



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

MAGISTRATE DR MARSE-ANN FARRUGIA LL.D.

Today **Thursday 7th March, 2019**

**The Police
(Inspector Elton Taliana)**

vs.

Lee Angelo Portelli

The Court

Having seen the charge brought against the accused:

Lee Angelo Portelli of 28 years born in London on the 19th April 1980, son of George and Jeanette nee' Spencer and residing at 13, Flat 1, Sunberry, Triq il-Gogi, Swieqi holder of identity card No 42003(L)

Charged with having on the 1st January 2008 at about 06:00 Hrs in Swieqi Street, Swieqi wilfully committed any spoil, damage in vehicle of make Citroen Saxo with registration number GAT 958 and in vehicle of make Peugeot 309 with registration number IAT 014 to the detriment of Kevin Gatt from Iklin and Farrah Borg from Imtarfa, in which the amount of damage exceeds one thousand and one hundred and sixty-four Euros and sixty nine cents (€1,164.69).

After having seen the Attorney General's consent for this case to be dealt with summarily, and after having heard the accused declare that he has no objection that this case be dealt with summarily.

After having heard the evidence and seen all the records of the case and documents submitted.

After having heard the oral submissions of the parties;

Considered that:

The Facts

In summary, the facts that gave rise to these proceedings are the following:

1. On the 1st January 2008, at about 7.45a.m., Kevin Gatt and Farrah Borg filed a police report at the St. Julian's Police station.
2. In the police report,¹ Kevin Attard stated that on that day at about 6.00a.m. he was driving his vehicle Peugeot Registration Number IAT 014 through Swieqi Tunnels, Swieqi, when he noticed vehicle DBI 191, a Wolkswagen Golf, which was driving on the other side of the road. Complainant stated that when he realised the other vehicle was driving in his direction, he shouted at the driver to drive on his side, but the driver continued to drive in his direction and hit him on the rear right passenger door and caused him damages.
3. Kevin Attard stated that both drivers got out of their cars, and a scuffle broke out. Attard's girlfriend, Farrah Borg, who was driving behind him, stopped driving, and tried to stop them, and the driver of the other vehicle started hitting with his fist her vehicle, which was a Citroen Saxo, registration number GAT 958, and caused damages on the door of the driver's side of the vehicle.

¹ See fol. 75 of the records.

4. The owner of vehicle DBI 191, the accused, was contacted by the Police, and he called the Police station, and he informed the Police that he also suffered damages on his vehicle, exactly on the rear right mudguard and front right mirror.
5. In his statement, the accused said that, he was with his girlfriend, Beatrice Guerra, in his car. He pulled at the side of the road, and stopped the car, and the vehicle of Kevin Gatt passed him coming from the opposite direction. Gatt swerved to come next to him as he was driving in the opposite lane to speak to him, almost touching his vehicle, and the accused thought he knew him. For no apparent reason, Gatt spoke foul language to him, and spat in his face, and drove on slowly.
6. The accused said that he got angry, and went to open his door, but his girlfriend stopped him. Then he looked at the rear view mirror and he saw Gatt coming out of his car holding a bottle of beer from his neck. He kicked the mirror of the accused and smashed it. Since he was afraid that Gatt was going to hit him with the bottle, he got out of his car and punched Gatt in the face. Gatt fell on the floor and he dropped the bottle as well, and the accused kicked the bottle across the road, so that Gatt could not grasp it again.
7. The accused said that another car which was driving after Gatt's vehicle also stopped, and Gatt's girlfriend got out of the car, and started screaming "*leave him alone*". Gatt got up and punched the accused in the face, and continued to offend him, and even calling names to his girlfriend. The accused admitted he kicked the door of Gatt's car and then also punched the car.
8. The accused continued saying that Gatt ran to his car, went inside and instead of driving forward, he reversed and hit his girlfriend's car. The accused denied that he kicked and punched the car of Gatt's girlfriend. The accused then went inside his car and drove off.

The Court's Considerations on Guilt

Before considering the merits of the case, the Court has first to deal with some preliminary issues – one which is going to be raised by the Court *ex officio*, and the other two issues were raised by the defence in the final oral submissions.

