Court of Magistrates (Malta)
As a Court of Criminal Judicature

Magistrate Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

The Police
(Inspector Hubert Cini)

-vs-

Kenneth David Allen, bearer of identity number 27111A

Case no: 1039/2012

Today, the 28th October, 2016

The Court,

Having seen the charges brought against the accused Kenneth David Allen who stands charged with having:

On the 22nd of August 2011 at about ten to nine in the morning (08:50a.m), whilst driving vehicle with reg no HBB227:-

1. Through imprudence, negligence and unskillfulness in his art or profession and non observance of the motor vehicle regulations, caused involuntary damages on a vehicle bearing registration no HAC587 to the detriment of Jennifer Attard.

2. Through imprudence, negligence and unskillfulness in his art or profession and non observance of any regulation caused injuries of grievous nature to Jennifer Attard as certified by Dr M Caruana M.D. reg no 2684.

The Court was kindly requested that should the accused be found guilty he is disqualified from all his driving licences.

Having heard witnesses.

Having seen all the acts and documents exhibited;

Having heard the prosecution and defence counsel make their submissions.

Considers:

Whereas the offences object of these proceedings allegedly occurred in August, 2011, the said proceedings commenced to be heard by this Court as previously precided, and the first sitting held before this Court as presided, was held on the 10th March, 2016.

The accused stands charged with the crimes of causing involuntary bodily harm of a grievous nature and causing involuntary damage to a vehicle, both offences having been caused to the detriment of Jennifer Attard.

Whereas Jennifer Attard, the injured party, testified how on the morning of the 22nd August, 2011, as she was driving to Zejtun from Marsascala, she was in a stationary position behind another car when suddenly a vehicle coming from the opposite side of the road and crashed into her car resulting in her suffering injuries to her chest and her left hand. Attard explained that the road in question was straight if one is driving upwards but when driving downwards it curves slightly. There was no traffic on the opposite side of the road and the witness never saw the accused approaching as she was looking ahead. The injured party described how she had just passed by the bowser facility and that this facility was close to where the accident occurred although not in the immediate vicinity.[1]

Whereas Professor Walter Busuttil testified that Attard had suffered a fracture of her sternum, which injuries were classified as grievous *per durata.*[2] Dr Marius Caruana had examined the injured party at the casualty department and found that she was bruised over the anterior aspect of the right shoulder and that x-rays confirmed that she sustained a fractured sternum as well as a fracture of the fourth metacarpal bone of her left hand. Such injuries take between nine to

[1] Fol.93 et seq.
[2] Fol.117-118

twelve weeks to heal.[3] Mr Raymond Gatt confirmed that Attard had suffered a permanent disability to her ring finger of the left hand.[4]

Whereas spoken to on the scene by SM1181 Eugene Caruana, the accused had stated that as he was driving from Zejtun towards Marsacala, upon reaching the bend on the said road, he noticed water and tried to break but the car skidded resulting in his losing control of his vehicle which collided into a car being driven in the opposite direction.The witness confirmed that although the conditions of the road where the incident occurred were good, <u>the said road was slippery</u> because there was water which had been left spilling on to the road by a bowser which had passed around ten minutes earlier.

On this point the Court feels that it is duty bound to remark that this statement is is contradicted by witness Darmanin[5] and the accused[6] who both stated that the water was coming out of the villa adjacent to where the car hit the water.

He added that where the collision occurred the road was very slippery because it was in a bend. The witness confirmed that there was water on the bend of the road as marked in Doc CG7A[7] and that he could see no break marks due to the water prescence. The damages sustained by the two vehicles indicated a strong impact.[8] The witness maintained that had the accused been driving at *"a good speed"* the water prcesence would not have caused the vehicle to lose control notwithstanding it was in a bend although ineveiatbely the water did play its part.[9]

Whereas the Court finds it opportune to remark that the fact that when the Police arrived on the scene coupled to the fact that the incident occurred on an August morning where dryness and heat inevitably contribute to the time-frame within which water dries up, is indicative of the fact that the amount of water which was on the road was substantial.

