1970
Oct. 9

GEORGHIOS PROKOPIOU HALOUMIAS
v.
THE POLICE

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

GEORGHIOS PROKOPIOU HALOUMIAS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3186).

Road Traffic—Driving a motor vehicle without due care and attention—Contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332—Collision on a dangerous bend between motor car and motor cycle—Appeal against conviction by the driver of the motor car—Trial Judge's finding that appellant failed to keep proper control over his car in negotiating a sharp bend supported by real evidence—Conviction sustained—Appeal dismissed.

Motor Traffic—Collision—Careless driving—Evidence—Assessment of—Real evidence—Its importance—See infra.

Per VASSILIADES, P. : It is hardly safe for a Court to make its findings in this type of case, by drawing entirely from the evidence of the one driver ; and rejecting entirely the evidence of the other. The truth in such cases lies usually somewhere between the two versions ; and the most reliable source for the truth is the real evidence. This is why it is highly desirable that plans, prepared by the police with all due care, should be drawn to scale wherever possible, as suggested time and again by Judges dealing with traffic cases.

Cases referred to :

S. S. Hontestroom (Owners) v. *S. S. Sagaporack (Owners)* [1927] A.C. 37, at p. 47.

The facts sufficiently appear in the judgments delivered, dismissing this appeal against conviction of the offence of careless driving contrary to section 6 of Cap. 332 (*supra*).

Appeal against conviction.

Appeal against conviction by Georghios Procopiou Haloumias who was convicted on the 24th June, 1970,

at the District Court of Famagusta (Criminal Case No. 2674/70) on one count of the offence 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 was sentenced by Pikis, D.J., to pay a fine of £15 and £2.270 mils costs.

G. Michaelides, for the appellant.

V. Aristodemou, Counsel of the Republic, for the respondents.

The following judgments were delivered by :

VASSILIADES, P. : This is an appeal against conviction for driving without due care and attention contrary to the provisions of section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332. The appeal is made on the ground that the findings upon which the conviction rests, are unsatisfactory, in view of the evidence ; and should not be sustained.

The facts of the case are not complicated ; and as usual in such cases, they have to be found in the conflicting versions of the witnesses called by the two sides, tested as far as possible, on the real evidence.

It is common ground in this case, that a collision occurred early in the morning of March 4, 1970, on a dangerous bend of a secondary road, between a light car driven by the appellant and a motor-cycle driven by the complainant.

The case for the prosecution is that the collision was due to the careless driving of the appellant-defendant, who was careless in that he was driving faster than it was safe in the circumstances ; and that when he was suddenly faced with the emergency, he lost proper control of his vehicle and went to his wrong side of the road where the collision occurred.

The version of the defendant is that when he suddenly faced the motor-cyclist coming from the opposite direction, on his (the motor-cyclist's) wrong side of the road, the distance between them was very short because of the limited visibility at that point ; due to the sharpness of the bend and to the cypress trees on both sides of the road. He (the defendant) then stepped hard on his brakes and sounded his horn ; the car skidded (ἐπήγαινε τριφτόν) to the other side of the road where the motor-cycle came into collision with his car.

As usual in such cases, the police were called to the scene and a police officer was actually there in a very short time. He found both vehicles on the spot. He also found the defendant there ; but the complainant had already been removed to the hospital as he had sustained a severe injury to his leg. The plea of the defendant—a plea of not guilty—puts the burden on the prosecution to prove to the satisfaction of the Court the averment in the charge that the defendant was driving without due care and attention.

The trial Judge heard the evidence of both drivers. He accepted entirely the evidence of the motor-cyclist ; and rejected entirely that of the defendant. He also accepted the evidence of the police officer and his plan, which mostly constitutes common ground in the case.

On that evidence, the learned trial Judge made three material findings upon which he reached the conclusion that the prosecution proved the case against the defendant. These findings were : (*a*) that the accused was negotiating a dangerous bend ; (*b*) that on the sight of the oncoming vehicle defendant's car zig-zagged on the road and when a short distance separated the two vehicles, the car, on the sudden application of the brakes, swerved to the other side of the road, and caused the accident, the complainant having kept to his proper side at all material times ; and (*c*) that the defendant failed to keep proper control over his car when negotiating this sharp bend and, as a result, caused the accident.

