

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

1971  
April 27

IOANNIS NICOLA SFONGARAS,

*Appellant,*

IOANNIS NICOLA  
SFONGARAS

v.

v.

THE POLICE

THE POLICE,

*Respondents.*

(Criminal Appeal No. 3244).

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*Findings of fact—Credibility of witnesses—Appeal—Approach of Court of Appeal to the matter—Conviction for failing to stop at traffic lights and for careless driving—Findings of fact that Appellant was guilty of negligence and that he was driving against the red lights clearly open to the trial Court on the evidence before it—Court of Appeal not persuaded that the reasoning behind such findings is either unsatisfactory or defective—Appeal dismissed.*

**Appeal against conviction.**

Appeal against conviction by Ioannis Nicola Sfongaras who was convicted on the 23rd March, 1971 at the District Court of Nicosia (Criminal Case No. 11817/70) on two counts of the offences of failing to stop at the traffic lights contrary to Regulation 58 (1) (i) of the Motor Vehicles Regulations 1959–1969 and section 3 of the Motor Vehicles and Road Traffic Law, Cap. 332, and of driving without due care and attention contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332 and was sentenced by Papadopoulos, D.J. to pay a fine of £10.– on the first count together with £4.– costs and no sentence was passed on him on the second count.

*M. G. Koumas*, for the Appellant.

*A. Frangos*, Senior Counsel of the Republic, for the Respondents.

TRIANTAFYLIDIS, P. The judgment of the Court will be delivered by Mr. Justice Hadjianastassiou.

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HADJIANASTASSIOU, J.: The Appellant in this case appeals to this Court against his conviction by the District Court of Nicosia, on March 23, 1971, on two counts, viz. of failing to stop at the traffic lights, contrary to Regulation 58 (1) (i) and 66 of the Motor Vehicles Regulations, 1959 to 1969 and section 3 of the Motor Vehicles and Road Traffic Law, Cap. 332; and of driving a motor car without due care and attention, contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332. He was sentenced to pay a fine of £10.— on count one with £4.— costs, and no sentence was imposed on count two.

There are two grounds raised by the notice of appeal in this case:— “(a) On the totality of evidence adduced, the inferences drawn by the trial Court were not justified on the evidence” and “(b) serious doubts ought to have been raised on the evidence adduced which entitled the Appellant to be acquitted”.

The facts in this case are simple: On July 17, 1970, the accused was driving motor car DD129 at Delfi Street on his way towards Acheon Street. When he reached the cross-roads which are controlled by traffic lights, he collided with an oncoming vehicle and the accident occurred because allegedly, he has failed to obey the road traffic lights from his own side.

According to the evidence of prosecution witness 1, Mr. A. Ierides, a Sub-Inspector of Police with several years' experience in traffic collisions, who was driving his motor car ED607 along Acheon Street going westwards, that is to say, towards the cross-roads, ahead of him was a van proceeding to the same direction. From a distance of 80-100 yards he saw that the lights in front of him were yellow amber and then turned into red. Just before he stopped behind the van under registration No. AM607, he saw a car No. EE919 coming from the opposite direction into the cross-roads. At the same time he saw a Rover car No. DD129 coming from the right without reducing speed and a violent collision occurred. The lights opposite him were red and on his right, that is to say, the direction from which the accused emerged into Acheon Road, the lights, having been checked by him, would be also red. In cross-examination by counsel for the accused, he said that he could see the driver of DD129, and that from the mode it came into the cross-roads, the brake-marks etc. the accused could not have stopped at the traffic lights. He added: “The

light on my right could not have been green as it would follow my green lights..... I have checked that for 6" the lights on all sides are red. I have no doubt about it".

The evidence of this witness, up to some extent, has been corroborated by the evidence of prosecution witness 2, Mr. Argyrides, who was the driver of the van which was also involved in an accident as a result of the first accident due to the driving of the accused.

Prosecution witness 3, P.C. 1486 M. Marcou who investigated the accident, took measurements and drew a sketch—*exhibit 1* before the trial Court—and also obtained a statement from the accused on the same date, which is *exhibit 2*. According to the evidence of this witness, the width of Acheon Street is 27 feet and of Delfi is 19 feet. He has also checked the traffic lights which he found in order, and said that the lights remain red for 5"–6" on all sides.

The accused gave evidence on oath and adopted fully the statement he had given to the police constable on that day. He denied that he had crossed against the red lights from his side and that the lights were green when he drove into the cross-roads. He said that he could not see Acheon Street when he entered, but he was going at a low speed and he applied his brakes when he saw the other car coming. In support of this evidence, his wife, Niki Sfongara, who was travelling in the car of her husband, gave evidence to the same effect, *viz.*, that her husband stopped at the red lights, and that when the green lights came on he proceeded to cross the cross-roads.

Counsel for the accused today, in his address to this Court, has contended that the evidence of Mr. Ierides which has been accepted by the trial Court, could not have been that of an accurate witness; and that his statement that he saw the lights being yellow amber from a distance of about 80–100 yards shows that if this witness was driving at a speed of 25 m.p.h. it must have taken him between 5"–6" to reach the lights, so that at the time when he stopped at such lights they could not just then have turned into red.

We would point out that there is no evidence before this Court as to what was the speed of this witness, and one, therefore, cannot speculate about the time it took him to cover 80–100 yards. Moreover, as it was pointed out to counsel

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for Appellant, one cannot read the relevant passage of the evidence of the witness so as to bear out the argument of counsel, because the witness clearly said that he saw the lights whilst he was still driving, for about 80–100 yards, and that the lights were yellow amber and then turned into red. Reading that passage together with the rest of his evidence, one cannot fairly draw the conclusion that the witness did not see the lights turning red just before he actually stopped in front of the lights, at the time when the accident occurred. We would, therefore, dismiss this contention of counsel.

The next contention of counsel was that there were contradictions between the evidence of this witness and prosecution witness 2. Having read the evidence, we have reached the view that no material contradictions can be found in their evidence with regard to the accident.

Finally, counsel argued that as both the accused and his wife gave evidence denying that he was driving against the red lights, the Court could at least take the view that there was some doubt on this point, and that the accused ought to have been afforded the benefit of the doubt.

The trial Court, after weighing the evidence given by the prosecution and the defence, and after assessing each witness, made its finding of fact that the accused was guilty of negligence by driving against the red traffic light.

The approach of this Court in such matters is well settled both as regards questions of findings of fact and of credibility of witnesses, which are within the province of the trial Judge who has the benefit of observing the demeanour of all the witnesses before him. Needless to say, that does not mean that if the reasoning behind the trial Judge's findings is wrong this Court will not interfere with such findings.

Having heard learned counsel for both sides and having considered the whole evidence, we are satisfied that the findings of fact that the Appellant was guilty of negligence and that he was driving against the red light were clearly open to the trial Court on the evidence before it, and we have not been persuaded that the reasoning behind such findings is either unsatisfactory or defective. We would, therefore, dismiss this appeal.

*Appeal dismissed.*