

1985 March 4

[A. LOIZOU, DEMETRIADES, LORIS, JJ.]

MARCOS DEMETRIOU,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4585).

Findings of fact—Based on credibility of witnesses—Inferences drawn from findings of fact—Appeal turning thereon—Principles on which Court of Appeal acts.

5 *Road traffic—Sentence—Careless driving—£20.- fine—Not excessive.*

10 Whilst the appellant was driving motor-van along a 17 feet 6 inches wide asphalted road within the area known as the "Secretariat" at Nicosia, he knocked slightly against a saloon-car, which at the time was parked on the berm of the said road. He was convicted of the offence of driving without due care and attention and was sentenced to pay a fine of £20.-. Hence an appeal against conviction which was turning on the findings of fact made by the trial Judge and the inferences drawn therefrom; and an
15 appeal against sentence on the ground that it was manifestly excessive in view of the circumstances of the case.

20 *Held*, (1) that in cases when an appeal is directed against the credibility of witnesses, it must be shown that the trial Judge was wrong in evaluating the evidence and the onus is on the appellant to persuade this Court that that is so; that matters relating to credibility of witnesses fall within the province of the trial Judge who has the opportunity to see and hear the witnesses; that if on the
25 evidence adduced it was open to the trial Court to make the findings concerned this Court will not interfere unless the inferences drawn therefrom were not warranted by

the evidence and that in such a case this Court is in as good position to draw its own inferences; that this Court is satisfied that the findings of the Court below were warranted by the evidence adduced and the inferences the trial Judge drew from such facts were reasonably open to him. 5

(2) That in the light of the circumstances of this case the sentence is in no way excessive and therefore there is no reason to interfere.

Appeal dismissed. 10

Appeal against conviction and sentence.

Appeal against conviction and sentence by Marcos Demetriou who was convicted on the 12th October, 1984 at the District Court of Nicosia (Criminal Case No. 9580/84) 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 No. 86/72) and was sentenced by N. Nicolaou, D. J. to pay £20.- fine. 15

S. Stavrinou, for the appellant.

R. Gavrielides, Senior Counsel of the Republic, for the respondents. 20

A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Loris.

LORIS J.: The present appeal is directed against the conviction and sentence of the appellant by a District Judge in Nicosia Criminal Case No. 9580/84 (N. Nicolaou D. J.), whereby the appellant was convicted of the offence of driving a motor-vehicle without due care and attention contrary to ss. 8 and 19 of the Motor Vehicles and Road Traffic Law 86/72 and sentenced to a fine of £20.- 25 30

The salient facts hereof are very briefly as follows:

Whilst the appellant, a Government employee, was driving on 20.3.84 a motor-van under Registration No. JH 604 along, a 17 feet 6 inches wide asphalted road within the area known as the "Secretariat" at Nicosia, knocked slightly against a saloon-car under Registration No. HG 989, 35

belonging to a female Government employee, which at the time, was parked on the berm of the said road; the width of the berm is 15 feet and the front part of the stationary car was protruding about 1 foot over the asphalted portion of the road. It seems that the van of the appellant which was proceeding on the asphalted road had to be manoeuvred at some time more closely to its nearside as there were other vehicles stationary on the asphalt, with the result that the bumper thereof hit and smashed the front left headlamp of motor car HG 989 while parked as aforesaid. The point of impact as denoted by broken glass and marked on the sketch prepared by police constable P.W.1, is hardly 1 foot within the asphalt to the nearside of the van driven at the time by the appellant.

The appellant obviously thinking that nobody had witnessed the accident, as the complainant was not present, left the scene of the accident; but P.W.2 another female Government employee working in the Ministry of Finance, whose office was just above the scene of the accident, having heard the noise caused by the impact and the broken glass, looked out of the window of her office and saw the position of the vehicles involved in the accident. In the result the police was summoned to the scene, investigations commenced, resulting in the prosecution of the appellant in the case under appeal.

During the hearing before the trial Judge two witnesses gave evidence for the prosecution including the Police Constable who has prepared a sketch of the scene of the accident. The accused when called upon to defend himself gave evidence and called no other witnesses.

In the result the accused was convicted of the offence charged and sentenced to pay £20.- fine.

The complaints of the appellant in this appeal as regards his conviction boil down to the credibility of the witnesses and the inferences drawn by the trial Judge.

As regards sentence his complaint is that in view of the circumstances of the case the fine of £20.- imposed was manifestly excessive.

In cases when an appeal is directed against the credibility of witnesses, it must be shown that the trial Judge was

wrong in evaluating the evidence and the onus is on the appellant to persuade us that that is so. Matters relating to credibility of witnesses fall within the province of the trial Judge who has the opportunity to see and hear the witnesses. If on the evidence adduced it was open to the trial Court to make the findings concerned this Court will not interfere unless the inferences drawn therefrom were not warranted by the evidence. In such a case our Court is in as good position to draw its own inferences. 5

We have considered the submissions of learned counsel in the light of the judgment of the trial Court and the record and we are satisfied that the findings of the Court below were warranted by the evidence adduced and the inferences the trial Judge drew from such facts were reasonably open to him; we should even go further and say that the inferences drawn by the trial Judge were the only reasonable inferences that could be drawn by him. 10 15

As regards the sentence imposed, we are of the view that in the light of the circumstances of this case it is no way excessive and therefore we see no reason to interfere. 20

In the result the present appeal fails and it is accordingly dismissed.

Appeal dismissed.