



MALTA

COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR.
NEVILLE CAMILLERI

Sitting of the 10 th March, 2014

Number. 298/2012

The **Police**

(Inspector Jesmond Micallef)
(Inspector Jason Francis Sultana)

vs.

Daniel Victor

The Court,

Having seen the charges brought against **Daniel Victor**, of twenty six (26) years, son of Faiz Victor and Yasmine Faiz née

Shadiq, born in Lahore, Pakistan on the 8th August 1985, residing at Killarney, Block C, Flat 9, Oscar Zammit Street, Msida, and bearer of national identity card number 045431A, charged with having:

1. on the 17th of March 2012, during the night at about three in the morning (03:00hrs), on these islands, whilst at The Strand, Sliema, with the intent to commit a crime, an attempted grievous injuries, manifested such intent by overt acts which were followed by the commencement of the execution of the crime, that is by driving vehicle type Hyundai Accent bearing registration number DBQ 227 in the direction of PS 1437 Norman Xuereb and PC 328 Matthew Azzopardi while these were performing their duties, which crime was not completed in consequence of some accidental cause independent of his will;
2. on the same date, time, place and circumstances, disobeyed the lawful orders of any authority or of any person entrusted with a public service that is of PS 1437 Norman Xuereb and PC 328 Matthew Azzopardi, or hindered or obstructed such person in the exercise of his duties, or otherwise unduly interfered with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any other manner whatsoever;
3. on the same date, time, place and circumstances, reviled, or threatened, or caused a bodily harm to any person lawfully charged with a public duty that is against PS 1437 Norman Xuereb and PC 328 Matthew Azzopardi while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty;

4. on the same date, time, place and circumstances in any public place or place open to the public, was found drunk and incapable of taking care of himself;
5. on the same date, time, place and circumstances, drove the mentioned vehicle or attempted to drive or be in charge of a motor vehicle or other vehicle on a road or other public place while he was unfit to drive through drink or drugs;
6. on the same date, time, place and circumstances, drove the mentioned vehicle in a reckless, negligent or dangerous manner;
7. on the same date, time, place and circumstances wilfully disturbed the public good order or the public peace;
8. on the same date, at about four in the morning (04:00hrs), in the islands whilst inside Sliema Police Station, refused or failed to provide the requisite specimen as provided under this article in order to verify the proportion of alcohol in that same specimen;

In case of guilt, in addition to the punishment, the Court was requested to disqualify Daniel Victor for holding or obtaining a driving license for a period of not less than eight days.

The Court was also requested that, in case of guilt, in order to provide for the safety of PS 1437 Norman Xuereb and of PC 328 Matthew Azzopardi in addition to the punishment, require Daniel Victor to enter into his own recognisance in a sum of money to be fixed by the Court.

Having seen the documents exhibited and all the acts of the proceedings.

Having seen the Articles of law sent by the Attorney General of the 19th. November 2012 (*a fol. 117*):

- (a) Sections 41(1)(a), 214, 218(1)(a), (b) and 222(1)(c) of Chapter 9 of the Laws of Malta;
- (b) Section 95 of Chapter 9 of the Laws of Malta;
- (c) Sections 338(dd), (ee), and (ff) of Chapter 9 of the Laws of Malta;
- (d) Sections 15(1)(a), (2), (3), 15A, 15E(1)(a), (4), and 15H of Chapter 65 of the Laws of Malta.

Having seen that, during the sitting of the 28th. February 2013 (*a fol. 131*), the Articles of Law sent by the Attorney General on the 19th. November 2012 (*a fol. 117*) were read out, during which sitting the accused declared that he does not object for his case to be tried and decided summarily.

Having heard the evidence brought forward by the Prosecution.

Having heard the testimony of the accused.

Having heard oral submissions by the Prosecution and by the defence (*a fol. 149 et seq.*).

Considers

That, during the sitting of the 26th. of March 2012, the Prosecuting Officer **Inspector Jesmond Micallef** gave his testimony (*a fol. 15 et seq.*) regarding the investigations carried out by the Police. He exhibited a number of documents marked as Doc. "JM 1" to "JM 4" (*a fol. 18 et seq.*). The other Prosecuting Officer, **Inspector Jason Francis Sultana** testified (*a fol. 110 et seq.*) during the sitting of the 17th. of September 2012 on the same lines of Inspector Jesmond Micallef.

