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Mar. 9

ELIAS EFTHYMIU  
SOULIS  
v  
THE POLICE

[TRIANTAFYLIDIS, P., STAVRINIDES, MALACHTOS, JJ.]

ELIAS EFTHYMIU SOULIS,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(Criminal Appeal No. 3396).

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*Findings of fact made by trial Courts—Credibility of witnesses—Discrepancy between the evidence of the two main prosecution witnesses—Court of Appeal considering correctness of a finding of fact by the trial Judge, who had the advantage of observing the demeanour of the said witnesses, not prepared, in the light of the circumstances of this case, to hold that it has been satisfied that the trial Judge erred in relying on the evidence of the one rather than on that of the other witnesses—Even if it could be said that had the matter to be decided on paper only it might have thought that it was not safe to rely on the evidence of the said witness.*

*Witnesses—Credibility—Approach of the Court of Appeal.*

The facts sufficiently appear in the judgment of the Court, dismissing this appeal against conviction.

**Appeal against conviction.**

Appeal against conviction by Elias Efthymiou Soulis who was convicted on the 21st December, 1972, at the District Court of Famagusta (Criminal Case No. 8073/72), on seven counts of the offences of, *inter alia*, permitting another person to drive a tractor without a driving licence, contrary to Regulations 27(1) and 66 of the Motor Vehicles Regulations, 1959 and of permitting another person to use a tractor without being covered by a policy in respect of third party risks, contrary to sections 3 (1) (2) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 and was sentenced by Artemides, D.J. to pay a total fine of £40.- and £5.- costs of prosecution.

*A. Poetis*, for the Appellant.

*A. Frangos*, Senior Counsel of the Republic, for the Respondents.

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The judgment of the Court was delivered by:—

TRIANTAFYLIDIS, P.: The Appellant, who is one of the two accused before the Court below, has appealed against his conviction of the offences of permitting his co-accused, who is his minor son, to drive a tractor without being the holder of a driving licence, to use it without being covered by an insurance policy in respect of third party risks and to drive it without it being licensed, and, also, of permitting the towing of a trailer, without a licence, the carrying of five passengers in the trailer, the towing of a trailer without a rear numberplate and the driving of a tractor towing a trailer without an efficient braking system.

The main facts of the case are that, after the Appellant had finished working in a field of his with his son and other workers, the son drove a tractor, towing a trailer, to take workers home and an accident occurred on the way, with the result that some workers were injured.

The appeal has been argued on the basis that the trial Judge was wrong in accepting that the Appellant permitted his son to act as he did.

It is true that the Judge observed in his judgment that there was some discrepancy between the evidence of the two prosecution witnesses, who testified regarding the giving of instructions by the Appellant to his son to drive away the tractor with the trailer, but the Judge did not consider such discrepancy to be so material as to undermine their credibility. It is clear that the judge was impressed by the demeanour of the first prosecution witness, who was one of the workers concerned, and has accepted her evidence to the effect that the Appellant at a time when he, his son and this witness were standing close together, told his son to convey the workers home; in a trailer drawn by a tractor which was to be driven by the son. It is correct that the other prosecution witness stated that he heard the Appellant speak to his son, as aforesaid, not while the Appellant, his son and the first prosecution witness were close together, but when all of them (including the second prosecution witness) were apart, at different places in the field, and quite some distance from each other; but, the second prosecu-

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tion witness was, nevertheless, positive that he did hear the father instruct his son to drive away the tractor with the trailer in order to carry home the workers; and the Judge believed him.

This is, indeed, one of those cases in which it could be said that, had we had to decide the matter on paper only, we might have thought that it was not safe to rely on the evidence of the aforementioned prosecution witnesses; but, we are sitting here as an appellate tribunal, considering the correctness of a finding of fact by a trial Judge who had the advantage of observing the demeanour of the witnesses concerned and, in the light of the circumstances of this case, we are not prepared to hold that we have been satisfied that he erred in relying on the above evidence for the prosecution.

It may well be that the father spoke to his son, for the same purpose, on more than one occasion and that the evidence of the second prosecution witness, which in this respect does not seem to tally entirely with the evidence of the first prosecution witness, refers to a different occasion than the one to which that of the first prosecution witness refers.

The Appellant called as a witness for the defence his son who said that in driving the tractor away he was not complying with a request of his father, but that he was acting on his own; and he stated that he started the tractor's engine with what he described as a "tin opener". Also, counsel for the Appellant pointed out that the police stated that no ignition key was found on the tractor after the collision and submitted that the son's evidence was wrongly rejected. We do not think that the fact that, subsequently, the ignition key was not found is strong evidence that such key was not on the tractor when it was started; it may have dropped from it as a result of the accident. The police were not cross-examined as to whether a search was carried out at the scene of the accident for the ignition key; nor were the two aforementioned prosecution witnesses—who were being carried in the trailer towed by the tractor—questioned by the defence as to how the tractor was started; only one of them was asked whether he saw the son approach his father, the Appellant, in order to take the ignition key and he said that he did not happen to see this; but, in our view, this was not a sufficient way of putting the defence version to a prosecution witness as regards what was considered by the defence to be an important aspect of the case.

The fact remains that the trial Judge disbelieved the Appellant's son's version that he was not given the ignition key by his father and we see no sufficient reason for which to interfere with the Judge's finding as to credibility in this respect.

Viewing the case as a whole we find no ground for which to interfere with the conviction of the Appellant and we dismiss the appeal accordingly.

*Appeal dismissed.*

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