1982 October 27

[A. LOIZOU, SAVVIDES AND STYLIANIDES, JJ.]

KYRIACOS TRIANTAFYLLIDES,

Appellant,

v.

THE POLICE,

Respondents

(*Criminal Appeal No.*4292)

Findings of fact made by trial Court—Based on valuation of credibility of witnesses—Appeal—Principles applicable.

Road traffic—Speeding—Muniquip machine radar device—Need to handle properly.

This appeal was directed against the conviction of the appellant of the offence of exceeding the speed limit within a built up area, contrary to sections 6 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86 of 1972). The speed of the accused was ascertained by means of the muniquip machine, a radar device; and the conviction rested on the findings of fact made by the trial Court based on his valuation of the credibility of witnesses.

Held, that this Court will not readily interfere with the findings of fact based on the valuation of the credibility of witnesses made by a trial Judge, who has the advantage of watching their demeanour and hearing their testimony; that the appellant on whom lies the burden of proof has failed to persuade this Court that this was a case in which it might on appeal interfere with the findings of fact and the conclusions drawn thereon based on the credibility of witnesses by ruling that the verdict reached is unreasonable having regard to the evidence adduced; accordingly the appeal must fail.

Appeal dismissed.

Observations with regard to the need to handle properly the muniquip machine, radar device.

Cases referred to:

Regina v. Desmond Hughes (Crown Court at Newport before H.H. Judge Pitchford 24th March, 1981).

Appeal against conviction.

Appeal against conviction by Kyriacos Triantafyllides who was convicted on the 23rd January, 1982 at the District Court of Nicosia (Criminal Case No. 8133/81) on one count of the offence of exceeding the speed limit contrary to sections 6 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86 of 1972) and was sentenced by Stavrinides, D.J. to pay £14.- fine.

St. Kittis with *N. Flourentzos*, for the appellant.

A. M. Angelides, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

A. Loizou, J. read the following judgment of the Court. The appellant, who is a senior employee at Amiantos Mines, was found guilty of the offence of exceeding the speed limit, contrary to sections 6 and 19 of the Motor Vehicles and Road Traffic Law 1972 (Law No. 86 of 1972). According to the particulars of the offence as set out in the charge, the appellant on the 3rd day of March, 1981, at Nicosia, did drive motor vehicle LB.193 on Grivas Dighenis Avenue, within the built up area of Nicosia, at a speed which was likely to endanger human life, to wit, at 44 m.p.h. instead of the prescribed for that part of the road 30 m.p.h. He was sentenced to C£14.- fine and ordered to pay C£15.- costs of the prosecution.

This appeal is against his said conviction and the main ground upon which it has been argued is that the Muniquip machine, a radar device through which the prosecution claimed to have ascertained the speed at which the appellant was driving his vehicle, could not be properly relied upon inasmuch as in accordance with the evidence adduced in his defence and which was wrongly discarded by the learned trial Judge, the possibility existed of the signal given by the said machine being false or invalid for a number of reasons unconnected with the speed at which the said vehicle was driven.

The learned trial Judge, after giving a summary of the testi-

mony of each witness and after referring to their demeanour in the witness box, concluded that the witnesses for the prosecution gave him the impression of persons who were telling the truth and on whom he could rely and he accepted the totality of their evidence without hesitation, whereas with the exception of one witness for the defence, the rest of them did not give him the impression that they were persons that could be relied upon as telling the truth.

Valid reasons have also been given by the learned trial Judge for preferring to that of the defence expert witness the evidence of Police Superintendent Nicos Sertaris, the Officer in charge of the Telecommunications Branch of the Police and a holder of a University Degree of Bachelor of Science in Electronics and who attended also post-graduate studies in the United States for telecommunications and for special lessons for the repair of radar equipment which is used in Cyprus by the Police.

This Muniquip is based on the Doppler principle of the difference in frequency of a sound between where an object is moving towards the listener and away from the listener. It consists of a transmitter and a receiver; it looks like a hair-drier and its weight is about 1 1/2 kgs. The transmitter puts out radio waves which are reflected from its target and the result is that a moving object within the ambit of the wave or beam reflects the beam back to the device and alters the frequency of the beam which causes the device to transmit that note into the form of a particular speed so that the speed of the moving object is recorded by the degree in that alteration and the frequency of the reflected beam. The kind of equipment used in this case was stated to have been made specially for motorcars as targets and although it can be used as against smaller objects, its sensitivity in such case would be reduced.

