



In the Court of Magistrates (Malta)
As a Court of Criminal Judicature
Magistrate Dr. Yana Micallef Stafrace LL.D.

The Police

(Denise Vella)

Vs

Akil Cakani

24th February 2025

The Court

Having seen the charges against Akil Cakani son of N/A born on the 12/08/1981 residing Belfry Court, Fl2, Triq Forrest, San Giljan ID No: 279311A.

As you have been charged with having on the 19th July 2022 at about 17.00 hrs, in Triq in-Naxxar, San Gwann drove vehicle with registration no: AKI128;

1. And through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations, and caused Matthias Aquilina involuntary grievous injuries with the effects mentioned in article 218 of Chapter 9 of the Laws of Malta as certified by Dr. J. Bondin MD of MDH;
2. And drove the mentioned vehicle in a negligent manner;
3. And drove the mentioned vehicle in a dangerous manner;
4. And drove the mentioned vehicle in a reckless manner.

The 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 licence, as indicated in S.L. 65.18 Art 36B and in S.L. 65.18 Sixth Schedule.

Having seen Articles 226(1) (a) chap 9 Art 15 (1)(a)(2) of Chap 65 S.L. 65.18 Art 36B and in S.L. 65.18 Sixth Schedule of the laws of Malta

Having seen all the witnesses produced by the prosecution

Having seen the testimony of the accused

Having seen all the documents, testimony and evidence in the proceedings

Having seen the Oral submissions

Considerations of this court

PS 364 David Borg Grima and Dr Christine Caruana gave testimony by means of an affidavit

Matthias Aquilina, on oath states:

Pros: Mister Aquilina, you were involved in an accident could you kindly describe to the court, to us when did this accident happen where and how?

Wit: The accident happened on the 19th July 2022 At around between 3.00 and 04:00 if I'm not mistaken direction going towards Naxxar, Naxxar Road, San Gwann I was going towards Naxxar and all of a sudden somebody hit me from the left hand side.

Court: So this person who was coming from the opposite direction?

Wit: No, no, we were going the same direction.

Court: I see so what happened? He changed lane?

Wit: No, we were going the same direction I just released the accelerator as soon as I released the accelerator, Yes, I was driving a motorcycle.

Court: You were to your right or on your left?

Wit: I was in the middle of the lane, He went to my left, so he was between me and the sidewalk.

Court: So he was to your right and he went to the left?

Wit: I was going straight and he tried to pass between me and the sidewalk.

Court: So he overtook you from your left?

Wit: Exactly, and he hit me. I fell on the ground I broke a finger I had problems, I had nerve problem.

Coirt: You don't feel numbness in your fingers?

Wit: If you can see it all the time shaking my finger I went to the hospital they couldn't make any gips, so they couldn't make any cast. They tried making other things, but after a while they saw that they couldn't do nothing and they had to operate me, and they operate me in my finger, my index finger.

Pros: How long did it take for your?

Wit: The accident was in July and I was released from the therapy in November.

Pros: Do you recognise the person?

Wit: Yes he is here.

Court: The witness indicated the accused.

Avu: Am I correct to state that you are both going in the same direction?

Wit: Yes.

Avu: And you are both on motorcycles?

Wit: Yes.

Avu: And you suffered the impact on the side of your motorcycle?

Wit: On the back and the left hand side I got hit from, he tried to pass from between me and the sidewalk I got the hit, not the bike I got the hit. I got the first hit, not the bike.

Avu: And where were you hit?

Wit: I'm not sure, but I think in my hand.

Avu: Your hand was presumably like this?

Wit: Because the bike he didn't hit the bike the bike has scratches from the floor he didn't hit the bike.

Avu: And why did you slow down? Why did you turn off the ignition? You said?

Wit: No, I didn't, I slowed down.

Avu: Why?

Wit: I can slow down he has to have enough distance.

Avu: Why did you slow down?

Wit: I can slow down. There's no reason.

Court: There was no reason you decided you needed to slow down, is that it?

Wit: I just released the throttle I didn't even brake.

Avu: Where were you going at that time?

Wit: I was going to my home.

Avu: Ok approximatley to where the accident happened where is that?

Wit: Not very far away it's like saying from here to the Fontana.

