



**Court of Magistrates (Gozo)**  
**AS A COURT OF CRIMINAL JUDICATURE**  
**Magistrate Dr. Jean Paul Grech B.A., LL.D**  
**M.Juris (Int. Law), Adv. Trib. Eccl. Melit**

**JUDGEMENT**

Today, Thursday the twenty sixth (26<sup>th</sup>) of September

Case Number 166/2023

**The Police**

(Inspector Josef Gauci)

VS

**Gijsbertus Nicolaas Miltenburg**

The Court,

Having seen the charges brought against **Gijsbertus Nicolaas Miltenburg**, born on the-ninth (9<sup>th</sup>) April 1952 and residing at “Thyme”, Triq ta’ Wara s-Sur, Rabat, Gozo, holder of Maltese identity card number 22978(A) for having on the sixteenth (16<sup>th</sup>) March 2023 at around two o’clock in the afternoon (14:00hrs), in Mgarr Road, Għajnsielem, Gozo, while driving vehicle Mercedes bearing registration number KBV 421:

(1) through imprudence, negligence or unskillfulness in his trade or profession, or through non-observance of any regulation, caused any fire or any damage or spoil on vehicle of make Peugeot, registration number KBX 785 property of Alexander Anastasi and also caused injuries of a grievous nature on Alexander Anastasi as certified by Dr. Chris Giordimaina, Med Reg 3584 of the Gozo General Hospital;<sup>1</sup>

(2) also on the same dates, time and circumstances, driven the mentioned vehicle in a dangerous and negligent manner.<sup>2</sup>

The Court was humbly requested that in case the accused is found guilty, the accused is barred from acquiring or else have his driving licence suspended for a period the Court deems fit.

Having seen that the case was assigned to this Court as presided following an order dated nineteenth (19<sup>th</sup>) day of February 2024 issued by the Chief Justice in terms of Article 11(3) of Chapter 12 of the Laws of Malta and Article 520 of Chapter 9 of the Laws of Malta;

Having seen the evidence compiled, the documents exhibited and all acts of the proceedings;

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<sup>1</sup> Article 328(c) of Chapter 9 of the Laws of Malta.

<sup>2</sup> Article 15(1)(a) of Chapter 9 of the Laws of Malta.

Having heard the evidence and final submissions of the parties;

Considers;

The facts of the case are as follows: on the sixteenth (16th) March 2023, the Police were informed that a motor vehicle accident had taken place in Mġarr Road, Għajnsielem. The Police reported on site and found a person lying on the road unconscious who was being given assistance by a medical team. The victim was identified as Alexander Anastasi. The Police spoke to the accused who told them that he was driving up Mġarr Road, Għajnsielem. There was the motorcycle on the inner lane. He drove past this motorcycle and as he drove past it, he heard a sound at the back of his vehicle. Through his side mirror he saw the person who was driving the motorcycle fall down. He stopped further up the road. A couple of days after the accident, the Police went to hospital to speak to the victim. Alexander Anastasi told the Police that he remembered going down the ferry and his intention was to go to his home in San Lawrenz. However, he did not remember anything else.

Considers:

**A. The First Charge – Article 328(c) of Chapter 9**

For a finding of guilt in so far as this first charge is concerned, the Prosecution had a two-fold obligation: (a) to prove negligent conduct on the part of the accused; **and** (b) to prove that this negligent conduct precipitated this accident. In relation to a similar charge in the judgement ***Il-Pulizija vs Noel Cutajar*** decided on the seventh (7<sup>th</sup>) May 2024, this Court had pointed out that:

*“huwa fundamentali li tigi pruvata kondotta negligenti, konsistenti generikament f’nuqqas ta’ ħsieb (imprudenza), negliġenza jew traskuraġni, jew ta’ ħila (imperizja) fl-arti jew professjoni, jew konsistenti speċifikament fin-nuqqas ta’ osservanza tal-liġijiet, regolamenti, u ordnijiet simili. Din trid tkun segwita b’ness ta’ kawżalita’ mal-akkadut dannuż involontarju. Fi kliem **Antolisei**, irid ikun hemm, “quel rapporto di causalita’ che deve intercedere tra la condotta imprudente o neglgente e l’evento.”<sup>3</sup>*

There is no doubt that as a result of this accident the victim suffered grievous injuries as well as damages to the motorcycle he was driving. However, from an examination of the Acts of the case the court finds it