Whereas Nadine Darmanin, who was present on the scene at the time of the incident, testified that when they were at the bend but still on the straight part of the road, the car in front of her had slowed down. It was at that point that she saw the accused coming from the bend on the opposite direction: *"Exactly when*

[3] Fol.119-120
[4] Fol.121-123
[5] Fol.145
[6] Fol.150
[7] Fol.139
[8] Fol.129
[9] Fol.131

he passed the bend there was water on the street I rememener becaue it was coming from the villa where the crash was, he swerved and hit her."[10]

Whereas the accused chose to testify and stated that he was driving at a speed of between 45-50 km/hr. The water was on his side of the road and it was coming out from a trench across the road and from another hole further back.[11] The accused maintained that this trench has been left in this state, allowing water to make its way onto the connecting road, for the last five years. Documents exhibited by the accused show that the speed limit on that stretch of road is that of 50Km/hr.[12]

Whereas learned counsel for the accused also raised the defence of 'casus', which if found to subsist exonerates the accused from any criminal responsibility.

In **Ciantar v Gatt**[13] an extract from **Chirani** was cited:
"L'efficacia del caso fortuito e della forza maggiore, o dello stato di necessita', quali mezzi liberatori delle responsabilita, cessano quando questi avvenimenti siano preceduti da dolo o colpa dell'agente… Il fatto illecito si conobbe allora al comportamento giuridicamente anormale, ne sara valevole l'eccezzione liberatoria perche' inutilizza dal dolo o dalle colpe precedente…."

Reference is being made to the judgement by the Court of Criminal Appeal in the names **The Police vs Clive Vella**:[14]

Il-ġudikant irid jiġbed il-konklużjonijiet tiegħu mill-provi li jkun hemm u mhux bilfors mill-brake marks jew minn xi inkjesta. Hekk ikkummentat il-Qorti tal-Appell Kriminali fis-7 ta' Frar 2003 fis-sentenza fl-ismjiet : 'Il-Pulizija vs Francis William Peter George Zarb Adami'
'F'każijiet ta' inċidenti stradali, hemm ċerta presumptions of fact li joħorġu mill-assjem tar-riżultanzi ta' dak linċident, li fil-ġurisprudenza antika kienu jissejħu 'res ipsa loquitur u li llum ikun korrett li jissejħu circumstantial evidence u li jistgħu jimmiltaw biex min irid jiġġudika jasal għal ċerti konklużjonijiet dwar ir-responsabilita' o meno
tal-akkużat.'

Another Judgement by the same Court, differently presided held:[15]

Sewqan negligenti ifisser nuqqas ta' prudenza ordinarja li wiehed ghandu jadopera biex jevita s-sinistri stradali (App. Krim. Pul. vs. Antonio Spiteri , Vol. XLIV . .892)

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[10] Fol.143
[11] Fol.150
[12] Fol.136
[13] Qorti tal-Appell Civili; 15.05.1926, per Onor. Imh. Luigi Camilleri
[14] Crim. App. No. 313/2012, decided by Hon. Mr. Justice Dr. Lawrence Quintano on the 14th January, 2013
[15] **The Police vs Kevin Caruana**, per the Hon. Mr. Justice Dr. J. Galea Debono, Crim. App. No.234/2002, 3.04.2003

Illi umbaghad gie ukoll ritenut minn din l-Qorti li "accident jista' minnu nnifsu jidher li x'aktarx gara minnhabba htija ta' xi persuna milli ghal kawzi ohra . Hawnhekk , ….. jaqa' fuq dik il-persuna il-piz tal-prova biex juri li f' dak li gara ma kellux htija ." (App. Krim. Pul. vs. Nazzareno Farrugia , Vol. XXXIII , p.968) Dan ghaliex "jistghu jigu assodati serje ta' fatti li jikkostitwixxu dak li "in subiecta materia" jissejjah "res ipsa loquitur" - "in such circumstances, the facts speak for themselves if no explanation is given by the defendant " (Ara DAVIES fil-"Law of Road Traffic" citat b'approvazzjoni minn din il-Qorti fl-appell : "Pul. vs Cassar Desain; 13.1.1962) S'intendi il-grad ta' prova filkaz ta' akkuzat jasal biss sa dak tal-probabilita' u mhux tenut li jipprova beyond "a reasonable doubt" kif jinkombi fuq il-Prosekuzzjoni . Hu veru li skond gurisprudenza aktar recenti, t-teorija ta' "res ipsa loquitur" f' materja penali m'ghadhiex aktar tigi applikata mill-Qrati taghna, pero', kif gie ritenut fl-Appell Kriminali " Il-Pulizija vs. James Abela " [11.7.2002] jistghu jirrizultaw certi provi indizjarji jew "circumstantial evidence" li joholqu certi "presumptions of fact" kontra s-sewwieq , li fl-assenza ta' spjegazzjoni li tilhaq il-grad tal-probabbilta' jistghu anki jwasslu ghall-htija tas-sewwieq.

