



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

Magistrate Dr. Yana Micallef Stafrace LL.D.

Police

(Inspector Charlotte Curmi)

Vs

Gabriele Castellana Balbo

3rd June 2024

The Court

Having seen the charges brought against Gabriele Castellana Balbo Son N/A Born on the 13/03/1992, ID 0239143A Residing 145, Park Res, Fl 4, Triq John Borg, Birkirkara. with having on the 7th June 2022 at about 19:50hrs in Triq Mikiel Anton vassalli San Giljan drove vehicle Registration no: IBT783;

1. In a negligent manner;
2. And drove the mentioned vehicle in a dangerous manner;
3. And drove the mentioned vehicle in a reckless manner;

4. And through imprudence, carelessness, unskillfulness in his art or profession, or non observance of regulations, and caused Asim Habib Habib Ur Rehman involuntary grievous injuries without the effects mentioned in article 218 of Chapter 9 of the Laws of Malta as certified by Dr. Alexander Paul Grima MD of MDH;

Prosecution requests that the mentioned person be disqualified from all his driving licenses.

The Court is humbly requested that in case of guilt, also deducts points from the driving license, as indicated in S.65.18 Art36B and in S.L. 65.18 Sixth Schedule.

Having seen articles 226(1)(b) of Chap 9 and 15(1)(a) (2) S.65.18 Art36B and in S.L. 65.18 Sixth Schedule of the Laws of Malta

Having seen the witnesses produces by the prosecution

Having seen the testimony of the accused

Having seen the acts and documents of the proceedings

Having seen the oral submissions of the parties

Considerations of the Court

PS 1440 Sergio Spiteri gave evidence by means of an affidavit regarding his involvement in these proceedings

Dr Alexander Paul Grima gave evidence by means of an affidavit regarding Asim Habib

Asim Habib Habib Ur Rehman, gave evidence as follows

Wit: I swear. Actually on 7th of June 2022, I was coming back from my work with the my motorbike so I just cross the tunnel and,

Adv: Which tunnel from where were you coming from and where were you heading to?

Wit: Saint Julians.

Adv: You were in Saint Julians, in the tunnel of Saint Julians and heading towards which direction?

Wit: Down the like Swieqi.

Adv: Ehe to the valley of Swieqi.

Wit: So I just turned from the tunnel and I'm going to downhill and the car was coming uphill.

Adv: The other car?

Wit: Yes.

Adv: It was coming up hill and you are going down here from the tunnel. When you went out of the tunnel, you took which side?

Wit: On the left side.

Adv: And a car was coming up from the hill?

Wit: Yes.

Adv: And what happened?

Wit: So it's it's coming very fast and I just I just turn, I'm not in the speeding so just car came up hill and he hit me,

Court: So he went on to your side of the road, you're saying?

Wit: Yes, I'm on the left side, on the right side, so the car coming uphill because there is a bend so they are in speeding. So they hit me and I fall down. So I Have injuries in my hand or in my foot and my bike bike it was broken from front you can see in the photos.

Adv: Yes, you have photos, yes, yes, exhibit them to the Court.

Wit: So these I had taken them by myself It's the photos of the accident.

Adv: Can you briefly explain what these photos are? Please?

Wit: So DOK A9 this photo is showing I was here.

Adv: Mark, Mark, with a pen in blue, In blue ink with a cross exactly where was the point of impact please?

Wit: I just coming here.

Adv: Yes. And where did he hit you?

Wit: He hits around here then my motorbike.

Adv: Mark with an X where he hit you Where he hit you? Where? Where's your bike?

Wit: My bike.

Adv: He marked it with a circle. You're on a road bike, OK? This is where, where where the the point of impact happened, you're saying?

Wit: Yes, here, and then the bike was scheduled.

Adv: OK, so that is where the bike candid then?

Wit: Yes, so that time, I fold on here. Then they came out from the car the car was here this is the this is the car I,

Adv: Mark with an X where was the car and how did it end up further on, on the photo?

Wit: They came out from the car, they they checked,

Adv: Who they?

Wit: The driver.

Adv: The driver are you recognising the driver in court?

Wit: Yes.

Adv: Where is he?

Wit: There.

Court: The witness indicated the accused.

Adv: You said they he was with someone else?

Wit: They were 2 men. No him.

Adv: There there are two, they come to me and they check me you're OK You are OK, they said I said I'm OK, but one of

his friends, he told him remove car from here. So they remove and put it there before they they removed his car.

