



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

**MAGISTRATE DR.
DOREEN CLARKE**

Sitting of the 21st June, 2012

Number. 534/2010

**Police
[Inspector Trevor Micallef]**

vs

Frederic Alexander Johannes Brenneisen

Case Number 534/2010

Today, the 21st June 2012

The Court

Having seen the charges against the Frederic Alexander Johannes Brenneisen son of Fritz Karl and Lucie nee Barone, born in Germany on the 22nd June 1980, residing at 11 Triq San Pawl Bormla, holder of Maltese identity card number 34768A and German Passport number C94YCF7YT.

Charged with having,

Charged with having on these Islands, on the 7th of June, 2008, at about nine fifteen in the evening (09:15pm) whilst driving a speedboat named MV Red Hot in Maltese Waters in the vicinity of s-Sikka "tal-Merkanti", St. Julians

Through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations, caused grievous bodily harm to the body or health of Sacha Horn and Messaudi Nacer as certified by court expert Dr.Mario Scerri M.D.

And for having on the same day, time, place and circumstances through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations, caused grievous bodily harm to the body or health of Lianne Psaila, Alison Psaila and Nikolas Proschek.

And for having on the same say, time, place and circumstances not maintained a proper look-out by sight and hearing as well as by all available means in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

And for having on the same day, time, place and circumstances caused, suffered or permitted any speedboat or other mechanical propelled sea craft to proceed at a speed which, in the particular circumstances, was dangerous to life or limb and led to a collision.

Having seen sections 225, 226(1)(a)(c) of Chapter 9 of the Laws of Malta, Legal Notice 340 of the year 2003, Regulation 5 of the Convention on the International Regulations for Preventing Collisions at Sea of 1972, and Regulation 26 of Legal Notice 183 of the year 2008.

Having seen the consent of the Attorney General for this case to be tried summarily, and that the accused had no objection to the case being so tried.

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Having seen the acts of the proceedings.

Having heard the evidence and submissions of the parties.

Having considered

That the facts of this case are relatively simple and in reality are not being contested.

At about 21.15hrs on the 7th June 2008 the accused was driving a speed boat, the MV Red Hot, from the Grand Harbour Marina to the Portomaso Marina; with him in the boat were five other persons. Just outside of the Portomaso Marina there is a reef known as *is-Sikka tal-Merkanti*; this reef is marked on the relative charts. Just as the accused was going to contact the Portomaso Marina to request permission to enter the Marina the boat hit a hard object; as a result of the impact all the persons on board were thrown into the sea and were injured; some suffered slight injuries others more greivous injuries.

At this point the Court feels that it should point out that although the charge in the English version referring to the bodily harm suffered by Lianne Psaila, Alison Psaila and Nikolas Proschek mentions greivous bodily harm the charge in Maltese refers to slight bodily harm. From the report of the Court appointed medical expert there is no doubt that the injuries suffered by these three persons are of a slight nature and that the correct version is that in the Maltese language.

Having considered

That there is a Light Beacon indicating the presence of the reef however this beacon was destroyed some time before the 30th January 2008 on which date a Notice to Mariners was issued in order to bring this fact to their attention. This beacon was only repaired some time after the incident subject-matter of these proceedings; another Notice to Mariners was issued on the 16th June 2008 to inform mariners that the beacon was restored.

The Notice to Mariners issued on the 30th January 2008, after giving indications as to which Light Beacon it was referring to, stated that this beacon has been destroyed and that “*the bottom structure may still be close to above position (i.e. the bearings indicated in the notice) just below the surface*”. In reality there was more than the bottom structure “just below the surface”. From the report filed by the Court appointed expert Joseph Zammit what was left was a rectangular metal pole measuring circa 9 square inches which was embedded in the reef circa two feet below sea level; this pole extended two feet above the surface of the sea¹.

From the findings of the said expert Joseph Zammit, who other than the boat also inspected the said pole, it appears that the pole showed signs of having suffered an impact and scratches (*tkaxkir fuq il-parti ta' barra*) which were compatible with the damages sustained by the boat. In fact in the same report it is also stated that the damages sustained by the boat were compatible with an impact with the said pole.

The accused is not contesting these facts but is contesting responsibility for the incident claiming that the incident was not a result of any negligence on his part.

From the findings of the Court nominated experts there can be no doubt that the boat hit the pole and not the reef; the accused was aware of the presence of the reef because he had the charts of the area in hand and it was clearly marked on these charts. The accused however was not aware of the pole which was left sticking out of the reef after the beacon had been destroyed. This pole was not visible in the dark as it had no marking and no light although it obviously constituted a very dangerous obstacle.

¹ This pole is shown very clearly in the photo taken by the said expert and exhibited as Dok JZ8 together with his report.

The prosecution² is claiming that once a Notice to Mariners had been issued then the accused should have been aware of the pole and consequently should have kept a proper look-out on approaching the area where the pole was embedded in the reef.

In this regard the Court feels that it should be pointed out that the Notice to Mariners in question was issued primarily to inform mariners that the light beacon indicating the Mercanti Reef had been destroyed i.e. that there was no light indicating the presence of the reef; it does not mention anything about the hazard posed by the pole.

One cannot deny the fact that the notice did state that “*the bottom structure **may still be**³ close (to the above position) just below the surface*”. This notice indicates that the bottom structure was dislodged and may be close to that position. This interpretation was in fact confirmed by the representative of the Yachting Directorate of Transport Malta⁴ who stated in his deposition that “*the notice states that the bottom structure is also removed*”. However this is not correct because the pole on which the beacon is attached⁵ was in fact still embedded in the reef and was jutting out, up to a height of two feet, above the surface. To make matters worse it was not visible in the dark and was not marked in any way.

In these circumstances there is nothing that the accused could have done to avoid the impact because at night the pole (which was not indicated in the Notice to Mariners) was not visible. Consequently it cannot be said that the charges brought against the accused have been sufficiently proved.

For these reasons the Courts finds the accused not guilty of the charges brought against him and acquits him thereof.

² And one of the Court appointed experts Captain Reuben Lanfranco

³ Emphasis of the Court

⁴ The person who is responsible for issuing Notices to Mariners

⁵ Presumably this is the bottom structure the notice is referring to.

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