[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

JAMES S. WERE,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3444).

Motor Vehicles—Motor Vehicles Regulations, 1959-1970—*Construction of Regulation* 50 (*j*) (*i*)—*"Two lamps" envisaged thereby—Are not the headlamps—"Two lamps... so constructed and placed in front of the motor vehicle one on either side as to exhibit a white light visible within a reasonable distance in the direction towards which the motor vehicle is proceeding or is intended to proceed and clearly indicating the width of the motor vehicle...".—On the true construction of the above the Appellant ought not to have been convicted—Appeal allowed.*

Allowing this appeal against conviction, the Supreme Court:-

Held, (1). In our view the provisions of Regulation 50 (j) (i) (*supra*) are satisfied once the two lamps (not headlamps) were so constructed and placed in front of the motor vehicle, one on either side so as to exhibit a white light visible within a reasonable distance in the direction towards which a motor vehicle is proceeding.

(2) If the Judge had proceeded to consider also the purpose and effect of the words "clearly indicating the width of the motor vehicle" *supra* (which he omitted to quote), which clearly qualify the use of these two lamps, then he would have had no difficulty to come to the conclusion that the true construction of the said Regulation (*supra*) is that those two lamps envisaged by the Regulation are not the headlamps.

(3) We are fortified in this view, because the words "visible within a reasonable distance" should obviously be construed to require no more than that another road user could see at a distance that there were white lights ahead indicating the width of the vehicle, and not that he should be able to identify the type of that vehicle.

Appeal allowed.

Appeal against conviction.

Appeal against conviction by James S. Were who was convicted on the 30th March, 1973, at the District Court of Limassol (Criminal Case No. 976/73) on one count of the offence of driving a motor vehicle with irregular front lights contrary to regulations 50 (j) (i) (ii) and 66 of the Motor Vehicles Regulations 1959–1970 and sections 19 and 27(2) of the Motor Vehicles and Road Traffic Law, 1972 (Law 86 of 1972) and was bound over by Kronides, D.J. in the sum of £15.- to come up for judgment if and when called upon for a period of six months.

St. McBride, for the Appellant.

C. Kypridemos, for the Respondents.

The judgment of the Court was delivered by:-

HADJIANASTASSIOU, J.: On March 13, 1973, the accused was convicted at the Limassol District Court on a single count of driving a motor vehicle with irregular front lights contrary to Regulations 50 (j) (i) and 66 of the Motor Vehicles Regulations 1959–1970 and sections 19 and 27(2) of the Motor Vehicles and Road Traffic Law, (Law 86/72). He was bound over in the sum of £15 to come up for judgment if and when called upon for a period of 6 months. He was also ordered to pay 800 mils costs for the prosecution.

The Appellant appealed against conviction and the notice of appeal raised three points: (1) that the Court was wrong in holding that the two front lamps exhibiting white light under the relevant regulations should be the head lamps; (2) the finding of the Court that the front white lamps of the Appellant's motor car were the parking lights is arbitrary; and/or against the evidence and (3) in any case the conviction was not justified by the evidence and/or the evidence as a whole.

The facts are simple. On December 15, 1972, the accused was driving motor vehicle GA 679 on the Nicosia – Limassol main road, between the 44th and 45th milestone in the district of Limassol and at 7.15 p.m. he was stopped and reported by P.C. 2048 Chr. Leonidas that he was driving with two yellow front lights. During the hearing of this case it appeared that although this police witness said in evidence that he did not see any other lights attached to the front part of the motor vehicle of the accused, in cross-examination he added that he could not say if the accused had attached to the front of his

car two small white lights, but later on he explained that he did not see those lights because they were not visible. It appears to us that this witness, once he realized that the accused was driving with two yellow front lights, he was satisfied that a breach of the regulations had been committed, and in our view he did not in any way try to investigate further whether the said motor vehicle had attached to it two small white lamps. Indeed, once those two white lamps were later on found by the trial Court to be so constructed and placed in front of the said motor vehicle, one on either side, in our view it was necessary for the police to have checked and ascertained as to whether those two small lamps exhibiting white light became defective in the course of the journey from Larnaca to Limassol.

The accused who also gave evidence on oath told the Court that he was using during the journey the six lights including the two white lights which are so constructed and placed on either side of his motor car so as to exhibit the width of his car. In cross-examination he said that he had no reason to believe that the small white lights were not on at the time of approaching the policeman. Then the prosecuting officer put this question to him: " I put it to you that you were driving the car without lights (white) in front of your car, but yellow lights". The reply of the accused was: " I did not see the lights at that moment". In re-examination he said that in normal circumstances the small white lights are lighted with the head lamps. As we said earlier, the police witness did not bother at all to check whether those white lights were on that particular night functioning properly or were defective, although during the trial the Court itself, in the presence of the accused, his advocate and the prosecutor, inspected the said motor vehicle and found that there were two small white lamps under the head lamps.

The learned trial Judge, after dealing with the evidence before him, and having inspected the said motor vehicle, came to the conclusion merely by his own observation, and unassisted by any expert evidence, that those two small white lamps were actually the parking lights. Later on he had this to say in his judgment:-

> " I have examined very carefully all the evidence before me. I have considered also the Regulation 50 (j) (i) and I find that the meaning of Regulation 50 (j) (i) is that the two

lamps must be the head-lights which must be visible from a reasonable distance".

