

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

**MAGISTRATE
DR RACHEL MONTEBELLO B.A. LL.D.**

**THE POLICE
(Inspector Matthew Spagnol)**

-Vs-

MICUN RADULOVIC

Compilation No: 669/16

Today, 30th July 2019

The Court,

Having seen that **MICUN RADULOVIC** of 36 years, son of Milevoja and Veselinka, married to Andriana, born in Serbia on the 24th of August 1980, residing at 182, St. Jude Flat 2, Sir Luigi Preziosi Street, St. Paul'S Bay and holder of the Serbian passport number 010814957 and Maltese Residence Permit number 128718A was arraigned and accused of having:-

Today, 30th July 2019

Magistrate Dr. Rachel Montebello B.A. LL.D.

In these islands, on the 27th March 2016, at around 19:30hrs, in St. Rita Street St. Julian's, without intent to kill or to put the life of Terence Zahra in manifest jeopardy, caused harm to his body or health, which injuries were certified as being of grievous nature by Dr. Alexandra Baldacchino (Med. Reg. 2180);

Also charged with having, on the same date, time, and circumstances, acted or was employed as an agency of private guard, or as private guard offered his services, without holding the required licence according to the dispositions of Chapter 389.

Having seen the consent granted by the Attorney General in terms of Article 370(4) of the Criminal Code for these proceedings to be dealt with summarily¹;

Having seen that in virtue of a decree dated 21st November 2017, the proceedings were ordered to be conducted in the English language;

Having seen that the Prosecution and the Defence declared² that they did not require the Court as presided to hear anew the testimony of those witnesses who had previously testified before the Court when differently presided;

Having heard the evidence and seen all the documents exhibited in the acts of the proceedings;

Having seen all the acts of the proceedings;

Having heard the oral submissions of both the Prosecution and the defence during the hearing of the 4th June 2019;

Having seen that the case was adjourned for today for the delivery of judgement;

¹ Fol. 7.

² 30th July 2019.

Having considered;

The Evidence

The facts of the case on which the charges brought against the accused are based, revolve around an incident that allegedly took place in Paceville on the 27th March 2016, where Terence Zahra claimed to have been attacked and beaten up by the accused and other security personnel outside the establishment “Bacco’s”, as a result of which he sustained grievous injuries to his face.

Inspector Matthew Spagnol testified³ that on the 28th March 2016 a report was received regarding quarrel that had taken place the previous night in St. Rita Steps, Paceville in which a certain Terence Zahra was injured. CCTV footage in the area were retrieved by the Police from the establishment Bar Native which is directly opposite Bacco’s where the quarrel allegedly unfolded. He stated that the Police identified two out of four bouncers who were involved in the incident and who were all foreign individuals and on the 28th December 2016 the accused was arrested. The witness also testified that during his interrogation the accused was shown the footage retrieved by the Police from the CCTV cameras in the area and according to the witness, the accused identified himself in the footage as being involved in the fight.

The Prosecution also exhibited a DVD⁴ with CCTV footage which, as Inspector Matthew Spagnol testified, was recorded from a camera pertaining to the establishment Bar Native which is opposite the establishment Bacco’s where the incident unfolded (Dok. CSH7)

He further testified as follows:-

³ 21st November 2017.

⁴ Dok. CSH7.

“Asked how many people were involved in the same arguments I say there were about four (4) or five (5) other youths and there were four (4) security persons involved.”⁵

He also stated that on the recorded footage of the incident:-

“Micun can be seen taking one of the youths as I said at first in a disciplined manner but then outside when it, the brawl began, he can be seen involved in the brawl punching and kicking.”

Terence Zahra testified that on a particular Sunday close to Easter in 2016, he was with some friends, Adrian Ellul, Alex Galea and Josef D’Amato at the establishment Bacco’s in Paceville when he saw his friend Alex Galea involved in a quarrel and was fighting and arguing with one of the bouncers. His other friends were also sent out of the premises by some other bouncers. When he stepped out of the establishment to see what was happening, he saw his friends arguing together with the bouncers and as he was worried, he joined them and told them not to continue fighting. Terence Zahra explained that one of the bouncers approached him and asked in Maltese if he was going to push him “*int ha timbuttani?*”, but although until that point in time he had pushed nobody, the bouncer punched him in the face. The witness claimed to be uncertain whether it was the accused who punched him first. Asked whether however the accused was with the bouncers who were involved in this argument, the witness claimed that from his appearance it could be that he was present:-

