



## **Court of Criminal Appeal**

Hon. Mr. Justice Dr. Giovanni M. Grixti LL.M., LL.D.

**Appeal Nr: 498/2017**

**The Police**

**vs**

**Rossella Franzini**

Sitting of the 25 February, 2019.

**The Court,**

Having seen the charges brought against Rossella Franzini, holder of Maltese identification card number 138186A, before the Court of Magistrates (Malta) as a Court of Criminal Judicature, charged with having on the 23rd January 2016 at about 16:15hrs in Swieqi: 1) In a reckless manner [sic]; and 2) Moreover in the same accident, [sic] caused involuntary injuries of grievous nature on the person of Joeline Delicata as certified by Dr. Luke Zammit MD of MDH.

The Prosecution requested that she be disqualified from all her driving licences;

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature delivered on the 10th of November, 2017, which found the accused not guilty and acquitted her of all charges;

Having seen the appeal application presented by the Attorney General in the registry of this Court on the 30<sup>th</sup> November, 2017 through which it requested this Court to revoke the said judgement and find the accused guilty of all charges proffered against her and to mete out all the punishments and consequences prescribed by law;

Having seen the grounds of appeal as presented by the Attorney General;

Having seen the records of the case;

Having seen the updated conduct sheet of the appealed, presented by the prosecution as requested by this Court;

Having considered:

1. That appellant felt aggrieved by the judgement of the first Court on the ground that the said Court arrived at its conclusions in consequence of a wrong appreciation and unreasonable interpretation of the evidence brought before it. It is for this Court therefore to re-examine the evidence in a thorough manner in order to determine whether the first Court arrived at its conclusion legally and in a reasonable manner;
2. The facts of this case are briefly described as a head-on collision between two cars in Swieqi Road, Swieqi coming from

opposite directions when the driver of one vehicle opted to turn on her right to intercept a side road but collided with the oncoming vehicle proceeding on the main road;

3. Before entering into the merits, however, this Court is duty bound to comment on the extremely poor rendering of the charges proffered by the prosecution which have been reproduced *verbatim* in the introductory part of this judgement. The first charge simply reads “In a (a) reckless manner”, which at law is not an imputable fact. It is only the second charge which, although devoid of any essential details, can be an imputable fact since the charge is merely deemed to be a summons and the accused would be in a position to offer a proper defence given the other details appearing on the charge sheet, namely the time and place where she is alleged to have caused involuntary injuries on the person of Joeline Delicata;

4. This Court will therefore be acquitting the appealed on the first “charge” and profer its consideration and conclusions on the second charge;

5. Joelene Delicata testified that while driving at a normal speed down Swieqi Road, Swieqi in the direction of St. Julians, she suddenly and out of nowhere felt an impact and the car’s airbag inflated. She then realised that another car had collided with her car head on which car bounced back and a second impact took place on the right hand door. Complainant also testified that the other car was being driven from the direction of Paceville towards Swieqi Valley when it turned into a side street without stopping. As a consequence, complainant sustained a fracture in her arm with a six percent permanent disability and her car was declared a total loss by her insurers;

6. Rossella Franzini, the appealed, testified that she was going home from work driving from Saint Julian’s to Swieqi. It was four o’clock in the afternoon and the sun was shining straight into her

eyes and also reflecting over the asphalt and her vision was therefore 'compromised.' And was almost completely blinded. She did not see anyone and she just turned. She had blind spots. There was a frontal impact. Appealed describes having sustained a brain freeze on impact and her car bounced back across the very high pavement and bounced back on the impacted car so that she actually hit it twice. Appealed denied complainant's assertion that she had reversed her car on impact;

7. The testimony of the victim and of the accused give a clear picture about how the accident had occurred. The appellant refers in particular to what the accused stated on page 37 of the records of the case. At four in the afternoon the sun was shining directly in her eyes and that the visibility was very limited. She had been almost completely blinded'. She had stopped, did not see anyone and just turned. The appellant referred to a judgement delivered by the Court of Criminal Appeal on the 6<sup>th</sup> May 1997 where the court had said that whether driving is negligent, reckless or dangerous is a question of degree. Negligent driving is lack of the ordinary prudence one must use to avoid street accidents. He went on to refer to another judgement which held that the Court could not rule out negligence simply because one claims that the sun was shining brightly in his eyes.

8. PS 1128 Glenn Sammut, who went on the scene of the accident immediately exhibited photos of the accident site (fol 24 to 27) which show the impacted vehicles and also the condition of the road at the time, namely the sun setting with a blinding effect to anyone proceeding from Paceville towards Swieqi Valley;

9. The Court also examined the medical certificate released by Dr. Luke Zammit who certified that complainant suffered a fracture of the distal radius. This was followed up by a full medical report issued by Mr Massimo Abela (Dok JD1 fol 30) who described the

injury as a displaced intra-articular fracture of the left, non-dominant, distal radial metaphysis which was managed surgically but that the patient still complains of pain and weakness in the thumb paraesthesia over the dorsum of the hand in the distribution of the radial nerve. Although the injuries sustained by complainant have not been contested by appealed, nor accepted for that matter, the said Medical Report Dok JD 1 was never confirmed on oath by its author and can not, therefore, be taken into consideration by this Court unlike the certificate issued by Dr. Luke Zammit and confirmed on oath;

10. It is immediately evident from the facts of this case, that appealed was the primary and only cause of the accident where complainant suffered grievous injuries consisting in a fracture of her distal radius and a write-off of her vehicle which latter fact however, is not part of the merits of this case. There is absolutely no doubt that it was appealed that caused the grievous injuries on complainant's person albeit involuntarily when she decided to proceed with actions of driving right across the path of an oncoming vehicle into a side road when she was completely blinded by the setting sun. The sketch exhibited by the prosecution shows a fairly long and straight stretch of road before the side street on appealed's right. Appealed was not blinded on turning her vehicle to the right but, as she admits in her own testimony, was blinded whilst driving, could not see anything and yet decided to turn into the side street. No further considerations are required or necessary for this Court to be morally convinced of the wrong doing by the accused who persisted in driving in the blind thus putting herself in a situation where she could not keep a proper lookout for oncoming traffic;

11. The above facts should have legally and reasonably led the first Court to conclude that the second charge was sufficiently proven by the prosecution;

12. For the above reasons, this Court upholds the request of the Attorney General limitedly as stated hereunder, namely by revoking that part of the judgement of the first court which found the accused not guilty of the second charge. Confirms that part of the judgement which found the accused not guilty of the first “charge” albeit for different reasons and finds the accused guilty of the second charge;

13. Having seen article 226(1)(b) of Chapter 9 of the laws of Malta, condemns the accused to a fine “multa” of €600.00. Furthermore, in terms of article 30 of the Criminal Code, disqualifies the accused from holding any driving license for a period of eight days starting from midnight of today and orders that she surrenders her driving license to the St. Julians Police station to be withdrawn by her after the lapse of the said eight days.