First Preliminary Issue – The admissibility of the statement of the Accused

Although no plea was raised by the defence in this regard, the Court feels that it is obliged to raise *ex officio* the issue whether the statement of the accused is admissible according to law, in view of the fact that at the time when it was taken, Maltese law, did not permit the suspect to consult a lawyer prior to the interrogation. However, in this case, the accused voluntarily tendered his evidence before this Court, and his defence counsel quoted some of the questions and answers in the statement, as the basis on which to ask him further questions.² Neither the accused nor his defence counsel raised the issue that the accused was not given the opportunity to consult a lawyer prior to the interrogation.

In the opinion of the Court, the statement made by the accused to the Police has to be considered as a whole – it is admissible in its totality, or not admissible at all. In view of the fact that the defence relied on parts of the statement during the evidence of the accused, the Court is of the opinion the dicta in the case **Mario Borg vs Malta** decided by the European Court of Human Rights on the 12th January 2016, are not applicable considering the particular circumstances of this case.

The Second Preliminary Issue – The nullity of the proceedings because the Accused was not served with the charge sheet in the English Language

This issue was raised for the first time by the defence in the final oral submissions which were made during the sitting of the 6th December 2017.

² See fol. 155 – 156 of the proceedings.

In the first place the Court points out that from the very first sitting in these proceedings, specifically that of the 11th February 2009, the Court ordered that since the accused did not understand the Maltese language, the proceedings will be conducted in the English language.

Unfortunately, due to an administrative error, although on the 19th November 2008, the Prosecuting Officer presented not only the Maltese version of the charge sheet, but also a translation of the charge sheet in the English language, for some reason the English translation of the charge sheet was stapled to the back of the file of these proceedings, and not inserted in the records of the case. By a decree delivered today, the Court ordered that the translation of the charge sheet be inserted in the records of the case, after the charge sheet drafted in the Maltese language.

In her oral submissions, the defence counsel submitted that “... .. *in the acts there is nothing which suggest that Lee Portelli has been notified with the charge sheet in the English language.*”³ In the first place, the accused never confirmed on oath, as should have been done in such a case, that he did not receive a translated version of the charge sheet. So, this is just a hypothesis which is being raised by the defence. Secondly, even if for argument’s sake only, it is conceded that the accused was only notified with the charge sheet in the Maltese language, at the back of the charge sheet there is an extract of Section 5 of the Judicial Proceedings (Use of English Language) Act (Chapter 189 of the Laws of Malta). Section 5(2) of this Act states that “*If for any reason whatsoever, the translation into English of any such act is not served on an English-speaking person, such person may make in the Registry, or forward to the Registrar, in any manner, a declaration to the effect that he is an English-speaking person and apply for an English translation of the act served on him.*” The accused tendered no evidence whatsoever, that he availed himself of this remedy, if, as stated for the sake of argument, it is conceded that he was only served with the Maltese version of the charge sheet.

Thirdly, in the first sitting of these proceedings, the accused was duly assisted by his defence counsel (a different lawyer from the one who made the final submissions). According to the minute of that sitting, after the Court ordered that these proceedings be conducted in the English language, it is stated that “*(T)he Prosecuting Officer Inspector Elton Taliana*

³ See fol. 207 of the proceedings.

read the charges on oath.” There is nothing in the records of the case, to suggest that the Prosecuting Officer read the charges in the Maltese language and not in the English language. Moreover, according to the same minute, immediately afterwards, the accused was examined in accordance with the applicable provisions of the Criminal Code, and when *inter alia* he asked what he wishes to reply to the charge, he replied “*not guilty*”.⁴ This obviously means that from the very first sitting, the accused knew exactly the contents of the charge which was being made against him, and he replied “not guilty”.

If, as the defence counsel is suggesting, the accused was not served with a translated version of the charge, then it is only natural that the accused, who as stated was duly assisted by his defence counsel, would not have answered the question whether he was guilty or otherwise of the charge brought against him, but he would have raised the issue, that he cannot reply to that question, because he is not privy of the contents of the charge. As the Court of Criminal Appeal (in its Inferior Jurisdiction)⁵ stated in the case **Il-Pulizija vs Rita Farrugia** decided on the 31st. May 2002:

