

KYRIACOS CHR. ATHANASSIADES,

*Appellant,*

KYRIACOS CHR.  
ATHANASSIADES

v.

THE POLICE

THE POLICE,

*Respondents.*

(*Criminal Appeal No. 3351*).

*Appeal—Turning on findings of fact and credibility of witnesses—Principles upon which the Supreme Court will act in appeals of this kind—Principles well settled—Restated—Burden on the Appellant to satisfy the Appellate Court that the trial Court erred on the above issues.*

*Credibility of witnesses—Findings of fact made by trial Courts—Approach of the Court of Appeal—See supra.*

Cases referred to:

*Roussou v. Theodoulou* (1972) 1 C.L.R. 22.

*Kyriacou v. Aristotelous* (1970) 1 C.L.R. 172.

The facts sufficiently appear in the judgment of the Court, dismissing this appeal against conviction and restating the principles upon which the Court will interfere with findings of fact made by trial Courts and questions of credibility of witnesses.

#### **Appeal against conviction.**

Appeal against conviction by Kyriacos Chr. Athanassiades who was convicted on the 30th May, 1972 at the District Court of Nicosia (Criminal Case No. 1056/72) 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. Efstychiou*, for the Appellant.

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

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KYRIACOS CHR.

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The judgment of the Court was delivered by:—

TRIANTAFYLLIDES, P.: The Appellant appeals against his conviction on a count that he was driving his motor-car without due care and attention, contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332.

The charge arose out of a collision between the motor-car of the Appellant and another motor-car in Dhigenis Akritas Avenue, in Nicosia, on the 19th November, 1971.

The trial Court convicted the Appellant because it accepted the version of the prosecution, namely that the Appellant just before the collision was driving in reverse gear from Cleomenous Street, which is a side-street of Dhigenis Akritas Avenue, into the avenue and he, thus, blocked the way of the car of the complainant who was proceeding along the avenue towards its junction with Cleomenous Street; as a result the front part of the vehicle of the complainant knocked on the rear part of the vehicle of the Appellant.

Counsel for the Appellant has argued that the trial Court was wrong in disbelieving the version of the Appellant, which was supported by the evidence of his father—who had been a passenger in his car and had just got off—to the effect that the Appellant at the time of the collision was stationary, on his proper side of the avenue, and that he had never driven into Cleomenous Street and reversed into the avenue.

As stated on quite a number of occasions by this Court (see, *inter alia*, *Roussou v. Theodoulou* (1972) 1 C.L.R. 22) the burden of satisfying us on appeal that the trial Court has erred on the issue of credibility lies always on the Appellant; and the grounds on which we can interfere with findings of fact are stated in, *inter alia*, *Kyriacou v. Aristotelous* (1970) 1 C.L.R. 172) and in the case-law referred to in that case.

We are not satisfied that the trial Court erred on the issue of credibility; on the contrary, we find that the version of the Appellant is inconsistent with indisputable facts, such as the point of collision which was practically in the middle of the avenue; because, it was impossible for the collision to have taken place in the middle of the avenue if the version of the Appellant, that he was at the time parked on his left-hand side of the avenue, were true.

Also, there was evidence by a policeman, who visited the scene soon after the collision, to the effect that the Appellant admitted to him that at the material time he had been reversing from Cleomenous Street into the avenue.

In view of the foregoing this appeal has to be dismissed. It has been contended by counsel for the Appellant that the complainant was driving at an excessive speed and that this factor was the main cause of the accident; this is not a matter relevant to the determination of this appeal; it is only relevant to the issue of contributory negligence which may arise in civil proceedings between Appellant and complainant.

*Appeal dismissed.*

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