That, during the sitting of the 26th. of March 2012, **PC 328 Matthew Azzopardi** also testified (*a fol. 26 et seq.*) saying that on the date in question he was together with PS 1437 on the side of the road keeping the road closed since some works were being held. He says that he noticed car bearing registration number DBQ 227 approaching him because at this time PS 1437 walked closer to where the works were being held. He says that this car did not slow down, it crushed through the barriers and kept driving towards PS 1437. He further says that he told PS 1437 over the radio that a car was heading towards him, the car made a u-turn as soon as it arrived next to the machinery and PS 1437 tried to stop the vehicle but the car kept moving and went back towards him (PC 328) so he crossed over to the other side and the car followed him so he had to dive in between the cars which were parked on the other side of the road. He says that eventually the driver was contacted and it took them about three quarters of an hour to get him to the police station. He says that this person was the accused who was not blowing enough breath all four times through the breathalyzer. He says that he was not injured.

During cross-examination, which was held during the sitting of the 20th. May 2013 (*a fol. 138 et seq.*), PC 328 states that he saw the vehicle coming towards him. He says that it was after he was flashing the torch and even shouting that the accused hit the water barriers. He says that the accused did not resist the arrest.

That, during the sitting of the 26th. of March 2012, **PS 1437 Norman Xuereb** also testified (*a fol. 28 et seq.*) saying that whilst he was on duty regarding some road works, his colleague PC 328 informed him via radio because a vehicle kept going through the barriers and hit one barrier. He says that this vehicle could not proceed because of the machinery and made a u-turn which could not be easily affected since there were parked vehicles on one side. He says that he (PS 1437) started shouting at the driver whom he recognised as being the accused but the accused ignored him. He says that he even touched the accused on his shoulder and smelled a severe smell of alcohol and tried to reach the car key to stop the vehicle but the accused drove off, dragged him for around three to four metres with the vehicle until he stuck off from the vehicle. He says that the accused changed lanes and kept going into the water barriers and one of them ended nearly in the sea and kept going wrong-way till Tigne Point. He says that eventually the accused was contacted and he went to the police station and when the breathalyzer test was submitted, the accused was not capable to blow. He exhibited two results of the test marked as Doc. "NX 1" and "NX 2" (*a fol. 31 et seq.*).

During cross-examination, which was held during the sitting of the 20th. May 2013 (*a fol. 133 et seq.*) PS 1437 explains that he was dragged like two to three metres by the accused the moment he tried to reach the keys of the car to try to switch it off. He says

that he got stuck. He says that the accused did not hold him but he kept holding the pillar from the driver side to avoid getting under the wheel. He testifies that he did not injure himself and that there was light because of the construction works that were being carried out and that the accused just sped off. He says that he could not see the face of the accused because the accused was totally ignoring him.

That, during the sitting of the 7th. of May 2012, **PS 1268 Ivan Caruana** testified (*a fol. 51 et seq.*) regarding his report exhibited and marked as Doc. "IC 1" (*a fol. 53 et seq.*). Asked if he was present for the breathalyzer test, he replied in the affirmative saying that the accused performed it four times but could not blow properly.

That, during the sitting of the 21st. of May 2012, **WPS 215 Valerie Farrugia** testified (*a fol. 63 et seq.*) saying that on the 17th. March 2012 at about 3.30am, she was at the Sliema police station and PS 1268 Ivan Caruana and PC 328 Matthew Azzopardi went to the said police station. She testifies that the accused was under arrest and that he was accompanied by the the police officers mentioned. She confirms that the accused accepted to do the breathalyzer test but, as far as she remembers, he did not blow properly.

During cross-examination, she says that it was PS 1268 who did the breathalyzer test and also states that she was present. She says: "*He gave insufficient breath more than once*" (*a fol. 64*).