Illi gie ukoll ritenut li "ma hemmx dubju li l-fatt li driver jitlef il-kontroll tal-karozza w jispicca fuq in-naha l-hazina tat-triq minnu nnifsu hija prova ndizjarja jew "circumstantial evidence" li tohloq "presumption of fact" ta' sewqan hazin , ghax driver suppost li jkollu l-vettura tieghu dejjem taht kontroll." [App. Krim. Pulizija vs. Neville John Psaila ; 20.3.2003]

Illi, kif intqal, fil-kaz in ezami l-appellant qed iqajjem id-diviza tal-"casus" kagjonata minn skiddjar tal-vettura tieghu. Illi gie ritenut appropositu minn din il-Qorti li : "F'materja ta' "skidding" il-principju regolatur ma jistax hlief ikun dan . L-skid wahedha mhix la prova ta' negligenza u lanqas skriminanti. **Hemm bzonn li jigi ndagat jekk kienx hemm negligenza antecedenti jew konkomitanti** . Jekk negligenza simili tirrizulta , allura hemm ir-responsabbilta' nonostante l-"skid" . Jekk ma tirrizultax, allura l-"skid" hija "a good defence" ghax tkun "inevitable accident".

Ghaldaqstant biex tirmexxi d-difiza tal-"skid", jinhtieg li limputat jipprova mhux biss l-"skid" dovuta ghall-art tizloq imma ukoll li l-"skid" saret bla ebda negligenza tieghu w li hu jkun ha l-prekawzjonijiet kollha li ghandu jiehu driver prudenti meta l-art tkun tizloq . Meta driver jipprova mhux biss il-fatt tal-"skid" "sic et simpliciter" , imma jipprova ukoll li l-"skid" saret bla ebda htija tieghu , izda accidentalment b'mod li l-vettura , bla htija tieghu w accidentalment, saret inkontrollabbli, allura hija eskluza n-negligenza li taghti lok ghar-responsabilta' kriminali." [Il-Pul. vs. Carmel Cachia- Vol. XXXVII , iv. p.920].

Gie ukoll ritenut minn din il-Qorti fl-Appell : Il-Pulizija vs. J. Cost Chritien (Vol. XXXVII , iv. p. 873) li "meta tissuciedi kollizzjoni minhabba li wahda mill-karozzi tkun skiddjat , id-driver tal-karozza li skiddjat huwa responsabbli jekk ma gharafx jaghmel il-manuvra mehtiega biex jevita w jnaqqas l-skiddjar meta kellu z-zmien biex jaghmel dan u hu aktar responsabbli jekk jaghmel xi manuvra li tipprovoka l-aggravament tal-iskiddjar . Ghax l-imperizja fis-sewqan bhas-sewqan hazin hija htija ."

In the judgement in the names **The Police vs Carmen Scerri** the same Court held:

L-appellanti tilmenta li hija kienet giet rinfaccata b' emergenza subitanea w ghalhekk ma kellhiex tort. Pero', kif gie ritenut fl-Appell Kriminali: **"Il-Pulizija vs. Captain A. Gera"** [13.12.1968] :-
"driver ma jistax jissolleva b' success id-difiza tas-'sudden emergency' meta l-emergenza jkun holoqha hu". u *"the driver of a car is always liable if it was his previous negligence which gave rise to the emergency"* (Kollez.Vol. XXIX, iv. p.573).[16]

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[16] Crim. App. No. 444/2009, Mr. Justice Dr. J. Galea Debono, 22.02.2010.

Whereas the accused stands with the offences of involuntary bodily harm and involuntary damages under the Criminal Code, reference shall now be made to legal doctrine on the constituent elements of an involuntary offence.

