



**In the Court of Magistrates (Malta) as a Court of
Criminal Judicature**

**Magistrate Dr. Yana Micallef Stafrace LL.D., Adv. Trib.
Ecc.Melit**

Naxxar Sitting

The Police

(Inspector Roderick Spiteri

Insepector Ritianne Gauci)

Vs

Delfin Baniqued Dacayanan (I.D. 27658 A)

Today, The 28th of September 2023,

The Court;

After having considered the charges brought against Delfin Baniquard Dacayanan, 65 years, son of Antonio and Juanita nee' Baniqued, born in Tarlac, Philippines on the first January of the year

nineteen fifty-five (01.01.1955) and residing at 8, Kennedy Building, Flat 3, Triq San Girgor, Pieta' I.D. 27658 (A)

Charged with having on the 05.12.2019 whilst at 'Wasteserv', Magtab l/o Naxxar and / or any other location in these Maltese Islands, through imprudence, negligence or unskillfulness in his trade or profession, or through non-observance of any regulation, caused any fire or damage, spoil or injury to Adrian Bianchi as certified by Dr Paul Zammit MD Reg. 3242, and or any other person. Cap.9 Art 328 (c)

Having seen that on the 17th November 2021 when the case was called Inspector Ritianne Gauci appeared for the prosecution. Appeared accused not assisted. The accused declares that he needs a Legal Aid lawyer and the Court appoints Dr Jason Grima, Legal Aid Lawyer on call today. The accused was given the number of Dr Jason Grima seduta stante.

Having seen that on the 21st April 2022 the accused appeared not assisted. Adrian Bianchi assisted by Dr Shaun Zammit. Dr Veronica Spiteri took the oath as an interpreter from the Maltese language to the English language and vice versa. The court proceeded without his lawyer since he lost the number of his legal aid lawyer. The court again gave the number of the Dr Jason Grima to the accused. The Court instructed the Prosecution that for the next sitting she requires a witness regarding responsibilities of its personnel during the manoeuvres described in today's sitting.

Having seen that during the sitting held on 6th October 2022 the Court notes that Adrian Bianchi was present while Stefan Salamone was giving evidence and his evidence was suspended. In the circumstances, he cannot give evidence. Dr Ismahel Psaila on behalf of Adrian Bianchi is reserving the right to seek further remedies given the Court's direction.

Having heard Adiran Bianchi who gave evidence on oath and exhibited a photo Dok AB 1 in the sitting of the 21st April 2022; Stefan Salamone who gave evidence in the sitting of 6th October 2022 ; Defendant Delfin Baniquard Dacayanan gave his evidence on the 24th January 2023;

Having seen the affidavits of WPS 198 Jennyfer Caruana and Dr Paul Zammit exhibited in the acts.

Having seen that the prosecution rested its case in the sitting of the 6th October 2022.

Having seen that the accused assisted by his lawyer declared that he does not have further evidence to produce.

Having seen Article 328 (c) of chapter 9 of the Laws of Malta

After taking cognisance of all the evidence, witnesses, documents and acts of the case.

Having heard the parties' oral submissions

Considers

WPS 198 Jennyfer Caruana, gave evidence by means of an affidavit. She confirms that on the on the 5th of December 2019 at around 14:45 hrs PC 12 from control room informed Naxxar police station that an accident had occurred in the WasteServ Landfill, where there was a person caught underneath a truck, and an ambulance and CPD were on their way. When the divisional police repaired on site, the ambulance and Dr Michael Spiteri were already assisting the victim, a certain Adrian Bianchi, together with CPD personnel from Xemxija Station.

The police spoke to the plant manager, Robert Micallef, who was not present on site during the incident, who gave details of the persons involved in the incident as was reported to him. A witness, Joseph Agius, and the accused Delfin Delfin Baniqued Dacayanan also gave their version of events. The police officer states that when Delfin Baniqued Dacayanan was spoken to he stated that there were a lot of trucks, he reversed, and did not know that he was driving very near the victim and accidentally he hit him. Adrian Bianchi was examined by Dr Paul Zammit Med. Reg. 3242, at MDH, where he certified him that he suffered from grievous injuries.