“Asked if I am sure that the accused was present, I say possibly he could have been present but however I am not too sure of that either. I know that after I was given a punch in the face two (2) other bouncers came and started hitting me in my side and kicking me. Then I know that there was a fourth (4th) bouncer who came out of the premises and hit me in my side with his legs. At that moment in time I tried to cover

⁵ Fol. 24.

my face to defend myself. The second (2nd), third (3rd) and fourth (4th) bouncer who effectively hit me were not speaking so I cannot say what is their nationality, they were just hitting me.”

Terence Zahra claimed to have suffered a broken nose as a result of the incident.

P.S. 845 Ian Vella testified that he was informed by WPS 347 on the 28th March 2016 that she had just entered a report in the Police System concerning a slight bodily harm suffered by Terence Zahra at Bacco’s in St. Rita Street, Paceville. On the 30th March 2016 the witness visited Bacco’s and spoke to a certain James Farrugia who, as indicated in the Police Report Dok. PS⁶, indicated two persons, Igor Alex and Micun Alex, employees of Signal 8, who were on duty at the establishment on the day of the incident.

W.P.S. 347 Jessica Muscat confirmed in her testimony that on the 28th March 2016, a certain Terence Zahra had gone to the Police Station and filed a report that the day before, on the 27th March 2016 between 7.30 p.m. and 8.00 p.m. he was in the establishment Bacco’s in St. Julian’s and was hit by bouncers working on the premises. The injured party did not indicate to the witness the identity of the aggressor.

The medical certificates exhibited by the Prosecution⁷ indicate that Terence Zahra suffered a fractured nasal bone, which injury was described by Dr. Alexander Baldacchino on the 2nd April 2016 as grievous⁸.

⁶ Fol. 35 *et seq.*

⁷ Dok. PS2 and Dok. PS3.

⁸⁸⁸ During the hearing of the 20th December 2017 the defence declared that it did not require the Prosecution to summon Dr. Mark Grech and Dr. Alexander Badacchino to confirm the medical certificates issued by them respectively in relation to the injuries sustained by Terence Zahra – Dok. PS2 and Dok. PS3 at fol. 39 and 39.

The accused did not testify in these proceedings however he did release a statement when he was interrogated by the Police on the 28th December 2016⁹ where although he confirmed his presence in the footage shown to him during the interrogation¹⁰, he denied having caused any injuries to any person and insisted that he did not use any force on the alleged victim and would not on any event use force on young persons. He explained that there was a fight in the balcony of Bacco's, he tried to push some Maltese persons out of Bacco's without fighting, but once outside Bacco's these persons began to fight again and there was confusion. He also confirmed that there were another two persons apart from himself working as security officers at that time in Bacco's who removed the Maltese persons from the establishment, as well as other persons from other bars.

Having considered;

With reference to the footage exhibited in the acts of the proceedings¹¹ purporting to show the incident described by Terence Zahra, the Court would point out at the outset that no witness was brought to confirm that the CCTV footage exhibited in the acts of the proceedings is actually footage taken from the establishment mentioned by Inspector Spagnol. It is also observed that it does not result from Inspector Spagnol's testimony that it was who personally elevated the footage from the aforementioned establishment. Moreover, it does not result from the evidence adduced who effectively transmitted the footage to the Police.

As would result from the Court-appointed expert's report (Dok. MC) the footage extracted from the DVD Dok. CSH7 consists entirely of footage¹² recorded with a

⁹ Dok. CSH4, fol. 8 *et seq.*

¹⁰ As already pointed out, no evidence was brought to show that the footage exhibited in the acts of the proceedings or the footage shown to the accused during interrogation, was taken at the time and on the date of the alleged incident.

¹¹ Forming part of Dok. MC.

¹² Stills extracted at fol. 50 until fol. 62.

device, possibly a mobile phone, from original CCTV surveillance cameras. However, as confirmed by the said Court-appointed expert, neither the camera number nor the time of the DVR, less so the real time and date of the footage, are visible on the said footage.

