

1970
June 3

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LYSANDROS
ANASTASSIOU
KESTAS
v.
THE POLICE

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

LYSANDROS ANASTASSIOU KESTAS,
Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 3162).

Road Traffic—Driving without due care and attention—Failing to obey traffic lights—Section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332—Regulations 182 (h) and 185 of the Limassol Municipal Bye-Laws, 1953 to 1960—Conviction—Sustained on appeal—No sufficient reason shown why the Court of Appeal should interfere with the findings of fact made by the trial Judge and based mainly on the credibility of witnesses.

Appeal—Findings of fact—Credibility of witnesses—Approach of the Court of Appeal to appeals against such findings.

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

Cases referred to :

Koumpbaris v. The Republic (1967) 2 C.L.R. 1 ;

Eraclides v. The Police (reported in this Part at p. 1 *ante*).

The facts sufficiently appear in the judgment of the Court, dismissing this appeal against conviction on the ground that the appellant failed to persuade it that the findings of fact made by the trial Judge and mainly based on the credibility of witnesses ought to be set aside.

Appeal against conviction.

Appeal against conviction by Lysandros Anastassiou Kestas who was convicted on the 26th March, 1970, at the District Court of Limassol (Criminal Case No. 12994/69) on two counts of the offences of driving a motor vehicle without due care and attention, contrary to sections 6 and 13 of the Motor Vehicles and Road Traffic Law, Cap. 332, and of failing to obey traffic lights contrary to Regulation

182 (h) and 185 of the Limassol Municipal Bye-Laws, 1953 to 1960, and section 126 of the Municipal Corporations Law, Cap. 240, and was sentenced by Kakathymis, Ag. D.J., to pay a fine of £10, was bound over for two years to keep the Laws and Regulations of Traffic and he was further ordered to pay £8 costs of prosecution.

E. Shiakalli (Miss), for the appellant.

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

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The judgment of the Court was delivered by :—

VASSILIADES, P.: On August 6, 1969, at a road-crossing controlled by traffic lights in the town of Limassol, a goods vehicle (to which for convenience we shall refer as “ the lorry ”) came into collision with a private car (to which we shall refer as “ the car ”). The lorry was driven by the defendant ; the car by prosecution witness No. 2. The collision was witnessed by several persons, whose attention was immediately drawn thereto by the noise of the crash. The police were called by telephone, but until they arrived, shortly after the collision, the defendant removed his lorry from the resultant position in order to facilitate the traffic, as he said.

The police prosecuted the defendant on two counts :—

1. For driving without due care and attention contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332 ; and
2. For failing to obey the traffic lights, contrary to regulations 182 (h) and 185 of the Limassol Municipal Bye-Laws, 1953 to 1960. The defendant pleaded not guilty to both counts ; and the case went to trial on the issues arising from his plea.

In support of their case, the prosecution called the policeman who took measurements and prepared the plan which was later produced to court as *exhibit 1* ; the driver of the car involved in the collision (P.W.2, Georghios Therapontos) ; and two other witnesses, who happened to be present at the crossing and whose attention was drawn to the collision by the noise of the crash ; they looked and saw the position immediately after the collision. These are witnesses Kyriacos Pirillis (P.W.3), who runs a “ driving school ”, he said ; and Theodoros Djirkallis (P.W.4) a taxi driver. The defendant gave evidence in his own defence ; and learned counsel on his behalf called two more witnesses.

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The case turned on the issue of fact whether defendant's lorry entered the crossing with the red light showing against the driver. There is no allegation on the part of the defendant that there was anything wrong with the functioning of the traffic lights. Some of the witnesses referred to the amber light between green and red. The trial Judge could, therefore, infer that at the material time the traffic lights functioned properly. The version of the prosecution was that the lorry driver entered the crossing with the red light showing against him ; and this was based on the evidence that at the time of the collision the red light was on.

The version of the defendant is that he entered the crossing with the green light on ; and that both in front and behind him there were other vehicles taking the crossing at the same time. At page 7 of the notes the defendant says :— «Εύρισκόμουν δίπλα του σύλλου δπου ήτο πράσινον. Τό προπορευόμενον (αυτόκίνητον) ήτο δέκα περίπου πόδες εμπρός μου. Έδωσα αριθμόν αυτόκινήτου τό όποϊον εύρίσκετο πίσω μου». In fact, immediately after the collision the first car to arrive at the crossing also stopped. It is the version of the defendant that, while the green light kept the crossing open to him and at least three cars were taking the crossing (one ten feet in front of the lorry and the other following close behind) the car involved in the collision (DQ911) coming from Ellados Street on the right, with the red light showing against him entered the crossing at a speed of 50 miles per hour (always according to the defendant) and, cutting the lorry's path while the latter was taking the crossing at 15 miles per hour, about 10 feet behind another vehicle, caused the collision. In his statement to the police (*exhibit 2* on the record) the defendant said that he took avoiding action by applying his brakes ; but as his lorry was heavily loaded it did not stop and the left part of its bumper collided with the near side rear wing of the car.

One can see the picture emerging from the version of the defendant ; and the difficulty of reconciling it with undisputed facts. Moreover, the statement of the defendant that he was following another vehicle and that his lorry was being followed by another car is directly contradicted by his own two witnesses who stated that they did not see any such vehicles. This is the version of the defendant which the trial Judge rejected, accepting that of the prosecution witnesses.

The version of the complainant (P.W.2, Therapontos) is that, on arriving at the crossing, he came against the amber light ; he slowed down waiting for the green light and

he crossed when the green light came on. His car collided with defendant's lorry while the latter was crossing his path against the red light. His evidence is supported by two other prosecution witnesses, one of them running a driving school and the other being a taxi driver. They both stated that when their attention was drawn to the two vehicles by the noise of the collision they saw that the lorry was travelling against the red light ; they noticed that the light regulating the traffic moving in the direction of the lorry was red.

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On this evidence, the trial Judge, accepting the evidence of the witnesses for the prosecution, and rejecting that of the defendant and his two witnesses, found the defendant guilty on both counts.

Against this conviction the defendant took the present appeal which was very ably presented on his behalf by Miss Shiakalli. She argued her client's case mainly on two grounds : First, that the trial Judge misdirected himself regarding the true effect of the evidence for the prosecution ; and secondly, that the findings of the trial Judge are not supported by the evidence. That, of course, covers the question of credibility as well as the effect of the evidence taken as a whole.

Having heard counsel on both sides, we have no difficulty in disposing of this appeal. For the appellant to succeed, he must be able to persuade this Court that the findings of the trial Court, upon which the conviction rests, are, in any way, unsatisfactory. As already pointed out during the argument, there is a line of cases on the point ; we may refer to *Koumbaris v. The Republic* (1967) 2 C.L.R. 1 ; and to a recent one *Eraklides v. The Police* (reported in this Part at p. 1 *ante*).

Notwithstanding the able way in which the case for the appellant was presented to us, at the end of the day we were not persuaded that there is sufficient reason for interfering with the findings of the trial Judge ; or, the conviction based thereon. There is ample evidence to support them ; and seen as a whole, the evidence appears to justify the trial Judge's assessment of the credibility of the witnesses ; those who gave evidence for the prosecution and those called for the defence.

In the result, the appeal fails and is dismissed.

Appeal dismissed.