[TRIANTAFYLLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

ANTONIOS G. KARATZIAS,

*Appellant,*

*v.*

THE POLICE,

*Respondents.*

(*Criminal Appeal No.* 3341).

*Evidence in criminal cases—Credibility of witnesses—Vital self-contradiction in complainant's evidence—Not taken into account by trial Court—Conviction quashed—On the other hand this is not a case where the proviso to section* 145 (1) (*b*) *of the Criminal Procedure Law, Cap.* 155 *should be applied—Cf.* infra.

*Miscarriage of justice—Proviso to section* 145 (1) (*b*) *of the Criminal Procedure Law, Cap.* 155*—Wrong admission of evidence or wrong assessment of evidence may not entail the quashing of conviction if there has been no substantial miscarriage thereby—When proviso can be resorted to.*

*Witness—Credibility—Vital self-contradiction not taken into account by trial Court—Conviction quashed.*

The trial Court disbelieving the evidence of the accused (Appellant) and believing the evidence of the complainant in spite of a vital self-contradiction in the latter's evidence, convicted the former of careless driving contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332. The accused appealed against his conviction. Quashing the conviction the Court:-

*Held,* (1). Unfortunately the trial Judge failed to take into account that in cross-examination the complainant admitted, eventually, that the truth was that the Appellant's car coming from the opposite direction had passed in front of him before he had started crossing the road; this self-contradiction of the complainant as regards a most vital aspect of what had happened shows that it was not at all safe to disbelieve the Appellant and to believe the complainant and to find, as a result, that Appellant's guilt had been proved beyond reasonable doubt.

(2) We have been invited by counsel for the Respondents to uphold the conviction and dismiss the appeal by applying the proviso to section 145 (1) (b) of the Criminal Procedure Law, Cap. 155 on the ground that in spite of the wrong assessment of the complainant's said contradiction no substantial miscarriage of justice occurred in this case. That proviso could only be resorted to if we were satisfied that the trial Court—or any other Court trying the Appellant— would without doubt have convicted him even after having given due weight to the aforementioned vital self-contradiction in the complainant's evidence (see, *inter alia, Polycarpou* v. *The Republic* (1967) 2 C.L.R. 198). But we are definitely not satisfied that this would be so. The conviction has to be quashed.

*Appeal allowed.*

Cases referred to:

*Polycarpou* v. *The Republic* (1967) 2 C.L.R. 198;

*Triftarides* v. *The Police* (1968) 2 C.L.R. 140.

The facts sufficiently appear in the judgment of the Court whereby they quashed the Appellant's conviction.

**Appeal against conviction.**

Appeal against conviction by Antonios G. Karatzias who was convicted on the 5th April, 1972 at the District Court of Nicosia (Criminal Case No. 468/72) on one count of the offence of driving without due care and attention contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332 and was sentenced by Papaioannou, Ag. D.J. to pay a fine of £20.

*A. Panayiotou* with *N. Aloneftis*, for the Appellant.

*N. Charalambous*, Counsel of the Republic, for the Respondents.

The judgment of the Court was delivered by:–

TRIANTAFYLLIDES, P.: The Appellant has appealed against his conviction of the offence of driving a motor vehicle without due care and attention, contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332.

The salient facts of the case are that at night-time on the 21st December, 1971, while the Appellant was on his way from Nicosia to Limassol, he knocked down the complainant, who is a man sixty-six years old; the accident took place in an illuminated road, in the outskirts of Nicosia, while the complainant was attempting to cross the road from right to left, in relation to the direction in which the Appellant was proceeding.

The trial Judge disbelieved the version of the Appellant to the effect that he saw the complainant only 3 or 4 metres ahead of him before he hit him; the Judge, also, took the view that the accident was not unavoidable; in this respect he did not accept the allegation that as soon as a car coming from the opposite direction had passed by the complainant emerged suddenly in front of the car of the Appellant. The Judge believed the complainant who said that when he started crossing the road the Appellant was about eighty metres away and that the said other car was more than eighty metres away coming from the opposite direction.

Unfortunately the trial Judge failed to take into account that in cross-examination the complainant admitted, eventually, that the truth was that the car coming from the opposite direction had passed in front of him before he had started crossing the road; this self-contradiction of the complainant as regards a most vital aspect of what had happened shows that, in the circumstances, it was not at all safe to disbelieve the Appellant, to believe the complainant and to find, as a result, that Appellant's guilt had been proved beyond reasonable doubt.

We have been invited by counsel for the Respondents to uphold the conviction, in spite of the above oversight of the trial Judge which—in our view—goes to the root of the issue of the credibility of the main witness against the Appellant; counsel for the Respondents has argued, in this connection, that it is an uncontested fact that the road was illuminated and, therefore, the Appellant ought to have noticed in time the complainant, if the Appellant had been keeping good look-out, and, also, that it has been found by the trial Judge that the Appellant was driving fast; in effect we have been asked by counsel for the Respondents to dismiss the appeal by applying the proviso to section 145 (1) (b) of the Criminal Procedure Law, Cap. 155.

That proviso could only be resorted to if we were satisfied that the trial Court—as well as any other Court trying the Appellant—would without doubt have convicted him, even after having given due weight to the aforementioned vital self-contradiction in complainant's evidence (see *inter alia*, *Polycarpou* v. *The Republic* (1967) 2 C.L.R. 198). We, definitely, are not satisfied that this would be so. On the contrary, on the material before us, we are not prepared to say that the evidence adduced could be treated as establishing beyond reasonable doubt the guilt of the Appellant: We fail to see how the Appellant could be expected to have noticed the complainant as he was starting to cross the road, at a moment when the Appellant's view towards the complainant was obstructed by a car which was passing by, coming from the opposite direction.

Furthermore, we cannot agree with the trial Judge that it could be safely inferred from the circumstances of the collision that the Appellant was driving fast; the fact that the complainant was thrown on to the bonnet of the car and his head hit the wind-screen, which as a result was smashed, is equally consistent with the happening of the impact at very close range, without the Appellant's car being driven at an excessive speed.

For all the foregoing reasons, and in the light, also, of relevant dicta in *Triftarides* v. *The Police* (1968) 2 C.L.R. 140, we have to allow the appeal and set aside the conviction of the Appellant.

*Appeal allowed.*