



**In the Court of Magistrates (Malta)**  
**as a Court of Court of Criminal Judicature**  
**Magistrate Dr Nadine Lia; B.A., LL.M(Kent); LL.D (melit)**

**Comp No: 528/2021**

**The Police**  
**(Inspector Saviour Baldacchino)**

**vs**

**Jeffry Varghese**

The Court after having seen the charges proffered against:

**Jeffry Varghese**, 30 years, son of Simon and Eliemma, born India on the 15/4/1991, residing at 23, Mingo, F15, Triq ir- Rebbiegha, San Pawl il- Bahar. Holder of identity card number 215705A

For having the 24th of August 2021 at around 19:20hrs in St Paul's Bay:

1. Committed a non-consensual act of a sexual nature against Claudia Maria Bertalanitz in breach of Art 207 of Chapter 9 of the Laws of Malta.

2. Without a lawful order from the competent authorities, and saving the cases where the law authorizes private individuals to apprehend offenders, arrested, detained or confined Claudia Maria Bertalanitz against her will as per Art 86 of Chapter 9 of The Laws of Malta.
3. Committed theft of vehicle Suzuki Alto registration number ABN 596, belonging to Ray Clifton Charles; which theft is aggravated by the amount which value is less than two thousand, two hundred and twenty-nine euro, thirty even cents (€2329.37) and by the nature of the thing stolen, as per Art 261, 267, 271(g), 279(a), 280(1) of Chap 9 of the Laws of Malta.
4. Through imprudence, negligence or unskilfulness in his trade or profession, or through non-observance of any regulation, caused damage, spoil to vehicle of Make Suzuki to the detriment of Ray Clifton Charles as per Art. 328(d) of Chapter 9 of the Laws of Malta.

The Court is requested to provide legal protection to the alleged victim Claudia Maria Bertalanitz as stipulated in Art 412 C of the Laws of Malta.

Moreover, the Court is also being requested that in case of guilt, to condemn the accused to pay for Court expenses related to the appointing of experts as set out in Art. 533 of Chapter 9 of the Laws of Malta.

Having seen that during the sitting of the 26th August 2021, the accused declared that he is not guilty of the charges proffered against him<sup>1</sup>.

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<sup>1</sup> Folio 9 of the acts of the proceedings

Having seen that in the sitting of the 26<sup>th</sup> August 2021 the Court ordered that proceedings continue in the English language since the accused did not understand or speak Maltese<sup>2</sup>.

Having seen that The Attorney General on the 11th July 2022 presented the formal accusatory document wherein the accused was charged with the following articles of law<sup>3</sup>:

- Article 207 of Chapter 9 of the Laws of Malta;
- Article 86 of Chapter 9 of the Laws of Malta;
- Articles 261 (c)(g), 267, 271(g), 279(a), 280(1) of Chapter 9 of the Laws of Malta;
- Article 328(d) of Chapter 9 of the Laws of Malta;
- Articles 15A, 17, 20 and 31 of Chapter 9 of the Laws of Malta;
- Articles 532A, 532B u 533 of Chapter 9 of the Laws of Malta;
- Articles 382A, 383, 384, 385 and 386 of Chapter 9 of the Laws of Malta

Having seen that during the sitting of the 29<sup>th</sup> July 2022 the Articles of Law for judgment which were sent by the Attorney General were read out, during which sitting the accused declared that he does not object to his case being tried and decided summarily<sup>4</sup>.

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<sup>2</sup> Folio 5 of the acts of the proceedings

<sup>3</sup> Folio 166 of the acts of the proceedings

<sup>4</sup> Folio 169-170 acts of proceedings

Having seen that the Prosecution concluded its evidence during the sitting of the 28<sup>th</sup> April 2022<sup>5</sup>

Having seen that the Defence concluded its evidence during the sitting of the 28<sup>th</sup> February 2023<sup>6</sup>

Having heard the submissions made by the Prosecution and the Defence.

## **Having Considered**

### **Summary of facts of the case**

This case concerns a report made by Claudia Maria Bertalanitz on the 24<sup>th</sup> August 2021 to the effect that at about 19:00hrs on that day in Qawra, the accused Jeffrey Varghese had entered her car in an unauthorized manner and had also touched her inappropriately while impeding her escape from the vehicle. According to the report, after Bertalanitz had eventually managed to exit the vehicle, the accused proceeded to drive off with same, also causing damage to the vehicle in the process.

