



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE
ANTONIO GIOVANNI VELLA**

Sitting of the 28 th October, 2010

Number. 1205/2008

**POLICE
INSPECTOR MALCOLM BONDIN
VS**

ANDREW STEPHEN ROBERTS

The Court;

After seeing the charges brought against:

Andrew Stephen Roberts, age 35, son of Jeff and Joan nee' Southern, born in England on the 9th of June 1975, residing at 38, Edera, Masrija Street, Mellieha and holder of identity card number 45123A;

For Having on the 10th October 2008, at about 2.20pm, at the Old Horse Track, Marsa Sports Grounds, limits of Qormi;

1) through imprudence, carelessness, unskilfulness in your art of profession, or non-observance of regulations, caused greivous bodily harm to the body or health of Anthony Busutil as certified by Dr. Rene Camilleri;

2) and for having on the same day, time, place and circumstances, through imprudence, carelessness, unskilfulness in your art of profession, or non observance of regulations, caused willfully committed any spoil, damage or injury to or upon any immoveable or movable property and hence on a cart and horse, where same horse lost his life, to the detriment of Anthony Busutil;

3) and of having on the same day, time, place and circumstances drove vehicle make Austin Mini registration HAH 893, which did not have a valid license issued by the Transport Authority;

4) and of having on the same dat, time, place and circumstances drove vehicle make Austin Mini registration number HAH 893, which was not covered by an Insurance policy to risks of third parties;

Considers:

The facts of the case were as follows. On the 10th of October, 2008, at around two in the afternoon, the accused was driving a vehicle, an Austin Mini with registration number HAH 893, in the old race track in Marsa. A friend of his, a certain Mario Vella, was also driving a vehicle in the same track ahead of him. It appears that the first vehicle driven by Vella was raising a lot of dust and leaving a cloud behind him, in such a way that the accused could not see properly while driving the Mini. At one point, there appeared a horse-drawn sulky driven by Anthony Busutil, and this happened to be

straight in the path of Mr Roberts. The ensuing collision was, unfortunately, unavoidable, and as a consequence the horse was very badly injured and had to be put down on the spot, the sulky was severely damaged, and Mr Busuttill suffered greivous injuries and was hospitalised. As a consequence, the Police issued charges against Roberts and this case was instituted.

From the evidence submitted by both parties, it is very evident that the accident in question happened entirely due to the careless and reckless driving shown by Roberts. It is a known fact that the old race track in Marsa, a dusty, wide tract of land, is very often frequented by the horse riding community, especially the ones who prefer the horse-drawn sulkies like the one involved in the accident. It is also common to find people walking in the race track, as it is no longer used for racing or for competitions. It is certainly not a public road, and as such any motorized vehicle driven on that track must be so driven with extreme caution and diligence, and only after having obtained authorization from the Malta Racing Club (vide Dok JV1 at fol. 27). From the dynamics of the accident itself, it appears that Roberts was driving in an anti-clockwise direction on the race course, keeping to his left, whereas Busuttill was training his horse and coming in the opposite direction. The accused claims that the part of the race track where the accident occurred, close to a large and open bend onto his left, was partly obstructed by trees, so he did not have a clear view of the track itself. The horse and sulky were in fact partially hidden by these trees, as the accused claims. Furthermore, the dust cloud raised by the vehicle being driven by Vella hindered Roberts's view of the road ahead of him even more. On impact, apart from the injuries caused to the horse and driver, and the damages to the sulky, the steering wheel of the Mini snapped off and the vehicle careered to its right and hit a wall on the other side of the race course. The Mini suffered considerable damage in this collision.

These submissions made by the accused, in the opinion of the Court, not only do nothing to help his defense, but actually strengthen the position of the Prosecution in this

case. It is a well established principle of law that, when a person is driving a motorized vehicle, he must always ensure that he has a clear and unobstructed view of the road ahead of him. If this view is somehow obstructed or rendered unclear, then he should slow down to an extent that allows him to proceed safely on his journey, with no risk for himself or for third parties. In other words, it was up to the accused to have slowed down and reduced his speed if he was not able to see the road ahead properly. It is no excuse to say that his visibility had been significantly hampered by the dust on the road and by the trees along the side of the road. The accused should have been aware that the old race track was very often frequented by the local horse racing community, as it was on that day, and it was up to him to keep a proper lookout for any sudden emergencies that may have come across his path, as unfortunately was the case. In fact, the friend of the accused, who was driving in another car ahead of him, testified in Court and stated clearly that at the time he and Roberts were driving, there were many horses on the old race course. This puts an even heavier burden of responsibility on the accused.

