



Court of Criminal Appeal

Hon. Mrs. Justice Dr. Edwina Grima LL.D.

Appeal Nr: 149/2016

The Police

[Inspector Maria Stella Attard]

Vs

Mariella Sotinova Kokonova

Today the, 28th February, 2018,

The Court,

Having seen the charges brought against Mariella Sotinova Kokonova holder of Maltese ID Card Number 82082A before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having:

Accusations indicated below;

Where on the 18th of June 2015 around 12:00hrs in Abate Rigord Street, Ta' Xbiex

[1] Drove a motor vehicle or any other vehicle without a vehicle license (Chap 65 Section 15 (1 (a), 3))

[2] You had in your possession or was in charge of a motor vehicle which was not registered with Transport Malta Authority (L.S. 368.02 Section 3)

[3] Used, caused or permitted another person to use a motor vehicle on a road without a policy of insurance in respect of third party risks. (Chap 104 Section 3 (1))

[4] Used or as the person who imported or brought into Malta, a motor vehicle which was brought into Malta by a person who is a resident of Malta or has normal residence in Malta or has a principal place of business in Malta, you failed to ensure that the mentioned used vehicle was registered with the Malta Transport Authority within Thirty days from its' arrival in Malta (Chap 368 Section 4, L.S. 368.02 Section 6(1)(2))

The Prosecution contends that the said person be disqualified from holding the driving license for a period of time that the Court deems appropriate.

Having seen the judgment meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 15th March, 2016 whereby the Court freed the accused from the first (1), second (2) and fourth(4) accusations and found her guilty on the third (3) accusation.

Found her guilty and fines her a fine of €2400 payable over a period of 24 months by monthly instalments of €100.00, as from the 1st of May, 2016.

Does not suspend her driving licence.

Having seen the appeal application presented by the Mariela Sotirova Kokonova in the registry of this Court on the 22nd March, 2016 whereby this Court was requested to vary the judgement from which this appeal is being filed as follows:

1. To confirm it in the acquittal of the appellant from the first, second and fourth charges brought against her and in not suspending her driving licence.

2. To cancel, reverse and revoke it in tis finding of guilt of the appellant on the third charge brought against her and instead to acquit her from any accusation, guilt and punishment in relation to same.

Having seen the acts of the proceedings;

Having seen the updated conduct sheet of the appealed, presented by the prosecution as requested by this Court.

Having seen the grounds for appeal are clear and manifest and consist of the following:

Whereas the accusation on which the appellant was found guilty is based on article 3 (1) of chapter 104 of the Laws of Malta.

Whereas article 3 (1A) of the same Act states that “It shall be presumed that there was not a policy of insurance in force in terms of saubarticle (1), unless the person charged with an offence under subarticle (1) shall show the contrary through the production of a certificate of insurance issued under article 4 (4)” which in turn states that “(omissis) where the policy of insurance consists of an international certificate of insurance, such international certificate shall, for all purposes of this Ordinance except where the context otherwise requires, be the certificate of insurance required to be issued under this subarticle”.

Whereas article 3 (1A) of Chapter 104 of the Laws of Malta creates a presumption that there was no policy of insurance in force unless the person charged shall show the contrary hence putting the onus of proof on the accused who in turn is required to provide a defense on the basis of probability and once evidence is provided disputing the presumption presented by the Prosecution, then the Prosecution is required to prove its case beyond reasonable doubt.

Whereas the definition clauses of Chapter 104 of the laws of Malta includes a definition of “international certificate of insurance” which is defined as “a duly completed international certificate of insurance (known as a “Green

Card”) issued on behalf of a foreign bureau or the local bureau in the form set out in the recommendation dated June 1952 made by the SubCommittee on Road Transport of the Inland Transport Committee of the Economic Commission for Europe, as from time to time amended”.

Whereas the main point of contestation of the appellant consists of the fact that the First Honourable Court could never find the appellant guilty of any of the charges brought against her, and this on the basis that all the necessary documentation including a valid “Green Card” as the one described in the afore mentioned definition clause of Chapter 104 of the laws of Malta, showing that appellant was adequately covered by a third party insurance policy which was issued in Bulgaria, was presented as evidence in court and no evidence to the contrary was presented by the Prosecution for the finding of such guilt.

Whereas it is a basic principle of the concept of a fair criminal trial that the Prosecution is required to provide the best evidence to convince the court that the accusations made against defendant are true and as stated by Manzini in *Diritto Penale* Vol. III Chapt. IV page 234, Edizione 1890: - “Il cosi’ ditto onero della prova, cioe’ il carico di fornire, spetta a chi accusa – onus probandi incumbit qui osservit” and if the Court is faced with opposing or conflicting versions of the facts, the Court has to acquit the defendant since any colflict should go to the benefit of the defendant.

