

1981 December 21

[LORIS, STYLIANIDES, PIKIS, JJ.]

ANDREAS SOCRATOUS NEOPHYTOU,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4253).

Reasoned judgment—Article 30.2 of the Constitution—Principles applicable—Requirement of due reasoning applies equally to judgment given in both civil and criminal proceedings—Conviction for careless driving—No finding regarding the credibility of the witnesses and no evaluation of the two conflicting versions—
5 *Difficult if not impossible to discern reasons for the conviction—Judgment not reasoned—Conviction and sentence set aside.*

This was an appeal against the conviction of the appellant of careless driving. The offence was committed when a motor-
10 vehicle driven by accused 1, before the trial Court, collided with a motor-cycle driven by the appellant on the main Paphos-Peyia road close to its junction with a side road and just after accused 1 had emerged on the main road from the side road. Before the trial Judge there were two conflicting versions as
15 to how the accident occurred but the trial Judge has not made any finding with regard to the credibility of the witnesses before him nor has he evaluated the conflicting versions. At the end of the trial the Judge convicted the appellant after finding that he failed to keep a proper look-out and “for keeping the wrong
20 side of the road”.

Held, (1) that given the conflicting allegations made about the circumstances surrounding the accident, it was of the first importance for the trial Court to determine, in the first place, the facts that attended the collision, especially the circumstances
25 under which the driver of the motor-vehicle emerged on the main road and the distance that separated the two vehicles at the

time he did so; that in the absence of such a finding, it was impossible to determine the liability of the appellant for the accident and, therefore, decide the issue of his guilt; that the failure of the Judge to examine the evidence before him in its proper perspective is such as to make it difficult, if not impossible, to discern the reasons for the conviction of the appellant; that the supply of proper reasoning for the deliberations of the Court, particularly the reasons for the conviction of the accused, is mandatorily warranted by the Constitution, notably Article 30.2, and constitutes at the same time a fundamental attribute of the judicial process. 5 10

(2) That the evidence before the Court must be analysed in the light of the issues arising; that in a criminal case, the basic issue is always that of the guilt of the accused in the light of the burden cast on the prosecution to prove it; that, further, there must be concrete findings as a necessary prelude to the final deliberations of the Court and, lastly, there must be a clear pronouncement indicating the outcome of the case; that the reasoning given in support of the judgment in this case falls short of the above; and that, therefore, the judgment cannot stand; accordingly the appeal must be allowed and the conviction and sentence set aside (statement of the law in *Pioneer Candy Ltd., and Another v. Stelios Tryfon & Sons Ltd.*, (1981) 1 C.L.R. 540 on reasoning of judgment in civil proceedings applies equally to judgments given in the field of criminal law). 15 20 25

Appeal allowed.

Cases referred to:

Pioneer Candy Ltd. and Another v. Stelios Tryfon & Sons Ltd.
(1981) 1 C.L.R. 540.

Appeal against conviction. 30

Appeal against conviction by Andreas Socratous Neophytou who was convicted on the 27th August, 1981 at the District Court of Paphos (Criminal Case No. 2697/80) on one count of the offence of driving without due care and attention, contrary to sections 8 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72) and was sentenced by Laoutas, Ag. S.D.J. to pay £15.—fine 35

Chr. Georghiades, for the appellant.

A. Evangelou, Senior Counsel of the Republic, for the respondents. 40

LORIS J.: We are unanimously of the view that the appeal must be allowed and that the conviction and sentence should consequently be set aside. We consider it unnecessary to break; Pikis, J. will give our reasons for allowing the appeal.

5 PIKIS J.: On 17.6.1980, a motor-vehicle, driven by accused
1 before the trial Court, and a motor-cycle, driven by the appel-
lant, accused 2 before the trial Court, collided on the main
Paphos—Peyia road, close to its junction with the side-road
10 leading to Chlorakas. Shortly before the collision, the motor-
car driven by accused 1 had emerged on the main road from
the side-road. It was of crucial importance for the Judge to
decide under what circumstances the motor-car had entered
the main road, and what the position of the two vehicles was
at the time.