“Issa huwa minnu wkoll li fil-kaz prezenti hu veru li fic-citazzjoni ma hemmx indikat iz-zmien li fih sar l-allegat reat mill-appellanti w lanqas ma hemm xi indikazzjoni taz-zmien meta dan l-allegat reat kontinwat gie skopert u mwaqqaf. Hi l-fehma tal-Qorti li f’dan il-kaz, l-eccezzjoni li qed tissolleva l-appellanti kellha taghmilha ‘in limine litis’ quddiem l-ewwel Qorti, dan ghaliex mill-atti ma jirrizultax li din il-kwistjoni qatt tqajjmet mill-appellanti quddiem dik il-Qorti fl-istadji kollha ta’ dawn il-proceduri kemm damu quddiemha. Dan ifisser li l-appellanti ma tistax issa tigi tqajjem ghall-ewwel darba din il-kwistjoni quddiem din il-Qorti bhala wahda mill-aggravji taghha kontra s-sentenza ta’ l-ewwel Qorti. Hi kellha tqajjem din l-eccezzjoni quddiem l-ewwel Qorti appena inqratilha l-akkuza w dik il-Qorti kienet taghti l-provvediment taghha relattiv.”

Although in this case the nullity of the charge sheet was raised in the appellate stage, the same principle applies in the proceedings at first instance. If, for the sake of argument only, it is conceded that the charge sheet was not duly notified in the English language to the accused, he should have raised this issue *in limine litis*, at the beginning of the first sitting, at

⁴ See fol. 9 of the records.

⁵ *Per* Judge Patrick Vella.

the latest when he was asked to answer whether he was guilty or otherwise of the charge brought against him, so that the Court could have given the relative decree.

Fourthly, and *ex abundantia*, the Court points out that in the judgement **Il-Pulizija vs Emmanuel Buttigieg** decided on the 4th November 1994, the Court of Criminal Appeal (in its Inferior Jurisdiction) held as follows:

“wara l-introduzzjoni ta’ l-inciz (2) ta’ l-Artikolu 360 tal-Kodici Kriminali, li bih ic-citazzjoni ghandu jkun fiha, fil-qosor, il-fatti ta’ l-akkuza, bil-partikolaritajiet opportuni ta’ zmien u l-lok, ic-citazzjoni ghadha mhix hlief avviz lill-imputat biex jidher quddiem il-Qorti tal-Magistrati. Id-dettalji msemminjin dwar il-fatti ghandhom jigu ndikati fiha mhux ghall-fini tal-validita’ taghha, jew tal-proceduri, kompriza s-sentenza, li jsegwuha, izda ghall-fini tal-praticita’ u ta’ evitar ta’ telf ta’ zmien, u cioe` biex l-imputat x’hin jidher quddiem il-Qorti, ikun jaf fuq hiex ikun gie mharrek, u hekk dak in-nhar stess li jidher ikun preparat biex jiddefendi ruhu ghall-imputazzjoni dedotta. L-imputazzjoni fil-kawzi sommarji hija dedotta kontra l-imputat proprjament u verament quddiem il-Qorti, u mhux fic-citazzjoni.”

In a similar case, **Il-Pulizija vs Leone Agius** decided on the 23rd. June 2005, the Court of Criminal Appeal (in its Inferior Jurisdiction)⁶

“Illi kif gie ritenut minn din il-Qorti fil-kawza “Il-Pulizija vs. Martin Brincat” [30.4.2003] fejn gie konsidrat aggravju simili u fejn ma gietx indikata bi precizjoni it-triq fejn gara l-kaz, skond l-Artikolu 360 (2) tal-Kodici Kriminali, c-citazzjoni ghandha ssemmi car il-persuna mharrka w ghandu jkun fiha, fil-qosor, il-fatti tal-akkuza, bil-partikolaritajiet ta’ zmien u ta’ lok li jkunu jinhtiegu jew li jkunu jistghu jinghataw u l-importanti hu li bl-uzu tad-dicitura msemminja fic-citazzjoni ikun bizzejjed biex l-appellant ikun jaf ta’ x’hiex ezatt kien qed jigi akkuzat. F’dik il-kawza l-aggravju kien gie respint ghaliex – bhal f’dan il-kaz - non si trattava ta’ xi belt jew rahal b’ xi ramifikazzjoni kapillari tat-toroq, pjazez jew sqaqien li setghu talvolta joholqu xi dubju dwar fejn seta gara l-incident li kien qed jigi akkuzat bih l-appellant. Kien intqal ukoll f’ dik is-sentenza li konsidrat il-fatt li - bhal f’ dan il-kaz - l-appellant kien gie imwaqqaf minn ufficjal pubbliku li kellmu dak il-hin, aktar u aktar l-appellant ma kellux fejn jifxkel dwar fejn suppost gara l-fatt li kien qed jigi akkuzat bih.”

⁶ Per Judge Vincent De Gaetano.

