

STAVROS SHIAKALLIS,

Appellant,

STAVROS
SHIAKALLIS

v.

THE POLICE,

v.
THE POLICE

Respondents.

(Criminal Appeal No. 3631).

Road Traffic—Careless driving—Defence—Sudden mechanical failure—It can be a defence if on the balance of probabilities its occurrence is established—Sudden failure of brakes accepted as a proved fact—Whether failure to use hand-brake sufficient to establish that appellant drove without due care and attention.

While the appellant was driving along a side road he collided, at a junction with a main road, with another car which was proceeding along such main road. It was not disputed that there was a "halt" sign at the part of the junction from which the appellant was to enter the main road.

The trial judge accepted that the brakes of the appellant failed suddenly due to a mechanical cause, without the appellant being in any way responsible in this respect. The judge found, nevertheless, the appellant guilty, on the ground that he did not try to apply the hand-brake, instead of swerving to his left, after the brakes had failed to operate. Upon appeal against conviction of the offence of driving without due care and attention contrary to section 8 of the Motor Vehicles and Road Traffic Law, 1972,

Held, (1) a sudden mechanical failure can be a defence in a case of this nature, if on the balance of probabilities its occurrence is established. (See *R. v. Spurge*, [1961] 2 All E.R. 688, which was followed in *Burns v. Bidder* [1966] 3 All E.R. 29; see also *Simpson v. Peat* [1952] 1 All E.R. 447 which was cited with approval in the *Spurge's* case, *supra*).

(2) We are of the view that the conviction was not

1975
July 2

STAVROS
SHIAKALLIS

v.
THE POLICE

warranted on the basis of the facts that were found by the trial Court. That possibly another driver might have tried to stop the car by using his hand-brake, is not sufficient to establish that the appellant drove without due care and attention merely because when his brakes failed suddenly he did not use his hand-brake, but swerved to his left in an effort to avoid a collision with another vehicle. 5

Appeal allowed.

Cases referred to :

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R. v. Spurge [1961] 2 All E.R. 688;

Burns v. Bidder [1966] 3 All E.R. 29;

Simpson v. Peat [1952] 1 All E.R. 447.

Appeal against conviction.

Appeal against conviction by Stavros Shiakallis who was convicted on the 30th May, 1975 at the District Court of Nicosia (Criminal Case No. 14130/73) on one count of the offence of driving without due care and attention contrary to section 8 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72) and was bound over, by A. Ioannides, D.J., in the sum of £50.- for nine months to keep the Traffic Laws and Regulations and he was further ordered to pay £12.- costs. 15 20

E. Odysseos with N. Tooulara, (Miss),
for the appellant. 25

Gl. Michaelides, for the respondents.

The judgment of the Court was delivered by :-

TRIANTAFYLLIDES, P. : The appellant appeals against his conviction of the offence of driving without due care and attention, contrary to section 8 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72). 30

The appellant was prosecuted after a car, No. ET 200, which he was driving on April 20, 1973, along the Mia Milia - Kythrea road, collided, at a junction with a main road, with another car, No. AZ 585, which was proceeding along such main road. 35

It is not disputed that there was a "halt" sign at the

part of the junction from which the appellant was to enter the main road.

1975
July 2

—
STAVROS
SHAKALLIS

v.
THE POLICE

The appellant has stated in evidence that when he was about 10 feet away from the said sign he tried to apply the brakes in order to stop, but he realised, at that moment, for the first time, that due to a mechanical failure the brakes would not operate and, so, in an effort to avoid an accident, he swerved to his left, but, eventually, he did not manage to avert a collision with the other car.

The trial judge accepted that the brakes of the appellant failed suddenly due to a mechanical cause, without the appellant being in any way responsible in this respect. The judge found, nevertheless, the appellant guilty, on the ground that he did not try to apply the hand-brake, instead of swerving to his left, after the brakes had failed to operate.

It is to be derived from *R. v. Spurge* [1961] 2 All E.R. 688, which was followed in *Burns v. Bidder*, [1966] 3 All E.R. 29, that a sudden mechanical failure can be a defence in a case of this nature, if on the balance of probabilities its occurrence is established.

In the present case the trial Court accepted the mechanical failure as a proved fact; and, as it was stressed in *Simpson v. Peat*, [1952] 1 All E.R. 447, which was cited with approval in the *Spurge's* case, *supra*, when a driver is confronted with a sudden emergency through no fault of his own, it is no use being wise after the event and saying to him that if he had swerved to the left, instead of to the right, a collision would not have occurred; if in fact, at the time, he was "exercising the degree of care and attention which a reasonably prudent driver would exercise, he ought not to be convicted, even though another, and, perhaps, more highly skilled, driver would have acted differently".

In the present case we are of the view that the conviction was not warranted on the basis of the facts that were found by the trial Court. It is correct, as was submitted by counsel for the respondents, that possibly another driver might have tried to stop the car by using his hand-brake, but this is not sufficient to establish that

1975
July 2

STAVROS
SHIAKALLIS

v.

THE POLICE

the appellant drove without due care and attention merely because when his brakes failed suddenly he did not use his hand-brake but swerved to his left in an effort to avoid a collision with another vehicle. The whole relevant sequence of events must have evolved in a matter of seconds, and as we are satisfied that the appellant has acted, in the circumstances, as a reasonably prudent driver would have done, he could not have been found guilty in the present criminal proceedings; and, therefore, this appeal is allowed and his conviction is set aside. 5 10

Appeal allowed.