With regard to the doctrine of keeping a proper lookout, our courts have consistently followed the rulings of English courts. Thus, in the case “**Pol. V. Roderick Debattista**” decided by the Court of Criminal Appeal on the 26 May 2004, the court had quoted the following from the English judgment in “**Newhaus N.D. vs Bastion Insurance Co. ltd** (1968);

“Keeping a proper lookout means more than looking straight ahead – it includes awareness of what is happening in one’s immediate vicinity. A motorist should have a view of the whole road from side to side and, in the case of a road passing through a built-up area, of the pavements on the side of the road as well.”

From this reasoning and from all the evidence submitted in the case, it appears clear that Roberts is at fault in having caused the accident in question. It was up to him to have taken precautionary measures in his driving and

thus reduce his speed. Even though he maintains that he was driving normally, at around 30 kph, the Court cannot agree with his interpretation of normal. In the Court's opinion, the speed at which the accused was driving was definitely excessive for the circumstances he was in. The dust cloud raised by his friend is no excuse. In this regard, the Court also refers to the testimony given by the victim, Anthony Busuttil, who stated that Roberts and Vella appeared to be racing against each other, even though both denied this assertion made by Busuttil. This assertion is also made by third parties in the Police report, but it was not established as a fact, although the presumption may be made that the speed at which Roberts was driving his Mini was excessive. It is certainly indicative that Roberts managed to hit a horse and cause it severe injuries, hit the sulky and damage it considerably, and even cause greivous injuries to the sulky driver, and then glide for 19 metres across the race track and smash the car into the wall on his right, and all this by simply driving at a normal speed. It is highly unlikely that all this damage and unnecessary suffering would have occurred had Roberts exercised prudence and diligence in his driving.

All the other evidence in the acts of the proceedings indicates that the responsibility for the accident falls squarely on Roberts and on no-one else. The Court cannot find any contributory negligence on the part of the victim, either in his driving or in his handling of the horse itself. For these reasons, the accused is to be found guilty of the first and of the second charges.

With regard to the third and fourth charges, the Court notes that the old race course is not a public road, and consequently the vehicle driven by Roberts did not require a paid licence to be driven there. Similarly, there was no requirement for an insurance policy to be issued on the same vehicle, as this was not being driven on a public road at the time. On account of this fact, the accused cannot be found guilty of the third and fourth charges, and shall as a result be acquitted from these.

With regard to punishment, the Court is of the opinion that such reckless driving deserves nothing but the maximum punishment at law. The consequences of the accident were very serious. A healthy horse had to be put down, and a man suffered serious injuries and a permanent disability as a result. All this could have been avoided had Roberts been prudent on the day. Instead, his actions have left a man scarred for life and killed an innocent animal. There are no mitigating circumstances in the Court's mind on this accident, and therefore the punishment to be given to the accused will be the maximum according to law.

Now, therefore, for these reasons;

After having heard the evidence and the documents exhibited;

After having seen Articles 226(1)(a) u 328 of Chapter 9 of the Laws of Malta;

Article 15(1) and (2) of Chapter 65 of the Laws of Malta;

And Article 3 of Chapter 104 of the Laws of Malta;

Does not find the accused guilty of the third and fourth charges, and consequently acquits him from these charges;

Finds him guilty of the first and second charges, and consequently condemns him to a term of imprisonment of one (1) year.

Furthermore the Court orders the accused to pay to Anthony Busuttil by way of damages the sum of three thousand, three hundred and fifty Euro (€3,350) in terms of Article 24 of Chapter 446 of the Laws of Malta.

The Court explained in clear words the terms of the judgement to the accused.

Informal Copy of Judgement

< Final Judgement >

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