

**Court of Magistrates (Malta)
As A Court of Criminal Judicature**

Magistrate Dr. Claire L Stafrace Zammit B.A. LL.D.

**The Police
[Inspector Joseph Busuttil]**

-vs-

Irina Alekseevna Vassallo

Case Number: 326/14

Today, the 23rd of January, 2017

The Court,

Having seen that the accused Irina Alekseevna Vassallo, holder of identity card number 57026A.

Was charged with having:

On the Maltese Islands in Saint Paul's Street, Saint Paul's Bay, Malta on the 31st of March 2014, without the intention to kill or put the life in danger of Ramona Vassallo ID: 413371M, she has caused her injuries of grievous nature, as certified by Dr Daniel Varnai MD Registration Number 3433 from Mosta Health Centre;
Art 216 of Chapter 6

Accused further that the in the same date, place and circumstances she has disturbed the public peace and order by fighting and shouting;
Art 338(dd) of Chapter 9

In case of guilt, the Court is humbly requested to treat the accused as a recidivist after she was found guilty by the Courts of Malta, which sentence is definitive and cannot be changed; and
Art 50 of Chapter 9

Further accused that in the same date, place and circumstances she has breached an order given by the Court of Appeal on the 14th of January 2014, in terms of Article 22 of Chapter 446 of the Laws of Malta.

Heard all the evidence;

Having considered that these proceedings relate to an incident which occurred on the thirty first (31) of March 2014 at premises in St. Paul's Street, St Paul's Bay whereby there was a fight between the accused and the alleged victim Ramona Vassallo who happen to be the daughter of the accused's husband who was also present to the incident.

These proceedings are characterised by lack of volume in the evidence produced by the prosecution in the sense that the prosecutor did not give his evidence to state his version of events and to inform about his investigation on the matter. It also lacked the outcome of the proceedings against the victim Ramona Vassallo.

As said above in these proceedings this Court has only the version of the victim on one side whereby she claims that she was physically abused by accused when she entered what she said was her property, and the version of accused and her husband on the other side that on entering the premises Ramona Vassallo was very angry that they were there and since there was a civil dispute about her mother's inheritance between them, she physically

abused her father. Accused says that she had to defend her husband and therefore, in her own words she grabbed and put down the alleged victim Ramona Vassallo until the police arrived at the premises and actually found Ramona pinned to the floor by accused. Accused's husband Kristino Vassallo confirmed on oath this version of events and confirmed as well that victim had been long abusing of drugs whereby she had denied this fact on oath.

From this assault Ramona Vassallo suffered grievous bodily harm whereby she had two broken teeth and a fracture to a rib as certified by Dr. Daniel Varnai.

From all this, this Court believes that the most credible version of events was that of accused not only because it is supported by the version of her husband, but also because the police actually found accused on top of victim holding her in order not to do any further movements. This is therefore compatible with the gesture of someone who wants to act in self defence.

What is not clear is that no evidence was produced as to how the fight evolved in the sense of how did the victim get the injuries she sustained. The evidence of Ramona Vassallo is very shady in the sense that whilst she says that accused repeatedly banged her head to the floor and blocked her airways, her injuries are totally different than her version of events in that she said that she sustained injuries in her teeth and a broken rib.

From the fight the accused also sustained injuries which were shown in pictures presented by her and exhibited at fol 50 of these proceedings which consisted mainly of bruises on face, arms and legs of the accused.

All this shows that accused was acting mainly in defence of her husband Kristino Vassallo who was being physically abused by his daughter and this is in line with Article 223 of our Criminal Code and with what our courts have repeatedly stated throughout the years regarding this defence. In fact in the case **Police vs Augusto Auguliaro** decided on the 26 th August 1998 (Per Imhallel Vincent De Gaetano; case number 859/2004), the Court of Criminal Appeal stated that:

“Mhux kull min “jagixxi biex jiddefendi ruhu” necessarjament jista’ jinvoka dana l-artikolu. Il-ligi titkellem car dwar il-“bzonn attwali” tad-difiza legittima” ta’ dak li jkun jew ta’ haddiehor. Kemm fid-dottrina kif ukoll fil-gurisprudenza taghna hu ormai stabbilit li biex wiehed jista’ jinvoka dina l-iskriminanti, l-aggressjoni subita trid tkun ingusta, gravi u inevitabli. L-element tal-inevitabilita jigi nieqes meta wiehed, minflok ma jevita l-inkwiet ossia glied li jara gej, meta dan ikun jista’ b’mod ragonevoli jigi hekk evitat, imur minghajr raguni valida jaffrontah b’mod li jipprecipita huwa stess il-konfront fiziku. Kif tajjeb intqal minn Lord Justice Widgelyy fil-kawza R. vs. Julien (1963) 1 WLR 839: “It is not ... the law that a person threatened must take to his heels and run in the dramatic way suggested by Mr. McHale, but what is necessary is that he should demonstrate by his actions that he does not want to fight. He must demonstrate that he is prepared to temporise and disengage and perhaps make some physical withdrawal, and that is necessary as a feature of the justification of self-defence is true, in our opinion whether the charge is a homicide charge of something less serious.”

The same was said by Prof. Anthony Mamo in his Lectures on Criminal Law whereby he clearly analyses the elements of legitimate defence and says that:

“The evil threatened must be: (1) unjust; (2) grave; (3) inevitable”.²⁹

Regarding the third element that is of inevitability (vide Lectures on Criminal Law (Part 1) fol. 104), he continues that:

“The accused must prove that the act was done by him to avoid an evil which could not otherwise be avoided. In other words, the danger must be sudden, actual and absolute. For if the danger was anticipated with certainty, a man will not be justified who has rashly braved such danger and placed himself in the necessity of having either to suffer death or grievous injury or to inflict it.”

All this confirms this court’s reasoning that the offence with which the accused is charged is justifiable in the sense that the act which she was repelling was unjust in the sense that the alleged victim was physically abusing her father at that moment in time whilst being very angry that she (Ramona) found them at the premises; equally it is grave since Kristino Vassallo is a man of very old age and as both accused and her husband said on oath, this was not the first time that his daughter was physically abusive to him. It was also inevitable in that both accused and her husband couldn’t pre-empt that Ramona was going to enter in the premises since they thought that she goes there only in the summer months.

As regards the third charge, this court has seen the minute of prosecution whereby he has withdrawn this charge and as regards the fourth charge, since no evidence was tendered by the prosecution this court cannot find guilt on this charge. Equally can be said on the second charge since no evidence was tendered about any disturbance of public peace especially by the police officer who went on the place of the incident. As regards the charge that accused contravened an Order of the Court of Appeal dated 14th of January 2014, the prosecution did not present any such order in these proceedings and therefore this Court cannot equally find any guilt even on this charge.

Therefore and on the above basis this Court cannot find any guilt on the accused and frees the accused Irina Alekseevna Vassallo from all the charges brought against her.

Dr Claire L Stafrace Zammit B.A. LL.D.
Magistrate