

1970
Sept. 22

[VASSILIADES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

IOANNIS I.
VRAHIMIS
v.
THE POLICE

IOANNIS I. VRAHIMIS,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 3160).

Motor Traffic—Driving motor car without due care and attention—Contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332 and Regulations 58 (1) (a) and 66 of the Motor Vehicles Regulations, 1959 to 1969—Collision between a motor car and a motor cycle—Conviction—Conviction set aside on appeal—The findings of the trial Judge held to be inconsistent with the real evidence and, therefore, to that extent unsatisfactory.

Appeal—Findings of fact made by trial Courts—Approach of the Court of Appeal to such findings—General principles applicable well settled—Cf. supra.

Findings of fact—Tested on real evidence—Cf. supra.

Witness—Credibility—Trial Judge's assessment of the appellant's credibility finds no justification on the record.

After reviewing the facts and circumstances of the case, the Supreme Court, allowing by majority this appeal against conviction :—

Held, (1). The approach of this Court to findings of fact by trial Courts is well settled. The appellant challenging such findings has to show that the trial Court is in error; that its findings are unsatisfactory in view of the evidence on record. If he succeeds in doing so, then this Court must proceed to determine the case on the evidence, without feeling bound by determinations on questions of fact made by the trial Court (See : *Simadhiakos v. The Police*, 1961 C.L.R. 64 ; *Meitanis v. The Republic* (1967) 2 C.L.R. 31 ; *Ioannides v. The Republic* (1968) 2 C.L.R. 169.

(2) (STAVRINIDES, J. *dissenting*) : In the case before us we have no hesitation in taking the view that the findings of the trial Judge are inconsistent with the real evidence and are

to that extent unsatisfactory. We also think that the trial Judge's assessment of the credibility of the appellant, finds no justification on the record.

Appeal allowed. Conviction quashed.

1970
Sept 22
—
IOANNIS I.
VRAHIMIS
v
THE POLICE

Cases referred to :

- Simadhiakos v. The Police* (1961) C.L.R. 64 ;
Meitanis v. The Republic (1967) 2 C.L.R. 31 ;
Ioannides v. The Republic (1968) 2 C.L.R. 169 at p. 183.

Appeal against conviction.

Appeal against conviction by Ioannis I. Vrahimis who was convicted on the 3rd April, 1970, at the District Court of Nicosia (Criminal Case No. 673/70) on two counts of the offences of driving a motor vehicle without due care and attention, contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332, and of failing to keep to the left side of the road, contrary to Regulations 58 (1) (a) and 66 of the Motor Vehicles Regulations, 1959-1969 and sec. 3 of the Motor Vehicles and Road Traffic Law (*supra*) and was sentenced by Pandelides, Ag. D.J., to pay a fine of £15 on the first count and no sentence was passed on him on the second count.

A. Triantafyllides with Chr. Artemides, for the appellant.

M. Kyprianou, Counsel of the Republic, for the respondents.

The following judgments were delivered by :—

VASSILIADES, P. : The appellant a medical practitioner, 35 years of age, was convicted on April 3, 1970, in the District Court of Nicosia, on a charge containing two counts : (1) Driving his motor car without due care and attention contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332 ; and (2) failing to keep the left side of the road on approaching traffic coming from the opposite direction, contrary to Regulations 58 (1) (a) and 66 of the Motor Vehicles Regulations, 1959-1969. He was sentenced to £15 fine and £1 costs on count (1) ; no sentence on count (2).

The case arises from a collision between the private car of the appellant and a motor cycle, which occurred

1970
Sept. 22

—
IOANNIS I.
VRAHIMIS

v.
THE POLICE

—
Vassiliades, P.

on a straight stretch of road leading to Ayios Pavlos, one of the suburbs of Nicosia, in the early afternoon of August 28, 1969.

The appellant pleaded not guilty to both counts ; and the case went to trial on the issues arising from that plea, with the usual burden on the prosecution to establish beyond reasonable doubt the charges against the accused.

As not uncommon in such cases, the trial Court had to consider two conflicting versions as to the facts preceding the collision. Together with the oral testimony however, the Court had before it the evidence of two policemen attached to the traffic branch : the officer who went to the spot very soon after the collision, while the two vehicles were still there ; and his companion who took measurements and prepared a plan showing the material points and markings connected with the case. *Exhibit 1*, as explained by these two officers, contains real evidence upon which the oral evidence in the case, can be tested ; and in the end be considered and assessed. The influence of different factors bearing upon individual witnesses, such as their connection with the case, their powers of observation, their ability to assess changing distances, etc., can thus be more correctly weighed.