The appellant challenges these findings on the ground that, based entirely on the version of the complainant and not supported by the real evidence, they are unsatisfactory. Speaking for myself, I am inclined to accept, up to a point, this complaint on the part of the appellant. In collision cases, the version of each of the drivers involved, is as a rule, naturally influenced by his interest in the outcome of the case ; and his evidence must be looked upon in that light.

A good test for each of the two versions, may often be found in the real evidence. And as far as I can see, the real evidence in this case, is far more reliable than the oral testimony of either of the two drivers. On the real evidence, as shown on the police plan and the markings on the road, there can be no doubt, I think, that the defendant, who is the driver of the car, was on his proper side of the road when he started negotiating this sharp left-hand (for him)

bend of the road in question. This is what one would expect of a driver taking such a bend at a speed, in a small car ; a bend to his left. The markings on the road surface confirm this.

The trial Judge, accepting the version of the complainant, found that the car was going zig-zag. I can find no reason in the evidence for the car to be going zig-zag at the time when the car was approaching the bend and before the driver saw the motor-cyclist. In fact the car did swerve from the driver's proper side to the other side of the road where the collision occurred. It seems to me that this is what the complainant meant when he said that the car was going zig-zag when he first saw it. The reason may well have been the sudden application of the brakes or, it may have been a combination of causes. The trial Judge found that the defendant failed to have proper control of his car at the time of the collision which occurred on his wrong side of the road. It may be that the defendant got scared when he suddenly saw the oncoming vehicle, so near him, on his (the defendant's) side of the road ; and when he applied suddenly and forcibly his brakes, the car swerved to the other side.

Be that as it may, however, the fact remains that the collision occurred on the defendant's wrong side of the road ; and that on the application of the brakes, the right rear wheel of defendant's vehicle left 34 feet long brake marks on the road as against only 14 feet long brake marks left by the other rear wheel of his vehicle. The different efficiency of the brakes on the two wheels may be the reason—or one of the reasons—why the car moved to the part of the road where the collision occurred.

The trial Judge reached the conclusion that the defendant was guilty of driving without due care and attention, upon finding, *inter alia*, that he failed to keep proper control over his car in negotiating this sharp bend. That was, apparently, due mostly to the fact that he approached and tried to take the bend at a speed faster than safe. In my view, that finding alone—for which there is ample support in the real evidence and in the version of the defendant himself—is sufficient to justify the conviction. Whether the driver of the motor-cycle was or was not, also careless in the way in which he approached and negotiated this equally sharp, but a right-hand bend for him, is a matter which does not seem to have been raised in this case ; and cannot be now discussed. Nor can any careless

driving on the part of the other driver constitute a valid defence to a charge under section 6. It could only go to sentence.

I content myself with dismissing this appeal against conviction, on the ground that the conviction can be sustained on the third finding of the trial Judge.

I would not leave this case without observing that it is hardly safe, I should think, for a Court to make its findings in this type of case, by drawing entirely from the evidence of the one driver ; and rejecting entirely the evidence of the other. The truth in such cases, lies usually somewhere between the two versions ; and the most reliable source for the truth is the real evidence. This is why it is highly desirable that plans, prepared by the police with all due care, should be drawn to scale wherever possible, as suggested time and again by Judges dealing with traffic cases.

I would dismiss this appeal.

LOIZOU, J. : I agree that the appeal should be dismissed.

The facts are quite simple and I need not go into them at any length.

The appellant was convicted and sentenced by the District Court of Famagusta for the offence of driving without due care and attention, contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332.

His appeal is based on the ground that the finding of the trial Court that he was going at a speed and/or that he failed to keep proper control of his car is not supported by the evidence and also that the trial Court was wrong in accepting the version of the complainant and rejecting that of the appellant.

It appears from the evidence and also from the sketch *exhibit* 1 which was prepared by the police constable who arrived at the scene only a few minutes after the accident that the scene of the accident is a sharp bend with restricted vision in view of the line of cypress trees on either side of the road ; the asphalted part of the road is 10 feet and 8 inches wide with a 2 feet wide berm on one side and 3 feet 7 inches on the other. The car driven by the appellant left brake marks which commence at a point just under

2 feet from the nearside edge of the asphalt in the direction the appellant was driving and extend up to the point of impact which is at a point about 2 feet from the offside edge of the asphalt. The brake marks left by the right wheels of appellant's vehicle are 34 feet long whereas those of the left 14 feet.

