

1977
Oct. 13

[STAVRINIDES, A. LOIZOU AND MALACHTOS, JJ.]

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SOFOCLIS
HADJIGEORGHIOU
v.
THE POLICE

SOFOCLIS HADJIGEORGHIOU,

Appellant.

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 3799).

Road Traffic—Careless driving—Sections 8 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86 of 1972)—Collision on main road whilst appellant was reversing his vehicle from side road—Signal man on main road—Duty of signal man and driver—Appellant not acting on signals but taking it upon himself to reverse—In circumstances proving that he failed to have proper lookout and he cut the path of a vehicle on main road—Rightly found guilty.

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Whilst the appellant was reversing with a road roller in Kato Lakatamia into the main Nicosia-Deftera road he collided with a car driven along the main road. It was undisputed that there was a signal man on the main road but there was a conflict as to whether he properly and in good time signalled with a view to stopping the driver of the car before waving, if he did so at all, to the appellant to start the process of reversing.

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The appellant stated that there was a signal man on the road stopping the traffic; that as soon as he came out of the side road into the main road, of which he could have view from his seat, he looked to the left and did not see any vehicle; that then he looked into his right and started slowly to get into the main road; and that he did not manage to drive for a pace and he heard the sound of braking and immediately the noise of an impact on the lefthand side of the road roller.

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The trial Judge did not expressly say which of the two versions before him he accepted but relied on the statement of the appellant and concluded that it was obvious from such statement that he did not wait, nor did he rely on the signal-man in order to signal him when to enter the main road, but he himself looked out and when he saw that no cars were coming from either

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direction he proceeded and the collision occurred. On this statement and independently of what were the duties of the signal man he found that the appellant failed to keep a proper lookout before he entered the main road and convicted him of the offence of driving without due care and attention.

Upon appeal against conviction Counsel for the appellant referred in particular to *Grange Motor (CYMBRAN) Ltd. v. Spencer* [1969] 1 All E.R. 340 and contended that once the appellant had obtained the assistance of a person to direct him whilst reversing into a main road he was free from liability even if the warnings of the man so detailed were inadequate.

Held, that it is not borne out from the evidence that the signal man signalled to the appellant to reverse or that the appellant did reverse because of any such signal; that even if that was so a person who makes a signal to a driver of a vehicle on a road must have regard to other users of the road before giving a signal and accordingly owes a duty of care to the driver of the vehicle; that the driver to whom the signal is addressed has a duty to use reasonable care in deciding whether and how to act on a signal (principles laid down in the *Grange* case (*supra*) adopted); that the trial Court in reliance to the appellants' own statement found that he did not act on the signals but took it upon himself to reverse in circumstances which proved that he failed to have proper lookout and he cut the path of a vehicle driven on the main road which had in fact priority to pass; and that, accordingly, he was rightly found guilty of driving without due care and attention.

Appeal dismissed.

Cases referred to:

Grange Motors (CYMBRAN) Ltd. v. Spencer [1969] 1 All E.R. 340.

Appeal against conviction.

Appeal against conviction by Sofoclis HadjiGeorghiou who was convicted on the 30th April, 1977 at the District Court of Nicosia (Criminal Case No. 31010/76) on one count of the offence of driving without due care and attention, contrary to sections 8 and 19 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 five months to keep the traffic Laws and Regulations.

E. Lemonaris, for the appellant.

A.M. Angelides, Counsel of the Republic, for the Respondents.

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STAVRINIDES, J.: The judgment of the Court will be delivered by H.H. A. Loizou.

A. LOIZOU, J.: This is an appeal against the conviction of the appellant by the District Court of Nicosia on a charge of driving on the 6th October, 1976 on the Nicosia—Deftera main road, a motor vehicle, to wit, a road roller under Registration No. CD. 672 without due care and attention, contrary to ss. 8 & 19 of the Motor Vehicles and Road Traffic Law, 1972 (No. 86/72).

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The appellant on the day in question whilst reversing with the said roller from a side road in Kato Lakatamia into the main Nicosia—Deftera road, cut the path of and caused a collision with a motor-car Registration No. HH 314 driven by Kyriacos Americanou along the main road.