Adrian Bianchi gave evidence in the Maltese language on the 21st April 2022. At the time of the incident, he was working as a heavy plant driver with Wasteserv. The incident occurred at the place of work Wasteserv, Maghtab. He recognises the accused who he refers to as "Id-Delfin". His work involves driving a truck and dismantling material [boxes] from the truck and taking them

from one place to another. They enter the gate on the truck, and after being weighed the inspector decides whether to go in or not.

On the day of the incident he entered the site to empty the material from the truck. He states that since the site is big you must wait for the go-ahead of the inspector before you empty the material from the truck. On the day of the incident the inspector was a certain Joe Agius. When asked he replied that the inspector's responsibility is he states

“ Xhud: Li jara li tkun clear il-lant fejn narmu tilhaq tkun imwittija jieqaf hu iwaqqfu lilu u jieqfu t- trakkijiet biex jarbulaw,

Qorti: Hu min?

Xhud: Ix-xufier tal-Boomack.

Avukat: U dak in-nhar ix-xufier tal-Boomack li qed tghid inti min kien qed isuqu?

Xhud: Delfin.”¹

According to the injured party there is a regulation that when the trucks are dismantling the material the machinery driven by defendant should stop working. The witnesses exhibited a picture of the machinery used by defendant [Dok AB 1]

The witness states that the accused normally does not drive that vehicle but on that particular day the person who normally drives it was on leave and the supervisor had asked the accused to operate that vehicle. He knows that it is another driver who usually does that work because he generally sees him driving it. On the day he saw the accused driving the vehicle and reversing on him.

The witness described how the accident occurred.

¹ “ Witness: to see that it the site where we throw away the material is clear he stops and stop him and stop the trucks from dismantling the material

Court: Who is he?

Witness: The driver of the Boomack.

Lawyer: And on that day who was the driver of the Boomak who you say was driving?

Witness: Delfin.”

“Avukat: Issa kif gara l-incident kif gara l-incident? Inti fejn kont l-imputat x`kien qed jaghmel u kif gara l-impatt?

Xhud: Le l-imputat kien qed iwittih qed nistennew biex nidhlu biex inbattlu

Avukat: Nistennew biex inbattlu min inti u?

Xhud: Jiena u tarkkijiet ohra ghax ma jkunx hemm jiena biss jieqaf hu l-inspector iwaqqaf lilu ghax hemm regolament waqt li qed tahdem ahna ma nistawx nidhlu,

Qorti: L-inspector min dan li hawn hawn barra Joe? Ma nafx x`kunjomu?

Xhud: Iva, waqaf biex nibdew nirriversjaw ahna ha nibdew inbattlu gew trakkijiet ohra irriversjajt jiena ma l-ohrajn jien sadattant inzilt biex niftah il-bibien tal-compacto li jkolli fuq it- trakk biex inbattalha sejjer ghat-trakk biex nitla halli nibda, kif nasal fuq l-ixkaffa fuq l- istafef inti tila b`dahrek hekk il-barra dahrek ikun il-barra inti ha titla fuq l-istafef,

Avukat: Issa f`dal-mument li inti ha titla fuq l-istafefda l-ingenju li kien qed isuq igifieri kien dahru lejki?

Xhud: Dak gie b`lura minn wara ghal-go fija bumm

Avukat: Dan irriversja qed nifhem sew ghal go fik?

Xhud: Kien qed jirriversja kif dahal bicca dar u qabad lili fuq l-istafef.”²

“Lawyer: Now how did the incident occur? Where were you what was the defendant doing and how did the impact occur?

Witness: No the defendant was spreading it and we were waiting to enter to empty.

Lawyer: Who was waiting to empty you and?

Witness: Other trucks and I, because it was not only me who was waiting, and the inspector stops him because there is a regulation that whilst he is working we cannot go in.

Court: The inspector, is it the one who is outside Joe? I don't know his surname?

Witness: Yes, he stopped so that we start reversing and we start removing the material other trucks arrived I reversed together with the others. In the

The injured party got caught between the machinery driven by defendant and the steps of the truck and he got crushed between staff next to the truck door

The witness states that he was not crushed because he sheltered between he managed to go in the cabin and shelter between the steering and the dashboard of his truck. His leg was injured because of the accident. The driver of the other vehicle did not notice what has happened immediately. The witnesses managed to honk the horn and the inspector realised what has happened, stopped defendant, and phoned for an ambulance.

