

1970
June 3

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

ANDREAS
CHARALAMBOUS
v.
THE POLICE

ANDREAS CHARALAMBOUS,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 3159).

Appeal—Findings of fact and credibility of witnesses—Appeal turning on findings of fact and credibility of witnesses—Circumstances under which the Court of Appeal will intervene—Restatement of the legal position.

Credibility of witnesses—See supra.

Findings of fact made by trial Courts—See supra.

Road Traffic—Conviction on a charge for failing to stop at “halt” sign and for driving motor car without due care and attention—Regulation 58 (1) (i) of the Motor Vehicles Regulations, 1959 to 1969 and sections 3 and 6 of the Motor Vehicles and Road Traffic Law, Cap. 332—Ample evidence upon which the trial Judge could reach his findings—Appeal dismissed.

Cases referred to :

Mamas v. “Arma” Tyres (1966) 1 C.L.R. 158 ;

Imitn v. Papacostas (1968) 1 C.L.R. 207.

The facts of this case sufficiently appear in the judgment of the Court, holding that no sufficient reasons, within the well established principles, were shown why the Court of Appeal should disturb the findings of fact made by the trial Judge, based mainly on the credibility of witnesses ; and dismissing the appeal accordingly.

Appeal against conviction.

Appeal against conviction by Andreas Charalambous who was convicted on the 30th March, 1970, at the District Court of Nicosia (Criminal Case No. 1003/70) on two counts of the offences of failing to stop at a “halt” sign contrary to regulation 58 (1) (i) of the Motor Vehicles Regulations 1959–1969 and section 3 of the Motor Vehicles and Road Traffic Law, Cap. 332 and of driving a motor-car

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without due care and attention contrary to section 6 of the same Law and was sentenced by Pantelides, Ag. D.J., to pay a fine of £25 on the second count and no sentence was passed upon him on the first count.

P. Demetriou, for the appellant.

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

VASSILIADES, P.: We find it unnecessary to call on Counsel for the respondents. The judgment of the Court will be delivered by Mr. Justice Loizou.

LOIZOU, J.: This appeal turns on findings of fact based on the credibility of witnesses.

The appellant was convicted by the District Court of Nicosia upon a charge containing two counts (a) for failing to stop at a "halt" sign contrary to regulation 58 (1) (i) of the Motor Vehicles Regulations, 1959-1969 and section 3 of the Motor Vehicles and Road Traffic Law, Cap. 332, and (b) for driving a motor-car without due care and attention contrary to section 6 of the same Law. He was fined £25 on the second count.

Soon after 7.00 p.m. on the 10th December, 1969, P.W.2, Yiannis Mertakas, the complainant, was driving his car, a van under Registration No. DD802 along St. Hilarion str., in the direction of "Bata" roundabout on the main Nicosia-Famagusta road. At the junction of this street with Beyoglu and Andreas Michael streets his vehicle came into collision with a taxi, a Ford Zodiac under Registration No. TDJ405, driven by the appellant.

P.W.1, P.C. 2531 Soterakis Frixou, who arrived at the scene soon after the accident took measurements and prepared the sketch which was produced as *exhibit 1*.

The version of P.W.2, the complainant, was that shortly before he entered the junction he saw a car coming from his left along Beyoglu street; that that car did not stop at the "halt" sign nor did it reduce its speed; that the witness himself applied his breaks and took what avoiding action he could, but in spite of this he could not avoid the collision with that car, which was the taxi driven by the appellant.

The version of the appellant, on the other hand, as contained in a statement which he made to the police on the date after the accident, was that he was driving his taxi along

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St. Hilarion street in the direction opposite to that the complainant was driving and as he was turning into Andreas Michael street to his left, keeping to his proper side of the road, the van driven by the complainant from the opposite direction came and collided with his taxi. He repeated substantially this same version on oath at the hearing of the case, but he further added that at the time of the accident he had seen another vehicle being driven along Beyoglu street towards the junction.

The learned trial Judge heard in all four witnesses for the prosecution, including the complainant, and two for the defence. One of the defence witnesses was the driver of a taxi, who stated in evidence that at the material time he was driving his taxi along Beyoglu street in the direction of the junction and that when he came to the "halt" sign he stopped and whilst there he witnessed the accident. As to how the accident occurred this witness corroborated the version of the appellant. But in the course of the hearing it came to light that although this witness saw the police officers who were investigating the case at the scene of the accident and was asked by them whether he had witnessed the accident he said that he had not. His explanation for this was that he was busy and did not want to get involved in the case. The learned trial Judge did not believe the evidence of this witness and it seems to us that, in the circumstances, it is not surprising that he did not.

Having weighed the evidence, the trial Judge came to the conclusion that the prosecution's version was the correct one and in coming to this conclusion he relied, apart from the credibility of witnesses, on the real evidence such as the evidence that appears on the sketch *exhibit* 1 and the photographs *exhibit* 3 taken at the spot by the police photographer. We think that the brake-marks appearing on the sketch *exhibit* 1 as well as the damage on both vehicles, as it appears in the photographs produced, support the findings of the trial Judge.

Learned counsel for the appellant today put forward a number of reasons why the trial Judge should not have accepted the prosecution's version and should have accepted that of the defence.

The principles upon which this Court decides appeals on findings of fact and credibility of witnesses are now well settled, having been repeated in a number of cases. It is sufficient to say that such matters are primarily within the province of the trial Judge and if, on the evidence before

him, it was reasonably open to him to make the findings which he did, then this Court will not interfere with the judgment of the trial Court. We need only cite the two cases cited by learned counsel for the appellant on this point : *Mamas v. "Arma" Tyres* (1966) 1 C.L.R. 158 and *Imam v. Papacostas* (1968) 1 C.L.R. 207.

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Having regard to all the circumstances of this case we think that there was ample evidence upon which the trial Judge could reach his findings and we have not been persuaded by the argument on behalf of the appellant in this Court either that the evaluation of the evidence by the trial Judge was defective or that his findings were in any way unsatisfactory.

In the result this appeal fails and is dismissed.

Appeal dismissed.