



MALTA

COURT OF CRIMINAL APPEAL

**HON. MR. JUSTICE
DAVID SCICLUNA**

Sitting of the 10th September, 2004

Criminal Appeal Number. 89/2004

The Police

vs

Balakrishnan Dhandapani

The Court,

Having seen the charges proffered against the appellant before the Court Of Magistrates (Malta), whereby he was charged with having on the 17th December, 1999, at about 00.35a.m., at Sliema Rd, corner with Rue d'Argens, driven vehicle No. LAF 826:

- (1) In a reckless manner;
- (2) Through imprudence, negligence and non-observance of the traffic regulations collided and caused involuntary damages on vehicle No. IAT 632 to the detriment of Paul Buhagiar;

(3) Caused involuntary injuries of grievous nature on the person of Paul Buhagiar as certified by Profs.R.Gatt of St.James Hospital, Zabbar;

(4) In the said accident caused involuntary injuries of slight nature on the person of Michael Pace as certified by Dr.Robert Chircop M.D. of S.L.H.;

(5) Moreover whilst driving same vehicle in the said locality which area is regulated by traffic light singals, failed to stop when said lights were indicating red or amber;

The Prosecution requested that he be disqualified from all his driving licences;

Having seen the judgement of the Court Of Magistrates (Malta) as a Court of Criminal Judicature of the 23rd of March, 2004, whereby the accused Balakrishnan Dhandapani was found guilty of the first, the second, the third and the fourth charges and condemned to the payment of a fine (*multa*) of one hundred and forty liri (Lm140) altogether; while with regard to the fifth charge, the Court noted that this is a contravention and is prescribed by section 688(f) of Chapter 9 of the Laws of Malta and consequently abstained from taking further cognisance of it; furthermore the first Court abstained from making an order disqualifying accused from his driving licences;

Having seen the application of appeal of the appellant Balakrishnan Dhandapani, filed by him on the 15th October, 2002, whereby he requested the Court to vary the said judgement, confirming it in so far as the fifth charge was declared prescribed at law and revoking it in so far as appellant was found guilty of the other four charges and declaring appellant not guilty of the said four charges and releasing appellant of punishment;

Having seen the records of the proceedings;

Having heard the evidence;

Having heard the submissions made by Doctor Joseph Zammit McKeon on behalf of the appellant and Doctor Anthony Barbara on behalf of the Attorney- General;

Having considered:

Appellant's grievance is that he was found guilty of the first four charges brought against him on the basis of a wrong application of traffic regulations in regard to the facts of the case and the evidence regarding the motor accident in question. He argues that since the traffic lights at the place where the accident occurred, that is to say the intersection between Sliema Road and Rue D'Argens in Gzira, were fully operational, the right of way is determined by the traffic lights system itself and not by other considerations of road priority, which considerations are unrelated to the primary question of the traffic lights. Thus, continues the appellant, road priority becomes irrelevant when an intersection is regulated by traffic lights. It is the green light that gives the right of way rather than the objective importance of the road. It is irrelevant if in normal circumstances one road would be considered as a major road in relation to the other.

This Court is in full agreement that at an intersection regulated by traffic lights, it is said lights which determine the right of way of traffic proceeding along the roads forming such intersection. This of course does not mean that a motorist may proceed in every circumstance. Indeed the Highway Code itself states: "Green means you may go on if the way is clear. Take special care if you mean to turn left or right and give way to pedestrians who are crossing"¹. The problem facing the Court in this case is that both drivers involved in this accident state that they were proceeding when the light was green. In other words both contend that they had the right of way. From a thorough reading of the first Court's judgement it would appear that appellant's version of events was not dismissed and that his guilt was declared on the basis that he went too far out into Rue D'Argens without exploring

¹ Appendix II under the title "Traffic Light Signals".

the road before crossing, thus causing a sudden obstruction to the oncoming vehicle driven by Paul Buhagiar.

This Court has had the opportunity to hear *viva voce* the evidence tendered and in fact finds the two versions quite contradictory.

The driver of the car which was proceeding down Rue D'Argens from the direction of Savoy Hill, P.S. 909 Paul Buhagiar stated that, together with P.C. 1510 Michael Pace, he was proceeding with his private car to investigate a report that somebody had been run over near the Old Stadium in Gzira. As he arrived at the intersection in question, a car emerged from Sliema Road in the direction of Kappara and collided into his car. He said that he is positive that the light was green when he passed the lights in Rue D'Argens and they were still green when he got out of his car and then fainted. He had been driving at 35 kilometres an hour and did not alter his speed at the lights. When he had almost reached the corner, he saw a bright light moving out from his left and so he swerved to the right and braked slightly but could not avoid the impact.

P.C. 1510 Michael Pace also stated that the light was green on their approaching the intersection in question and that it was still green when he got down from the car. He concluded this because he could see the red light reflected in the Sliema Road lights. He denied having told P.S. Buhagiar after the accident "M'ghidtlekx li kienu homor?"

Appellant stated that he is familiar with the place where the accident occurred and that on the day in question he stopped at the lights in Sliema Road on the Gzira side behind another car as the lights were red. The car in front of him moved off when the lights changed to green and he followed. He said that it is his habit to look to left and right before he goes out of the intersection in question, but everything happened in a flash. According to appellant, the car coming down Rue D'Argens was travelling at a

very fast speed. He indicated that it had already passed the lights as when he saw it, it was around ten metres distance "but there was no proof that he was trying to brake or avoid the accident, and my car was already out on the road, so it was him who had to brake". Appellant said that he did not apply his brakes at any time. He also stated that he heard P.C. 1510 say "M'ghidtlekx jiena li kellek red? Qed tara x'ghamilt int?" He got out of his car and helped P.S. 909 who had fainted.

In this Court's view, appellant's version could be believed as much as the other driver's. Indeed, if appellant's version is to be believed, then he had every right to proceed out into Rue D'Argens in order to cross over to the other side of Sliema Road. Being behind another car that was the first to move out and that did so without any problem, meant that the road was in fact clear. Moreover, it was not a question of, as the first Court put it, being audacious, but of exercising a right of way that was granted by a green light. Nor could it be interpreted as an attempt by appellant to unduly enforce his right of way. On the other hand, if it is P.S. 909's version that is to be believed, that is to say that he passed the lights in Rue D'Argens when they were still green, then there is no doubt that he had the right of way.

Hence in view of this conflict of evidence, it cannot be said that the prosecution has proved its case and the appeal filed by appellant is being acceded to.

For these reasons:

The Court accedes to the appeal and reforms the judgement of the Court of Magistrates (Malta) given on the 23rd March 2004 in the names **The Police vs Balakrishnan Dhandapani** by confirming it insofar as the fifth charge was declared as prescribed at law and revoking it insofar as appellant was declared guilty of the other four charges and instead declares and finds appellant not guilty also of the said other four charges and accordingly releases him from all punishment.

Informal Copy of Judgement

< Final Judgement >

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