The version of the appellant, as it appears from his sworn evidence at the trial, is that he was driving on his nearside of the asphalt, that is on the proper side of the road, and as he was negotiating the bend he saw the motor-cyclist coming from the opposite direction keeping to the wrong side of the road ; that as soon as he saw him he sounded his horn and applied brakes and that thereupon his car swerved to the right of the road. He attributed this swerving to the light weight of his car and the fact that he was negotiating a sharp bend and also (in cross-examination) to the wet surface of the road. He never suggested that he deliberately swerved to the right in order to avoid the accident.

Now the version of the other driver was that, at all material times, he was driving on the proper side of the road ; that when he first saw the appellant's vehicle he saw it coming in a zig-zag fashion, that is to say he saw it swerving to the right and then coming back to the left and then again to the right until the point where the collision occurred.

The learned trial Judge having heard the evidence accepted the version of the complainant and came to the conclusion that the appellant was guilty of the offence charged. In coming to this conclusion the learned Judge found that the bend in question was a dangerous bend ; that the complainant kept to the proper side of the road at all times ; that the appellant's car swerved to the right and as a result collided with the motor-cycle ; and that this was due to his failure to keep proper control of the vehicle. In my view the conclusion of the learned Judge that the appellant failed to have proper control of his vehicle is a reasonable inference from the evidence on record and especially from appellant's evidence that he did not deliberately swerve to the right in order to avoid the oncoming motor-cycle but that such swerving was not intentional.

On the whole the appellant has failed to satisfy this Court that the findings of the trial Judge, upon which the conviction rests, cannot be sustained on the evidence on record, or that they are otherwise unsatisfactory as he had to do in order to succeed.

In the result this appeal must fail.

HADJIANASTASSIOU, J. : I also agree but I would like to add a few words of my own.

As usual in these traffic cases, there were before the trial Court two sharply conflicting versions. The trial Court, after weighing the two versions, found as a fact that the accused, whilst he was negotiating a dangerous bend on seeing the oncoming vehicle—ridden by the complainant—his car zig-zagged to the left and when he was a short distance from the other vehicle, his car swerved to the right ; and because of the application of the brakes the appellant lost the proper control of his car and as a result the accident occurred.

Although I share the views expressed by the learned President of this Court that when a trial Judge is confronted with the evidence of the parties only, the Judge in weighing and evaluating such evidence should test it with the real evidence, which in these cases is more credible than that given by the persons who have an interest in the outcome of the trial, nevertheless, I am of the view that the trial Court in its careful and lucid judgment reached the conclusion that the accused was solely to blame for the accident after testing the evidence before it with the real evidence.

It is not in dispute that the collision of these two vehicles took place at the proper side of the complainant. The appellant's case before the trial Judge and in this Court was presented in three heads. First it was alleged that the appellant was not negligent and that the accident was entirely due to the negligence of the complainant. Secondly it was said that the appellant was confronted with an emergency because of the fault of the complainant. Thirdly it was argued that the evidence of the complainant was so entirely unreliable and in conflict with the real evidence.

It is true that there was a conflict of evidence in the Court below, but the learned Judge accepted the version of the complainant. Upon his findings of fact, I am of the view that the appellant was clearly guilty of negligence. We were invited to say that the learned Judge's conclusions should be set aside, but in my judgment this Court ought not, in these circumstances, to set aside the Judge's finding of fact. There was, as I said earlier, evidence the other way, which the Judge, if he had thought it right, could have accepted it. But he saw the witnesses and disbelieved

the evidence of the appellant, and, therefore, we ought not to interfere with these findings upon our own view of the evidence and the probabilities of the case.

As Lord Sumner said in *S. S. Hontestroom (Owners)* v. *S. S. Sagaporack (Owners)* [1927] A.C. 37 at p. 47 :—

> " The higher Court ought not to take the responsibility of reversing the conclusions so arrived at, merely on the result of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case ."

With regard to the question that the appellant was faced with a dilemma, in my view, there is no evidence to that effect, and it is clear from the record that he was not presented with an emergency. I agree, of course, with the principle that where the accused person is placed in danger by the wrongful act of the complainant the accused is not negligent, if he exercises such care as may reasonably be expected of him in the difficult position in which he is so placed. He is not to blame if he does not do quite the right thing in the circumstances. But here the appellant, I repeat, has himself to blame because of his own folly.

For these reasons, I have reached the conclusion that the appellant has failed to persuade me that the findings of the learned trial Judge were wrong and, I would, therefore, dismiss the appeal.

Appeal dismissed.