Whereas in the case **Il-Pulizija vs Perit Louis Portelli, B.E &A., A&CE,** the Court of Criminal Appeal established that:[17]

"Hu mehtieg ghall-kostituzzjoni tar-reat involontarju, skond l-artikolu 239 tal-Kodici Penali, illi tirrikorri kondotta volontarja negligenti – konsistenti generikament f'nuqqas ta' hsieb ("imprudenza"), traskuragini ("negligenza"), jew ta' hila ("imperizja") fl-arti jew professjoni jew konsistenti specifikatament f'nuqqas ta' tharis tar-regolamenti – li tkun segwita, b'ness ta' kawzalita`, minn event dannus involontarju.

Ghandu jigi premess illi, ghall-accertament tal-htija minhabba f'kondotta negligenti, ghandu isir il-konfront tal-kondotta effetivament adoperata ma' dik il-persuna li s-sapjenza rumana identifikat mal-"bonus pater familias"; dik il-kondotta, cioe` ili fil-kaz konkret kienet tigi wzata minn persuna ta' intelligenza, diligenza u sensibbilita` normali; kriterju dan li, filwaqt li iservi ta' gwida oggettiva ghall-gudikant, ihallieh fl-istess hin liberu li jivvaluta d-diligenza tal-kaz konkret. "La diligenza del buon padre di famiglia costituisce un criterio abbastanza indeterminate per lasciare al giudice gran liberta` di valutazione" (Giorgi, Teoria delle Obbligazioni, II, 27 p.46)….

Whereas in **Il-Pulizija vs Ludwig Micallef**[18] the Court of Magistrates declared**:**

"Jispetta ghalhekk lill-Prosekuzzjoni tipprova b'mod konklussiv illi l-incident li fih miet Clifford Micallef sehh unikament jew almenu in parti, tort ta' negligenza, traskuragni w nuqqas t'osservanza tar-regolamenti tat-traffiku da parti tal-imputat li tajjarha.

Sabiex tipprova dan il-Prosekuzzjoni ma tistax tistrieh fuq dak li l-Qorti tista' tahseb li gara, ghaliex il-gudikant irid necessarjament jiddeciedi *iuxta allegata et probate*. Id-dover tal-Prosekuzzjoni hu allura li jipprezenta quddiem il-Qorti, kaz konvincenti u pprovat li adegwatament jistabilixxi l-htija tal-imputat ghall-akkadut, li tipprova kondotta voluntarja, negligenti, konsistenti generikament f'nuqqas ta' hsieb 'imprudenza', 'negligenza' jew 'traskuragni' jew ta' hila, ta' 'imperizja' fl-arti jew professjoni jew konsistenti specifikament fin-nuqqas ta' osservanza tal-Ligijiet, regolamenti, ordnijiet u simili li tkun segwita b'ness ta' kawzalita' minn akkadut dannuz u involontarju.

Dan ifisser li fil-materja tal-kolpuz hemm necessarjament l-element t'attivita diretta ghal xi fini partikolari, li minhabba nuqqas ta' certu prekawzjoni jistghu jigu lezi jew danneggjati jew impregudikati l-interessi ta' terzi. Il-konnotat karetteristiku tal-kulpa huwa l-prevedibilta' tal-event dannuz, li kondotta llegali ta' xi hadd tista' ggib. Din hija l-kulpa normali jew l-hekk imsejha 'colpa incosciente' a differenza minn dik imsejha 'colpa cosciente', li hija l-kulpa bl-element fiha tal-previst tal-akkadut.

Hemm diversi forom ta' kodotta kolpuza derivanti minn att ta' negligenza, imprudenza, imperizja u non ossevanza tal-ligijiet, regolamenti, ordnijiet u simili.

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[17] 4.02.1961 per Onor. Imhallef Dr. J. Flores. Kollez. Deciz Vol.XLV.iv. 870, 903

[18] Magistrate Dr. Consuelo-Pilar Scerri Herrera, Case no.753/2006, 17.08.2010. The said considerations were also reiterated in judgements by the same court differently presided, **"Il-Pulizija vs Edward Bonnici"** (27.010.2016), and **"Il-Pulizija vs Rudolph Gatt"** (03.02.2016), per Magistarte Dr. Josette Demicoli.

L-imprudenza tigi mill-agir ta' xi hadd minghajr ma jiehu l-opportuni kawteli.

In-negligenza tigi mid-disattenzjoni u disakkuratezza tal-agent fil-kondotta tieghu.

L-imperizja hija l-forma specifika tal-kulpa professjonali cioe' kif jghid **Manzini**:- "L-inettitudine e insuficienza professionale generale o specifica, nota all' agente di cui egli vuole non tener conto".