In the judgement **Il-Pulizija vs Rita Farrugia**, cited above, the Court of Criminal Appeal (in its Inferior Jurisdiction) continued saying as follows:

“Barra minn hekk, imkien ma jirrizulta mill-atti li l-appellanti ma setghetx tiddefendi ruhha kontra l-akkuza migjuba kontriha minhabba n-nuqqas tar-rekwizit tad-data fic-citazzjoni. Jirrizulta car mill-provi li anke mill-ewwel seduta quddiem l-ewwel Qorti kien gie maghruf liema kien iz-zmien jew data in kwistjoni w li kienet qed tirreferi ghalih l-akkuza, u, fil-fatt, l-appellanti, ghalhekk ikkontestat l-akkuza w anke gabet il-provi relattivi taghha li jirreferu ghal dan iz-zmien jew data rizultanti mill-provi.”

When these observations are applied to the present case – even, if for the sake of argument only, it is conceded that the accused was not formally notified of the writ of summons in the English language – it is obvious even from the very first sitting that the accused, duly assisted by his defence counsel, was well aware of the charge which was being levelled against him. In fact, the accused contested the charge, and during the examination pleaded not guilty to the charge. During the proceedings, the defence cross-examined all the witnesses of the Prosecution and the accused himself voluntarily gave evidence on oath, wherein he confirmed the statement he had given to the Police, and also produced witnesses in his defence. All the cross-examinations, the evidence of the accused and the witnesses he produced testified in great detail. At the final oral submissions, the defence made also submissions on the merits of the charge against the accused. At no stage of the proceedings, did the defence raise the issue that it was not aware, or not fully aware, of the charge levelled against him, or that in some way the right of the accused to defend himself was being prejudiced. In actual fact, in the sitting of the 15th April 2015⁷, the defence declared that *“the accused is exempting the Court and the Registrar of the Criminal Court from translating the evidence of the witnesses which were given in the Maltese language and any minutes of this Court which were drafted in the Maltese language.”*

In the light of the above considerations, the Court cannot see how it can ever accept the plea of the defence that these proceedings are null, because the accused was allegedly not served with the charge sheet in the English language.

⁷ See fol. 149 of the records,

The Third Preliminary Issue – The Charge Sheet should have named John Mary Borg as one of the injured parties and not Farah Borg

The argument of the defence is in the sense that since from the evidence produced the vehicle Citroen Saxo JAT – 978, being driven by Farah Borg, did not belong to Farah Borg but to her father John Mary Borg,⁸ the charge sheet should not have stated “to the detriment of Farah Borg” but “to the detriment of John Mary Borg.”

To avoid repetition, the Court refers to the judgements cited above, in particular that of **II-Pulizija vs Leone Agius**. The accused knew exactly the facts, and in particular the allegations regarding the Citroen in question, which were being imputed to him, even when he was questioned by the Police, and throughout these proceedings.

In the judgement **II-Pulizija vs. Spiru Spiteri**⁹ decided on the 18th March 1955, the Court of Criminal Appeal (in its Inferior Jurisdiction)¹⁰ made the following observations:

“Issa ic-citazzjoni fil-gudizzji sommarji, kif jirrizulta mill-gurisprudenza lokali in propozitu, giet introdotta fis-sistema kriminali patriju mis-sistema kriminali ingliz (ara deciz. Preliminary “Pulizija vs. Bartoli”, App. Krim. 8.1.1938, deciz definittivament fl-4 ta’ Gunju 1938); u ghalhekk il-Qrati ta’ Malta segwew il-principji tad-Dritt Ingliz dwar din il-materja, senjatament il-principju bazilari, hekk espress, aktar minn sebghin sena ilu, fil-kawza “Terreni vs. Gabaretta”, 17 ta’ Gunju 1880, Appell Kriminali, sedenti l-President Sir Antonio Micallef:- “Che e di regola, anche nella Corte dei Magistrati della Polizia Giudiziaria come Corte di Criminale Giudicatura, che non e indispensabilmente necessario attenersi strettamente e precisamente ai termini della originaria citazione, quando anche il procedimento fosse per parte della Polizia, e che la Corte possa benissimo decidere in ogni caso pel diritto risultato dalle prove e dietro alla stessa avanzata citazione; beninteso che si debba accordare, qualora si domandi, o quando la Corte stessa lo crede necessario, un breve termine per poter il citato difendersi su di un tale risultato diritto”;

⁸ See evidence of Brian Farrugia at fol. 67 of the proceedings.

⁹ Vol. XXXIX-IV-986.