That, during the sitting of the 21st. May 2012, **Brian Farrugia** (representative of Transport Malta - *a fol. 66 et seq.*) also testified saying that vehicle bearing registration number DBQ 227 is a

Hyundai Accent coloured blue and on the 17th. March 2012 it was registered on the name of the accused.

That, during the sitting of the 20th. May 2013, the accused **Daniel Victor** testified (*a fol. 141 et seq.*) saying that he was with some friends and on his way back to Msida, there were some students who crossed the road. He says: *"Because they were just like jumping and coming over the road and you know. And then I hit the barriers and after I see some two people there was fire [...] so I thought that they are in charge of the road or something cause I cannot see them very well. So I just turned the car and they start shouting"* (*a fol. 141-142*). He says that he felt scary when they started shouting so he drove off. He says that the police never went next to him and they were shouting and he just left them. He says that it took him three quarters of an hour to get to the police station because he was lost. He testifies that, before the incident, at around 8pm, he had one or two beers and also ate.

During cross-examination, he confirms that when he was driving his vehicle towards Gzira he saw people and asked if these were police officers or civil persons, he replied in the negative. He says that he could not see if they were wearing fluorescent vests because they were a bit far and all he wanted was to leave. Asked whether he remembers what they were shouting, he says: *"Hey, hey"* (*a fol. 144*). He says that he gets scared when someone shouts like this. Asked how far was he from them when they shouted, the accused replies that the distance was about ten to fifteen meters.

Considers

The First (1st.) Charge -

Sections 41(1)(a), 214, 218(1)(a), (b) and 222(1)(c) of Chapter 9 of the Laws of Malta:

The Court starts by making reference to the judgment **Il-Pulizija vs. Emanuel Zammit** delivered on the 30th. March 1998 in which case the Court of Criminal Appeal stated the following:

“Jekk l-intenzjoni ta’ l-agent tkun li jaghmel hsara, zghira kemm hija zghira dik il-hsara li jkollu f’modu li jaghmel, hu irid iwiegeb għall-konsegwenzi kollha li effettivament jirrizultaw bhala konsegwenza diretta ta’ l-għemil tiegħu.”

The Court notes that for the crime under examination to subsist it is sufficient that the intention is a generic one. There is disagreement between various authors as to whether there can be an attempt of grievous injury. Professor Mamo in his notes states:

“the principle that in the crime of bodily harm a generic intention to injure is sufficient, the offender being answerable for the harm which has actually ensued, gives rise to the doubt whether a charge of attempt is legally possible”;

but then adds:

“Looking at the classification of offences as made by the Law, it is not difficult to imagine certain

circumstances in which, having regard to the means used by the offender and his mode of action, one may be certain of his intention to produce one rather than the other of the effects therein mentioned. Should there still remain a doubt as to the gravity of the result aimed at by the offender, the principle will naturally apply in *dubbio pro reo*”.

That, in the judgment in the names **Ir-Repubblika vs. Domenic Briffa**, decided on the 16th. October 2003, the Court of Criminal Appeal quoted the author Francesco Antolisei in detail:

“Fost l-awturi hemm diskordju dwar jekk jistax ikun hemm tentattiv ta’ offiza gravi. Francesco Antolisei fil-ktieb tieghu “Manuale di Diritto Penale” (Parte Speciale I (Giuffre` (Milano), nona edizione, 1986) ighid f’pagna 79: “Quanto al tentativo, la nostra concezione porta ad ammettere che esso possa verificarsi anche nei confronti della lesione grave e della lesione gravissima. Che dal punto di vista naturalistico un tale tentativo sia ipotizzabile, non e` dubbio e per convincersene basta pensare al caso, tutt’altro che infrequente nella pratica, dell’individuo che getta del vetriolo contro una persona col preciso intento di sfregiarla, senza riuscire a colpirla nel viso. Di fronte al nostro diritto positivo, la giurisprudenza e la prevalente dottrina opinano che non e` consentito parlare di tentativo di lesione grave e gravissima, e ritengono che in ogni caso il reo deve rispondere di tentativo di lesione comune. Tale conclusione, peraltro, se pure in armonia con la premessa da cui viene dedotta, non puo` soddisfare, non soltanto perche` trascura marcate differenze che esistono nella realta`, ma anche perche` assicura al tentativo di lesioni gravi e gravissime un trattamento di estrema benignita`,