The version of the complainant, is that while driving his motor cycle on that straight stretch of road, with clear visibility and no other traffic in front of him, at a speed of about " 25-28 m.p.h.", he noticed suddenly at a distance of " 50-60 ft. " (about 20 yds.) the motor car of the appellant in the middle of the road. " When he approached it at 30 m.p.h. the car turned to its right". In an attempt to swerve abruptly to his right in order to avoid a collision, the motor-cyclist lost his balance and fell with his motor cycle on the asphalted surface of the road. The motor cycle skidded for a short distance—about 3 yards—and then, parting company with its driver, reached as far as appellant's car, coming into collision with the rear left-hand side (near side) of the car. He admits, however, that the first words of the appellant were : " What's the matter with you ? Are you blind and you came in this way towards the car ?" The motor-cyclist did not complain of any injuries ; so it may be assumed that any injuries which he may have received, were only minor.

Unfortunately, there is no indication in the evidence as to the age of the motor-cyclist, his driving experience ; the make of his motor-cycle, his profession or occupation, all of which are relevant matters in assessing the weight of his evidence.

The version of the appellant is that he was proceeding in the middle of the road, towards the crossing of Ayios Pavlos and Rupel Streets, where he intended to turn to his right into Rupel Street, as shown on the plan, *exhibit* 1. On approaching the crossing, he slowed down and actually brought his car to a stand-still to give way to a Mercedes car coming in the opposite direction, to go past. Seeing that the road was then clear, except for a motor-cycle about 400 ft. away coming towards him, the appellant engaged his first gear and drove to his right to get into Rupel Street. At that stage, he noticed the motor-cyclist making an abrupt move to the right—apparently to avoid the car—losing his balance in the attempt, and falling on the asphalt with his motor-cycle, which continued skidding on the surface of the road until it collided with the front left side of his car, which the appellant had again brought to a stand-still at the mouth of Rupel Street, as found by the police; and as shown on the plan.

The real evidence before the Court, establishes beyond all doubt that the point of impact—regarding which there is no dispute—was at the entrance of the side road ; and that the motor-cycle fell on its side 48 feet away from the car, as shown by the marks it left on the asphalt surface of the road, starting from a distance of 48 ft. from the point of collision. This indicates unmistakably, I think, that the motor-cyclist was driving considerably faster than 25–28 m.p.h., the speed which he stated to the Court.

Moreover, the evidence establishes that in a sudden attempt to avoid a collision with a vehicle which he said that he first noticed when he was about 20 yds. away from it, the cyclist lost his balance and fell with his motor-cycle on the road. Answering counsel for the accused, the motor-cyclist said : “ I think that I applied the front brake and fell immediately on the road ”. He also admitted that he had been driving with a learner’s licence for five years without taking a test. His failure in the attempt to take the proper avoiding action where the crossing offered plenty of space, indicates the kind of driver that the motor-cyclist was. A look at the plan is very helpful in this connection.

The trial Judge accepted the evidence of the motor-cyclist ; and rejected that of the appellant. He entirely discarded the part of the evidence regarding the passing of the Mercedes car which the Judge described as an after-thought. I can find nothing in the evidence to justify such a conclusion. The remark of the appellant to the cyclist immediately after the accident, supports the version

1970
Sept. 22
—
IOANNIS I.
VRAHIMIS
v.
THE POLICE
—
Vassiliades, P.

of the former, which finds further support in the absence of any reply to his remark by the latter. Moreover, the real evidence, as presented in the police plan, supports strongly, in my opinion, the version of the appellant. In any case it is not for him to explain the accident. It is for the prosecution to prove that he was driving without due care and attention, as charged.

The approach of this Court to findings by the trial Court is well settled. The appellant challenging such findings has to show that the trial Court is in error ; that its findings are unsatisfactory in view of the evidence on record. If he succeeds in doing so, then this Court must proceed to determine the case on the evidence, without feeling bound by determinations on questions of fact made by the trial Court. (See : *Simadhiakos v. The Police*, 1961 C.L.R. 64; *Demetris Meitamis v. The Republic* (1967) 2 C.L.R. 31 at p. 41 ; *Ioannides v. The Republic* (1968) 2 C.L.R. 169 at p. 183).

In the case before us, I have no hesitation in taking the view that the findings of the trial Judge are inconsistent with the real evidence and are to that extent unsatisfactory. I also think that the trial Judge's assessment of the credibility of the appellant, finds no justification on the record.

I would allow the appeal, set aside the findings of the trial Judge and the conviction based thereon, and discharge the appellant.

STAVRINIDES, J. : As I see it, the appeal turns on whether on the evidence the trial Judge was entitled to believe the complainant's version in preference to that of the appellant. In my judgment the complainant's version was, in its essential particulars, an inherently credible one, and there was nothing in the rest of the evidence to affect it. Therefore, we should not interfere with the conviction unless the appellant's evidence discloses no lack of due care and attention on the part of the appellant ; but evidence of such a fault on the appellant's part is to be found in the complainant's statement that " When I approached it (the car driven by the appellant) at 30 ft. this car turned to its right ". I would dismiss the appeal.

HADJIANASTASSIOU, J. : I agree with the judgment of the learned President of this Court just delivered, and as I do not think I can usefully add anything more, I would allow the appeal.

VASSILIADES, P. : In the result the appeal is allowed by majority ; the conviction is set aside ; and the appellant is discharged.

Appeal allowed.