



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

MAGISTRATE DR. AUDREY DEMICOLI LL.D.

Today 17th of March, 2017

**Police
(Inspector Matthew Spagnol)**

VS

Mahamadou Fofana

The Court;

Having seen the charges brought against Mahamadou Fofana holder of identity card number 67671A whereby he was accused with having on the 4th of September, 2015, at around 05:00hrs, at St George's Bay, St Julian's

1. Without intent to kill or to put the life of Alex Salvi in manifest jeopardy, caused harm to the body or health of the same Alex

Salvi, which was certified as being of grievous nature by Dr Stephanie Azzopardi

2. And further, of having rendered himself recidivist by Court sentences given to him by the Court of Malta, these sentences having become definitive and cannot be changed
3. And further, for having broken the conditions imposed onto him by the provisions of Article 7 of Chapter 446 of the Laws of Malta by a sentence handed to him dated 7th of April, 2014, this sentence having become definitive and cannot be changed

Having seen all the acts of the proceedings, including the Attorney General's Note dated 20th of September, 2015 (exhibited at. folio 15) whereby he gave his consent for this case to be treated summarily.

Having heard the final submissions made by the Prosecution and the Defence Counsel.

Having considered that:

The facts of this case are in brief as follows. On the 4th September 2015 a report¹ was filed at the St .Julian's Police Station by Alex Salvi and Joara Seris whereby they informed the police that whilst they were sitting down on the rocks at St George's Bay a coloured man with a Mohican hairstyle stole the girl's bag which contained a mobile phone and identity card and when Alex Salvi chased the man a bottle was thrown at Salvi whereby he was injured and taken to hospital by

¹ Report inserted at folio 31 to 33 of the acts of these proceedings.

ambulance where he was certified as having suffered grievous bodily harm.² The alleged victims left Malta soon after the incident however on the 18th September an acquaintance of theirs, a certain Michael Carter, identified the accused in Paceville as being the person who had assaulted Alex Salvi and his girlfriend and stolen the handbag on the 4th of September 2015. According to the Prosecuting Officer, whilst the accused was being escorted to the police van after being arrested Michael Carter called on Joara's number (i.e. the sim card inserted in the stolen phone) and the accused's mobile phone rang simultaneously.

Having considered that:

Alex Salvi, the alleged victim, gave evidence during a sitting held on the 24th November 2016 by video link whereby he appeared before the Italian Regional Court in Aosta. Salvi explained that while he was on the beach with his female friend and they were embracing a coloured man who was not very tall, around 1.75m in height, started bothering them by using vulgar language and the girlfriend said that she wanted to leave. When Salvi got up this coloured man threw two glass bottles of beer towards his face, grabbed the girl's handbag and ran off. Salvi also said that he was not quite sure about the coloured man's height since he was crouching on the rocks above them He also said that he could not see very clearly since it was very dark. Alex Salvi explained that he was hit with the glass bottles on the right side of his face above the eyebrow and he also had injuries on his lip and four front teeth were broken. Salvi also explained that after the assault they went to seek help at a nearby bar where an ambulance was called on site and he was then taken to hospital where he remained for a few hours because he had to have his

² Vide medical certificate at folio 7 et sequitur of the acts of these proceedings.

wounds cleaned and stitched. When asked to identify the accused as the person who had assaulted him the victim said that h was not sure that it was the same person. He said that the hair looked the same but he was not in a position to say with certainty that the accused was the same person who had assaulted him.

Having considered that:

The Prosecution is basing its case predominantly if not solely on the evidence given by the alleged victim Alex Salvi. As this Court has already pointed out in the preceding paragraph Salvi was not in a position to say with certainty that the accused was the same person who had assaulted him in the early hours of the morning of the 4th September 2015. He could only say that the hair looked the same. Furthermore he indicated that the person who had assaulted him was around 1.75 metres tall and said that he was not able to see very well on the date of the incident since it was very dark. The accused' s exact height cannot be ascertained from the acts of these proceedings however it was possible for the Court to note based on appearance that he is definitely much shorter than 1,75 metres. This Court cannot therefore based on Alex Salvi's testimony be morally convinced that the accused was the same person who assaulted Salvi on the date and time indicated in the charge sheet.

Furthermore this Court would like to point out that the doctor who issued the medical certificate inserted at folio 7 of the acts of these proceedings was never brought forward to confirm the content of then said medical certificate and confirm that the injuries sustained by Alex Salvi were grievous in nature. The Prosecution also failed to produce as witnesses

the only other ocular witness of the incident, i.e. the victim's girlfriend, or Michael Carter, the person who fifteen days after the incident took place identified the accused to the Police as the person who had assaulted Salvi thus bringing about the arrest of the accused. It is also relevant to note that Carter was not an ocular witness of the assault and could only identify the accused based on details given to him by the victim and his girlfriend.

The Prosecution therefore certainly cannot be deemed to have proven its case to a level of beyond reasonable doubt as required by law.

For the abovementioned reasons the Court declares the accused not guilty of the charges brought against him and consequently acquits him from the said charges.

Magistrate