

THE PEOPLE v CASHELL (1965) ZR 152 (HC)

HIGH COURT

PICKETT J

18th November 1965

Flynote and Headnote

[1] Criminal procedure - Notice of intended prosecution - unnecessary for offence of causing death by reckless or dangerous driving:

See [2].

[2] Road traffic and roads - Causing death by reckless or dangerous driving - notice of intended prosecution unnecessary - sections 211 and 210 (1) of Roads and Road Traffic Ordinance construed:

In a prosecution for causing death by reckless or dangerous driving, it is not necessary for the People to satisfy the 'notice of intended prosecution' requirements of Roads and Road Traffic Ordinance, section 211.

Case cited:

R v Patel 1962 R & N 735.

Statutes Construed:

Roads and Road Traffic Ordinance (1959, Cap. 173), ss. 210 (1), 211, as amended.

Loe, Senior State Advocate, for the people

Houstoun - Barnes, for the accused

Judgment

Pickett J: This is a preliminary issue raised in this case by defence counsel Mr Houstoun - Barnes, as to whether or not a warning of intended prosecution should have been given to the accused, in accordance with the provisions of section 211 of the Roads and Road Traffic Ordinance, Chapter 173 of the Laws of Zambia. The contention of Houstoun - Barnes is that such notice was essential before there can be a conviction on a charge of causing death by dangerous driving contrary to section 210 of Chapter 173 of the Laws of Zambia (Roads and Road Traffic Ordinance). It is maintained by the People, in the person of Mr G. M. Loe, the learned state advocate, that such notice is unnecessary. Section 211 of Chapter 173 is in the following terms:

'211. (1) Where a person is prosecuted for an offence under any of the provisions of this Part of this Ordinance relating respectively to the maximum speed at which vehicles may be driven, to reckless driving, to dangerous driving, to careless driving, to failure to obey traffic signs or signals, or to the obstruction of a road by a vehicle he shall not be convicted unless -

- (a) he was warned at the time the offence was committed that the question of prosecuting him for an offence under someone or other of the sections aforesaid would be taken into consideration; or
- (b) within fourteen days of the commission of the offence a summons for the offence was served on him, or
- (c) within the said fourteen days a notice of the intended prosecution specifying the alleged offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or to the person registered as the owner of the vehicle at the time of the commission of the offence, and the summons was served within twenty - eight days of the commission of the offence, unless the consent in writing of the Director of Public Prosecutions is obtained to serve the said summons outside the said period of twenty - eight days.'

There follows a *proviso* which has no application to the present case.

At this stage, I may say that the State concedes that in Act no such notice as provided by section 211 has been given.

The offence of causing death by reckless or dangerous driving is created by section 210 of Chapter 173 which reads as follows:

'210. (1) Any person who causes the death of another person by the driving of a motor vehicle on a road recklessly, or at a speed, or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, shall be guilty of an offence and liable upon

conviction to a fine not exceeding five hundred pounds or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment.

(2) When a person is charged with an offence under subsection (1) of this section and the court is of the opinion that he is not guilty of such offence, but that he is guilty of an offence under section *two hundred and six* [Careless Driving] or section *two hundred and seven* [Reckless or Dangerous Driving] of this Ordinance, he may be convicted of the offence of which the court is of opinion that he is guilty notwithstanding that he was not charged therewith and whether or not the requirements of section *two hundred and eleven* of this Ordinance have been satisfied as respects such offence.'

It is the contention of the People that the above - mentioned subsection (2) of section 210 lends support to the view that the warning required by section 211 is not essential on a charge of causing death by dangerous driving.

I have been referred to the case of *R v Patel* 1962 R & N 735, at page 736, which was dealt with by Conroy, CJ, but I find this case is of very little assistance because the learned Chief Justice did not come to any definite decision on the point at issue, since he observed:

' In the first place I do not think that the provisions of s. 211, which require notice to be given, apply to prosecutions for causing death by dangerous driving under s. 210 of the Roads and Road Traffic Ordinance. If I am wrong on the first point, then I think that in the circumstances of the present case, the accused was, in fact warned at the time the offence was committed that the question of prosecuting him for an offence would be taken into consideration.'

Indeed, the learned Chief Justice pointed out that he had not had the advantage of argument regarding the applicability of the provisions of section 211 to prosecutions under section 210, but that no doubt the opportunity would arise for the matter to be ventilated in argument, and a final judicial decision reached on this point. In fact, that time has now arrived.

I was referred by Mr Loe to the Eleventh Edition of *Maxwell on the Interpretation of Statutes* (Wilson and Galpin, Editors; 1962) at pages 274 - 5, where it is stated:

' The tendency of modern decisions, upon the whole, is to narrow materially the difference between what is called a strict and a beneficial construction. All statutes are now construed with a more attentive regard to the language, and criminal statutes with a more rational regard to the aim and intention of the legislature, than formerly. It is unquestionably right that the distinction should not be altogether erased from the judicial mind, for it is required by the spirit of our free institutions that the interpretation of all statutes should be favourable to personal liberty, and this tendency is still evinced in a certain reluctance to supply the defects of language, or to eke out the meaning of an obscure passage by strained or doubtful influences. The effect of the rule of strict construction might almost be summed up in the remark that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself.'

The somewhat similar provisions of the English Road Traffic Act, 1960, are not comparable, since there the clauses are set out more specifically, and of course it must be remembered that here we are dealing with the Roads and Road Traffic Ordinance of Zambia, and not the English Act.

I have given my most careful consideration to the argument of Mr Houstoun - Barnes, to his detailed submission to the magistrate and also to all that Mr Loe has had to say on behalf of the People.

[1] After such consideration, I am fully satisfied that in the case of a charge laid contrary to section 210 (1), the warning provided by section 211 is not necessary. I am led to this conclusion in particular by the fact that the legislation has provided a distinct and separate section (210) for the offence of causing death by reckless or dangerous driving, whilst there is also a distinctly separate section (207) for reckless or dangerous driving. In addition, I am considerably influenced by the provisions of subsection (2) of section 210 of the Roads and Road Traffic Ordinance. In my opinion these factors override any inference in regard to the use of the words 'relating respectively to' at the beginning of section 211 (1). Accordingly, this defence submission is rejected.

[Editor - Following the conclusion of the decision on the preliminary issue, The Senior State Advocate stated: 'I offer no evidence in this case against the accused'. Thereupon the court acquitted the accused.]