Whereas, without prejudice to the above, during the hearing of the case before the First Honourable Court, the defence also presented a valid third party insurance certificate, which was in the Bulgarian language, covering the vehicle and its driver during the period in question; at thisstage the appellant would like to clarify that at the first sitting the appellant had requested the assistance of an interpreter yet at the second sitting there was no interpreter present; despite another request for the assistance of an interpreter the First Honourable Court deemed the appellant’s knowledge of English to be sufficiently good and that the proceedings could continue without interpreter.

Whereas following the presentation of the third party insurance certificate in Bulgarian, the Court sought the assistance of a third party who coincidentally was present and this in order for him to explain the contents of the insurance certificate to the court and mainly whether any exclusions for 'any driver' were present in the said certificate whereby the said interpreter explained that the insurance certificate presented (No. 06114002348866) was a valid 'Combined Insurance Policy' insurance certificate covering third party liability of drivers issued to the owner of the vehicle Spasena Georgieva Stoyanova and that although no reference was made to any exclusion in the policy, the policy did not include a specific clause stating that the Policy covers 'any driver'.

Whereas the interpreter was requested by defendant to explain further whether the Insurance certificate covers the driver of the vehicle outside the territory of Bulgaria and in the European Union, the Bulgarian interpreter replied in the affirmative and confirmed that the third party insurance that was validly issued in Bulgaria covered the driver of the vehicle in the European Union during the period when the defendant was stopped by PC 1289.

Whereas following the explanation of the Bulgarian interpreter the First Honourable Court seemed to interpret the word 'driver' of the vehicle as meaning the owner of the vehicle or the policy holder rather than the person driving the vehicle, whoever that person may be.

Whereas it is impossible that at one instance, the First Honourable Court repeated the explanation of the Bulgarian interpreter that the Insurance Policy covered third party risks of the driver of the vehicle, while immediately after, the same Court found the appellant guilty of having used a motor vehicle on a road without a policy of insurance in respect of third party risks.

Whereas, without prejudice to the above, even if the insurance policy presented by the appellant as evidence to the First Honourable Court did not technically cover her as an insured party, to her knowledge, based on

what she was told by the vehicle's owner which was in line with what she was accustomed to in Bulgaria (that Third Party insurance cover would cover any driver driving that particular vehicle) she was adequately covered to drive the vehicle by an insurance policy covering third party risks and therefore the First Honourable Court should have acquitted the appellant on the basis of Article 3 (1B) of Chapter 104 of the Laws of Malta.

Whereas, without prejudice to the above, in their decisions in *Police vs Angelo Scuderi* (Court of Criminal Appeal, 3rd November, 2005), *Police vs Stephan Apap* (Court of Criminal Appeal, 26th April, 2007) and *Police vs Charles Galea* (court of Criminal Appeal, 7th May, 2007), the although they were not the specific person covered by the insurance policy, they were still adequately covered against risks of third parties.

Considers,

The grievance put forward by appellant to the judgment delivered by the First Court, is limited to the finding of guilt for the third charge brought against her and this for the offence laid out in article 3(1) of Chapter 104 of the Laws of Malta, appellant having been acquitted from the other charges.

That from the acts of this case it transpires that appellant had exhibited before the First Court documentation relating to the insurance coverage issued on the vehicle which was being driven by her on the day she was stopped by the police. The First Court *seduta stante* heard a verbal translation of the documentation carried out viva voce by a translator from the Bulgarian to the English language since all documentation filed is in Bulgarian. The First Court however found appellant guilty of the third charge preferred against her on the grounds that the insurance policy had been issued in the name of a third party and not appellant.

During the appellate proceedings conducted by this Court, the documents exhibited by appellant were officially translated by a court appointed translator. The international insurance policy issued by a Bulgarian insurance company by the name of DZI Insurance plc, in favour of insured Spasena Georgiev Stoyanova against third party liability covers the period

between the 18 September 2014 and the 18 September 2015, which insurance policy has an extended coverage for third parties in the system “Green card”. The insurance contract covers vehicle bearing registration number CH1036KA, being the same vehicle driven by appellant on the day indicated in the charge sheet. Also the insurance policy provides as follows:

“Based on the premium paid this insurance policy provides coverage throughout the territory of the Member States of the European Union, all countries of the European Economic Area as well as Andorra, Serbia and Switzerland throughout the term of the Insurance Contract including each period within this term when the vehicle is in the territory of any of the above mentioned countries.”

