



MALTA

**COURT OF CRIMINAL APPEAL**

**THE HON. MR. JUSTICE  
MICHAEL MALLIA**

Sitting of the 20<sup>th</sup> February, 2014

Criminal Appeal Number. 241/2013

**Appeal No: 241/2013 MM**

**The Police  
Inspector Robert Said Sarreo**

**vs**

**Mike Said Yakabu**

Today 20<sup>th</sup> February, 2014

The Court,

Having seen the charges brought against the appealed Mike Said Yakabu holder of Maltese Identity Card No: 38379A whereby he was charged with having on:

the 14<sup>th</sup> March, 2010 at around 4:00pm:

1. whilst driving in Marsascula Road, Zabbar, through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations, caused serious grievous bodily harm on the person of Ryan Falzon, which serious grievous bodily harm caused a permanent debility of the health or any permanent functional debility of any organ of the body, or any permanent defect in any part of the physical structure of the body, or any permanent mental infirmity, or any serious and permanent disfigurement, as certified by Dr. Satya Brata Das M.D., the doctor of the Casualty department at Mater Dei hospital and other certifying doctors; and also;

2. with having on the same date, time, place and circumstances, driven a vehicle, make Citroen, model ZX and bearing Reg. No. HAB851, in a reckless, negligent and dangerous manner; and also;

3. with having on the same date, time, place and circumstances, driven a vehicle, make Citroen, model ZX and bearing Reg. No. HAB851 at an excessive speed and also;

4. with having on the same date, time, place and circumstances, driven a vehicle, make Citroen, model ZX and bearing Reg. No. HAB 851 on the wrong side of the road.

That moreover the Court was requested to suspend the driving licence of Mike Said Yakabu in the event of conviction as well as being requested to apply Articles 533 and 383 of Chapter 9 of the Laws of Malta.

Having seen the judgment meted out by the Court of Magistrates (Malta) as a Court of Criminal Judicature issued on the 13<sup>th</sup> May, 2013, whereby the Court after having seen section 225(1) and 226(1)(b) of the Criminal Code and section 15(1)(a) of Chapter 65 of the Laws of Malta. Having seen his early admission and his clean conduct sheet, the Court did not condemn him to a term of imprisonment but sets him free under the provisions of

section 22 of Chapter 446 of the Laws of Malta on condition that he commits no further offence for a period of three years. Moreover, the Court condemns the accused to the payment of a fine of two hundred euro (€200). In the circumstances, there is no need to suspend the driving license of the accused.

Having seen the acts of the proceedings.

Having seen the updated conduct sheet of the appealed, presented by the prosecution upon this Court's request;

Having seen the Attorney General's application, presented on the 27<sup>th</sup> May, 2013 whereby this Court was requested to reform the judgment in the sense that it confirms that part whereby the accused person was found guilty of **all** charges brought against him, confirming also the term of the conditional discharge as well as the fine imposed whilst revoking the final part of the judgment in that the disqualification for holding or obtaining a driving licence of the accused person should be ordered for a period of at least three months, pursuant to the application of Article 15(2) of the Traffic Regulations Ordinance and this in accordance with the Laws of Malta.

Having seen the grounds for appeal as follows:

That without prejudice to the nature of this appeal and for all intents and purposes the appellant submits that this appeal is limited to the fact that the first Court failed to disqualify the accused from holding or obtaining a driving licence despite the mandatory nature of such an order. The Attorney General will not be appealing with regards to the quantum of the punishment awarded and logically neither will there be any appeal with regards to the finding of guilt. Moreover there appears not to have been any expert fees incurred in terms of article 533 of the Criminal Code and neither did there appear the need for the application of article 383 of the same code since the victim claimed not to have any further pretences from the person charged qua the appellant.