Court: They removed his car.

Wit: Yes, they move the car from the spot of impact.

Court: where is there Where it was stopped initially?

Adv: Yes, it's marked. The car is marked with a cross with an X and the bike with a circle, Alright, so now DOC A8 what is being seen there?

Wit: This one this one just took from the side, all right, so it's the centre from the side Side this one for the car photo.

Adv: Ok what car he was driving, correct?

Wit: Small one Smart car. This picture,

Court: These photos were taken after he moved his car?

Wit: Yes, yes, Because that one, that time I was in shock, so I didn't look before, when I come in my sense, then I,

Adv: Then you regained consciousness. OK, so you you lost consciousness at some point?

Wit: Yes.

Adv: So DOC A5 is the bike, How it ended up, `OK, DOC A3. When the police came, they were marking OK.

Adv: Now you you mentioned earlier on that you were injured. Can you please explain what kind of injuries you sustained?

Wit: From my left hand there is the 3 bones are fractured and my left foot there is 2 bones are fractured.

Adv: And you have?

Wit: Yes, I have medical reports here from Mater Dei hospital there,

Adv: So this the discharge, note the Trauma Clinic orthopaedic outpatients and this is the follow up. So to explain to the court exactly what you endured due to the accident, how often you had to go to hospital, and these things?

Wit: Then ambulance came to at the spot and they bring me to hospital and there is a Doctor who attend me and they took X-rays. And they told me you have a fracture in in your hand and in your foot and after that and after that they make a plaster on my foot and leg, so I stayed at home so I stayed at home 2 months.

Adv: And you stayed at home 2 months. And how long did you did you spend in hospital?

Wit: In hospital I spend, 18 hours and then yes, then they discharge me, they they put plasters on my injuries, then they discharge me. Then I they advised me to stay at home, so after after, one month and seven days, I went again to the hospital. They opened my plasters.

Court: So you stayed home for one month, seven days?

Wit: Yes, 4 weeks, 4 weeks so after they checked me again and they advised me to stay at home, more 15 days, yes so for that actually I was am doing 2 jobs full time and I have part time as well so I know go for work 2 months I stayed at home. I got lost from my jobs and how I survive and how are my family survived I know because of my friends they help me out for this.

Adv: Do you have anything else to add with regards to this accident?

Wit: No.

Adv: No further questions;

Adv2: So the road where the accident happened, when you're coming out of the tunnel and going down to Swieqi Valley, it's a bend, correct?

Wit: Yes. And it's a tight bend, Correct?

Wit: Yes.

Adv: It's quite tight bend?

Wit: If you're turning. Because it's it's two ways, not one way.

Adv: But it's sharp the turn?

Wit: It's sharp.

Adv: OK, so if I were to suggest that as soon as you turned you did not turn properly and you drove down into the middle of the two lanes, what would you say?

Wit: Actually that one is not on the bend, I turn and go down in the middle there is a happen.

Court: In the middle there is what?

Wit: There is a happened there that happened, yes. that accident in the middle. Not on the short on the on the,

Court: She's suggesting you were on the wrong side when there was the accident? Is that true or not?

Wit: No, I am my side.

Adv2: OK. So if I were to suggest that you were in the middle of the lanes, what would you say that you were between your lane and the other lane, what would you say?

Wit: I was on my side. You can see that there is a big space to turn so if, how can I turn it`s like a big round, I cannot turn like that, because I always going from using that way to go my house.

Court: Did you when he hit you, did your bike move in any way or it stayed where he hit you?

Wit: My bike,

Court: When he hit you, did it fall immediately or did it move?

Wit: No, my bike go back because he hit from the front and my bike go back like 1 metre away.

Adv2: And what if I were to suggest that when you were driving you were looking at navigation, what would you say were you looking at navigation when you were driving?

Wit: No I'm not on navigation rules and assistance.

Adv: Did you refuse medical assistance at first did you refuse medical assistance?

Wit: They told me you are OK. It's not not a big issue. Then when it's getting cold I get hurt. I feeling pain then I tell them to the police, I have pain in my They said they bandaged first the small car they came, they bandaged first then I didn't realise it's broken from inside then when I get paid, I call.

Court: So when did you go to hospital that day or in another day?

Wit: Yes, yes. I went to hospital, then I tell to the police I need a ambulance they said, OK, I will call.

Adv: That's all.

