[TRIANTAFYLLIDES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

PAULA MCLEOD,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3394).

Causing death by want of precaution through careless driving—Section 210 *of the Criminal Code, Cap.* 154*—Charge under said section involves a higher degree of negligence than that required for liability at civil law or for a conviction under section* 6 *of the Motor Vehicles and Road Traffic Law, Cap.* 332 (*careless driving*)—Rayas *v.* The Police, 19 *C.L.R.* 308 *still good law—Not expressly overruled in* Nearchou *v.* The Police (1965) 2 *C.L.R.* 34*—No negligence established in the instant case of such a degree warranting conviction of causing death by want of precaution under said section* 210 *of the Criminal Code—Conviction of careless driving under Cap.* 332 (supra) *substituted therefor—Section* 145 (1) (c) *of the Criminal Procedure Law, Cap.* 155.

Causing death by want of precaution—Section 210 *of the Criminal Code, Cap.* 154*—Degree of negligence required—See* supra.

Fatal accident—See supra.

Careless driving—See supra.

The Appellant in this case was convicted by the trial Court of the offence of causing death by want of precaution contrary to section 210 of the Criminal Code, Cap. 154. The Supreme Court, holding that the degree of negligence of the Appellant was not so high as to warrant a conviction under the said section, set aside the conviction appealed from and, proceeding under section 145 (1) (c) of the Criminal Procedure Law, Cap. 155, substituted therefor a conviction for careless driving contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332 and sentenced her accordingly. It is to be noted that *Rayas'* case (*infra*) was held to be still good law notwithstanding

certain doubts thereon arising from certain pronouncements in *Nearchou's* case (*infra*).

The facts sufficiently appear in the judgment of the Court, allowing this appeal, quashing the conviction for the offence of causing death by want of precaution contrary to section 210 of the Criminal Code, but substituting therefor a conviction for careless driving under section 6 of Cap. 332 (*supra*).

Cases referred to:

Rayas v. *The Police*, 19 C.L.R. 308;
Nearchou v. *The Police* (1965) 2 C.L.R. 34;
Kannas v. *The Police* (1968) 2 C.L.R. 29;
R. v. *Lowe* [1973] 1 All E.R. 805;
Andrews v. *Director of Public Prosecutions* [1937] A.C. 576.

Appeal against conviction.

Appeal against conviction by Paula Mcleod who was convicted on the 21st December, 1972 at the District Court of Kyrenia (Criminal Case No. 1534/72) 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(1) of the Motor Vehicles and Road Traffic Law, Cap. 332 and was sentenced by Pitsillides, S.D.J. to pay £70.- fine and £30.- costs.

A. Christofides with *L. Olymbiou* (Mrs.), for the Appellant.

N. Charalambous, Counsel of the Republic, with *C. Kypridemos*, for the Respondents.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: In this case the Appellant has appealed against her conviction of the offence of causing death by want of precaution, contrary to section 210 of the Criminal Code, Cap. 154.

The facts on which the charge was based are, briefly, that on the 4th of July, 1972, the Appellant, while driving a mini-bus from Kyrenia to Ayios Amvrosios, collided with a motor-car coming from the opposite direction, as soon as the motor-car had emerged from a narrow part of the road under which there is a culvert; as a result the driver of the motor-car was killed.

The learned trial Judge found that the collision had been caused partly through the fault of the other driver and partly

through the fault of the Appellant; he took the view that the Appellant's fault consisted in driving without due care and attention; and, as such fault had contributed to the causing of the death of the other driver, the Judge proceeded to convict the Appellant as charged, under section 210 of Cap. 154; he stated that the Appellant had driven without due care and attention, in the sense of section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332, and that in his opinion no higher degree of negligence than that was required for a conviction under section 210.

Such a view of the law is inconsistent with the decision in *Rayas* v. *The Police*, 19 C.L.R. 308, regarding the degree of negligence required for a conviction under section 204 (now section 210) of the Criminal Code; but the trial Judge considered that that case had been overruled in later cases, and, in this respect, he referred, in particular, to *Nearchou* v. *The Police* (1965) 2 C.L.R. 34.

It is true that in the *Nearchou* case the decision in the *Rayas* case was doubted; but it was never expressly overruled by a majority of the three Judges of this Court who dealt on appeal with the *Nearchou* case.

It seems that after the *Nearchou* case this Court did not in subsequent cases — such as, for example, *Kannas* v. *The Police* (1968) 2 C.L.R. 29 — tackle directly the issue of the validity of the decision in the *Rayas* case.

Counsel for the Respondents has today agreed with counsel for the Appellant that the *Rayas* case is still good law; and we are reinforced in accepting this proposition by a recent decision of the English Court of Appeal in *R.* v. *Lowe* (reported in the London "Times" of the 24th January, 1973)* where there was adopted the view of Lord Atkin in *Andrews* v. *Director of Public Prosecutions* [1937] A.C. 576—which was a case involving motor manslaughter—to the effect that in order to establish criminal liability the facts must be such as to show that the negligence of the accused "went beyond a mere matter of compensation between subjects" and was "such disregard for the life and safety of others as to amount to a crime against the state and conduct deserving punishment".

* See now [1973] 1 All E.R. 805.

Though in the case before us we are not dealing with a charge of motor manslaughter (as in the *Andrews* case), we are dealing none the less with a charge for a crime against the State—under the Criminal Code (section 210)—which involves, as decided in the *Rayas* case, a degree of negligence beyond that required for liability at civil law.

On the other hand, section 6 of Cap. 332, like the practically identical regulation 56 of the Motor Traffic Regulations, 1951 (in force at the time of the *Rayas* case), creates a statutory offence beyond the ambit of criminal law liability for negligence; and for a conviction under such section there is not required proof of negligence of a higher degree than negligence at civil law.

In the light of the foregoing we entertain no doubt that the trial Court misdirected itself in law by holding that proof of the lack of care and attention, required for a conviction under section 6 of Cap. 332, sufficed for the conviction of the Appellant under section 210 of the Criminal Code, Cap. 154; and in view of such misdirection and of the fact that we are of the opinion that there was not established in the present case negligence, on the part of the Appellant, warranting a conviction under section 210 we have to set aside the conviction appealed from.

We have to consider next whether we should substitute a conviction of the Appellant under section 6 of Cap. 332:

Counsel for the Appellant has argued that we should not do so, as it has not been established that the Appellant was driving at the material time without due care and attention.

It is, however, an indisputable fact that the Appellant saw the other vehicle coming towards the narrow part of the road, over the culvert, in a zigzag manner, at a time when she could have stopped before the culvert, if she had applied fully the brakes; yet, though she ought to have realized that there existed the likelihood of a collision, especially in the narrow part of the road, she did not try to stop immediately her mini-bus, so as to allow the other vehicle to pass the narrow part first; for this reason we find that the Appellant drove negligently and that, in the exercise of our powers under section 145 (1) (c) of the Criminal Procedure Law, Cap. 155, we should convict the Appellant of the offence of driving without due care and attention, under section 6 of Cap. 332.

The sentence passed upon the Appellant by the trial Court was a fine of £70; once her conviction by the trial Court under section 210 was set aside this sentence has to be set aside too. As regards the sentence to be passed upon the Appellant by us, in respect of the offence under section 6 of Cap. 332, we are of the opinion that a fine of £30 suffices; the Appellant to pay, in addition, the £30 costs of the prosecution, which she was adjudged by the Trial Court to pay.

Appeal allowed.