

1970
May 19

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

FOTIS MATSIS
v.
THE POLICE

FOTIS MATSIS,
v.

Appellant,

THE POLICE,

Respondents.

(Criminal Appeal No. 3156).

Road Traffic—Driving without due care and attention—Section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332—Conviction—Prosecution evidence accepted—Credibility of witnesses—Findings of fact made by the trial Court not unreasonable on the evidence—Appeal against conviction dismissed.

Appeal—Findings of fact made by trial Court—Based on credibility of witnesses—Principles upon which the Court of Appeal will approach such findings.

Evidence—Evaluation of evidence and credibility of witnesses—Matters primarily within the province of trial Courts.

Credibility of witnesses—Findings based thereon—Approach of the Court of Appeal—See supra.

Cases referred to :

Lazarou v. The Police (1969) 2 C.L.R. 184 ;

Terlas v. The Police (reported in this Part at p. 30 *ante*).

After reviewing the evidence on record, the Court dismissing this appeal against the appellant's conviction of the offence of driving without due care and attention contrary to section 6 of Cap. 332 (*supra*),

held, (1). The evaluation of the evidence, and the credibility of witnesses lies primarily with the trial Judges who have the advantage of hearing the witnesses and observing their demeanour in the witness-box. To upset the findings of a trial Judge the appellant must persuade this Court that such findings are unjustified on the evidence, or they are unreasonable (see *Lazarou v. The Police* (1969) 2 C.L.R. 184 ; *Terlas v. The Police* (reported in this Part at p. 30 *ante*)).

(2) In view of the evidence, the findings of the trial Court were not unreasonable and the conviction must stand.

Appeal dismissed.

Appeal against conviction.

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Appeal against conviction by Fotis Matsis who was convicted on the 12th March, 1970, at the District Court of Nicosia (Criminal Case No. 139/70) 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 bound over by Pantelides, Ag. D.J., in the sum of £30 for one year to keep the traffic laws and regulations.

M. Christofides, for the appellant.

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

The judgment of the Court was delivered by :—

VASSILIADES, P.: The subject matter of this appeal is the conviction of the appellant in the District Court of Nicosia (Cr. Case No. 139/70) on March 12, 1970, for driving without due care and attention, contrary to the provisions in section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332, wherein the legislator provided for the offence and for penalties on conviction.

The appellant, who is 60 years of age and lives at Palechori village, is a professional driver for the last 30 years. On the 5th January, 1970, Nicosia Police prosecuted the appellant for driving without due care and attention motor vehicle No. BX46, a land-rover, on November 19, 1969, between the 24th and 25th mile-stone of the public road Nicosia-Palechori.

In support of the charge, the prosecution called three witnesses : (1) the policeman who went to the place of the accident soon after, took measurements and prepared a sketch ; (2) the driver of the vehicle travelling at the time of the accident in the opposite direction; and, (3) the mechanic who examined the land-rover on the spot and arranged for its transport to Nicosia..

On being called upon for his defence, the appellant merely said that his statement to the police contained all he had to say in the matter. After this statement, counsel for the appellant called for the defence, appellant's passenger in the land-rover. The evidence of this witness was to the effect that on taking a sharp bend while travelling down the

hill, the land-rover suddenly faced a car coming in the opposite direction, travelling in the middle of the road at a speed of about 25 miles per hour. To avoid a collision, the appellant swerved sharply to the left and the land-rover went off the road, hit the bank of the hill, and returning to the road crossed to the other side and fell down the precipice some 30 feet below, the appellant apparently having lost control of the vehicle.

The appellant's reply to the police charge was placed before the trial Court as *exhibit 2* ; and reads as follows :

“ I stepped on the brake which did not function and I went down.”

The trial Judge did not accept the evidence of the defence witness and, in the absence of other evidence explaining the accident, which was apparently due to the loss of control of the land-rover on the part of the appellant, the trial Judge reached the conclusion that the appellant drove the vehicle without due care and attention; and, found him guilty as charged.

Against this conviction counsel for the appellant took the present appeal on two grounds :—

1. That the trial Court wrongly discarded the explanation of the defence as to how the accident occurred ; and,
2. In the alternative, that “ the evidence adduced does not justify the finding of the trial Judge beyond reasonable doubt.”

As we have already observed during the hearing, counsel for the appellant framed with commendable clearness and brevity the grounds on which he founded the appeal. In expanding his grounds, counsel tried to persuade this Court that the trial Judge was wrong both in his assessment of the evidence and in the findings made thereon.

The evaluation of the evidence, and the credibility of the witnesses lies primarily with the trial Judge who has the advantage of hearing the witnesses and observing their demeanour in the witness-box. To upset the findings of a trial Judge the appellant must persuade this Court that such findings are unjustified by the evidence, or they are unreasonable. (See *Lambros Lazarou v. The Police* (1969) 2 C.L.R. 184 ; *Nicos Terlas v. The Police* (reported in this Part at p. 30 *ante*)).

In the present case, the trial Judge accepted the evidence of witness George Angeloudis (P.W. 2) to the effect that the appellant was not driving on the proper side of the road but was driving the land-rover on the wrong side while taking a sharp bend down the hill. This witness was not cross-examined on the point or at all.

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On the other hand the trial Judge did not have before him the version of the appellant as to how the accident occurred. He simply had his reply to the Police charge that "he stepped on the brake which failed to function". Before the Court, however, there was the evidence of the mechanic Savvas Theodossiou (P.W. 3) who stated that he examined the land-rover after the accident and found the brakes in good working order. There was no cross-examination whatsoever on this point.

In view of this evidence, the submissions that the findings of the trial Court are unreasonable and the conviction of the appellant unjustified, cannot stand. In the circumstances, we found it unnecessary to call upon counsel for the prosecution to support the conviction. The appeal fails and is dismissed.

Appeal dismissed.