Il-kulpa tista' tkun dovuta wkoll ghal non osservanza tal-ligijiet, regolamenti, odnijiet u simili bhal ma huma l-assjem ta' regoli predisposti mill-Ordinanza tat-Traffiku –Kap 65, il-High Way Code – Motor Vegicle Regulations – bl-iskop li jigu evitati l-possibiltajiet ta' hsara u dannu lil terzi.

Il-Qorti hi ghalhekk sejra tezamina bir-reqqa x'inhuma l-ingredjenti tar-reat principali in ezami, u cioe' ta' dak kontemplat fl-**Artikolu 225 tal-Kap. 9,** u cioe' tar-reat li bih gie akkuzat l-imputat, u cioe' omicidju involontarju. L-**artikolu 225 tal-Kap 9** jiddisponi s-segwenti:

"Kull minn b'nuqqas ta' hsieb, bi traskuragni jew b'nuqqas ta' hila fl-arti jew professjoni tieghu, jew b'nuqqas ta' tharis tar-regolamenti, jikkaguna l-mewt ta' xi hadd …"

Issa ghalhekk, wiehed irid jifli l-elementi li jikkostitwixxu dan r-reat, li huma bazikament tlieta u cioe:-
1. b'nuqqas ta' hsieb, bi traskuragni, jew b'nuqqas ta' hila fl-arti jew professjoni tieghu jew b'nuqqas ta' tharis tar-regolamenti ;
2. kkaguna l-mewt ;
3. fuq persuna.

Fis-sentenza moghtija mill-Qorti tal-Appelli Kriminali nhar il-21 ta' Marzu 1996 fl-ismijiet **il-Pulizija vs Richard Grech** dik il-Qorti sostniet is-segwenti:-

"Huwa mehtieg ghal kostituzzjoni tar-reat involontarju skond l-artikolu 225 tal-Kodici Penali, li tirrikorri kondotta volontarja, negligenti – konsistenti generikament f'nuqqas ta' hsieb, imprudenza fl-arti jew fil-professjoni, jew konsistenti specifikament f'nuqqas ta' tharis ta' regolamenti, li tkun segwita b'ness ta' kawzalita' minn event dannuz involontarju. Ghandu jigi premess li ghal accertament tal-htija minhabba f'kondotta effettivament adegwata ma' dik ta' persuna li s-sapienza umana identifikat mal- bonus pater familias, dik il-kondotta cioe' fil-kaz konfet, kienet tigi uzata minn persuna ta' intelligenza, diligenza u sensibilita normali, kriterju dan li filwaqt li jservi ta' gwida objettiva ghal gudikant, jhallieh fl-istess hin, liberu li jivvaluta d-diligenza tal-kaz konkret."

L-awtur Taljan **Giorgi** fil-ktieb tieghu **Teoria delle Obbligazione** – 1127 pagna 46 ighid:-

"La diligenza del buon padre di famiglia costituisce in criterio abbastanza indeterminate per lasciare al giudice Liberta' di valutazione".

Fil-kawza fl-ismijiet **Il-Pulizija v Leonard Grech** deciza mill-Qorti tal-Appell Kriminali nhar il-hamsa ta' Settembru, 1990, il-Qorti dahlet fid-dettal dwar in-natura tal-kolpa f'dawn il-kawzi. In succint fuq skorta ta' awturi u gurisprudenza, t-trepod tal-kolpa gie definit bhala:
1. la volontarieta dell'atto;
2 la mancata previsione dell'effetto nocivo;
u
3 la possibilita di prevedere.

Bhala konkluzzjoni tad-definizzjoni li din il-Qorti trid taghti lit-terminologija culpa, ghalhekk jibqa' dejjem li l-element taghha huwa volontarjeta' tal-att, in-nuqqas ta' previzjoni tal-effetti dannuzi ta' dak l-att u l-possibilta' ta' previzjoni ta' dawk l-effetti dannuzi. **Jekk l-effetti dannuzi ma kienux prevedibbli, hlief b'diligenza straordinarja li l-ligi ma tesigix u li semmai tista' ggib culpa levissima li ma hiex inkriminabbli, ma hemmx htija**. (vide **Il-Pulizija vs John Vella** deciza nhar il-15 ta' Dicembru 1958 mill-Qorti ta' l-Appelli Kriminali) [emphasis by the Court]

