

1978 October 10

[TRIANTAFYLIDES, P., DEMETRIADES, SAVVIDES, JJ.]

STAVROS GRIVAS,

*Appellant.*

v.

THE POLICE,

*Respondents.*

( *Criminal Appeal No. 3917*).

*Criminal Law—Conviction for careless driving—Based on evidence of eye-witness and on real evidence—Discrepancy between evidence of this witness and trial Judge’s finding as to how collision actually occurred—Court of Appeal not prepared to speculate whether trial Judge could, or would, have convicted the appellant without relying on evidence of such witness and by relying only on the real evidence—Conviction set aside.*

10 A car driven by the appellant collided with a bus driven by appellant’s co-accused at the trial, who was not called upon to make a defence because no *prima facie* case had been made out against him sufficiently to require him to do so. In finding the appellant guilty of the offence of driving without due care and attention the trial Judge relied on the real evidence and on the evidence of an eye-witness, who was a passenger in the bus; and who testified, clearly, that the bus had been keeping to its proper side of the road and that it was while the bus was proceeding in this way that the car driven by the appellant went across the road and collided with it. On the other hand, in not calling upon the co-accused of the appellant to make a defence, the trial Judge found that the bus had collided with the car of the appellant while the latter was stationary and he added that this was a fact about which both accused were in agreement.

*Upon appeal against conviction:*

25 *Held*, that there is a clear discrepancy between the version of

the only prosecution eye-witness and the said finding of the trial Judge as to how actually the collision had occurred; that, therefore, it was not safe for the trial Judge to rely at all, as it has done, on the evidence of the said witness in convicting the appellant; and that as this Court is not prepared to speculate whether the trial Judge could, or would, have convicted the appellant without relying on the evidence of such witness, and by relying only on the real evidence as it is indicated on the plan prepared by the police, it has decided that the proper course is to set aside the conviction.

*Appeal allowed.*

### **Appeal against conviction.**

Appeal against conviction by Stavros Grivas who was convicted on the 11th July, 1978 at the District Court of Nicosia (Criminal Case No. 27064/77) on one count of the offence of driving without due care and attention, contrary to section 8 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72) and was sentenced by Laoutas, D.J. to pay a fine of £7.- and £4.500 mils, costs.

*E. Odysseos*, for the appellant. 20

*A. M. Angelides*, Counsel of the Republic, for the respondents.

TRIANTAFYLLIDES P. gave the following judgment of the Court. In this case the appellant, who was accused before the trial Court, was found guilty of the offence of driving without due care and attention, contrary to section 8 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72), and was sentenced to pay a fine of C£7 and C£4.500 mils costs.

The salient facts of the case are as follows:-

The appellant, while driving car No. GL266, collided with a bus, No. TJD420, which was being driven by a certain Costas Evangelou, who at the trial was the co-accused of the appellant, but who was not called upon by the trial Court to make a defence, as it held that no *prima facie* case had been made out against him sufficiently to require him to do so.

At the time of the collision the bus was proceeding along Ayios Dhometios street, which is a main road, and the appel-

lant's car was emerging into the main road from Chios street, which is a side-road to the right-hand side of the at the time route of the bus.

5 The point of impact, as it appears on a plan which was prepared by the police and produced at the trial, was slightly over the crown of the road, it seems that the bus occupied not only its own proper side of the road, but, also, to a certain extent, part of the opposite side of the road, which, normally, should have been left open for use by traffic coming from the  
10 opposite direction.

The trial Court based its decision to convict the appellant on the real evidence, as it was shown on the said plan, and on the evidence of an eye-witness, who was a passenger in the bus and whose evidence it accepted as reliable; this witness testified,  
15 clearly, that the bus had been keeping to its proper side of the road and that it was while the bus was proceeding in this way that the car driven by the appellant went across the road and collided with it.

On the other hand, in not calling upon the co-accused of the  
20 appellant to make a defence the trial Judge found that the bus had collided with the car of the appellant while the latter was stationary and he added that this was a fact about which both accused were in agreement.

We think that there is a clear discrepancy between the version  
25 of the only prosecution eye-witness and the above finding of the trial Court as to how actually the collision has occurred; so, it was not safe for the trial Court to rely at all, as it has done, on the evidence of the said witness in convicting the appellant; and as we are not prepared to speculate whether the  
30 trial Court could, or would, have convicted the appellant without relying on the evidence of such witness, and by relying only on the real evidence as it is indicated on the plan prepared by the police, we have decided that the proper for us course is to set aside the conviction of the appellant.

35 The appeal is, therefore, allowed.

*Appeal allowed.*