

1974

May 9

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DINOS L
KOLOKOTRONIS

v

THE POLICE

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU, JJ.]

DINOS L. KOLOKOTRONIS,

Appellant,

v

THE POLICE,

Respondents.

(*Criminal Appeal No. 3552*)

Criminal Law—Causing death—Definition—Section 211 of the Criminal Code, Cap. 154—Subsection (e) thereof has to be construed in conjunction with the immediately preceding it subsection (d)—“Act or omission” referred to in subsection (e) is an “act or omission” envisaged by subsection (d)

Criminal Law—Sentence—Careless driving—Section 8 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86 of 1972)—Professional driver—Disqualification order—Whether a more severe sentence than it would normally be—Very serious accident involving death of two persons—Disqualification for six months and fine of £50.

Statutes—Construction—Section 211 (d) and (e) of the Criminal Code, Cap 154

Causing death—Definition—Construction of section 211 (d) and (e) of the Criminal Code Cap. 154

Disqualification—Professional driver.

The Appellant was convicted on two counts of the offence of causing death by want of precaution, contrary to section 210 of the Criminal Code, Cap. 154. He was prosecuted after the occurrence of a collision, on the Nicosia-Limassol road, between a car driven by him and another car driven by one of the two persons who were killed; the other deceased was a passenger in that car.

Counsel for the Appellant contended that it was not established that it was through the negligence of the Appellant that the two deceased persons lost their lives, because, as he has pointed out in this respect, soon after the collision in which the Appellant

was involved, another car, passing from there, collided with the other two vehicles which had already collided.

1974
May 9

The trial Judge did not exclude the possibility that the second collision took place while the two deceased persons were still alive, though seriously wounded in their vehicle; and he decided to rely, in convicting the Appellant, on section 211 (e) of Cap. 154 (quoted in full in the judgment post).

DINOS L.
KOLOKOTRONIS
V.
THE POLICE

Held, (1) In our view subsection (e) of section 211 has to be construed in conjunction with the immediately preceding it subsection (d) (quoted in full in the judgment post) in the same section.

(2) Construing subsection (e) in conjunction with subsection (d), and bearing in mind, in this connection, the term "this" in subsection (e), one is led to the conclusion that the "act or omission" referred to in subsection (e) is an "act or omission" envisaged by subsection (d).

(3) As, in the present case, there exists the possibility that the two deceased persons were alive, though wounded, when the second collision occurred, it cannot be ruled out beyond reasonable doubt that it was such second collision which hastened their demise and, consequently, the provisions of subsection (e) were not directly applicable in relation to the first collision in which the Appellant's car was involved.

(4) So subsection (e) could not have been resorted to, in the circumstances of this case, in a manner leading to a finding that the Appellant was guilty as charged.

(5) Using our powers under section 145 (1) (c) of the Criminal Procedure Law, Cap. 155, we find the Appellant guilty of the offence of careless driving contrary to section 8 of the Motor Vehicles and Road Traffic Law, 1972. Taking into account that he is a professional driver and, therefore, a disqualification order in his case will be a more severe sentence than it would normally be, but not losing sight of the fact that he was involved, through the way in which he was driving, in a very serious accident, we feel that it is necessary to make a disqualification order, in addition to any other sentence. We, therefore, sentence him to pay a fine of £50.- and we, also, disqualify him from possessing or obtaining a driving licence for a period of six months.

Appeal partly allowed.

1974

May 9

—

DINOS L.
KOLOKOTRONIS
v.
THE POLICE

Appeal against conviction.

Appeal against conviction by Dinos L. Kolokotronis who was convicted on the 11th February, 1974 at the District Court of Limassol (Criminal Case No. 11738/73) on two counts of the offence of causing death by want of precaution contrary to section 210 of the Criminal Code Cap. 154 and was sentenced by Korfiotis, D.J. to pay a fine of £80.— and was disqualified from possessing or obtaining a driving licence for one year on count 1 and no sentence was imposed on him on count 2.

B. Vassiliades, for the Appellant.

C. Kypridemos, Counsel of the Republic, for the Respondents.

The facts sufficiently appear in the judgment of the Court which was delivered by:

TRIANFAYLLIDES, P.: The Appellant appeals against his conviction on February 11, 1974, on two counts of causing death by want of precaution, contrary to section 210 of the Criminal Code, Cap. 154. In respect of the first count he was sentenced to pay a fine of £80, was disqualified for one year from possessing or obtaining a driving licence, and was ordered to pay £14,600 mils as costs of the prosecution. No sentence was imposed on him as regards the second count, as both counts related to the same event.

The Appellant was prosecuted after the occurrence of a collision, on the Nicosia-Limassol road, between a car driven by him and another car driven by one of the two persons who were killed; the other deceased was a passenger in that car. The contention of counsel for the Appellant has been that it was not established that it was through the negligence of the Appellant that the two deceased persons lost their lives, because, as he has pointed out in this respect, soon after the collision in which the Appellant was involved, another car, passing from there, collided with the other two vehicles which had already collided.

It appears from the judgment of the trial Judge that he did not exclude the possibility that the second collision took place while the two deceased persons were still alive, though seriously wounded, in their vehicle; and he decided to rely, in convicting

the Appellant, on section 211 (e) of Cap. 154, which reads as follows:-

1974
May 9

—
DINOS L.
KOLOKOTRONIS
v.
THE POLICE

“ 211. A person is deemed to have caused the death of another person although his act is not the immediate or not the sole cause of death in any of the following cases:-

.....
(e) if this act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons”.

But, in our view—(as, also, was submitted by counsel for the Appellant and was very fairly conceded to be so by counsel for the Respondents)—sub-section (e), above, has to be construed in conjunction with the immediately preceding it sub-section (d) in the same section, which reads as follows:-

“ (d) if by any act or omission he hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death”;

Construing subsection (e) in conjunction with subsection (d), and bearing in mind, in this connection, the term “ this” in subsection (e), one is led to the conclusion that the “act or omission” referred to in subsection (e) is an “act or omission” envisaged by subsection (d); and as, in the present case, there exists the possibility that the two deceased persons were alive, though wounded, when the second collision occurred, it cannot be ruled out beyond reasonable doubt that it was such second collision which hastened their demise and, consequently, the provisions of subsection (e) were not directly applicable in relation to the first collision in which the Appellant’s car was involved.

So, subsection (e) could not have been resorted to, in the circumstances of this case, in a manner leading to a finding that the Appellant was guilty as charged.

Counsel for the Respondents has, however, submitted that, on the basis of the totality of the evidence, we should use our powers under section 145 (1) (c) of the Criminal Procedure Law, Cap. 155, and find the Appellant guilty of the offence of careless driving under section 8 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72); and, indeed, counsel for the Appellant did not dispute that such a course is open to us.

1974

May 9

—

DINOS L.

KOLOKOTRONIS

v.

THE POLICE

In the light of all the foregoing we have decided to allow this appeal, but to substitute a conviction under section 8 of Law 86/72. As regards the sentence to be passed upon the Appellant by us, in view of his conviction under section 8, we have taken into account that he is a professional driver and, therefore, a disqualification order in his case will be a more severe sentence than it would normally be; but, on the other hand, we cannot lose sight of the fact that he was involved, through the way in which he was driving, in a very serious accident. So, we feel that it is necessary to make a disqualification order, in addition to any other sentence that we shall impose on him; we, therefore, sentence the Appellant to pay a fine of £50, plus £14.600 mils costs of the prosecution, and we, also, disqualify him from possessing or obtaining a driving licence for a period of six months as from the date when he was convicted by the trial Court.

Appeal partly allowed.