## **Having Considered**

That reference will be made to the most salient testimonies heard and documents exhibited during these proceedings

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<sup>5</sup> Folio 154 acts of proceedings

<sup>6</sup> Folio 174 acts of proceedings

**Clifton Charles Grech** testified during the sitting of the 9<sup>th</sup> September 2021<sup>7</sup>. After explaining that his partner is the parte civile Claudia Bertalanitz, he confirmed having made a report to the police on the 24<sup>th</sup> August 2021 at about 19:30 about what happened to his partner and also that his vehicle ABN-596 which was being used by her, was stolen by the defendant. On the day in question his girlfriend called him upset and told him that the defendant had drive off with her in the car, took her another way and molested her – “*baghasni, qabadni, messni*”.

The witness recalled that his girlfriend had told him that he threatened her life because he said that if she got out of the car they would shoot her not once but three times. After the vehicle was retrieved at about 02:00hrs the following day, he noticed that it had a big dent on the right hand side and that it was leaking oil, indications that it was involved in an accident. The witness explained that he was not present during the actual assault. Requested by the Court to quantify the damages sustained by the vehicle, the witness stated that he had obtained a repair quote of approximately €700.

**Claudia Maria Bertalanitz**, the parte civile, testified during the same sitting<sup>8</sup>. She recounted that on the 24<sup>th</sup> August 2021 at about 19:00hrs, she was driving in Triq it-Tamar, St Paul’s Bay, which is very close to her home. Suddenly, she heard a noise and thought that she had crashed so she went out of the carto check and when she confirmed that everything was fine, she tried getting back into the car. At that point she saw the defendant standing in proximity pointing towards her. After she unsuccessfully tried to start the car to leave, the defendant offered to help. Defendant then proceeded to assist he parte civile out of the car, got in

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<sup>7</sup> Fol. 27-37 of the acts of the proceedings

<sup>8</sup> Fol. 38-50 of the acts of the proceedings

himself, and managed to start the car. Bertalnitz explains that when the defendant was about to drive off with the car, she managed to climb back through the passenger door and requested the defendant to stop. Nonetheless, the defendant kept on driving and started grabbing her breasts whilst putting his hands on her thigh. Throughout this incident, the parte civile was offering resistance and begging the defendant to stop and get out of the car. The defendant threatened *“if you get out of the car, they will shoot you”*. Eventually, the defendant did stop the car close to Qawra Church and after he refused to get out, the parte civile herself got out of the car to safety after managing to wrestle herself free as the defendant was trying to restrain her from leaving by holding her from the arm. The defendant then sped away from the scene with the car, which contained the parte civile’s personal belongings, including home keys. Upon being questioned by the Court, the parte civile, whilst recognizing the defendant in the Court Hall, declared that she did not know him beforehand. Regarding the damages sustained to the car, the parte civile confirmed that they were not present before the incident at issue. The parte civile explained that she had not suffered any injuries other than some bruising to her wrist and perhaps a pulled muscle.

The parte civile had also given her version of events on the date in question when she went and reported the matter to the police. The parte civile had given her first instance version on the same day of 24<sup>th</sup> August 2021 as recorded in police report NPS 9A/V/4202/2021.<sup>9</sup> In the report she explains:

*“Kien hemm ragel twil u bid-daqna li kien quddiem il-vann u gie hdejja u offrieli l-ghajjnuna fejn jien accettajt. Qabadani minn idejja u gibidni l-barra mil-karozza u dahal*

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<sup>9</sup> Doc A, Folios 10-14 acts of the proceedings