Then the learned Judge goes on:-

" Otherwise when, as the accused admitted, the four yellow headlamps are on, then the small parking lights are not visible from a reasonable distance. I find that the two small white lamps of the accused's car are actually the parking lights, as provided by the Regulation 50(k) of the same Regulations".

It was contended by counsel for the Appellant today (a) that the trial Judge in construing the Regulation 50 (j) (i) erred in law, because the two lamps required under the said Regulation are not the headlamps which are used for other purposes, but two lamps so constructed and placed in front of the motor vehicle, one on either side so as to exhibit a white light visible within a reasonable distance indicating the width of the vehicle;

(b) that the words "visible within a reasonable distance" should be held to require no more than that another road user could see at a distance that there were lights ahead indicating the width of the vehicle and not that he should be able to identify the type of that vehicle; and

(c) that the Judge in convicting the Appellant misdirected himself regarding the evidence, because there was no evidence that the Appellant admitted, as the Judge found, that the small white lights are not visible from a reasonable distance.

Although counsel for the Respondent very fairly conceded that the trial Court erred in law that what was required by the Regulation was that a vehicle should carry two lamps so constructed and placed in front of the vehicle, one on either side, and not two headlamps, he argued that the two white lamps were not those envisaged by the said Regulations once they were not seen by the policeman.

Although under s. 5 of the new law, i.e. the Motor Vehicles and Road Traffic Law (No. 86/72) which came into force on the 20th October, 1972, the Council of Ministers was empowered to make Regulations, no such Regulations have been made until now and we have, therefore, to turn to the Motor Vehicles Regulations 1959–1970, which continue to remain in force under the provisions of s. 27 (2) of the new law. Under the Motor Vehicles Regulations 1959–1970, regarding the con-

struction and fittings of motor vehicles, and the general conditions as to their use on the road, Regulation £50 provides that " ... no person shall cause ... a motor vehicle to be used on a road or shall drive or have charge or control of a motor vehicle when so used unless the following provisions are satisfied and observed:- ...".

Then I read (j) and (i) which is as follows:-

> "(j) During the period between half an hour after sunset and half an hour before sunrise a motor vehicle shall have attached thereto a lamp or lamps lighted and so constructed and placed as to exhibit light in accordance with the following provisions:-
>
> (i) Two lamps shall be so constructed and placed in front of the motor vehicle one on either side as to exhibit a white light visible within a reasonable distance in the direction towards which the motor vehicle is proceeding or is intended to proceed and clearly indicating the width of the motor vehicle. Two additional lamps shall be carried at the back of the vehicle, and shall show a red light in the reverse direction; such lamps shall be so contrived as to illuminate and render easily distinguishable every letter and figure on the identification plate fixed on the back of the vehicle. The lamps shall be placed in such a position as to be free from all obstruction to the light, and nothing shall be carried on any part of the vehicle which will in any way obstruct the light of any of the lamps;" ...

and under (iii) it is provided that:-

> "no light shall be used on any motor vehicle on a road unless such precautions are taken as are sufficient to prevent it from being dangerous by reason of its brilliance to persons, motor vehicle or vehicles using the road".

Having considered the contentions of both counsel, we find ourselves in agreement with counsel for the Appellant that the learned Judge erred regarding the construction of the said Regulation, because, in our view, the provisions of Regulation 50 (j) (i) are satisfied once the two lamps (not headlamps) were so constructed and placed in front of the motor vehicle, one on either side so as to exhibit a white light visible within a reasonable distance in the direction towards which a motor vehicle is proceeding. In our opinion, if the Judge had proceeded to

consider also the purpose and effect of the words "clearly indicating the width of the motor vehicle" (which he omitted to quote) which clearly qualify the use of those two lamps, then he would have had no difficulty to come to the conclusion that the true construction of the said Regulation is that those two lamps envisaged by the Regulations are not the headlamps. Furthermore, we are fortified in this view, when one considers also the purpose of Regulation 50 (j) (i) as contrasted to Regulation 50 (j) (iii) and also because the words "visible within a reasonable distance" should be construed to require no more than that another road user could see at a distance that there were white lights ahead indicating the width of the vehicle, and not that he should be able to identify the type of that vehicle.

Regarding the other finding of the Court that the two lamps are actually the parking lights, we think that, in the absence of any evidence on record, we are in doubt and we are not in a position to express an opinion on a matter which requires, to say the least, expert evidence. We would, therefore, reiterate that the duty of a user of a vehicle is to provide lamps which show light visible from a reasonable distance, but whether those lamps can also be used as parking lights, we repeat, in the absence of any evidence, we cannot draw any conclusions only from the personal experience of the learned Judge.

Finally, regarding the last submission of counsel, we think that, in the absence of a clear finding based on evidence, the Court in our view misdirected itself on a factual issue because going through the record we can find no evidence at all justifying or warranting the conclusion reached that the Appellant admitted that when the yellow lights of his vehicle are on, the small parking lights (as the Court called them) were not visible from a reasonable distance. The onus remains on the prosecution to prove that the Appellant was driving with irregular front lights contrary to the Regulations, and the evidence on on this issue is unsatisfactory.

For the reasons we have endeavoured to explain, and having regard to the evidence adduced, we are of the view that, the conviction was unreasonable, and we would reverse the judgment of the Court. We allow the appeal, quash the conviction, and set aside the sentence.

Appeal allowed.