Avu: Okay. All right, So you did not see him coming?

Wit: Obviously from behind me how can I see him coming?

Avu: So you cannot explain to the court his speed nor how he was driving this bike?

Wit: All I could say that when he hit me his bike kept on going uphill, so I assumed there was speed yes.

Avu: Did you not see him in any way on your mirrors?

Wit: Yes, but I was driving forward, not backwards what was the reason of looking backwards?

Avu: Did you see him coming from your mirrors?

Wit: No.

Avu: Were you going in a straight line or were you changing direction?

Wit: No, I was going in a straight line there is no way to change direction.

Adv: And you injured which hand? You said the left hand?

Wit: The left hand.

Avu: What kind of bike do you drive?

Wit: At that time, I had Z 750, which is Kawasaki.

Adv: For those of us who are not knowledgeable about bikes ss it a sports bike?

Wit: No, it's not it's a street bike.

Adv: It's a street bike, but is it a sport version?

Wit: No, it's a street bike.

Adv: I have no further questions.

Akil Cakani, on oath states:

Pros: Mr. Cakan, you heard the witness testify as to how he believes that this accident happened?

Wit: Yeah.

Adv: I would like you now to explain to the court what really happened, please?

Wit: So that date was 19 July and it was afternoon it was very like hot and the sun, it was in front of us I was going

towards home after I put fuel and in front of me it was this power motorbike and it was in the middle of the road, which means between the two lanes, and I was yes on the back I was like going up and in that point where we had the accident is a point where he's slightly going up in the hill. So I was giving, obviously, gas.

Adv: What bike were you driving?

Wit: I have a Vespa.

Adv: So he was on a Kawasaki bike?

Wit: Exactly, It was a powerful bike you could hear it, you could see it and whatever I was on a Vespa, which the maximum speed is like 100 kilometres per hour and obviously the position of the Vespa and the position of the sport bike are totally different. And so I was going in that direction suddenly I had enough space to overtake even I was going in my direction so I wasn't like going zig zag or whatever, because he was in the middle of the road so I was keep going in my direction, since I know about the law of the road so two motorbikes, they can stay on the same lane as also I can overtake a car if I stay on the same lane the code allows me so I was going in my direction.

Court: Are there two lanes or one lane over there on the direction?

Wit: One lane, yes but we are two motorbikes so I was keeping my direction suddenly, the guy from the motorbike, he

slowed down, but it's like crazy slow down and he just hit me and I felt on the left side and so when we felt, I took straight away a video I have the video, and I noticed the motorbike didn't have the keys on it. So I assume he was playing with the motorbike, he was doing something so the keys of the motorbike, they were outside. So if the keys of the motorbike, they were outside, the bike just suddenly slowed down, like immediately and hit me. That, I think, is the reason of why he slowed down. He said he slowed down on purpose, but I think like he was doing something with the keys of the motorbike.

Adv: Apart from slowing down did his bike as he testified, he said, I remain straight is that true?

Wit: No, because he came in my direction I couldn't, like, avoid him because I was very, like, we was like, I was going up, and he was like, hit me. So he hit me no, I couldn't avoid them. And he didn't stay in the same position because he was in the middle of the road when he was going and we both were going in the same direction, like, giving us but suddenly he just slowed down, and he came in my in my line, so he moved.

Adv: And when you decided to drive past him, what did you notice about the distance, the speed? I mean, what assessment did you make?

Court: Why did you overtake on the left?

Wit: I didn't overtake I was I was going straight so for me, like, overtaking means when I go overtake someone, I wasn't

overtaking I was going straight in my line So, like, we are two motorbikes, we have two different lines So it's like, if he's going in this direction and I'm going here, I can keep going I'm not overtaking for me, overtake, like, the name overtake means, like,

Court: When behind him, you know?

Wit: Yes, I was behind him, and I was going in the same direction so in front of me, the the space, it was empty.

Adv: Mister Kakani, I think this is what you need to clarify you are behind him but was he right?

Court: Can you any more direct questions, doctor, you've been doing it all through his testimony, and part of it, actually, he gave testimony because you directly told her what to say, and I'm going to discard that.

Adv: Let me phrase could you explain to the court where, in terms of width of the lane not so in terms of one?