When asked by the Court who was responsible on site the witness answered as follows

“Qorti: Allura fejn kien meta gara l-incident? Min hu responsabbli biex jara li kulhadd jaghmel dak li suppost jaghmel?

Xhud: Dik isa ma nafx ghax ahna jaghjtulna l-inspectors nidhlu narbulaw,

Qorti: Imma l-inspectors qeghdin hemm ghal-raguni.

Avukat: Ha nsaqsik mistoqsija qabel ma suppost irriversja l-imputat min kelli jidderigieh biex jirrivversja?

Xhud: L-inspectors ghax hemm regolament il-bicca tax- xoghol qeghda hekk hi l-ewwel jahdem hu jahdmu tal-Boomack ghax Boomacks hemm tnejn l-ewwel iwittu l-Boomacks, dahlu it-trakkijiet jarbulaw mela arbulaw fhimt tigi il-Boomack twitti waqt li qeghda twitti ahna ma nidhlux ahna tat- trakkijiet,

meantime, I went down to open the door of the compactor that I have on the truck to remove it and going on the truck to start. When I arrive on the step of the staff you go up with your back facing outwards whilst you are going up the staffs.

Lawyer: Now whilst you are going up the staffs the machinery that he was driving was it facing backwards

Witness: He came from the back on me bumm.

Lawyer: Am I understanding well that he reversed on you?

Witness: He was reversing as he went in, he turned and caught me on the staffs.

Avukat: L-inspectors f`dal-hinijiet kollhax`istruzzjonijiet ikun qed jaghti?

Xhud: Sakemm tkun qed tahdem il-Boomack ma jidhollu l- ebda trakk ikun hemm huma fin-nofs u jigu hekk l- inspectors iduru,

Avukat: Allura biex l-imputat irriversja qabel mairriversja kellu jaghtih il-go-ahead xi hadd?

Xhud: Le suppost dhalna ahna ghamlilna is-sinjal l- inspectors, u dhalna ahna narbulaw waqt li qed narbula kont diga ma dhaltx got-trakk biex nibda ngholli ftaht il-bibien u ha nibda ngholli.

Qorti: Ijja imma il-Boomack min iwaqqfu?

Xhud: Il-Boomack jieqaf, biex jidhlu it-trakkijiet jieqaf,

Qorti: Jieqaf, imma min iwaqqfu?

Xhud: Is-sistema hekk qeghda jieqaf, kif jidhlu it-trakkijiet irid jieqaf,

Qorti: U jekk xi hadd jiccaqlaq min suppost iwaqqfu?

Xhud: Issa hekk ma nafx.”³

³ “Court: So, who was responsible of the place where the incident occurred? Who is responsible to see that everyone is doing what he is supposed to do?

Witness: I don’t know because we are told by the inspectors to go in and start dismantling.

Court: But the inspectors are there for a reason

Lawyer: Let me ask you a question before the defendant reversed who had to instruct him to reverse?

Witness: The inspectors because there is a regulation first he works, the Boomack works there are two, first the Boomacks level, then the trucks enter and dismantle the material . . . do you understand the Boomack levels and whilst it is levelling, we the trucks do not enter.

Lawyer: The inspectors whilst this is happening what instructions would they be giving?

Witness: Whilst the Boomack is working no truck is allowed to be in the middle and the inspectors go around

Lawyer: Therefore in order for defendant to reverse, did he need a go-ahead from somebody?

“Avukat: L-irwol ta l-inspector x`inhu?

Xhud: Li jara t-trakkijiet li jidhlu jarbulaw u hekk.

Avukat: Allura min suppost iwaqqfu?

Xhud: Issa ma nafx mhux ha nwaqqfu jien ghax jiena mat- trakk ghandi x`naqsam.

Qorti: L-inspector suppost iwaqqfu hu milli jibqa ghaddej?