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<sup>3</sup> Vide page 9 of the judgement. Vide also Antolisei F., *Manuale di Diritto Penale – Parte Speciale I*, 14th Edizione (2002), Dott. A. Giuffrè Editore (Milano), p 73. Refer also ***Il-Pulizija vs Jason Friggieri***, decided on the 11<sup>th</sup> July 1995 decided by the Court of Criminal Appeal (Inferior Jurisdiction).

quite difficult not to say impossible to link this accident to some form of negligent conduct on the part of the accused. This for several reasons:

(a) the victim did not provide any information as regards the way this motor vehicle accident happened. He could not even provide information as regards the immediate moments preceding the impact, which information could possibly have shed some light on the dynamics of this accident. His last recollection was him exiting the ferry. However, the accident did not happen exactly on exiting the ferry but some minutes later further up the road to Għajnsielem. The situation is further exacerbated by the fact that the Police did not manage to trace any eyewitnesses who could possibly indicate how this accident unfolded. This information vacuum is fatal to the Prosecution's case as it allows too much room for doubt. The only information available to the Court is that provided by the accused when he voluntarily took the witness stand.

(b) Although a road accident report was drawn up, the Police did not prepare a sketch. This notwithstanding that they reported on site minutes after the accident, so much so that the victim was still being assisted by the medical team on site and had not as yet been transferred to hospital. Hence the Court was unable to determine the exact spot of impact. Unfortunately, the photos exhibited only show the motorcycle lying down on the road and

do not provide any indication in which part of the road the vehicle and the motorcycle could have collided. It is impossible to decipher from these photos whether the collision happened completely on the inner lane, the outer lane or exactly in the middle of the two lanes. The victim's relatives did file other photos but these were not taken right after the incident but hours later, after that the street had already been opened again for traffic. It cannot therefore be ascertained with certainty that the scratches portrayed in the photos refer to the accident *de quo*.

(c) No photographic evidence of the damages sustained to the accused's vehicle were provided. There is only an indication in the road accident report that the damages were on the rear left door;

(d) The accused was always consistent when testifying about the modality of this accident. He explained that he exited the ferry, drove behind two motorcycles and the victim's motorcycle. Then when he arrived at a point where the road widens up, he positioned himself on the outer lane and continued driving on the same lane without ever changing lanes. He went on to say that the victim's motorcycle was driving on the inner lane. He continued driving on the outer lane as he passed this motorcycle which at that point in time was still in the inner lane. The accused

makes it clear that at no point did he change lanes. He then heard a bump on the rear part of his vehicle. He saw the victim fall over through his side mirror. The Court considers that had there been some form of brisk manoeuvre on the part of the accused, it is likely that the accused's vehicle would have sustained damages to its front left part and not to its rear left part. Besides since the accused is claiming that he was all the time driving in the outer lane and he did not switch to the inner lane, the only plausible explanation why this accident happened is that for some reason or another the victim's motorcycle invaded the outer lane, hit the accused's vehicle and consequently the victim fell over.

The Court therefore is not convinced that the accused was driving negligently or that he failed to observe some traffic regulation as a result of which this accident unfortunately took place. Hence the Court cannot hands on heart declare the accused guilty of this first charge.

#### **B. The Second Charge – Article 15(1)(a) of Chapter 65**

With reference to this second charge, as already pointed out the Acts do not contain the slightest of evidence, not even circumstantial evidence, suggesting that the accused could have been driving dangerously and negligently. Rather the evidence given by the same accused is completely excluding this sort of driving. As already noted,

the accused explained that as soon as he exited the ferry, he started driving the road up to Għajnsielem. He continued driving behind two (2) motorcycles and the victim's motorcycle. Then when he arrived at the point where the road widens up, he positioned himself on the outer lane and remained on this outer lane even when passing by the motorcycle driven by the victim which was situated in the inner lane. There is nothing which the Court can possibly censor in all this. Furthermore, the accused was always consistent in his version of events and there is nothing which can possibly dent the credibility of this version. Hence, the Prosecution has also failed to prove this second charge.

- **Decide**

Consequently, for the reasons outlined above the Court **is not finding the accused guilty** of the charges brought against him and is acquitting him of all charges.

**(sgd) Dr. Jean Paul Grech**  
**Magistrate**

**(sgd) Diane Farrugia**  
**Deputy Registrar**



**True Copy**

**For The Registrar**