¹⁰ Per Judge William Harding.

Lanqas hu l-kaz li jinghad li bil-korrezzjoni l-imputat seta' kien "deceived" jew "misled", jew b'xi mod pregudikat, ghax id-dettalji dwar ir-reat kontenuti fic-citazzjoni ma setghux ma jurux lill-imputat kontra liema fatt hu kellu jiddefendi ruhu. Infatti, il-bazi ta' l-inkriminazzjoni kienet jekk kellux jew ma kellux fil-pussess tieghu 214 il-par kalzetti tan-nylon bla dazju, u kambjament tad-data ma setghax jizvijah. Fil-prim'istanza, fejn il-korrezzjoni tac-citazzjoni tista' ssir, il-pregudizzju, ghall-finijiet ta' kwistjonijiet simili, ma ghandux jigi maghmul jikkonsisti filli l-imputat ma jkunx jista' japprofitta ruhu minn zball tal-Prosekuzzjoni, imma filli genwinament, minhabba dak l-izball, hu jkun gie b'xi mod imfixkel fil-mezzi tad-difiza;

Lanqas ghandu jintesa li hawn si tratta, mhux ta' difett fis-sens li l-korrezzjoni kellha tikkonsisti f'kambjament tar-reat imputat, imma pjuttost ta' dik li tissejjah "variance" ghax appuntu "variance" hi deskritta fil-gurisprudenza Ingliza bhala "some difference between the allegation and the evidence, and not to a different offence (ara Martin vs. Pridgeon, 1859, 23 J.P. 630."

In its oral submissions, the defence in no way indicated how this "variance" between the allegation in the charge sheet and the evidence prejudiced the right of the accused to defend himself.

In the light of the above considerations, this plea of the defence cannot be accepted by the court.

The Merits of the Case

The decision on the merits of the case depends heavily on the credibility of the witnesses. The case of the Prosecution depends on the evidence of the complainants Kevin Gatt and Farah Borg.

The version of complainant Gatt to the Police on the day of the incident was on that day at about 6.00a.m. he was driving his vehicle through Swieqi Tunnels, Swieqi, when he noticed a Volkswagen Golf, which was driving on the other side of the road. Gatt stated that when he realised the other vehicle was driving in his direction, he shouted at the driver to drive on his

side, but the driver continued to drive in his direction and hit him on the rear right passenger door and caused him damages. He also stated that after a scuffle broke out between them, the accused hit with his fist his girlfriend's vehicle, and caused damages on the door of the driver's side of the vehicle.

When giving evidence before this Court,¹¹ Kevin Gatt stated that whilst driving he saw a car coming from the opposite direction, driving straight on him. Gatt's version before this Court was the following:

"I put my car to the side and I stopped suddenly. Then came the owner of the other car and the other car took my mirror with it."

*At that moment I knew it was a Volkswagen. When he came like this, I started shouting "stop stop" and he started f*** me in English and talking rudely towards me and when I saw this, I answered back, that is I spoke rudely as well just as he was doing. When he saw this, he started trying to get out of the car but he could not because he was too close to my car because he had hit my car. When I saw this, I rushed out of my car to take note of his number and when he saw that I had gone out of my car or I do not know for which reason, he got out of the car and he came to fight. He moved towards her (his girlfriend's) car, a Citroen and started kicking it on the door and on the mudguard"*

No I went close to the pavement and he kept proceeding straight and we hit mirror to mirror. But these are things that happen. But he was aggressive."

So whilst in the Police report, Kevin Gatt stated that the accused had hit him with his car and caused him damages on the rear right passenger door, in the evidence he gave before this Court he said that the vehicles hit mirror to mirror, and no further damages were mentioned.

Farah Borg, Kevin Gatt's girlfriend, gave evidence as follows:¹²

"Kevin is my boyfriend. We were driving after each other. All of a sudden, from the other side of the road, there came another car almost onto Kevin's car. They stopped beside each other and some words were exchanged. Then Kevin continued driving. I drove after him but

¹¹ See fol. 37 *et seq.* of the records.

¹² See fol. 59 *et seq.* of the records.

the other car did not let me pass because it had reversed onto Kevin, on Kevin's side behind the driver. Then Kevin came out of the car to see the damage to his car and the other driver came out as well. I continued driving my car to come nearer to Kevin and all of a sudden they were fighting. At that time I rushed out of the car and ran towards Kevin to stop him from fighting. When they stopped fighting, the other person went and started kicking my car."