Xhud: Hekk nahseb Suppost ir-regolament qieghed li m`ghandux jibqa jahdem waqt li hemm it- trakkijiet.”⁴

On the nature of his injuries the witness states that he has suffered a permanent disability.

Stefan Salamone, gave evidence on the 6th October 2022. He is a Health and safety manager at Wasteserv, in Maghtab. He was not on site on the day of the accident and went after he was informed.

Witness: No we were supposed to be there because the inspectors gave us the signal and we enter and remove the material whilst we were removing I was not inside the truck and to heighten the truck I opened the door to start.

Court: But who stops the Boomack?

Witness: The Boomack stops when the trucks go in.

Court: It stops, but who stops him?

Witness: The system is that he stops, as soon as the trucks come in he has to stop.

Court: And if someone one moves who is supposed to stop him?

Witness: Now like that I don't know.

⁴ Lawyer: What is the role of the inspector?

WitnessL To see that the trucks enter remove the material and things like that.

Lawyer: So who was supposed to stop him?

Witness: I don't know not me because I am only involved with the truck

Court: Is the inspector supposed to stop him whilst he is working?

Witness: I think so the regulation is that one hasto stop working whilst the trucks are there.

Affidavit of Dr Paul Zammit confirmed on oath on 1st April 2022. He confirms that he examined Adrian Bianchi on 05/12/2019 and the injuries that he suffered. The injuries are of a grievous nature.

Defendant Delfin Dacayanan, gave evidence on the 6th October 2022. On the day of the accident he was operating machinery referred to as a back hook compactor at Wastesev in Maghtab, Naxxar.

He states

“Wit: I was pushing the material the garbage I was pushing it so when I pushing it,

Court: So you were on machine and when you were pushing the garbage which is in front of yours something or what somebody puts the garbage in the machine?

Wit: The garbage in front of my compactor pushing it to level it so when I move reversed I did not notice that there is a truck in at the back of my machine and then I hit it,

Court: You hit the truck?

Wit: Yes, I hit the truck but the problem is there we have the Inspector they call it Inspector, where they stop the truck to show where they going to dump the material there is a person from,

Court: An inspector you mean?

Wit: Like an inspector Maam like an inspector so they,

Court: Who is which to direct the traffic in Wasteserve?

Wit: Yes to give instruction to the drivers so when I reversed this the problem they should not go on my back because I had the reverse on and it's very very strong 500 meters you can hear still booo booo booo that's why and then I hit it, it's on my back so that's it.”

The driver of the truck got hurt. The driver was outside the truck going down from the cabin.

“Court:Between you and the truck? He was between both of you?

Wit: Yes yes.

Avd: So he wasn't driving the truck he was?

Wit: No he leave the truck there that I did not notice.”

Considered

The case concerns an incident that occurred on the place of work at Wasteserv in Maghtab. Accused was driving and reversing machinery whilst the injured party was going down his truck facing backwards.

It is not contested and admitted by the defendant in his evidence that he was reversing the machinery and that he hit the injured party.

It has also been proved by means of the doctor's affidavit that the injuries suffered by the injured party were of a grievous nature.

The court observes that even though so directed by the same court and verbalized in the sitting of the 21st April 2022 the prosecution did not provide a a witness regarding responsibilities of its personnel during the manoeuvres described by the injured party.

However, both from the injured party's evidence and also from the accused evidence it is clear that the company has the responsibility to see that regulations and safe practices on health and safety rules are followed. Both the injured party and the accused concur that someone has to give the instruction for this manoeuvre to take place.

This premised the driver of the machinery the accused also has responsibility in this accident since as the injured party stated, not contradicted by defendant, he had to stop when the trucks were on site.

When considering the penalty to be inflicted the court is taking into account the evidence tendered on the responsibility of the company's officials on the site of the incident as well as defendant collaboration when spoken by the police and his evidence which mitigate against imprisonment of the accused.

Decision

Consequently for the above-mentioned reasons, the Court, after having seen article 328 (c) of Chapter 9 finds the accused Delfin Baniqued Dacayann guilty as charged and condemns him to a fine of One Thousand one hundred and sixty four euro (1,164).

DR. YANA MICALLEF STAFRACE LL.D.

MAGISTRATE

Doris Serpina Sciberras

Deputy Registrar