X'inhu l-obbligu tas-sewwieq fil-posizzjoni tal-imputat? Ir-risposta tohrog mil-Ligi u senjatament mill-Artikoli 225 u 226. Dan jimporta li l-prosekuzzjoni trid tipprova, f'kazijiet bhal dak odjern, illi l-imputat kien kolpevoli ta' nuqqas ta' hsieb, jew ta' traskuragni jew li naqas li jhares xi regolamenti, f'dan il-kaz, r-regolamenti tat-traffiku. Il-prosekuzzjoni trid tipprova in-nexus bejn il-mewt tal-vittma u t-traskuragni tal-imputat, liema nexus irid irendi t-traskuragni l-kawza immedjata u prossima tal-effett, wara trid ukoll tipprova li t-traskuragni kienet culpable negligence u cioe' li tammonta ghal criminal misconduct. (vide **Il-Pulizija vs Manuel Schembri** deciza nhar it-28 ta' Novembru 1949 mill-Qorti ta' l-Appelli Kriminali.)

Irid jigi determinat allura jekk l-imputat kienx hati ta' xi nuqqas ta' hsieb jew traskuragni jew ta' nuqqas ta' tharis tar-regolamenti…. ."" [emphasis by the Court]

Whereas reference is also being made to the judgement in the names **Il-Pulizija vs Aaron Camilleri et**:[19]

"Kif inghad fis-sentenza Il-Pulizija vs Saverina sive Rini Borg et, deciza mill-Qorti tal-Appell Kriminali fil-31 ta' Lulju 1998, "Skond l-Artikolu 225 tal-Kodici Kriminali, sabiex jirrizulta d-delitt ta' omicidju involontarju, hemm bzonn li tirrikorri kondotta volontarja negligenti, konsistenti generikament f'nuqqas ta' hsieb (imprudenza), negligenza jew traskuragni, jew ta' hila (imperizja) fl-arti jew professjoni, jew konsistenti specifikatament fin-nuqqas ta' osservanza tal-ligijiet, regolamenti, ordnijiet u simili, li tkun segwita b'ness ta' kawzalita`, minn akkadut dannuz involontarju".

Il-gurist **Francesco Carrara** jghid hekk dwar il-culpa, "… il tripode sul quale si aside la colpa sara` sempre questo - 1° volontarieta` dell'atto - 2° mancata previsione dell'effetto nocivo - 3° possibilita` di prevedere."[20]

Bl-istess mod, il-**Professur Anthony J. Mamo**, fin-noti tieghu, jghid hekk:

"In these definitions the essence of negligence is made to consist in the "possibility of foreseeing" the event which has not been foreseen. The agent who caused the event complained of, did not intend or desire it, but could have foreseen it as a consequence of his act if he only had minded: so his negligence lies in his failure to foresee that which is foreseeable".[21]

U fis-sentenza fuq citata, gie ritenut hekk dwar il-kondotta kolpuza:

"… kondotta kolpuza hija definita bhala kondotta volontarja li tikkaguna event dannuz, mhux volut, izda prevedibbli, li seta' jigi evitat bl-uzu ta' attenzjoni jew prudenza fi grad ta' persuna normali".

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[19] Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali, Magistrat Dr Natasha Galea Sciberras, 25.04.2014, Kump. Nru 609/1993

[20] Carrara F., "Programma Del Corso Di Diritto Criminale", Vol. I (Parte Generale), p. 88.

[21] Prof. Sir A. J. Mamo, Lectures in Criminal Law, p. 67

Hemm diversi forom ta' kondotta kolpuza derivanti minn att ta' negligenza, imprudenza, imperizja u non ossevanza tal-ligijiet, regolamenti, ordnijiet u simili.

L-imprudenza tekwivali ghal "un atto inconsiderato e rischioso" maghmul b' "leggerezza" jew "sconsideratezza"[22] u kif jghid **Antolisei,** "L'imprudenza e` propriamente l'avventatezza, l'insufficiente ponderazione ed implica sempre una scarsa considerazione per gli interessi altrui".[23] U kif insibu fin-Novissimo Digesto Italiano, "Si comporta con imprudenza che tiene una condotta positive dalla quale occorreva astenersi perche` capace di cagionare un determinate evento di danno o di pericolo, o che e` stata compiuta in modo non adatto, cosi` da essere, pericolosa per l'altrui diritto penalmente tutelato. E`, quindi, una forma di avventatezza, un agire senza cautela."[24] Bl-istess mod, fissentenza fl-ismijiet Il-Pulizija vs Saverina sive Rini Borg et, fuq citata inghad illi "L-imprudenza tigi mill-agir ta' xi hadd minghajr ma jiehu l-opportuni kawteli".

