2 C.L.R.

1981 December 21

[LORIS, STYLIANIDES AND PIKIS, JJ.]

GERD MARIANCZYK,

Appellant,

r.

THE POLICE,

Respondents.

(Criminal Appeal No. 4251).

Criminal Law—Evidence—Failure of accused to give evidence in his own defence—Comment by Judge—Although Judge wert a bit too far in commenting on such failure his observations do not go beyond area of comment—Conviction sustained.

When called upon to make his defence or a charge of driving without care and attention the appellant adopted his statement to the police in an unsworn statement from the dock. The trial Judge found him guilty mainly resting his findings on the evidence of a prosecution witness; and attached no weight to the version of the appellant set out in his statement to the police, in view, inter alia, of his failure to give evidence on oath.

Upon appeal against conviction:

Held, that although the trial Judge went a bit too far in commenting upon the implications of such failure, his observations do not go beyond the area of comment; that, therefore, he cannot be faulted for deriving any inference of guilt from such failure, something impermissible; and that given his findings it was perfectly open to the trial Judge to arrive at the conclusions he did.

Appeal dismissed.

Appeal against conviction.

Appeal against conviction by Gerd Marianczyk who was convicted on the 18th August, 1981 at the District Court of Larnaca (Criminal Case No. 5349/80) on one count of the offence of driving without due care and attention, contrary to sections

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8 and 19(1)(4) of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72) ans was sentenced by Eliades, Ag. D. J. to pay a fine of £10.

- P. HadjiDemetriou, for the appellant.
- A. Evangelou, Senior Counsel of the Republic, for the 5 respondents.

LORIS J. gave the following judgment of the Court. A collision occurred between two vehicles, that of accused 1 and 2, on the Larnaca-Kophinou road at approximately the middle of the road.

The trial Judge relying on the evidence of the only eye-witness before him discharged accused 1, at the close of the case for the prosecution, and called upon accused 2 on his defence.

Accused 2-the appellant before us-adopted his statement to the Police in an upsworn statement from the dock. At the 15 end of the day the Judge found the appellant guilty, mainly resting his findings on the evidence of P.W.3. He attached no weight to the version of the appellant set out in his statement to the police in view, inter alia, of his failure to give evidence on oath.

Although the Judge went a bit too far in commenting upon the implications of such failure, his observations do not go beyond the area of comment. Therefore, he cannot be faulted for deriving any inference of guilt from such failure, something impermissible.

Having given due consideration to the arguments raised on appeal, we find ourselves unpersuaded that we should interfere with the deliberations of the trial Judge. Given his findings, it was perfectly open to him to arrive at the conclusions he did.

In the result the appeal is dismissed.

Appeal dismissed.

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