15 For the prosecution, evidence was adduced, coming from the
police constable who investigated the accident, sketching the
scene and recording pieces of real evidence found thereat.
The point of impact was on the righthand side of the road, as
one proceeds in the direction of Peyia. The only other evidence
20 adduced by the prosecution, came from a passenger in the car
of accused 1, whose testimony is, on the face of the record, by
no means conclusive as to what had preceded the collision.
This witness testified, *inter alia*, that the motor-cyclist changed
direction and moved to the right, a short while after the motor-
25 car had entered the main road. With this evidence in hand,
the trial Judge dismissed the case against accused 1, who was
consequently acquitted and discharged, and called upon accused
2 to make his defence. In his testimony before the trial Court,
accused 2, the appellant before us, maintained that he was
30 compelled to change direction and move to the righthand side
of the road, in view of the emergence of the motor-car on the
main road without first halting, a fact that precipitated the
collision. At the end of the day the trial Judge, in an *ex tempore*
judgment, convicted the accused after finding that he failed
35 to keep a proper look-out and “for keeping the wrong side
of the road”. No findings are made with regard to the credi-
bility of either eye-witness who testified for the prosecution, or
the accused, nor was the version of the accused examined in
any real sense in the context of the evidence before the Court.
40 Obviously, the statement of the trial Judge that the appellant
was not an experienced driver and that the accident was wholly

or in part due to that, is a matter of conjecture rather than a finding of fact. Certainly, the experience of a driver as such, is not an issue on a charge of driving without due care and attention.

The manifest absence of any real finding with regard to the credibility of the witnesses before the Court, and the failure to evaluate the conflicting versions, led us to invite the views of counsel for the respondents on the sufficiency of the reasoning of the judgment. Mr. Evangelou submitted that the reasoning, although it falls short of what is desirable, the inadequacy of the reasoning is not such as to justify intervention on this count. We are of a contrary view.

Given the conflicting allegations made about the circumstances surrounding the accident, it was of the first importance for the trial Court to determine, in the first place, the facts that attended the collision, especially the circumstances under which the driver of the motor-vehicle emerged on the main road and the distance that separated the two vehicles at the time he did so. In the absence of such a finding, it was impossible to determine the liability of the appellant for the accident and, therefore, decide the issue of his guilt. The failure of the Judge to examine the evidence before him in its proper perspective is such as to make it difficult, if not impossible, to discern the reasons for the conviction of the appellant. The supply of proper reasoning for the deliberations of the Court, particularly the reasons for the conviction of the accused, is mandatorily warranted by the Constitution, notably Article 30.2, and constitutes at the same time a fundamental attribute of the judicial process. In the longer run, faith in the judiciary of the State, and its mission, depends, to a very large extent, on the persuasiveness of the reasons given by the Courts in support of their decisions. Any laxity in this area would inevitably undermine faith in the premises of justice. The need for proper reasoning is not only warranted by the interests of the litigants but also by the interests of the general public in the proper administration of justice. The impression of arbitrariness is the one element that must constantly be kept well outside the sphere of judicial deliberations.

Recently, we had occasion to review the concomitants of proper reasoning in a judgment of this Bench, notably in Civil

Appeal No. 6075, delivered on 17.11.1981.* Whatever was said there with reference to the reasoning of judgments in civil proceedings, applies equally to judgments given in the field of criminal law. It was pointed out that the evidence before
5 the Court must be analysed in the light of the issues arising. In a criminal case, the basic issue is always that of the guilt of the accused in the light of the burden cast on the prosecution to prove it. Further, there must be concrete findings as a necessary prelude to the final deliberations of the Court and,
10 lastly, there must be a clear pronouncement indicating the outcome of the case.

The reasoning given in support of the judgment in this case, falls short of the above; it does not, for example, indicate whether the appellant moved to the right-hand side of the road as a
15 result of a failure of the motor-car driver to enter the main road with due regard to traffic thereon. And if that was the case, nothing is said with regard to the implications of the actions of the appellant thereafter, and the reasonableness of his alleged efforts to avoid the collision.

20 For all the above reasons, we consider that the judgment cannot stand; therefore, the appeal is allowed, and the conviction and sentence are set aside.

Appeal allowed.

* *Pioneer Candy Ltd. and Another v. Stelios Tryfon & Sons Ltd.* (1981) 1 C.L.R. 540.