In-negligenza tigi mid-disattenzjoni u disakkuratezza tal-agent fil-kondotta tieghu, fil-waqt illi "l-imperizja hija l-forma specifika tal-kulpa professjonali cioe`, kif jghid il-**Manzini**: `inettitudine e insufficienza professionale, generale e specifica, nota all'agente, di cui egli vuole non tener conto`".[25]

Skond l-imsemmija sentenza, "Il-kulpa tista' tkun dovuta wkoll ghal nonosservanza tal-ligijiet, regolamenti, ordnijiet u simili, bhal ma huma l-assjem ta' regoli predisposti mill-awtorita` pubbblika dwar xi attivita` determinata u specifika bl-iskop li jigi evitat il-possibilita` ta' hsara u dannu lil terzi, cjoe`, dawk li jkollhom l-element tal-prevenzjoni." Il-kulpa tista' tkun dovuta wkoll ghalhekk ghal non ossevanza tal-ligijiet u regolamenti bhal ma huma l-assjem ta' regoli predisposti mill-Ordinanza tat-Traffiku (Kap. 65 tal-Ligijiet ta' Malta) u l-High Way Code – Motor Vegicle Regulations, fost regoli ohrajn.

Dwar id-diligenza rikjesta fil-kamp kriminali, il-Professur Anthony Mamo jghid illi "The amount of prudence or care which the law actually demands is that which is reasonable in the circumstances of the particular case. This obligation to use reasonable care is very commonly expressed by reference to the conduct of a 'reasonable man' or of an 'ordinarily prudent man', meaning thereby a reasonable prudent man: "negligence", it has been said, "is the omitting to do something that a reasonable man would do, or the doing something that a reasonable man would not do" … What amounts to reasonable care depends entirely on the circumstances of the particular case as known to the person (Carrara, Programma, § 87n.) whose conduct is the subject of enquiry. Whether in those circumstances, as so known to him, he used due care – whether he acted as a reasonably prudent man – is in general a mere question of fact as to which no legal rules can be laid down.""[26]

Whereas these legal principles not only apply to the offence of involuntary homicide but also find application to the offences forseen by Articles 226 and 328 of the Criminal Code, offences with which the accused has been charged.

Whereas in the court's opinion the evidence by the only independent eyewitness is pivotal in the determination of these proceedings and corroborates the accused's version of events. It is to be underlined that no expert was ever appointed in a bid to establish the speed at which the accused was driving thus presenting evidence to substantiate the charges brought against him. The only

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[22] Dizionario Zingarelli, (2002) "Vocabalorio della Lingua Italiana", Nicola Zingarelli (Edizzjoni 12 Gunju, 2001).
[23] Antolisei F., "Manuale di Diritto Penale: Parte Generale", Edizzjoni 15 (Giuffre`, 2000), p. 366.
[24] Novissimo Digesto Italiano, Vol. III, p. 548.
[25] Il-Pulizija vs Saverina sive Rine Borg, fuq citata
[26] Lectures in Criminal Law (First Year), p. 71.

independent person who witnessed the dynamics of the event in cross-examination continued to describe the amount of water on the road *"Yes of course it was a lot of water either they were gardening or something or I don't know it was in the middle of the road."*[27] Asked directly by the Court about the speed the accused was driving at, the witness is decisive in her reply *"Normal I would say normal.",* later also adding *"…but when he came out of the bend …he hit the water immediately…. normal [speed] yes."*[28]

Therefore having carefully examined the evidence in the light of these judgements, the Court cannot but find that no evidence was presented that the bodily harm which ensued on the injured party was caused by the imprudence, carelessness, unskilfulness in one's art or profession, or due to the non-observance of regulations by the accused Kenneth David Allen. The same considerations apply in relation to the second charge of which the accused is also being acquitted.

Consequently in view of the above-made considerations the Court cannot but acquit accused of all the charges brought against him.

Dr Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law).
Magistrate

[27] Ibid.
[28] Fol.145