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It was undisputed that the foreman of the works in which the road roller was engaged, stood in the middle of the main road, but there was a conflict as to whether he properly and in good time signalled with a view to stopping the complainant before waving, if he did so at all, the appellant to start the process of reversing.

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The learned trial Judge summed up the evidence of the witnesses for the prosecution and the defence. After referring to the evidence of Police Constable Stylianou, who prepared the plan of the scene of the accident and gave aspects of the real evidence, he referred to the testimony of Christodoulou, an eye-witness, who said that he saw the foreman stand in the main road and raising his hand towards the side road and then he saw the road roller reversing towards the main road. As soon as it came out of the side road it collided with the car, which was proceeding along the main road.

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The other eye-witness, Andreou, who was also sitting at the same coffee shop with the previous witness, gave the same version, with the difference, according to him that the foreman raised his hand towards the direction of the on-coming motor car simultaneously with the collision.

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The complainant and his wife testified that they saw the road roller reversing from the side road, its driver applied brakes and they did not see anybody standing on the road and making any signal.

5 The appellant adopted his statement to the Police and called as a witness the foreman. The latter said that after stopping a car coming from the one side he signalled to another car, which was coming from the opposite side and then, without making certain that that car stopped, signalled to the appellant to
10 proceed, which the latter did and because the car on the main road did not stop, a collision followed.

The appellant in his statement, after referring to the presence of the foreman in the middle of the road stopping the traffic, said that as soon as he came out of the side road into the main
15 road, of which he could have view from his seat, look to the left, that is to say, in the direction of Nicosia, and did not see any vehicle, then looked into his right, that is in the direction of Deftera, and started slowly to get into the main road. He did not manage to drive for a pace and he heard the sound of braking
20 and immediately the noise of an impact, on the lefthand side of the road roller.

The learned trial Judge did not expressly say which of the witnesses he believed or which version he accepted but relied on the statement of the appellant and concluded that it was
25 obvious from his statement that he did not wait, nor did he rely on the foreman in order to signal to him when to enter the main road, but he himself looked out and when he saw that no cars were coming from either direction he proceeded and the collision occurred. On this statement, and independently of what were
30 the duties of the foreman, who, on his own showing, did not wait for the on-coming car to stop before he signalled to the appellant to move, he found the appellant guilty of failing to keep a proper lookout before he entered the main road, with the result that he did not see in time the car of the complainant, proceeded and
35 entered the main road and the collision occurred and this before even the foreman signalled to him to do so.

It was the case for the appellant that once he had obtained the assistance of a person to direct him whilst reversing into a main road, that is to say, executing a dangerous manoeuvre, he was
40 free from liability, even if the warnings of the man so detailed were adequate.

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THE POLICE

We were referred to a number of authorities and in particular to the case of *Grange Motors (CYMBRAN) Ltd. v. Spencer etc.* [1969] 1 All E.R. p. 340.

It is not borne out from the evidence, as accepted by the trial Court, that the foreman on the main road really signalled to the appellant to reverse or that the appellant did reverse because of any such signal. But even if that was so, the *Grange* case would not be helpful to the appellant as there it was held that a person who makes a signal to a driver of a vehicle on a road must have regard to other users of the road before giving a signal and accordingly owes a duty of care to the driver of the vehicle, but the driver to whom the signal is addressed has a duty to use reasonable care in deciding whether and how to act on a signal; the question being, did the driver act with reasonable care? 5
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We fully adopt these principles, but they have no direct bearing on this case as here the trial Court, in reliance to the appellant's own statement, found that he did not act on the signals, of the foreman in order to reverse into the main road, but took it upon himself to reverse, in circumstances which proved that he failed to have proper lookout and he cut the path of a vehicle driven on the main road which had in fact priority to pass. Consequently, he was rightly found guilty of driving without due care and attention. 15
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For the aforesaid reasons this appeal should fail and is hereby dismissed. 25

Appeal dismissed.