

IORDANIS PAVLOU SHIOUKIOUROGLOU,

Appellant.

v.

THE POLICE,

Respondents.

IORDANIS
PAVLOU
SHIOUKIOU-
ROGLOU
v.
THE POLICE

(*Criminal Appeal No. 2831*)

Criminal Procedure—Appeals—Findings of fact by the trial Court—Appeal against conviction for driving without due care and attention, contrary to sections 6 and 13 of the Motor Vehicles and Road Traffic Law, Cap. 332—Challenging trial Judge's findings of fact—Requirements to enable an appellant to succeed in his appeal—The onus is on the appellant to satisfy the Appellate Court that the findings are unsatisfactory in the light of the evidence—In the present case it was open for the trial judge, on the evidence before him to find as he did—The above principles are applicable to criminal as well as to civil appeals.

Findings of fact by trial Courts—Principles upon which an Appellate Court will interfere with such findings—Both in criminal and in civil appeals—See above.

Road Traffic—Motor Vehicles and Road Traffic Law, Cap. 332, sections 6 and 13—Driving without due care and attention — Conviction—Appeal against conviction challenging the findings of fact made by the trial judge—See above.

Cases referred to :

Antoniou v. Elmaz (1966) 1 C.L.R. 210, followed.

Appeal against conviction.

Appeal against conviction by appellant who was convicted on the 5th July, 1966 at the District Court of Limassol (Criminal Case No. 4831/66) on one count of the offence of driving a motor car without due care and attention, contrary to sections 6 and 13 of the Motor Vehicles and Road Traffic Law, Cap. 332, as amended by Laws 25/59, 2/62 and 8/64, and was sentenced by Malachtos, D.J., to pay a fine of £20 and £4,500 mils costs.

A. Myrianthis, for the appellant.

A. Frangos, Counsel of the Republic, for the respondents.

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The judgment of the Court was delivered by :

VASSILIADES, AG. P.: This is an appeal against a conviction in the District Court of Limassol where the appellant was convicted on July 5, 1966, on a charge under sections 6 and 13 of the Motor Vehicles and Road Traffic Law (Cap. 332 as amended at the material time) for driving without due care and attention at a point of the main Limassol-Nicosia road in the outskirts of the town of Limassol, on March 3, 1966.

The grounds upon which the appeal is taken as they appear in the notice prepared by counsel, are to the effect :—

- (1) that the trial Court acted unreasonably in rejecting the evidence of the appellant, having regard to the evidence as a whole ; and
- (2) that the verdict is not supported by the evidence ; and is unreasonable having regard to the evidence as a whole. The facts of the case are fairly simple. The appellant, driving his new " Alfa Romeo " car, came into a forcible collision with a tractor proceeding in the same direction, while overtaking the tractor, at a point of the road near Limassol town, some 50 yards after a wide bend. The collision occurred at the part of the road which would, normally, be in the path of the overtaking car. And apparently it occurred as the tractor was changing direction from his near side of the road to get across, into a side road.

The case for the prosecution was that the driver of the tractor duly signalled his intention to change direction across the path of overtaking traffic, by stretching his right arm in the usual manner ; and that after signalling, he used his right hand again in manipulating the driving wheel of his vehicle for turning into the side road. The prosecution, therefore, blamed the driver of the overtaking vehicle for the collision.

The case of the appellant, on the other hand, was that, on clearing the bend, the driver of the overtaking vehicle, travelling at a speed of about 35-40 m.p.h., saw the tractor about 40 metres ahead of him, proceeding on his proper side of the road, and seeing no signal or other indication that the tractor was about to change direction, tried to

overtake it ; and in doing so while the tractor was changing direction, came into collision with the off-side of the slow vehicle.

The main point of dispute at the trial, was, apparently, whether the driver of the tractor had duly signalled his intention to change direction across the path of overtaking traffic ; appellant's " Alfa Romeo " car at the material time. " On this point—the learned trial Judge says in the second paragraph of his judgment—the evidence of the driver of the tractor is clear. He told this Court that when he was at a distance of about 40-50 metres away from the side road, he extended his right arm and signalled his intention to turn right. He was at the time holding the left hand side of the road He removed his right hand and placed it on the wheel of the tractor at some time, as it can be inferred from his evidence, when his tractor was within the distance of 20 metres away from the side -road "

The evidence of the driver of the tractor (P.W.3) was supported by the evidence of a witness standing at the side of the road (P.W.2) watching these vehicles as he (the witness) was about to cross the road himself.

The trial Judge accepted the evidence of the prosecution on these points : and found that the driver of the tractor did signal with his right arm before changing direction. " Furthermore—the trial Judge says towards the end of his judgment (page 12E of the record)—I do not accept the allegation of the accused that he did not see the complainant signalling his intention to turn right, as he alleges, as when he first saw it, the tractor was driven on the left hand side of the road. The accused was bound to see the signal, if he were driving with due care and attention. The evidence of the tractor driver is clear on this point, that he only removed his hand when he was driving towards the right hand side of the road "

In challenging the trial Judge's findings, and the conviction based thereon, the appellant has to satisfy this Court that the findings are unsatisfactory in the light of the evidence on record. To succeed in his appeal, he has to persuade this Court that, considering the evidence on record, properly assessed, the findings are unreasonable. Our approach as an appellate Court to the findings of the trial Court, may be found in a number of cases, both civil and criminal. One of the more recent ones is *Antoniou v. Elmaz* (1966) 1 C.L.R. 210.

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In a criminal case, it is for the trial Court to assess the evidence and find the facts necessary to constitute the offence charged. If on the evidence before it, or such of it as it was admissible, it is open to the trial Court to make such findings, these can only be disturbed on appeal, if this Court is persuaded that they are unsatisfactory to the extent of requiring intervention in order to do justice in the case according to law.

In this particular case, we are all unanimously of opinion at this stage, after hearing learned counsel for the appellant, and notwithstanding his strenuous efforts, that on the evidence before him, it was open to the trial Judge to find as he did ; and that it is not necessary for us to call upon the respondent to support the conviction.

The appeal fails ; and must be dismissed. Appeal dismissed. Conviction affirmed.

*Appeal dismissed. Order
in terms.*