trattamento che contrasta nel modo piu` stridente con l'inesorabile rigore che viene adottato in caso di consumazione. Di cio` si e` reso conto qualche scrittore, come il Vannini, il quale sostiene l'ammissibilita` del tentativo di lesioni gravi e gravissime, ma a noi sembra che a tale risultato non si possa logicamente pervenire se si accetta la communis opinio che ravvisa nella lesione personale una sola figura criminosa. Accogliendo, invece, il nostro assunto e riconoscendo che non una, ma tre sono le figure di lesione personale, quella conclusione si giustifica; anzi, si rende necessaria. Naturalmente la punizione per tentativo di lesione grave o gravissima presuppone l'accertamento che nel caso concreto il reo mirava a realizzare uno dei risultati di cui all'art. 583. Se a tale accertamento il giudice non puo` pervenire, egli adempiera` il suo compito, applicando - come e` logico e giusto - il canone probatorio in dubio pro reo".

That, in the judgment **Ir-Repubblika vs. Domenic Briffa**, already quoted above, the Court concluded:

"Din il-Qorti tara li dana il-bran jaqbel anke mad-dottrina li dejjem giet accettata mill-Qrati ta' Gustizzja Kriminali taghna, u cioe` li jista' ikollok tentattiv ta' offiza gravi jew tentattiv ta' offiza gravissima, purche' jigi pruvat li l-agent kellu l-intenzjoni specifika li jikkaguna xi wahda minn daww il-konsegwenzi li jikkarakterizzaw l-offiza gravi jew l-offiza gravissima skond il-kaz. Hekk, per ezempju, ma jistax ikun hemm dubbju li jekk persuna isawwat mara tqila bl-intenzjoni specifika li ggieghelha tehles qabel iz-zmien jew bl-intenzjoni specifika li dik il-mara tabortixxi, jekk ma jirnexxilha fil-hsieb taghha (u salv l-elementi l-ohra kollha tat-tentattiv) huwa konsepibbli d-delitt ta' tentattiv

ta' offiza gravi fl-ewwel lok u dak ta' tentattiv ta' offiza gravissima fit-tieni lok".

That, in the case of voluntary bodily harm, a generic intention to cause harm is sufficient but in the case of attempted grievous bodily harm, the Prosecution is required to prove beyond reasonable doubt that the person charged had the specific intention to cause grievous harm to the victim.

That, with reference to the present case, after having taken into consideration what happened on the 17th. March 2012, and after having heard all the witnesses and seen all the documents presented, the Court notes that it cannot be proven beyond reasonable doubt that the accused had the intention to cause any harm, be it grievous or slight on PS 1437 Norman Xuereb and PC 328 Matthew Azzopardi.

Hence, the Court will acquit the accused from the first (1) charge brought against him.

The Third (3rd. Charge) -

Section 95 of Chapter 9 of the Laws of Malta:

That in his notes, Professor Mamo refers to the authors Cheveau et Helie who state the following:

"Quando l'oltraggio si verifica nel corso delle funzioni, il motivo che lo determina e' indifferente; la legge vede soltanto il turbamento, l'ingiuria fatta all'esercizio delle funzioni, l'insulto che degrada la loro dignita'; avesse pure

quest'ingiuria una causa determinante estranea alle funzioni, il turbamento all'esercizio di esse sussisterebbe sempre."

In his Notes, Professor Mamo further states that:

"This offence arises even though the person charged with the public duty may not at the time of discharging such duty be wearing his uniform or badge etc of office, provided the offender was aware of his status as such person."

In the judgment **Il-Pulizija vs. Giuseppe Borg** delivered on the 2nd. November 1917, the Court of Criminal Appeal noted the following:

"Nel reato di oltraggio ad ufficiale od impiegato pubblico, oltre il dolo specifico desunto dal fine dell'agente, e' necessario ad integrare l'elemento morale od intenzionale del reato, la scienza della qualita' ufficiale dell'oltraggiato, ma questa scienza puo' sussistere indipendentemente dalla questione se il pubblico ufficiale portasse on no la divisa della sua carica al tempo dell'oltraggio; di guisacche' il reato puo' avverarsi anche se l'ufficiale non indossasse tale divisa a patto, ben inteso, che risulti della scienza nell'oltraggiante della qualita' ufficiale dell'oltraggiato."