That the first Court upon pronouncing judgement, failed to order the disqualification for holding or obtaining of the driving licence of the accused person as it was mandatorily bound to do in accordance with Article 15(2) of the Chapter 65 (Traffic Regulations Ordinance) which reads as follows:

**(2) Where the offence consists in driving a motor vehicle or other vehicle in a reckless or dangerous manner, the court shall<sup>1</sup>, in addition to the punishment under sub-article (1), disqualify the offender for holding or obtaining a driving licence, in the case of a first conviction for a period of not less than three months, and in the case of a second or subsequent conviction for a period of not less than one year.**

That it is therefore clear that considering that the accused duly admitted and was hence found guilty of ALL the charges falling under this Ordinance (Chapter 65) and since the Prosecuting Officer in this case had formally requested when submitting the charges against the accused that the Court disqualifies the accused from holding or obtaining a driving licence of the accused in the eventuality that he is found guilty, the Court had no option other than to do so for no less than three months as above cited. Neither is it arguable to state that the accused was conditionally discharged hence not strictly speaking being found guilty since the court also imposed the payment of a fine on him and even authorised that such fine is paid in instalments of €25 every month by the accused commencing on the 3<sup>rd</sup> June 2013<sup>2</sup>.

That in view of this the undersigned fails to understand how the first court opined that *'in the circumstances there is no need to suspend the driving licence of the accused'*. Such circumstance would only arise if the prosecuting officer does not request the disqualification for holding or obtaining a driving licence of the person so charged. For the sake of clarity it is being pointed out that this scenario

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<sup>1</sup> Emphasis of the Attorney General.

<sup>2</sup> Folio 18 and 19 of the Acts of the Proceedings

does not apply in this case in that such a request was made by the prosecution and at no time was it withdrawn. For some strange reason however, upon pronouncing judgement the court failed to reproduce the excerpt from the charges proffered indicating such a request. Having said that though, the court was never precluded from its application and thus such an order is legally binding upon it.

Considers:

That it results from the evidence that on the fourteenth (14th) of March two thousand and ten (2010) an accident took place in Marsascala Road, Zabbar involving Citroen CZ bearing registration number HAB 851 driven by appealed and vehicle Toyota Carina number EAG 848 driven by Ryan Falzon who claimed that Yakabu was driving on the wrong side of the road and crashed head-on into his car despite an attempt on his part to avoid the collision. In fact the Toyota Carina suffered considerable damage as a result. Other witnesses who were on site when the collision took place claimed that the vehicle driven by Yakabu was speeding excessively prior to impact. In view of the above as well as the medical certificate released with regard to the injuries sustained by Ryan Falzon legal action was taken against the appealed and duly charged therein.

The accused appeared in Court on the thirteenth (13th) of May two thousand and thirteen (2013) when he admitted to all the charges proffered against him whereby the Magistrates' Court found him guilty as charged and conditionally discharged him for a period of three (3) years in terms of article 22 of Chapter 446 of the Laws of Malta as well as condemning him to pay a fine of two hundred Euro (€ 200).

The Court however failed to disqualify accused from holding or obtaining a driving licence despite the request of the Prosecution. The Attorney General took exception to this last failure and duly filed an appeal arguing that the order for disqualification or holding or obtaining a driving

licence under such circumstances was mandatory on the part of the Court (article 15(2) of Chapter 65). Consequently the Attorney General requested this Court to confirm that part of the judgement where appealed was found guilty of all the charges brought against him and confirming also the fine imposed, requested that appealed should have his driving licence withdrawn for at least a period of three (3) months.

By means of a note verbal entered during the sitting of the twenty third (23rd) of January two thousand and fourteen (2014) the appealed acknowledged the request made by the Attorney General and declared that he is correct in his assessment and reasons for appeal and accepted a disqualification from obtaining a driving licence for a period of at least three (3) months.

On the basis of this note verbal, this Court does not see any reason to delve any further into the merits of this case and proceed forthwith to accept the demands of the Attorney General.

Consequently this Court decides that it upholds the appeal and reforms the judgement of the first Court in the sense that whilst confirming the declaration of guilt and imposition of the fine, also orders that appealed Yakabu be prohibited from holding or obtaining a driving licence for a period of three (3) months.

**< Final Judgement >**

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