

COSTAS HJI NICODEMOU,

Appellant, HJI NICODEMOU

v.

v.

THE POLICE,

THE POLICE

Respondents.

(*Criminal Appeal No. 2996*)

Road Traffic—Motor Vehicle—Conviction of driver for leaving motor vehicle in dangerous position on a public road contrary to section 11 of the Motor Vehicles and Road Traffic Law, Cap. 332—Driver stopping vehicle at the side of the road to look into its engine—Collision between two other vehicles—Whether driver properly convicted.

Criminal Law—Road Traffic—See above.

On the facts of this case the Supreme Court found that the appellant driver at all material times was making normal and reasonable use of the road when he decided to stop his vehicle at the side of the road in order to look into the trouble in the engine ; and quashed the conviction—The facts appear in the judgment of the Court.

Appeal against conviction.

Appeal against conviction by Costas Hji Nicodemou who was convicted on the 30th March, 1968 at the District Court of Nicosia (Criminal Case No. 235/68) on one count of the offence of leaving his motor vehicle in a dangerous position contrary to section 11 of the Motor Vehicles and Road Traffic Law, Cap. 332 and was sentenced by Papaioannou Ag. D.J. to pay a fine of £5.

M. Christofides, for the appellant.

A. Frangos, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :

VASSILIADES, P. : This is an appeal against a conviction under section 11 of the Motor Vehicles and Road Traffic Law (Cap. 332) in the District Court of Nicosia. Appellant was found guilty on a count alleging that while having the

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charge of a motor-car he caused it to remain at rest on a public road in such a position as to be likely to cause damage to other persons using the road.

Shortly, the material facts are : The appellant, a professional driver for 18 years, now a man of the age of 47, while driving a motor-tanker up a hill on the main Nicosia/Morphou road, heard an unusual noise in his engine, which he thought that he should look into. As he was near the top of the hill, he drove as far as there ; and as the noise in the engine continued, he drove his vehicle for a distance of some 220 feet down the mild slope on the other side of the hill and brought it to a standstill with all the nearside wheels on the berm and the offside part of the vehicle taking some six feet of the asphalted width of the road.

The road at the material part, measured by the police, was found to be 19 feet wide, the asphalted surface, with a berm of 2 ft. 4" on the nearside of the vehicle, and 4 ft. on the other side. According to the police sketch, appellant's vehicle was on a straight stretch of road, with clear visibility of about 230 feet from the top of the hill and more than three times as much from the opposite direction in which the vehicle had been travelling from Morphou to Nicosia. Stationary as it was at the side of the road, appellant's vehicle left free for other traffic using the road, 13 ft. of the asphalted surface plus the four feet of the berm on the offside of the vehicle.

While the appellant was examining his engine with the bonnet up, he heard quite near him, the noise of a collision between two other vehicles ; a bus going up the hill which had just passed by the side of the tanker and a van which was coming down the hill. The latter vehicle taking to its offside apparently in order to pass by the side of the stationary tanker, found itself face to face with the travelling bus with which it came into collision.

The police sketch shows brake-marks about 30 ft. long by the bus and some 130 ft. long caused by the van, which tend to indicate the speed at which these vehicles were travelling immediately before the collision.

We are not concerned in this case with the collision between the other two vehicles which we understand is the subject of other litigation, and therefore reference to them should, be avoided as far as possible. We are only concerned with the conviction of the appellant on the count described earlier in this judgment.

The trial Judge took the view that "the position of accused's vehicle contributed to a great extent to the accident"; and that the appellant "had a duty to other users of the road and should move away from the downhill part of the road where he stopped". With all respect to the learned trial Judge, we do not think that if it were not for the collision between the other two vehicles, a prosecution for stopping his vehicle where he did, would have ever been instituted against the appellant; and if instituted, we do not think it should succeed. The appellant was making, we think, normal and reasonable use of the road when he decided to stop his vehicle at the side of the road in order to look into the noise in the engine. He drove over 200 feet down the hill apparently in order to give a reasonable distance to other drivers using the road to take the necessary action.

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There can be no doubt that there was ample room for other ordinary vehicles driven with due care, to pass on the offside of the tanker. For the failure of either or both the drivers of the other two vehicles to avoid the collision between them in the circumstances in which it occurred on that day, we do not think that the appellant could be charged or convicted on the count preferred against him. We, therefore, allow the appeal and set aside the sentence. As far as the other drivers are concerned, not being parties in these proceedings, they cannot be affected in the least by the result of the present prosecution.

Appeal allowed.