

1976

Jan. 5

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

COSTAS CHR
PELECANOS

COSTAS CHR. PELECANOS,

Appellant,

v.

v.

THE POLICE

THE POLICE,

Respondents.

(*Criminal Appeal No. 3669*).

Road Traffic—Careless driving—Section 8 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86 of 1972)—Collision between vehicles coming from opposite directions—Two conflicting versions—No finding by trial Court as to credibility—Real evidence—Extent to which it can be resorted to—Correct conclusion to be drawn from Haloumias v. The Police (1970) 2 C.L.R. 154—Resultant position of appellant’s car, could not, in the circumstances, be safely relied on for the purpose of drawing any conclusion against him—Conviction set aside—Retrial ordered by another Judge. 5 10

Evidence—Real evidence—Careless driving—Extent to which real evidence can be resorted to.

Credibility of witnesses—Careless driving—No finding as to credibility—Extent to which real evidence can be resorted to.

Decided Cases—Haloumias v. Police (1970) 2 C.L.R. 154—Correct conclusion to be drawn therefrom. 15

The appellant was convicted of the offence of driving without due care and attention in that his car collided with a car coming in the opposite direction. The versions of the two drivers were conflicting; but the trial Judge did not make a finding as to credibility, so as to be able to decide which of the two versions was to be accepted. Instead he relied on the case of *Haloumias v. The Police* (1970) 2 C.L.R. 154 and proceeded to treat as a decisive consideration for reaching a verdict of guilty against the appellant the resultant position of his car (as shown on a sketch). 20 25

The appellant appealed against conviction:

Held, (1) (after stating the correct conclusion to be drawn

5 from the *Haloumias* case (*supra*) at p. 6 *post*). The trial Judge wrongly treated the *Haloumias* case as enabling him to resort solely to the real evidence in order to avoid completely a decision as regards which out of two conflicting versions in relation to the occurrence of a traffic accident, is more credible.

(2) In the circumstances of this case the trial Judge could not safely rely on the resultant position for the purpose of drawing any conclusion against the appellant such as the finding that he was negligent.

10 (3) The better course is to order that this case be retried by another Judge.

Appeal allowed. Retrial ordered.

Cases referred to:

Haloumias v. The Police (1970) 2 C.L.R. 154.

15 **Appeal against conviction.**

20 Appeal against conviction by Costas Chr. Pelecanos who was convicted on the 27th October, 1975 at the District Court of Nicosia (Criminal Case No. 5228/75) on one count of the offence of driving without due care and attention contrary to section 8 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86/72) and was sentenced by Laoutas D.J. to pay £8.- fine.

A. Markides with *A. Georghiades*, for the appellant.

S. Nicolaidis, Senior Counsel of the Republic, for the respondents.

25 The judgment of the Court was delivered by:—

TRIANAFYLLIDES, P.: The appellant appeals against his conviction of the offence of driving without due care and attention, contrary to section 8 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72).

30 The trial Judge had before him evidence showing that the car driven by the appellant collided with a car coming in the opposite direction; the versions of the two drivers were conflicting, each one of them throwing the blame for the collision on the other.

35 The Judge did not, unfortunately, make any finding as to credibility, so as to be able to decide which of the two versions was to be accepted; it appears that he treated, wrongly, the case

1976
Jan. 5
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COSTAS CHR.
PELECANOS
v.
THE POLICE

of *Haloumias v. The Police*, (1970) 2 C.L.R. 154, as enabling a trial Court to have resort solely to the real evidence in order to avoid completely a decision as regards which out of two conflicting versions, in relation to the occurrence of a traffic accident, is more credible; in our view the correct conclusion to be drawn from the *Haloumias* case, when one reads as a whole the judgments delivered in it, is, only, that the real evidence can provide a very good and safe test for the purpose of deciding which of two conflicting versions is to be believed, and to what extent.

Having not made any finding as regards which side's version was the credible one, the trial Judge proceeded to treat as a decisive consideration for reaching a verdict of guilty against the appellant the resultant position of the car of the appellant (as shown on a sketch prepared by the police) which, in view of the absence of any other relevant evidence, as well as of the fact that such resultant position must have been brought about by a number of interactive factors, including the force of the impact of the collision of the two cars, could not, in our opinion, be safely relied on for the purpose of drawing any conclusion against the appellant, such as was the Judge's finding that the appellant was driving on the wrong side of the road and that, therefore, he was negligent.

In the light of all the foregoing we think that the better course is to order that this case be retried by another Judge of the Nicosia District Court.

Appeal allowed. Retrial ordered.