

COMMENTS AND LETTERS

Diving damaged by verdict



DANIEL XERRI

Most of the reactions to the recent court verdict in which a diver was found guilty of the accidental death of his buddy have ranged from outrage to disbelief.

On social media and popular diving forums like ScubaBoard, members of the international diving community have expressed incredulity at the court's judgment and shared their concerns about diving in Malta in the future.

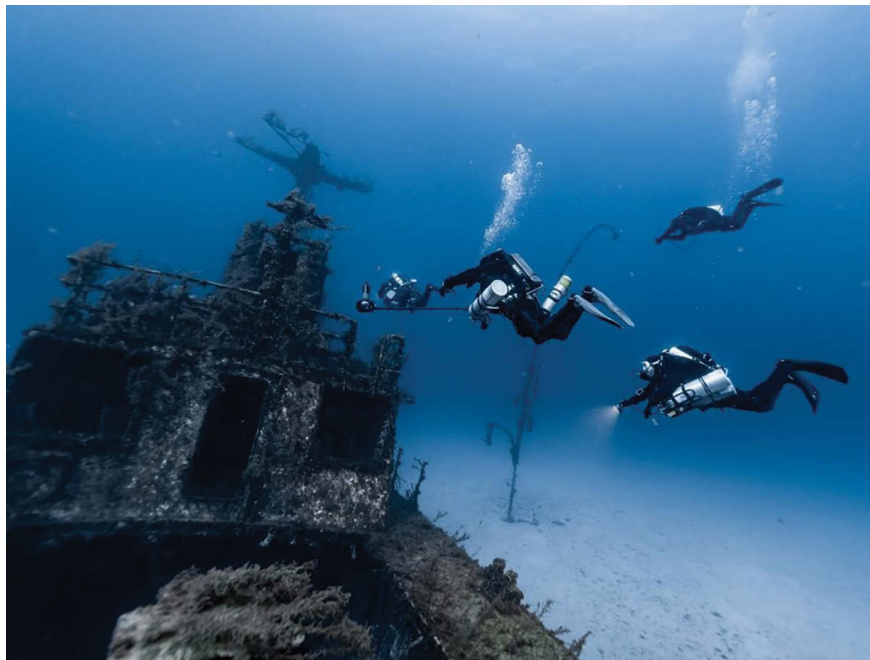
Some examples of the comments to be found are: "very disturbing. I cannot imagine ever going to Malta to dive" and "forget Malta. There are so many other better places to dive. I'll spend my money elsewhere and continue to be a good dive buddy."

Several foreign divers drew parallels between this verdict and the highly publicised case of the British diver Stephen Martin. In 2015, he was accused of the involuntary homicide of his girlfriend and another man after their accidental death during a dive in Gozo. He had to fight extradition from the UK and the case made international headlines partly due to how the Maltese magisterial inquiry was at odds with the conclusions of the UK inquest. The charges were subsequently dropped.

The main reason for these negative sentiments is that the verdict in the Arthur Castillo case seems to have increased the risk of liability for anyone diving with a buddy.

Calypso Sub Aqua Club, one of Malta's main diving clubs, highlighted the point that the court verdict "has been considered by many local and international divers debating in international forums as possibly creating a contentious legal precedent in terms of divers' responsibility when diving using the buddy system".

However, the club still "encourages divers to dive in pairs and not solo where possible, due to the benefits of the buddy system that should



Technical divers. The Arthur Castillo case seems to have increased the liability for anyone diving with a buddy. PHOTO: JON BORG

not be overshadowed by this judgment".

The verdict has been criticised by both diving professionals and enthusiasts based locally and abroad. The main criticism is directed at the court's determination that the defendant was responsible for his buddy's safety during the dive, irrespective of her actions.

However, as stated by the Professional Diving Schools Association, which is the body representing most diving schools in Malta, "A buddy, during any dive, recreational as well as technical, can never be held responsible for the other diver if all safety procedures and protocols are followed correctly".

The fact that the incident in question concerned a technical dive is an important clarification given that in technical diving self-reliance on behalf of each diver forming part of a team is vital. This means that divers are trained to take responsibility for their own safety prior to and during a dive. The magistrate's failure to appoint an expert with specialisation in technical diving training and procedures is particularly conspicuous.

Tom Steiner, a renowned technical-diving instructor with 32 years of experience, explained that "as a technical

diver, you should be self-sufficient at any time in case of team separation or any situation where you could be obliged to surface on your own. So, technical divers should be able to handle their own dive in any situation for any reason".

For Steiner, if you are a self-reliant diver, "you should always be aware that when something is wrong or you don't feel well, you should call off the dive immediately or you don't even start the dive in the first place".

Mikela Borg, the owner of a centre that provides technical-diving training, claimed

to be in disbelief at the conclusion of this case. Besides underscoring the cardinal value of self-reliance in technical diving, she also pointed out that "when diving unaccompanied by a service provider, the degree of responsibility is not equal to the instructor-student scenario; therefore, when choosing to dive independently, autonomy should be at the forefront of the dive mission".

Dora Farkas, a highly respected technical-diving instructor, emphasised the principle of self-reliance and personal responsibility by recounting how she had once experienced buoyancy issues due to lending some weight to her buddy on a dive while trying out new equipment.

Despite struggling to maintain depth, Farkas was not burdened with all the other problems faced by the victim in the court case though. She said: "It was not fun, I have to admit. I had to do deco, wedged under a rocky outcrop. Fortunately for us, it was only a lesson to be learned. But we would never have blamed each other for our respective mistakes."

When one considers that diving is of crucial importance within Malta's tourism industry, it becomes clear that this verdict and the equally

contentious Martin case can damage the country's reputation among foreign divers.

Edward Arrigo, one of the pioneers of the diving industry in Malta, remarked: "In all these years of diving in Malta, this verdict has shaken the local dive community and will cause ripple effects in the industry beyond our shores."

Prior to the pandemic, statistics issued by the Malta Tourism Authority indicated that 6.5 per cent of all inbound tourists did scuba diving while in the country. Numerically, this equates to more than 177,000 divers. This figure includes both those tourists motivated to visit the country for diving purposes as well as those who were not but still ended up doing some diving during their stay.

The first group constitutes nearly five per cent of all tourists, which indicates that diving in Malta is a significant motivation for visiting the country.

Just like other tourism-dependent sectors ravaged by the effects of the pandemic, the diving industry experienced massive difficulties in 2020 and 2021. These included many booking cancellations and staff lay-offs as well as the closure of some diving schools. This year, the situation has improved significantly but the sector remains fragile.

For this reason, it is instrumental that a concerted effort be made to challenge the verdict. Jon Borg, a well-known underwater photographer and diving influencer, observed: "It's worrying how many members of the diving community in Malta haven't spoken up against this harsh decision. This could have serious repercussions on the diving industry."

It is hoped that the potential damage inflicted by the court verdict on Malta's reputation as a diving destination can be mitigated in the appeal process. If the verdict is to be quashed, the court's reliance on the advice of experts with specialist knowledge and experience of technical-diving training and procedures would be fundamental.

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