In such circumstances, even if it were possible to identify the accused or even the alleged victim in the said footage, the Court cannot consider such evidence as having any probatory value (i) when the DVD Dok. CSH7 consists of footage extracted from an unknown device which captured footage from CCTV surveillance cameras, which original footage was not preserved for the purposes of the proceedings; (ii) in the absence of testimony that shows who recorded the footage, and/or the place and time such footage was so recorded and also (iii) in the absence of the footage alleged to have been originally recorded by CCTV cameras in the mentioned establishments.

The Court viewed the footage contained on the DVD in question, and even if it had to take such footage into account in order to arrive at its conclusions, the Court would point out that neither the accused nor Terence Zahra are properly identifiable in the footage. It is also relevant to observe that the said injured party was not shown the footage during the proceedings and therefore never identified himself in the said footage or even confirmed that the footage exhibited is the actual footage of the incident mentioned in his testimony and as a result of which he claims to have suffered the injuries.

Additionally, although the accused in his statement did indeed identify himself as one of the persons shown in the footage marked as “Bacco2”, the images and the quality of this recording are extremely unclear and moreover, contrary to what was stated by Inspector Matthew Spagnol in his testimony, it does not result from the accused’s statement that he actually identified himself as the person who is shown to be punching and kicking in the said footage marked as “Native2”.

The Court also observes that the Prosecution also failed to summon as witnesses the friends of the alleged victim who, as Terence Zahra testified, were present at the time and also involved in the scuffle with the security officers at Bacco's¹³ in order to corroborate his testimony and perhaps identify the accused as the person who caused Terence Zahra's injuries.

Significantly, the alleged victim himself failed to identify the accused as the person who punched him and upon being questioned specifically, Terence Zahra claimed he was also uncertain as to whether the accused was actually present at the time of the incident. It is also undisputed that there were four or more bouncers involved in the altercation and who allegedly attacked Terence Zahra.

Most significantly, it must also be pointed out that, as stated during his interrogation, the accused does not understand or speak the Maltese language and in his statement he explained that: "... *then they started talking in Maltese, I don't know what they were saying...*". This observation is noteworthy because Terence Zahra testified that the bouncer who punched him in the face had spoken to him in the Maltese language and asked him: "*int ha timbuttani?*" At no other point did Terence Zahra during his testimony mention that he was punched in the face by another bouncer: he stated however that **other persons kicked him in his side and that he was covering his face**. Indeed, Terence Zahra was reasonably clear when he excluded that the person who punched him in the face was the accused:-

"Asked if it was the accused who punched me, I say no I'm not sure of that either."

It would therefore result that the only episode where Terence Zahra, in his testimony, described a physical act that could reasonably produce the injuries that he sustained as a result of this assault, that is a fractured nose, was the said episode where he was

¹³ Josef D'Amato, Alex Galea and Adrian Ellul.

punched in the face, and indeed no other evidence was brought that would associate the accused with the said injuries sustained by Terence Zahra.

Having considered;

The Court therefore finds that on the basis of the inadequate and scant evidence produced by the Prosecution, it is impossible to reach the conclusion that the accused participated in the scuffle involving Terence Zahra, let alone to be morally convinced that it was the accused who actually caused the injuries to the said person. Evidently, the Prosecution has failed to prove its case with regards to the first charge beyond reasonable doubt, as it is required to do in order for the Court to establish guilt and consequently the Court cannot find the accused guilty of the first charge brought against him.

Having considered;

As for the offence subject of the second charge brought against the accused, that is the offence of having acted or having been employed as an agency of private guard or as a private guard offered his services without holding a required licence, the Court cannot but point out at the outset that the Prosecution brought absolutely no evidence to sustain this charge. The Prosecution failed to summon as a witness a representative of the Licencing Office in order to testify whether the accused was in possession of a licence to act as a private guard, or a representative of the establishment “Bacco’s” to confirm the purpose of the accused’s service at the establishment on the stated date and time.

Although the accused in his statement, agreed that he works occasionally at Bacco’s in order to help out his friends, it was never shown that worked there as a private guard. In fact, while the evidence does not conclusively show that he was working as a security officer or as a bouncer on the 27th March 2016, the Court also observes that

the accused was never asked during his interrogation whether he was in fact working at Bacco's as a security guard on the said date.

Decide

In view of all the above-mentioned reasons, the Court does not find MICUN RADULOVIC guilty and consequently acquits him of both charges brought against him.

**DR. RACHEL MONTEBELLO
MAGISTRATE.**