Wit: I was on the left.

Adv: And where was he?

Wit: He was on the extremely right of the lane so in the middle of the road so the road have two lanes, he was in the middle of these two lanes.

Adv: Okay and which part of your lane were you in there for?

Wit: I was, let's say, in the middle of the lane, going straight where I should be.

Adv: Right he was in the middle of the road so between two lanes.

Court: So if he was in the middle of the road, did you go ahead?

Adv: If he was in the middle and not in the correct position, why did you go ahead?

Wit: Because,

Court: And not wait to see what was happening or overtake from the right.

Wit: I didn't know what he was doing I mean, so, like,

Court: I cannot ask even more I'm asking you. Why did you keep on going if you didn't know what he was doing maybe he was stopping, was there was a cut in the road?

Wit: Because if he does, if he wanted to, I don't know, to change the lane or to go somewhere else, he wouldn't, like,

touch me I wouldn't touch him. so in front of me, my lane, it was free.

Adv: So why could the Court ask you a question? Why couldn't you overtake from the right what was there coming on the right on the right?

Wit: He was on the right, in the middle of the road.

Adv: And the other lane, what direction is it?

Wit: Opposite direction.

Court: He was in the middle of your lane or in the middle of the road?

Wit: He was in the middle of the road I was in the middle of the lane.

Adv: And in the other lane that he was in the middle. So you're driving he was in the middle of the road and the other lane, you said direction opposite?

Wit: Opposite, yeah.

Adv: So you couldn't overtake him from there?

Wit: Exactly.

Adv: And in front of you the area was what?

Wit: Empty Free I have 20 years of experience, so I have the driving licence and I mean, I've been driving in Italy, in England, in Malta I'm here since five years I was driving I raced in Bologna so, like, people in the in the North I mean, I live here in Malta since five years I moved here from the first day with my car from England and I never had any accident, any scratches of my car and I'm very careful on the road and you can assume this, I'm driving a Vespa because I didn't want to be on the car I was wearing like, shoes, I was wearing like, long clothes and whatever, He was driving a sport motorbike with the flip flops, Like, I think this is not like something safe and the keys of the motorbike, they were outside, so on the floor I have the proof I have the video I can show to you.

Adv: Can you show the video? Can you exhibit?

Wit: Yes, absolutely. Can I take the phone?

Court: No. The phone No.

Adv: Do you have it on a USB?

Wit: No.

Adv: Do you have anything else to add?

Wit: No I mean, it's unbelievable what. What happened. And I'm accused of the negligence, which somebody else was in that position, not me So I was like, driving safe, like I do always.

Pros: I just wanted to clarify something, that this was a one lane it's one lane it's not the double lane?

Wit: One lane.

Court: From what I understand, he was alluding to Lane sharing because there is a there are bikes involved am I understanding correctly?

Wit: Yes.

Pros: You were overtaking the other bike from the inside?

Wit: No, I wasn't overtaking I wasn't even passing I was behind him on the same lane okay so if he wanted to change direction or whatever, I could overtake him in the safe position I wasn't overtaking him, So we touched his shoulder and he hit me because he suddenly slowed down and came in my line. I wasn't overtaking him. Like he said, he slowed down for no reason. Why you have to slow down on a high hill position for no reason why you cannot express the reason with a power motorbike he's trying to say it's not a sport, but yes, if you see the motorbike, it's a

street sport motorbike. It's powerful. Why he slowed down, like, suddenly, like.

Adv: No further questions.

Considerations of this court

There is no evidence regarding the first charge as the affidavit Doc A is not confirmed on oath. Regarding the rest of the charges there is a serious conflict of evidence regarding the dynamics of the accident and therefore the the level of evidence is not as required in the Criminal Court of beyond a reasonable doubt. The accused is therefore acquitted of all the charges.

Decide

For these reasons and after having seen Articles Articles 226(1) (a) chap 9 15(1)(a)(2) Chap 65 and S.L. 65.18 Art 36B and in S.L. 65.18 Sixth Schedule. of the laws of Malta finds the accused Akil Cakani not guilty of the charges.

Magistrate Dr Yana Micallef Stafrace LL.D.

Magistrate

Doris Serpina Sciberras

Deputy Registrar

