on that straight piece of road, with its headlights on, visible from considerable distance. Most probably he had seen the lights, but miscalculating the distance, he thought that he had the time to cross. It is positively established that another person standing on the side of the stationary car, prosecution witness Sofroniou, saw the approaching vehicle and called out to the old man a warning to wait for the van to pass ; which indicates that he apprehended the danger in the old man's attempt to cross at that moment.

In our judgment, the proximate and direct cause of the collision was the unfortunate old man's failure to look out before crossing the road ; as it was his duty to do for his own safety and that of other persons entilted to use the road. In that sudden emergency even if the brakes of the van were in no way defective, it could make no difference whatsoever. In any case, it was not suggested that the brakes of appellant's van, which had come with a load from Limassol earlier on the same day, gave signs of inefficiency ; and at the time of the accident they were sufficiently effective to bring the van at a stand still within some 30 yards of the collision leaving about 35 ft. of brakemarks on the road. Their condition had nothing to do with this case.

In *Costas Ioannou Triftarides* v. *The Police* (1968) 2 C.L.R. 140, this Court held that drivers and pedestrians who are making use of public roads in exercise of their legal right to do so, owe a duty of care to other users of the road. " They must make—it was said—such careful

and reasonable use of the road as is required for their own safety as well as for the safety of others, who are likewise entitled to use the road ".

The want of precaution necessary to support a conviction under section 210 is mostly a question of fact in each particular case ; and on the evidence in this case, the finding of want of precaution on the part of the driver, cannot be sustained for the reasons already stated. Moreover, the conviction is based on findings which, in our view, fail to take proper account of the immediate, the proximate, cause of the collision which the trial Judge described as " a serious contributory negligence on the part of the unfortunate victim "; but which, we think, was the cause of this inevitable accident.

Upon this conclusion, we allow the appeal and set aside the conviction.

Appeal allowed ; conviction and sentence set aside.