Appellant also exhibits the international motor insurance card, being a ‘green card’ valid between the same period of time bearing number BG/06/05993275. Now the green card system is a protection mechanism created to safe-guard the rights of victims for compensation in cross-border traffic accidents. It has a two-fold objective:

- 1. Facilitating the crossing of borders** - To avoid the need for motorists to obtain insurance cover at each of the frontiers of the 48 member countries. The motorist is released from the obligation of taking out a national insurance contract at the border if possessing a green card.
- 2. Facilitating claims settlement** - To ensure that Third Party victims of road traffic accidents are not prejudiced by the fact that injuries or damage sustained by them were caused by a visiting motorist rather than a motorist resident in the same country¹.

Now it seems that the First Court found objection to the fact that the insurance contract exhibited was issued in the name of a third party and not accused, thus concluding that the only driver covered by the said policy would be solely the insured person. Now Section 9A of Chapter 104 of the

¹ <http://www.cobx.org>

Laws of Malta clearly states with regard to the right of action arising in the case of a motor vehicle accident:

(1) “An injured party resident in Malta or a designated State² and entitled to compensation in respect of any loss or injury resulting from an accident caused by the use of a motor vehicle which is insured by an authorized insurer and normally based in Malta or the territory of a designated State, shall have a direct right of action against the authorized insurer in Malta, if:

(a) the accident occurred in Malta or a designated State; or

(b) the accident occurred in a third country whose foreign bureau has joined the green card system.”

(2) “An injured party resident in Malta and entitled to compensation in respect of any loss or injury resulting from an accident caused by the use of a motor vehicle which is insured and normally based in the territory of a designated State, shall have a direct right of action against the insurance undertaking issuing the policy of insurance and shall be entitled to exercise his direct right

of action against the insurance undertaking’s claims representative in Malta, if:

(a) the accident occurred in a designated State; or

(b) the accident occurred in a third country whose foreign bureau has joined the green card system.”

It clearly transpires from the wording of the law that the law necessitates that the motor vehicle involved in the road accident be covered by a valid insurance policy and not the driver of the vehicle, the insurance company having then a right of action against the said driver should he or she not be covered by the said policy.

² Bulgaria being a member of the European Union since the 1st January 2007, is a designated state in terms of Subsidiary Legislation 104.03

In a judgment delivered by this Court of the 3rd November 2005, reference was made to article 10 of Chapter 104 of the Laws of Malta referring to the obligations of an insurer under an insurance policy wherein it was decided:

“...una volta li jkun hemm polza ta’ assikurazzjoni li tkopri l-vettura in kwistjoni, jekk ikun hemm xi responsabbilta’ ghal dejn civili, din tigi rizarcita mill-assikurazzjoni, sakemm ma jirrikorru xi wahda jew aktar mic-cirkostanzi elenkati fis-subartikolu (2) u (3), anki meta l-assikuratur ikollu dritt jannulla jew ihassar il-polza, ghaliex, per ezempju, d-driver ma jkollux licenzja. Imma hija l-prosekuzzjoni li trid tipprova li ma jkunx hemm din il-kopertura minnhabba xi cirkostanza indikata fissubartikolu (2) (3), u sakemm din il-prova ma ssirx minnha, tibqa’ l-prezunzjoni li hemm il-kopertura tal-polza kontra r-risjki ta’ terzi persuni kif tipprovdli l-ligi fissubartikolu (1) fuq citat...”

Thus once a vehicle has a valid insurance coverage, it is incumbent on the insurer to compensate any victim in a motor vehicle accident. In this case appellant has proven that a valid international insurance coverage exists with regard to the vehicle being driven by her even though the insurance contract was not issued in her name and consequently has satisfied the degree of evidence incumbent upon her in terms of Section 3(1A) of Chapter 104 by exhibiting a valid international certificate of insurance as specified in article 5 of the said Act.

“A motor vehicle which is normally based in the territory of a third country shall, before entering Malta, be provided with an international certificate of insurance or with such other certificate as may be prescribed by the Minister responsible for Transport under this article, establishing that the motor vehicle is insured in accordance with article 4(1) and (1A).”

Thus signifying that the car being driven by appellant, although not registered in her name, but in her friend’s name, was covered by a valid insurance policy against third party damage.

Consequently for the above-mentioned reasons the Court upholds the appeal filed by appellant, varies the judgment delivered by the First Court, confirms it wherein appellant was acquitted from the first, second and fourth charges brought against her, and revokes the said judgment where she was found guilty of the third charge and acquits her from the same.

(ft) Edwina Grima

Judge

TRUE COPY

Franklin Calleja

Deputy Registrar