hu u rnexxielu jistartja l-karozza. Qabel dahal fil-karozza, huwa qalli biex nipparkja ghal-gemb. Meta startja l-karozza, huwa ma riedx johrog minnha. Meta rajt li ma kienx ser johrog mill-karozza, jien mort fuq is-seat tal-passigier. Huwa qalli biex isuq il-karozza fejn hemm aktar spazju u jsuqili barra mid-djuq tat-triq. Huwa beda jsuq izda ma riedx li jieqaf u ghidtlu jemm il-darba sabiex jieqaf izda hu baqa jsuq. Huwa kompla jusq u ma riedx jieqaf. Meta kien qieghed isuq u beda jaqbadli u jghafasli sidri u jien kull darba innehhielu idejh. Qabadli sidri ghal 3 darbiet. Meta nehhejtlu idejh u nizzel idejh fuq kuxtejjha u beda jdahhal ideh il-gewwa lejn il-parti intima tieghi izda jien bdejt niccaqlaq u nnehielu idejh biex finalment ghalkemm huwa pprova 3 darbiet, qatt ma rnexxielu jmissli l-parti intima tieghi. Imbaghad qabadni minn idejjha u gibidni fuqu u dak il-hin rega ghafasli sidri. Huwa kompla jsuq u mbaghad waqaf hdejn il-knisja, ezattament hdejn il-Maxims tal-pastizzi. Ghidtlu biex johrog mill-karozza izda dan ma harigx. Jien ppruvajt nohrog mill-karozza u huwa qalli ma nistax u li jekk tohrog mill-karozza, kien hemm xi nies li kienu ser jisparawliha. Dak il-hin huwa ppunta subajh fid-direzzjoni tal-knisja. Jien rnexxieli niftah il-bieb tal-karozza u huwa gibidni lura minn idejja. Jien ghajjat mara Maltija li ma nafx min hi u tlabtha sabiex iccempel lill-pulizija. Huwa gibidni l-gewwa u rnexxielu jghalaq il-bieba tal-karozza. Jien ergajt ftaht il-bieba u rnexxieli nohrog mill-vettura. Huwa qalli tlett darbiet li jekk nohrog mill-karozza kien hemm xi nies li kienu ser jisparawli. Meta hragt mill-karozza, jien mort n-nahha tieghu biex nipprova naqla c-cweivet mill-ignition izda hu tella t-tieqa. Jien tlabtu sabiex itini c-cwievet izda hu minflok, ghafas il-pedala tal-gas u telaq minn fuq il-post. Meta rajt li telaq, jien ergajt mort fi Triq it-Tamar ghax hsibt li kien ser jerga jmur hemm hekk izda ma rajtux u ghalhekk bqajt sejra l-ghassa.

**PS 419 Anton Buttigieg**, stationed at Qawra Police Station testified on the 14<sup>th</sup> October 2021<sup>10</sup>. The witness confirmed receiving an anonymous telephone report on the 24<sup>th</sup> August 2021 at about 19:35hrs whereby it was stated that a man was driving a vehicle, ABN-596 of make Suzuku Alto, grey, in Triq it-Turisti, Qawra, in a dangerous manner. Police were sent on the scene. After a few minutes, a certain Claudia Maria Bertalanitz rushed into the station and reported that she tall, bearded foreigner had stolen her vehicle and that he had assaulted her by touching her breasts and attempting to touch her intimate parts, without success. The witness explained that the vehicle details provided by Bertalanitz tallied with those given in the previous report. The witness explained that one of the officers sent on site, PC 979, informed that whilst vehicle ABN-596 has been traced in Triq it-Turisti, a man matching the description given by the parte civile was found in vehicle of make Mercedes bearing registration number IQZ-292. The man, who was identified as Jeffry Varghese who was arrested on site. Sometime later, persons who identified themselves as Ivan Kostev and Biljana Kostev claimed that the Mercedes vehicle was theirs and that the defendant was in their vehicle without permission. The defendant was then taken into custody after being given his statutory rights, including the right to consult with a lawyer.

**Inspector Saviour Baldacchino** testified during the same sitting<sup>11</sup>, whereby he clarified that he was not present during the incident however, he was involved in the taking of the defendant's statement on the following day, that is, the 25<sup>th</sup> August 2021. The witness explained that the defendant had first refused legal advice, however, he then had a change of heart and actually consulted with Dr

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<sup>10</sup> Fol. 64-71 of the acts of the proceedings

<sup>11</sup> Fol. 79-83 of the acts of the proceedings



Robert Piscopo, in whose presence the statement was eventually taken. PC 759 also witnessed the statement. In his statement, the defendant consistently stated that he was drunk throughout all the incident. The witness took the stand again on the 28<sup>th</sup> April 2022<sup>12</sup> whereby he presented a record of the defendant's initial refusal to consult with a lawyer

**Stephen Cachia**, on behalf of the Authority for Transport in Malta, testified on the 18<sup>th</sup> November 2021<sup>13</sup> whereby he confirmed that vehicle ABN-596 of make Suzuki Alto is registered on Clifton Charles Ray meanwhile vehicle IQZ-292 of make Mercedes Benz GLC is registered on Anthony Meli on behalf of Fremond Limited.<sup>14</sup>

**PC 586 Mario Azzopardi and PC 2369 Stephanie Cassar** from the Forensic Services Laboratory testified during the same sitting<sup>15</sup> whereby they confirmed having taken a buccal swab from the defendant as well as carrying out tests on vehicle ABN-596. The samples were then passed on to Dr Marisa Cassar for DNA analysis.