It has resulted amply proven in this case that the accused reviled the Police Officers in the execution of their duties. This results from the evidence tendered by PS 1437 Norman Xuereb

and PC 328 Matthew Azzopardi who testified in this case. Hence, the accused will be found guilty of the third (3rd.) charge brought against him.

The Sixth (6th.) Charge -

Section 15(1)(a) of Chapter 65 of the Laws of Malta:

It is clear in our legal system as to what constitutes reckless, negligent or dangerous driving. In the judgment in the names **Il-Pulizija vs. Michael Grech** delivered on the 20th. February 2007, the Court of Criminal Appeal stated:

*“Kif gie ritenut minn din il-Qorti ripetutamente u kif intqal fl-Appell Kriminali **Il-Pulizija vs. Alfred Mifsud** deciz fis-6 ta’ Mejju 1997 (Vol. LXXXI.iv.157), din il-Qorti diversament presjeduta qalet:*

Sewqan traskurat (negligent driving) hu kwalsiasi forma ta’ sewqan li jiddipartixxi minn, jew li ma jilhaqx il-livell ta’ sewqan mistenni minn sewwieq ragonevoli, prudenti, kompetenti u ta’ esperjenza. Bhala regola, il-ksur tar-regolamenti tat-traffiku kif ukoll in-non-osservanza tad-disposizzjonijiet tal-Highway Code li jincidu fuq il-mod jew il-kwalita` ta’ sewqan ta’ dak li jkun, jammonta wkoll ghal sewqan traskurat. Sewqan bla kont hu deskritt ... bhala sewqan ‘bi traskuragni kbira’. Din it-tieni ipotesi, jigifieri ta’ sewqan bla kont, tikkontempla s-sitwazzjoni fejn il-grad ta’ traskuragni tkun kbira u tinkludi l-kazijiet fejn wiehed deliberatament jiehu riskji fis-sewqan li m’ghandux jiehu minhabba l-probabbilita’ ta’ hsara li tista’ tirrizulta lil terzi, kif ukoll kazijiet fejn wiehed ikun indifferenti ghal tali riskji. Sewqan perikoluz (dangerous driving) jirrikjedi li fil-kaz

partikolari s-sewqan kien ta' perikolu ghal terzi jew ghall-proprjeta` taghhom. Biex wiehed jiddeciedi jekk kienx hemm dana l-perikolu, wiehed irid jara c-cirkostanzi kollha tal-kaz, inkluzi l-hin u l-lokalita` ta' l-incident u l-presenza o meno ta' traffiku iehor jew ta' nies ghaddejjin bir-rigel. [...]

*U kif qalet din il-Qorti diversament presjeduta fl-Appell Kriminali **Il-Pulizija vs. Mario Gellel** deciz fid-19 ta' Frar 2004:*

*"... kif gie ritenut minn din il-Qorti diversament preseduta, jekk sewqan hux (i) negligenti, jew (ii) bla kont jew (iii) perikoluz hi kwistjoni ta' 'degree' (App. Krim. **Pul. vs Charles Bartolo**, 14.3.59, **Pol. vs Wilson** [Vol. XXXIX iv. 1018] u **Pul. vs Alfred Vella** [Vol. XLIV, p. 933]) u kif jidhru wara xulxin huma fl-iskala tas-serjeta` taghhom (App. Krim. **Pul. vs Hardingham**, 19.10.1963). Gie wkoll ritenut li biex jintegra ruhu r-reat ta' sewqan perikoluz, hemm bzonn ta' certu grad ta' 'recklessness' (App. Krim. **Pul. vs Charles Farrugia** [Vol. XXXIX iv.9 78]). 'Recklessness' giet definita bhala 'wilfully shutting one's eye' (App. Krim. **Pul. vs Joseph Aquilina**, 20.4.1963). Invece sewqan negligenti jew traskurat ifisser nuqqas ta' prudenza ordinarja li wiehed ghandu jadopera biex jevita s-sinistri stradali (App. Krim. **Pul. vs Antonio Spiteri** [Vol. XLIV iv. 892])".*

The Court makes reference to the testimonies tendered by PC 328 Matthew Azzopardi and by PS 1437 Norman Xuereb who both recount the manner in which the accused was driving. In one instance, one of the police officers had to dive in between the parked cars to avoid the car being driving by the accused.