On the day in question, Acting Police Sergeant Ioannou trained his equipment at the car of the accused which was coming towards him; at the time there were no other cars going to the direction the appellant was coming from but only a car that was following that of the appellant at a great distance. After he left the equipment so trained for some time, it recorded on its window the speed of the car of the appellant as being 44 m.p.h. The appellant then was stopped, he was told by Police

Constable Karantonis who was on duty with the previous witness, that he would be reported for driving at a speed of 44 m.p.h. and he replied "All right". In fact, witness Ioannou also showed to him at the time the recording of the speed on the window of the equipment.

Both policemen stated that they checked the said equipment both before and after they went on duty and that it was properly working.

The learned trial Judge relying on the evidence adduced excluded the possibility of the recording being false or invalid because of the presence of other traffic or buildings upon which its beam was reflected. He further accepted the evidence adduced before him that this particular kind of equipment could not have been in the circumstances affected by any other interference and that the speed recorder was that of the car of the appellant. Learned counsel for the appellant has vigorously argued the case and in effect he has asked us to upset the findings of fact made by the learned trial Judge and the conclusions drawn thereon. In support of his arguments he has drawn our attention to the case of *Regina v. Desmond Hughes* (Crown Court at Newport before H.H. Judge Pitchford, 24th March, 1981), whereby the appeal against the conviction by the Newport Magistrates' Court, for exceeding the speed limit was allowed.

It has to be pointed out, however, that the conclusions arrived at in that appeal could not as such affect the outcome of the case before us as there are certain fundamental aspects involved when it comes to the usefulness of the judgments of other Courts or of judicial precedents. The Appeal Bench in the *Hughes case* heard afresh the evidence including that of experts that had been heard by the Magistrates and made its own findings of fact and drew its own conclusions as trial Judges who hear the evidence, might and in fact ought, to have done, whereas in our case the position of this Court hearing a case on appeal is different as we only have to rely on the transcribed record of the case. As it has been said time and again this Court will not readily interfere with the findings of fact based on the valuation of the credibility of witnesses made by a trial Judge, who has the advantage of watching their demeanour and

hearing their testimony. Furthermore there is nothing in the evidence to suggest that the model used in the case before us is the same as that used by the Police in that appeal and one cannot help observing that in matters of such equipment the technological progress achieved from day to day is a significant factor to be born in mind in the comparison of equipments of possibly different models although of the same make.

It is significant, however, that even in that case the learned Judge in his judgment made certain observations feeling that it was his duty to do so when that machine was to be used in the future, which means that he did not rule it out as unreliable as such but only that its reading could not constitute the corroboration required in a prosecution under section 78(a)(2) of The Road Traffic Regulation Act of 1967, in that particular case. The safeguards suggested by him to be adopted by the police operators were, firstly, that not only should they test the machine with the tuning fork and a button, but they should test it against a motorcar travelling at a particular speed - a very simple thing to do -. Secondly, before such machine is used the operator should test the site chosen for possible sources of interference. All he has to do he said was precisely what the expert witness said: point the machine in the air and if he gets a reading other than a minus sign it means that there is a source of interference in the air. Thirdly, under no circumstances must the Police patrol car transmitter or any portable transmitter be used anywhere near the Muniquip, because it gives a greater risk of false readings. Fourthly that there should be a sensible period of expiry before the device is locked. It could be done, he suggested, by the officer counting 1,2,3, or even 4. We have thought it useful to include these observations in our judgment so that the appropriate Police Authorities here, may co-relate them to the type of equipment they use, bear them, if necessary in mind and instruct police operators accordingly if that is called for in the circumstances.

On the totality of the circumstances we have come to the conclusion that the appellant on whom lies the burden of proof has failed to persuade us that this was a case in which, we might on appeal interfere with the findings of fact and the conclusions drawn thereon based on the credibility of witnesses by ruling

that the verdict reached is unreasonable having regard to the evidence adduced.

For all the above reasons this appeal is dismissed.

Appeal dismissed.