

RASIH MEHMET,

Appellant,

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RASIH MEHMET
v.
THE POLICE

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3301*).

Road Traffic—Careless driving and failing to keep to the left side of the road—Section 8 of the Motor Vehicles and Road Traffic Law, Cap. 332 and regulation 58 (2) (a) of the Motor Vehicles Regulations 1959–1970—Collision at cross-roads between motor-vehicle and a bicycle—Findings of fact—Trial Judge’s acceptance of complainant’s version not sustained on appeal—Because that version was much less consistent with an indisputable fact than Appellant’s version which was much more consistent with the said fact—Findings of fact resting on credibility of witnesses—Approach of the Court of Appeal.

Findings of fact—Appeal—Power of the Court of Appeal to set aside findings of fact made by trial Courts—Principles applicable—See further supra; cf. also infra.

Appeal—Findings of fact—Approach of the Supreme Court to appeals turning on findings resting on credibility of witnesses—See further supra.

Witnesses—Credibility of—Findings of fact resting on such credibility—Approach of the Court of Appeal—See supra.

Allowing this appeal against conviction, the Supreme Court:—

Held, (1). It is well settled that an appellate Court has the power to set aside the findings of fact made by a trial Court where the trial Judge has believed testimony which is inconsistent with itself or with indisputable fact (see, *inter alia*, *Economides v. Zodhiatis*, 1961 C.L.R. 306).

(2) In the present case the trial Judge disbelieved the version of the Appellant and accepted that of the complainant. But an indisputable fact is that it was the complainant’s right leg,

1971

Dec. 20

—

RASIH MEHMET

v.

THE POLICE

and not his left leg that was injured; if the complainant's (cyclist's) evidence that he was hit by the left front part of the Appellant's car is correct then, in the ordinary course of things, the complainant (cyclist) who was coming from the opposite direction, would have been wounded on his left leg; the wounding of his right leg is by far more consistent with the version of the Appellant, viz. that the complainant's bicycle hit the right front part of the Appellant's motor car.

Appeal allowed.

Cases referred to:

Economides v. Zodhiatis, 1961 C.L.R. 306.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Rasih Mehmet who was convicted on the 11th November, 1971 at the District Court of Nicosia (Criminal Case No. 9847/71) on three 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, of failing to keep the left side of the road contrary to regulations 58 (2) (a) and 66 of the Motor Vehicle Regulations 1959-1970 and section 3 of the Motor Vehicles and Road Traffic Law, (*supra*) and of failing to report an accident to the Police contrary to regulations 61 and 66 of the Motor Vehicle Regulations (*supra*) and section 12 of the Motor Vehicles and Road Traffic Law, (*supra*) and was sentenced by Papaioannou, Ag. D.J. to pay £10.- fine on each of counts 1 and 3 and £5.- fine on count 2.

M. Aziz, for the Appellant.

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

The judgment of the Court was delivered by:-

TRIANAFYLLIDES, P.: The Appellant has been convicted of the following offences: First, that he was driving a motor vehicle without due care and attention, contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332; secondly that in approaching traffic coming from the opposite direction he failed to keep to the left side of the road, contrary to regulation 58 (2) (a) of the Motor Vehicles Regulations

1959-1970; and, thirdly, that he failed to report an accident to the police, contrary to regulation 61 of the same Regulations.

1971
Dec. 20

—
RASIH MEHMET
v.
THE POLICE

The Appellant has appealed in respect of all these convictions but during the hearing of this appeal counsel for the Appellant has, quite rightly in our view, abandoned the appeal as regards the third conviction and, therefore, the appeal is dismissed in so far as such conviction is concerned.

The salient facts of this case are that on the 24th June, 1971, at about 1.30 p.m., the Appellant was driving his motor-car, AM57, along Archbishop Makarios III avenue in Nicosia; as he was proceeding towards the centre of the town and was approaching the cross-roads with Dhigenis Akritas avenue he collided with a bicycle ridden by the complainant who was proceeding in the opposite direction.

The version of the complainant has been that when the Appellant was about to turn right, in order to proceed along Dhigenis Akritas avenue, he knocked him down with the left front part of his car; as a result the complainant's right leg was injured. The version of the Appellant has been that while he was stationary behind another car, on the left side of the road, waiting for the traffic lights to change from red into green, so that he could turn right and proceed along Dhigenis Akritas avenue, the complainant came from the opposite direction, on his bicycle, holding some tins with his right hand and, having lost his balance, he hit with his bicycle the right front part of the car. The trial Judge believed the evidence of the complainant and disbelieved that of the Appellant.

It is well-settled that an appellate Court has the power to set aside the findings of fact of a trial Court where the trial Judge has believed testimony which is inconsistent with itself or with indisputable facts (see, *inter alia*, *Economides v. Zodhiatis*, 1961 C.L.R. 306).

In the present case the trial Judge disbelieved the version of the Appellant and accepted that of the complainant because, as he has said in his judgment, the Appellant's version "comes into direct contrast with the actual facts established as to how the accident occurred"; but an indisputable fact is that it was the complainant's right leg, and not his left leg, that was injured; if the complainant's evidence that he was hit by

1971

Dec. 20

—
RASIH MEHMET
v.
THE POLICE

the left front part of the Appellant's car is correct then, in the ordinary course of things, the complainant, who was coming from the opposite direction, would have been wounded on his left leg; the wounding of his right leg is by far more consistent with the version of the Appellant, viz. that the complainant's bicycle hit the right front part of the Appellant's motor-car.

The Appellant's guilt had to be established beyond reasonable doubt; but even on the basis of only the balance of probabilities the acceptance by the trial Judge of the version of the complainant, instead of that of the Appellant, cannot be sustained as it was much less consistent with an indisputable fact, viz. the nature of the injury suffered by the complainant, than the version of the Appellant, which is, as stated, much more consistent with the said fact.

In the light of the foregoing and bearing in mind, too, that counsel for the Respondents has, very fairly, stated that he was not satisfied that the reasoning of the trial Judge has led to a beyond any reasonable doubt ascertainment as to how the collision has occurred, we have decided to allow the appeal as regards the Appellant's convictions regarding the first and second of the aforementioned offences; such convictions are, therefore, set aside together with the sentences imposed in relation thereto.

Appeal allowed.