**PC 979 Daniel Mohr** testified on the 9<sup>th</sup> February 2022<sup>16</sup>. The witness responded to the report about erratic driving in Triq it-Turisti. When he called on site together with other colleagues, vehicle ABN-596 of make Suzuki Alto was found parked in front of a garage in the mentioned street however the driver was not inside. After being alerted by a pedestrian, the driver, later identified as the defendant, was found in a white Mercedes vehicle bearing registration number IQZ-292. The

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<sup>12</sup> Fol. 159-160 of the acts of the proceedings

<sup>13</sup> Fol. 96 of the acts of the proceedings

<sup>14</sup> Dok SC1 and SC2, Folio 97-100 acts of proceedings

<sup>15</sup> Fol. 101-102 of the acts of the proceedings

<sup>16</sup> Fol. 136-139 of the acts of the proceedings

defendant appeared rather confused and did not answer to any questions. Eventually a certain Ivan Kotsev approached the vehicle and stated that he was the person responsible for it and that the defendant was in the vehicle without his permission. After receiving instructions from his superiors, the witness proceeded to arrest the defendant. The witness was able to identify the defendant in the Court Hall.

**Ivan Kotsev**<sup>17</sup> and his wife **Biljana Kotsev**<sup>18</sup> both testified on the 9<sup>th</sup> February 2022. They could recall an incident about a man that got into their leased car unlawfully and tried to drive away, however, “luckily” the Police were there and intervened in time.

**Dr Rebecca Camilleri** testified on the 28<sup>th</sup> April 2022<sup>19</sup>. The witness conformed that she had completed the medical certificate exhibited at Fol. 72 following an examination on the defendant Jeffrey Varghese and further explained that she had not found any injuries of note. The witness also referred to the certificate at Fol. 158 which she had completed following an examination of parte civile Claudia Maria Bertalanitz. The examination had revealed that she was suffering form bruises to the right wrist and well as abrasions on the right palm, forearm and index finger.

**Dr Nadia Vella** on behalf of Mapfre Middlesea Insurance testified on the 27<sup>th</sup> July 2022<sup>20</sup>. She explained the company does not hold any information regarding the value of the vehicle as it is insured on a third party only basis.

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<sup>17</sup> Fol. 140-144 of the acts of the proceedings

<sup>18</sup> Fol. 145-148 of the acts of the proceedings

<sup>19</sup> Fol. 155-157 of the acts of the proceedings

<sup>20</sup> Fol. 171 of the acts of the proceedings

The defendant **Jeffry Varghese** took the stand freely on the 28<sup>th</sup> February 2023<sup>21</sup>. Succinctly, he explained that whilst he was with friends, he saw a lady (the parte civile) waving for help as her car was not starting and it was partially blocking the road. He tried to start the car two or three times. After he managed to start the car, he drove it round the block to allow the battery to charge. The defendant could remember that the lady was seated next to him in the car at some point in time but could not remember anything other than that because he was dizzy. The next thing he recalls is being “**relaxed**” in the white Mercedes and being arrested by the police immediately after.

**Sinu Thattuparambil Francis** also testified during the same sitting<sup>22</sup>, whereby he stated that he was together with defendant and a certain Arun driving in Qawra and there was a lot of traffic because a car was blocking the road. The only thing that he knows is that whilst he was helping Arun into his apartment, they left the defendant together with the woman who’s car had broken down as she was asking for help.

## **Considerations**

### **The Statement released by the Defendant**

The accused had his statement<sup>23</sup> taken by the Police as part of their investigation by Inspector Saviour Baldacchino on the 25<sup>th</sup> August 2021 in the presence of PC 759 A. Mercieca and Dr Robert Piscopo, with whom the accused had previously

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<sup>21</sup> Fol. 175-185 of the acts of the proceedings

<sup>22</sup> Fol. 186-189 of the acts of the proceedings

<sup>23</sup> Fol 15-18 of the acts of the proceedings

consulted. On the statement exhibited as evidence in these proceedings it results that the accused was given the due caution in terms of law.

In the statement, with reference to the charges under examination, the accused explained that he was drunk at the time and that he didn't remember anything other than being eventually arrested by the Police.

