

1981 May 18

[TRIANTAFYLIDIS, P., L. LOIZOU, DEMETRIADES, JJ.]

DEMETRAKIS TSAOUSIS,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(*Criminal Appeal No. 4182*).

*Criminal Law—Conviction for failing to stop at traffic lights—Based on assessment of credibility of the evidence—Appellant’s version disbelieved—Judge inquiring at length into past traffic record of appellant by putting to him questions—Approach of trial Judge to credibility of the evidence probably influenced adversely for appellant by what he stated about his similar previous conviction—Conviction unsafe—Set aside.*

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*Practice—Judge—Trial of criminal case—Function of Judge—Questions to accused about his past record.*

The appellant in this appeal appealed against his conviction of the offence of failing to stop at traffic lights when they were showing a red light. In an effort to clear up the issue of the exact state of the traffic lights the trial Judge put to the appellant a number of questions; and went on to ask the appellant whether he had been convicted in the past of any other traffic offence, and after the appellant had answered that he had been so convicted in 1951, when he was very young, the Judge asked him whether it was in respect of an offence of the same or of similar nature as the one for which he was being tried in the present instance, and the appellant replied that it was an offence of a similar nature.

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*Held*, that as the conviction of the appellant was based on the assessment by the trial Judge of the credibility of the evidence adduced and as the appellant was convicted because the trial Judge disbelieved his version that at the time when he set into motion his car the traffic lights were showing an amber light,

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and that when he drove past them they were showing a green light, and believed, instead, the version of a prosecution witness which contradicted that of the appellant, the fact that the trial Judge proceeded to venture into the realm of the past record of the appellant in relation to traffic offences renders unavoidable the conclusion that the approach of the trial Judge to the credibility of the evidence before him was quite probably influenced adversely for the appellant by what the appellant stated about his previous conviction for a similar offence and that, as a result, the conviction of the appellant cannot be regarded as being safe and has to be set aside (principles laid down in *Jones v. National Coal Board* [1957] 2 All E.R. 155 at p. 159 and in Archbold on Pleading, Evidence and Practice in Criminal Cases, 38th ed., para. 572, p. 307 approved).

*Appeal allowed.*

Cases referred to:

*Jones v. National Coal Board* [1957] 2 All E.R. 155.

**Appeal against conviction and sentence.**

Appeal against conviction and sentence by Demetrakis Tsaoushis who was convicted on the 19th November, 1980 at the District Court of Nicosia (Criminal Case No. 25670/79) on one count of the offence of failing to stop at traffic lights, contrary to regulations 57(1)(k), 70 and 71 of the Motor Vehicles Regulations, 1973 and sections 5 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86 of 1972) and was sentenced by Stavrinides, D.J. to pay a fine of £30.- and was disqualified from holding or obtaining a driving licence for a period of 20 days.

*St. Kittis*, for the appellant.

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

TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellant was convicted by the District Court of Nicosia of the offence of failing to stop at traffic lights when they were showing a red light, and he was sentenced to pay a fine of C£30 and was disqualified from holding or obtaining a driving licence for a period of twenty days.

The exact state of the traffic lights was the much disputed main issue at the trial.

In relation to this issue the trial Judge put to the appellant a number of questions, obviously in an effort to clear up completely this aspect of the case.

Then, however, the Judge went on to ask the appellant whether he had been convicted in the past of any other traffic offence, and after the appellant had answered that he had been so convicted in 1951, when he was very young, the Judge asked him whether it was in respect of an offence of the same or of similar nature as the one for which he was being tried in the present instance; the appellant replied that it was an offence of a similar nature. 5 10

As the conviction of the appellant was based on the assessment by the trial Judge of the credibility of the evidence adduced and as the appellant was convicted because the trial Judge disbelieved his version that at the time when he set into motion his car the traffic lights were showing an amber light, and that when he drove past them they were showing a green light, and believed, instead, the version of a prosecution witness which contradicted that of the appellant, we think that the fact that the trial Judge proceeded to venture into the realm of the past record of the appellant in relation to traffic offences renders unavoidable the conclusion that the approach of the trial Judge to the credibility of the evidence before him was quite probably influenced adversely for the appellant by what the appellant stated about his previous conviction for a similar offence. As a result the conviction of the appellant cannot be regarded as being safe and has to be set aside. 15 20 25

We are very much indebted to counsel for the respondents for the fair stand that he has taken in agreeing that, in the circumstances, he cannot support the conviction of the appellant. 30

Before concluding this judgment we would add that as regards the complaint of counsel for the appellant that the trial Judge put so many questions to the appellant that, in effect, he cross-examined him, we have been referred to the case of *Jones v. National Coal Board*, [1957] 2 All E.R. 155, 159 and to Archbold on Pleading, Evidence and Practice in Criminal Cases, 38th ed., para. 572, p. 307, and we limit ourselves to observing that we think that the relevant principles of law are rightly stated there and that it is useful for trial Judges to bear such principles in mind. 35 40

*Appeal allowed.*