

CHARALAMBOS KOUKOUNIDES.

Appellant

CHARALAMBOS
KOUKOUNIDES
v.
THE POLICE

THE POLICE,

Respondents

(*Criminal Appeal No 2904*)

Road Traffic—The Motor Transport Law, 1964, sections 9 (4) and 15 (1) (2), and the Motor Transport Regulations, 1964 Regulations 13 (h) and 25—Approved stopping place—Failing to stop taxi at the approved stopping place contrary to Regulations 13 (h) and 25 (supra)—No substance in submission that said Regulation 13 (h) is ultra vires the provisions of sections 9 (4) and 15 (1) (2) of the aforesaid Law—Or repugnant to Articles 13, 15, 25 and 28 of the Constitution

Criminal Procedure—Trial in criminal cases—Witness called by the defence but not asked by them to give evidence—Called by the Court after the close of the defence—Even if this course was not allowed, the Court, still, would not interfere with the conviction appealed against—And would exercise the powers vested in it by the proviso to section 145 (1) (b) of the Criminal Procedure Law, Cap 155—As there has been no substantial miscarriage of justice.

Miscarriage of justice—No miscarriage of justice—Section 145 (1) (b), proviso, of the Criminal Procedure Law, Cap 155—See above

Evidence in Criminal Cases—The best evidence rule In prosecutions like the present one the taxi licence of the accused must be produced by the prosecution as part of its case—It is not sufficient for a police constable to give evidence and say that according to the licence in the accused's possession the latter is entitled to park in a specified street

Witness—Witness called by the Court after the close of the case for the defence—See above under Criminal Procedure

Trial in Criminal Cases—See above under Criminal Procedure

Constitutional Law—Articles 13, 15, 25 and 28—Regulation 13 (h) of the Motor Transport Regulations, 1964, is not repugnant to any of those Articles of the Constitution

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The appellant, a taxi-driver was convicted of the offence of failing to stop his taxi at the approved stopping place, contrary to Regulations 13 (*h*) and 25 of the Motor Transport Regulations, 1964, made under the provisions of section 15 of the Motor Transport Law, 1964. The main grounds of appeal are three : (1) that Regulation 13 (*h*) is *ultra vires* the provisions of section 9 (4) of the aforesaid Law and the provisions of section 15 (1) and (2) of the same Law ; (2) that the aforesaid Regulation is repugnant to the provisions of Articles 13, 15, 25 and 28 of the Constitution ; and (3) that the trial Judge called a witness after the close of the defence, who had been called by the defence. after an adjournment granted at their request, but eventually not asked to give evidence.

In dismissing the appeal the Court :

Held, (1) we do not think that there is any substance either in the first or second grounds of appeal (*supra*).

(2) As regards the third ground (*supra*), even if there was any substance in the submission (*supra*) this would be a case in which the Court would exercise the powers vested in it under the proviso to section 145 (1) (*h*) of the Criminal Procedure Law, Cap. 155, that there has been no substantial miscarriage of justice.

Appeal dismissed.

Per curiam : We consider that it is necessary that in prosecutions like the present one the taxi licence should be produced to the Court by the prosecution as part of their case. It is not sufficient for a police constable to give evidence and say that according to the licence in the accused's possession he is entitled to park in a specified street. This is contrary to the best evidence rule. In fact the licence was eventually produced in this case by the accused himself and was before the Court.

Appeal against conviction.

Appeal against conviction by appellant who was convicted on the 15th April, 1967, at the District Court of Nicosia (Criminal Case No. 1196/67) on one count of the offence of failing to stop his taxi at the approved stopping place,

contrary to Regulations 13 (h) and 25 of the Motor Transport Regulations, 1964, and section 15 of the Motor Transport Law, 1964, and was sentenced by Papa Ioannou, Ag. D.J., to pay a fine of £4.

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E. Emilianides, for the appellant.

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

The judgment of the Court was delivered by :

JOSEPHIDES : We shall not call upon you Mr. Frangos and we do not propose giving a long judgment.

The appellant was convicted of the offence of failing to stop his taxi at the approved stopping place, contrary to Regulations 13 (h) and 25 of the Motor Transport Regulations, 1964, made under the provisions of section 15 of the Motor Transport Law, 1964.

The facts, which are not really in dispute, were that the taxi-driver was licensed under a permit issued under the provisions of the aforesaid law and regulations, and one of the conditions of the permit was that he should park his taxi in Gregoriou Afxentiou Street. This was in accordance with regulation 13 (h) of the Motor Transport Regulations. On the day in question, at about 8 p.m. a policeman, who gave evidence in the case, found the taxi of the accused parked in King Paul Street which is not far away from Gregoriou Afxentiou Street. The accused in evidence admitted that he had his taxi parked there for about half-an-hour as he was having a cup of coffee. The trial Judge, after hearing the explanation given by the accused, found him guilty and we are of the view that there was ample evidence to find the accused guilty of the charge.

Three main grounds were argued before us today on his behalf. The first ground was that Regulation 13 (h) is *ultra vires* the provisions of section 9 (4) of the Motor Transport Law, 1964 and the provisions of section 15 (1) and (2) of the same Law.

The second ground was that the aforesaid Regulation is repugnant to the provisions of Articles 13, 15, 25, and 28 of the Constitution ; and the third ground was that the Judge called a witness after the close of the defence, who had been called by the defence, after an adjournment granted at their request, but eventually not asked to give evidence.

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As regards all grounds, no authority has been cited in support of the submissions made to the Court and we are sorry to say that we are not prepared to look into submissions which are not supported by authorities. In any event, we do not think that there is substance either in the first or second ground of appeal.

As regards the third ground, even if there was any substance in the submission this would be a case in which the Court would exercise the powers vested in it under the proviso to section 145 (1) (b) of the Criminal Procedure Law, Cap. 155, that there has been no substantial miscarriage of justice.

There is one observation we would like to make arising out of the conduct of the case for the prosecution in this case, and that is that we consider that it is necessary that in such prosecutions the taxi licence should be produced to the Court by the prosecution as part of their case. It is not sufficient for a police constable to give evidence and say that according to the licence in the accused's possession he is entitled to park in a specified street. This is contrary to the best evidence rule. In fact the licence was eventually produced in this case by the accused and was before the Court.

In the result the appeal is dismissed.

Appeal dismissed.