There is no doubt whatsoever that the driving of the accused is tantamount to dangerous driving and hence the accused will be found guilty of the sixth charge brought against him.

The Fifth (5th.) and the Eight (8th.) Charge -

Sections 15A, 15E(1)(a) and 15E(4) of Chapter 65 of the Laws of Malta:

It is amply clear from the testimonies tendered by the police officers who were on site at The Strand, Sliema that the accused was unfit to drive through drink. Apart from the manner in which the accused was driving, PS 1437 Norman Xuereb stated clearly in his testimony that he could smell a severe smell of alcohol on the accused. Apart from this, reference ought also to be made to the testimonies given by PS 1268 Ivan Caruana and WPS 215 Valerie Farrugia. Both of them testify that the accused did not blow properly when he was asked to do the breathalyzer test. Apart from this, reference ought also to be made to Doc. "NX 1" and "NX 2" (*a fol. 31 et seq.*). Hence, there is no doubt whatsoever that even the fifth (5th) and the eight (8th.) charges brought against the accused have been sufficiently proven.

The Second (2nd.), the Fourth (4th.), and the Seventh (7th.) Charge -

Sections 338(dd), 338(ee) and 338(ff) of Chapter 9 of the Laws of Malta:

It results from the acts of the case that the accused disobeyed lawful orders given by the police officers, that he was actually drunk and that he even disturbed the public good order or the public peace. Hence, there is no doubt whatsoever that the

accused will be found guilty of the three above-mentioned charges.

Considers

That it results that all the charges brought against the accused, except for the first (1^{st.}) charge, have been sufficiently proven.

With regards to the punishment to be inflicted, the Court will be taking into consideration various factors, including the nature of the charges brought against the accused, the clean conviction sheet of the accused (Doc. "JM 1" - *a fol.* 18) and that the accused was in a state of intoxication when he committed the charges brought against him.

Therefore, the Court, for the above-mentioned reasons, whilst acquitting the accused from the first (1^{st.}) charge brought against him, after having seen the Articles of Law sent by the Attorney General on the 19^{th.} of November 2012 (*a fol.* 117), mainly Sections 95, 338(dd), 338(ee) and 338(ff) of Chapter 9 of the Laws of Malta and Sections 15(1)(a), 15A, 15E(1)(a) and 15E(4) of Chapter 65 of the Laws of Malta, finds the accused Daniel Victor guilty of the second (2^{nd.}), third (3^{rd.}), fourth (4^{th.}), fifth (5^{th.}), sixth (6^{th.}), seventh (7^{th.}), and eighth (8^{th.}) charges brought against him and condemns him to three (3) months imprisonment however, since the Court is of the opinion that there are sufficient reasons which warrant that the said term of imprisonment be suspended, in terms of Section 28A of Chapter 9 of the Laws of Malta, suspends the said term of three (3) months imprisonment for a period of one (1) year from date of this judgment. The Court orders that the accused be

disqualified from holding or obtaining a driving licence for a period of nine (9) months starting from today.

In terms of Section 28A(4) of Chapter 9 of the Laws of Malta the Court has explained to the accused in plain language his liability under Section 28B of Chapter 9 of the Laws of Malta if during the operational period he commits an offence punishable with imprisonment.

Finally, after having seen Section 383 of Chapter 9 of the Laws of Malta, the Court binds the accused to hold the peace with PS 1437 Norman Xuereb and PC 328 Matthew Azzopardi under a penalty of one thousand and five hundred Euro (€ 1500) for a period of one year from today.

< Final Judgement >

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