### **Having Considered**

The prosecution primarily rests its case on the evidence of the alleged victim Claudia Maria Bertalanitz. The reason being that despite the fact that an exercise for DNA mouth swabbing took place with the samples being passed on to Dr. Marisa Cassar<sup>24</sup> the prosecution did not insist on an expert being appointed to formally examine the swabs and present them in Court.<sup>25</sup>

The Court observes that the witness gave her version several times. The first time being to her boyfriend Clifton Charles Grech whom she called on the spot and immediately after the incident to seek his help. In the version she told her boyfriend she clearly explained what happened, the dynamics and how the incident unfolded as well as the acts of molestation and the words spoken to her.

This version was also repeated to the police when she gave her police report as confirmed by the same PC 419 Anton Buttigieg who took down her version of events in the police report. In the police report one finds that once again she corroborates everything she told her boyfriend to the police without any noticeable discrepancies or variations to her version of events.

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<sup>24</sup> Vide Folio 109 and 110 of the acts of proceedings

<sup>25</sup> Vide Folios 150, 153 and 154 acts of proceedings

The same victim later gave her evidence viva voce in open court two weeks later whereby she recounted the same facts in the same chronological order and repeating the words and actions that took place by the defendant.

Therefore this Court had the opportunity to compare and contrast at least three difference instances where the victim gave her version of events. In addition to this the Court was presented with medical certificates of both the defendant and the victim showing slight bodily harm on their persons. In examining the medical certificate of the victim it is possible to note that there was an altercation involving the victim owing to the nature of the bruises and abrasions and the place that they are found. The Court considers that the witness was consistent in reproducing and repeating her versions throughout and that there is no reason not to believe what she went through or that the acts by the defendant took place.

On the other hand, the Court also finds that certain bystanders who happened to be present on the scene could confirm aspects of the version of events and the sequence in which they played out.

The defendant chose to partially answer parts of the statement that was taken when he was interrogated and also chose to voluntarily give evidence in court. From his two versions it results that he is not contesting being at the place on the date and time in question. Neither is it contested that he came in contact with the parte civile. As such he does not contest what the victim states because he declared in both instances that when it came to the incidents he had no memory or recollection of what happened since he was dizzy and drunk as he had been consuming alcohol which he had bought from Piscopo supermarket and had been drinking with his friends.

Therefore, the defendant himself places himself at the scene on the date in question and also places himself to be contact with the victim. The defendant rests his defence primarily on the fact that he cannot remember anything that happened and as results distances himself from what could have happened in the car.

The defendant is not obliged to give testimony or provide evidence. However, if he chooses to do so then it is subject to scrutiny by the court. The Court finds that this absence of memory does not sufficiently exonerate him or provide sufficient doubt in the prosecutions case to absolve him from responsibility. The Court emphasises that a finding of guilty is the responsibility of prosecution to reach the necessary legal threshold.

The Court also took note of the evidence of the defendant's friend Francis Sinu Thattuparambil who also confirmed the presence of the defendant on the date and time in question. Furthermore he also confirmed that the defendant had been drinking and that he had gone near the victim and was in contact with her.

Therefore the Court finds that the prosecution has been successful in proving all the charges proffered against the defendant to the decree required by the law and shall proceed to find him guilty of all the charges.

### **Having Considered**

That in examining the appropriate punishment for the defendant the Court took note of the following:

1. The Criminal record of the defendant. The criminal record of the accused<sup>26</sup> was exhibited in the acts of the proceedings. The Court notes that said

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<sup>26</sup> Fol 19 of the acts of the proceedings

document, which covers the period during which the “subject lived in Malta” does not attest to any criminal convictions whatsoever.

2. That according to article 280(1) of the Criminal Code the punishment cannot be given in the minimum.

### **Decide**

Therefore, after having seen Articles 15A, 17, 20, 31, 86, 207, 261 (c)(g), 267, 271(g), 279(a), 280(1), 328(d), 382A, 383, 384, 385, 386, 532A, 532B and 533 of Chapter 9 of the Laws of Malta, the Court hereby finds Jeffrey Varghese **guilty** of the charges proffered against him and accordingly, condemns him to four (4) years imprisonment.

The Court having seen article 382A of the Criminal Code issues a restraining order against the defendant in favour of Claudia Maria Bertalanitz which shall remain in force for three years and which shall commence to run from the date of expiration or remission of the punishment.

The Court having seen article 533 of the Criminal Code abstains from taking further cognisance of the request due to the fact that no experts were appointed.

**Delivered today the 3<sup>rd</sup> of October 2023 at the Courts of Justice in Valletta, Malta.**

**Dr. Nadine Lia**

**Magistrate**

**Deputy Registrar**