The contradictions between the versions of Kevin Gatt and that of his girlfriend Farah Borg both given before this Court are obvious, and need no further comment by this Court.

The police report does not describe the damages on the vehicles in question.

Dok ET 1 and the photos attached to it¹³ show that Kevin Gatt' vehicle had a crack in the right side mirror (i.e. the one on the driver's side), and all the rear right passenger door caved in.

Dok ET and the photos attached to it¹⁴ show that the Citroen had the right hand door and right hand wing of the Citroen were slightly indented and scraped. The front right wing moulding was broken.

No evidence was produced in Court on the damages to the accused's car.

The different versions of events which Kevin Gatt gave to the Police and the one he gave in Court, as well as the different version of events given by Kevin Gatt and his girlfriend Farah Borg, and then compared with the damages allegedly caused to their respective vehicles, are enough to raise a reasonable doubt in the mind of this Court, that the damages on both vehicles were not done by the accused.

However, the Court would like to make the following additional comments with regards to the version of events given by the accused. In his statement, the accused said that, he was with his girlfriend, Beatrice Guerra, in his car. He pulled at the side of the road, and stopped the car, and the vehicle of Kevin Gatt passed him coming from the opposite direction. Gatt swerved to come next to him as he was driving in the opposite lane to speak to him, almost

¹³ See fol. 20 and 21 of the records.

¹⁴ See fol. 16-18 of the records.

touching his vehicle. For no apparent reason, Gatt spoke foul language to him, and spat in his face, and drove on slowly. The accused said he looked at the rear view mirror and he saw Gatt coming out of his car holding a bottle of beer from his neck. He kicked the mirror of the accused and smashed it. Since he was afraid that Gatt was going to hit him with the bottle, he got out of his car and punched Gatt in the face. Gatt fell on the floor and he dropped the bottle as well, and the accused kicked the bottle across the road, so that Gatt could not grip it again. The two men started fighting. In the meantime, another car which was driving after Gatt's vehicle also stopped, and Gatt's girlfriend got out of the car, and started screaming "*leave him alone*". The accused admitted he kicked the door of Gatt's car and then also punched the car. The accused continued saying that Gatt ran to his car, went inside and instead of driving forward, he reversed and hit his girlfriend's car. The accused denied that he kicked and punched the car of Gatt's girlfriend. The accused then went inside his car and drove off.

In his evidence before this Court, the accused repeated in substance the same version. He also stated that he specified that he kicked the driver's side of Gatt's car once with his foot, and he did not exclude it could have been the rear door. However, he could not recall that in his statement he had stated that he had also punched the car.

Although the accused girlfriend, Beatrice Guerra, gave evidence and corroborated the accused version in general, she could not testify in detail, in the first place because she stayed all the time in the car, and secondly because she could not remember certain detail because she gave evidence nearly eight (8) years after the incident.

As regards the evidence of Andrew Tabone, produced by the defence, his evidence, tendered more than nine (9) years after the incident, is too vague as to the detail of what he could recall, and the Court considers his evidence to be unreliable.

However, in the Court considers the evidence tendered by the accused to be a credible one. The way the rear passenger right hand door of Gatt's vehicle is caved in is compatible with a bump with a large object, and is not compatible with a kick, or fist punch, or for that multiple kicks or fist punches, because kicks and fist punches cause dents or multiple dents. The crack in the side mirror could be have been caused by a fist punch, but it could have been caused by any other type of impact as well. The accused says that Gatt reversed in his girlfriend's car –

in a bumper to bumper collision. If the impact was small, it is very probable that it would have left very little damage or no damages to both vehicle.

The damages on the Citroen, which was being driven by Gatt's girlfriend consist mainly of scraping, and indentations on the right hand door and right hand wing, with the moulding of the right hand wing being broken. The craping is obviously incompatible with kicking and fist punching, whilst indents and the broken moulding could be so compatible. The accused denied punching the Citroen.

However, the onus of proof in criminal cases is on the Prosecution, and the level of proof which it produces has to be beyond reasonable doubt. As the Court has already observed the serious contradictions in the versions of main witnesses of the Prosecution, namely Kevin Gatt and Farah Borg, raise a reasonable doubt in the mind of this Court, as to whether the damages on the vehicles concerned were actually caused by the accused.

Conclusion

In the view of the above considerations, the Court finds the accused not guilty of the charge levelled against him, and acquits the accused.

Magistrate

Deputy Registrar