

The Court of Magistrates (Malta)

As a Court of Court of Criminal Judicature

Magistrate Dr Aaron M. Bugeja M.A. Law, LL.D. (melit)

The Police

(Inspector Trevor Micallef)

vs

Nizar Gweleg

The Court after seeing the charges in respect of **Nizar Gweleg**, holder of Hungarian passport number BH6436839 who was charged with having in these islands on the 8th November 2016 at about half past five in the morning (05:30a.m.) in St. Julian's and/or in the vicinity : -

1. Without intent to kill or to put the life in manifest jeopardy, caused grievous bodily harm on the person of Elsayed Elsisi (art. 216 of the Criminal Code)
2. For having on the same date, time, place and circumstances wilfully disturbed the public peace and order (art. 338(dd) of the Criminal Code).

Having seen that during the sitting of the 8th November 2016 this Court as differently presided ordered that proceedings be carried out in the English language after that it ascertained that the accused is English

speaking in terms of law and that during the same sitting the Prosecuting Officer confirmed the charges on oath and during the examination of the accused in terms of Article 392(1)(b) he pleaded not guilty to the same charges;

Having heard the witnesses produced;

Having seen the documents submitted;

Having seen the formal accusatory document filed by the Attorney General issued on the 22nd December 2016, wherein the Attorney General found that from the preliminary investigation in this case there might result an offence or offences under the provisions of :

- a. Articles 214, 215 and 216 of the Criminal Code, Chapter 9 of the Laws of Malta;
- b. Article 338(dd) of the Criminal Code, Chapter 9 of the Laws of Malta;
- c. Articles 383, 384, 385, 386, 387 and 412C of the Criminal Code, Chapter 9 of the Laws of Malta;
- d. Articles 17, 31, and 532A, 532B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta;

And decided in terms of Articles 370(3)(a) of the Criminal Code to send the accused for trial by this Court subject to no objection being made by the accused in accordance with Article 370(3)(b)(c)(e) of the Criminal Code;

Having seen that during the sitting held on the 4th January 2017 the Prosecution declared that it was resting its case and on the same sitting in terms of Article 370(3)(b) of the Criminal Code, the Court, after reading out the contents of the formal accusatory document to the accused, requested the accused whether he found any objection to his case being dealt with summarily. After giving the accused a reasonable time within which to reply, and after consulting his Legal Counsel, he declared that he had no objection to his case being dealt with summarily. The Court therefore took note of this declaration in writing in the records of these proceedings in terms of Article 370(3)(c) of the Criminal Code;

Having seen that during the sitting of the 22nd February 2017 the Defence produced the testimony of Elsayed Abdel Salam El Sisy who declared that he was forgiving the accused;

Having seen that following this testimony the accused declared himself guilty as charged;

Having seen that in view of this declaration, the Court explained to the accused, in simple language the consequences arising from his guilty plea and namely that the Court will find him guilty as charged and will award sentence against him. After granting sufficient time to the accused to reconsider his guilty plea and after conferring with his legal advisor, the accused reiterated that he was guilty as charged;

Having heard the final oral submissions of the Prosecuting Officer and of the Legal Counsel to the accused following which the Court adjourned this case for judgment in terms of Article 377 of the Criminal Code;

Having seen the clear criminal record of the accused;

This Court considered that :-

In view of the guilty plea, as duly reiterated the Court has no option but to find the accused guilty as charged.

The Court noted also that in this case the accused registered his guilty plea after that the Prosecution had rested its case. Therefore he cannot benefit from a discount in his sentence on account of his registering an early guilty plea. On the otherhand, the Court noted that the accused has had, until now, a clean criminal record sheet. It noted also that the

alleged injured party declared under oath that in essence he was forgiving the accused. He further declared that he was not sure what gave rise to the incident with the accused and was not sure who gave rise to the incident in the first place. He implied that he was not sure who was the aggressor and the alleged victim in the first place. However despite this declaration from the alleged victim himself, the accused decided to plead guilty. The Court can understand this position on account of the fact that in his statement to the Police the accused admitted that he was involved in a fight with the alleged victim after that the alleged victim called the accused's mother as being a "bitch". Despite this unruly behaviour on the part of the alleged victim, the accused could not retaliate to this verbal violence by exerting physical violence on the alleged victim. The fact that both were allegedly drunk does not diminish responsibility for the act committed.

This Court noted the more recent judgment decided by the Court of Criminal Appeal in the names *Il-Pulizija vs Mohammad El Hussein* on the 14th instant. In this case the alleged victim testified before this Court about the grievous bodily harm suffered. During his testimony before this Court he stated that the accused in that case attacked him with a hammer and that during the aggression the accused told him their native saying "you took my money, I take your soul". No forgiveness or retraction of the complaint was made at first instance. This Court condemned the accused to twelve months imprisonment.

On an appeal filed by the accused from this judgment, the alleged victim was once again produced to testify and declared that he was forgiving the accused and that he had no further pretences in his regards. In view of this new declaration the Appellate Court varied the punishment to eighteen months imprisonment suspended for a period of four years from the date of that judgment.

The Court noted that in the case *Il-Pulizija vs. Joseph Zahra* the Court of Criminal Appeal on the 9th September 2002 decided that :

Kull forma ta' vjolenza fuq il-persuna ghandha, bhala regola, iggib maghha piena restrittiva tal-liberta' tal-persuna b'effett immedjat... Socjeta` civili ma tistax tittollera l-prepotenza ta' min, ghax taqbizlu c-cinga, jew ghax jidhirli li ghandu lment kontra haddiehor (anke jekk dak l-ilment ikun fil-fatt gustifikat) jahbat ihebb jew isawwat lil dak il-haddiehor. F'dan il-kaz din il-Qorti ma tarax alternattiva ghal piena karcerarja.

This Court finds that in this present case the dicta in *Il-Pulizija vs Joseph Zahra* still holds. And this particularly so when this incident took place in an area that is a famous entertainment area attracting huge numbers of young and old Maltese and foreign residents and tourists alike. Incidents involving physical violence have become rife in these areas and the Courts have a duty to stand up to this in their sentences. The increase in the incidence of physical violence being resorted to, especially in these entertainment areas has to be seen also from a broader perspective as it not only hurts the immediate victims but

affects and damages the reputation of this country with foreign residents and tourists alike.

Decide : -

Consequently, this Court finds the accused *Nizar Gweleg*, upon his declaration of guilt, guilty of the charges brought against him and after having seen the Articles of the Law quoted by the Attorney General, that is to say Articles 17, 31, 214, 215, 216(1)(a)(ii)(iii)(b)(d), 338(dd), 383, 384, 385, 386, 387, 412C, 532A, 532B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta condemns him to imprisonment for a period of four months.

Furthermore, given that the alleged victim decided to forgive the accused, the Court is not upholding the Prosecution's request for the issue of a protection order under Article 412C of the Criminal Code.

Having seen Articles 532A, 532B and 533 of the Criminal Code and given that there was no evidence of any expert witnesses being appointed or any damages being occasioned or other expenses being incurred, the Court abstains from pronouncing itself in relation thereto.

However in order to provide for the protection of the public peace, after having seen Article 383 of the Criminal Code the Court requires the

accused to enter into his own recognisance for a period of one year subject to a penalty of two thousand euros (€2000).

Furthermore, having seen Article 392A of the Criminal Code, this Court orders that the record of the proceedings together with a copy of this judgment be transmitted to the Attorney General within six working days.

Delivered today the 28th February 2017 at the Courts of Justice in Valletta, Malta.

Aaron M. Bugeja