Gabriele Castellano Balbo, gave the following evidence

Adv: So Gabriele can you tell us what happened in this accident?

Wit: So, I was going up from the road take you to the Bypass after the gallery of St. Julian, I was going up from my side When the motor cycle come to me to my side make it me in front of me.

Adv: And you have photos can you exhibit the photos explain the photos where is the motorbike and where is you car?

Wit: F 1 If you can see the photo you can see the crash.

Court: Put a mark where there is the crash please.

Wit: This is the point of the cross.

Court: You marked it with a circle.

Wit: And this the middle of the street this is my side this is the other side, the crash is here the car is here and he moved the motorcycle over here.

Court: What do you mean here and here you have to describe on the photo and mark it, so you are saying he pushed it from where you crashed?

Wit: No no no when we crash my car was here and he hit my car and moved here and the stopped the motor cycle in the middle.

Court:

Wit: He was coming down and I was,

Court: You`re not understanding my question when you say he moved for me means the he actually got up and moved it away from the accident.

Wit: No with the crash,

Court: Exactly so with the dynamics of the accident the point of accident the impact is the circle but car ended up where as indicated in that photo am I understanding correctly?

Wit: Yes.

Avu: Jien daqsekk sinjura.

Court: Cross examination.

Adv2: So you are saying that the point of impact happened in that circle am I understanding you correctly?

Wit: Yes, where there is the oil falling down.

Adv: And the oil fell from where what car from your car?

Wit: No from my car just the water from the radiator.

Adv: What did you mean you couldn't move your car?

Wit: When there is no water in the radiator the car cannot move.

Adv: But so you're saying that on the impact your car stopped exactly where it is?

Court: No he said after the impact the car moved ahead.

Adv: It moved ahead and then it couldn't go,

Court: And the motorbike moved as well and the point of impact is where is the circle is what I understood.

Adv: Ok what velocity were you driving with?

Wit: I was 20 km per hour maximum because I was going up.

Adv: And your car is a left hand drive or right hand drive?

Wit: Right hand drive it's a Maltese car.

Adv: It`s being suggested to you that an actual fact you were not driving on your side of the lane but you over stepped middle line what would you have to say about this?

Wit: It`s impossible because if you can see by the photo the line is in the middle of the street is on the right of point of the crash so I was in my left side.

Adv: So I am going to make reference to DOC A 9 you`re saying that the point of impact happened where you said that there is water and the oil as you marked on your photo on DOC F 1 how do you explain the fact then that there are there`s car debris and even further oil spills on the other side of the lane further down on DOC A 9 how you explain this fact? Basically further down there is oil spill it` marked with bike and a circle, how do you explain that the point of impact happened where the cross is but there is debris and oil spills further down on the other side of the lane?

Wit: If you can see if you can see this is not our impact or our crash.

Court: What is this? Is the X you are referring to?

Wit: Yes.

Court: So with the red circle right?

Wit: Yes, the circle it mean the same I circle here so this is DOK F 1.

Adv: Now how my question is very simple sir how do you explain the fact that there are oil spills and car debris your car debris further down on the other side of the lane?

Wit: This is on the lane, this is not mine it doesn't mark.

Court: So put your own mark and say this is not mine.

Adv: Qalha sinjura you are saying that the spill further down where there is written bike is not yours?

Wit: This is not mine.

AdvL So you are saying that the oil spill and car debris next to the circle marked as bike on DOC A9 is not yours?

Wit: No.

Adv: I have no further questions.

Considerations of the Court

The affidavit of Dr Alexander Paul Grima refers to the date of his examination of Asim Habib and not Asim Habib Habib Ur Rehman. Furthermore the date of examination is 25th June 2022. The accident occurred on the 7th June 2022 and therefore it cannot be concluded to the level of proof required in a criminal court that the injuries described on the affidavit occurred on the 7th June 2022. Therefore the fourth charge is not proven

Regarding the first three charges. There is a conflict of evidence regarding the dynamics of the accident and therefore there is not the level of proof required in a criminal court to ascertain the dynamics of the accident and therefore the first three charges are not proven

Decide

Having seen articles 226(1)(b) of Chap 9 and 15(1)(a)(2) S.65.18 Art36B and in S.L. 65.18 Sixth Schedule of the Laws of Malta and for these reasons finds **Gabriele Castellano Balbo** not guilty of the charges brought against him.

Magistrate Dr Yana Micallef Stafrace LL.D.

Doris Serpina Sciberras

Deputy Registrar

