



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR. GABRIELLA VELLA B.A., LL.D.**

**Police
(Inspector Gabriel Micallef)**

Vs

Igor Luko

Today, 23rd January 2020

The Court,

After having considered the charges brought against Igor Luko, son of Djordje and Nada neè Suvcarov, born in Serbia on the 3rd May 1976 and residing at number 230, apartment number 1, Bay Square Court, St. Anthony Street, Bugibba, holder of Identity Card Number 54057(A), of having on the 1st January 2012 at about 6:00a.m., in Zarb Apartments situated in St. Georges Road, St. Paul's Bay:

1. Caused grievous bodily harm on the person of Christian Anthony Camilleri, holder of Identity Card Number 21958(A), and on the person of Anthony Camilleri, holder of Identity Card Number 445851(M);
2. Caused slight bodily harm on the person of his wife Darlene Luko;
3. Insulted or threatened Darlene Luko;

After having considered the Conviction Sheet of the accused exhibited at folio 5 of the records of the proceedings, a photocopy of the Residence Permit of the accused exhibited at folio 6 of the records of the proceedings and the Consent by the Attorney General in terms of Section 370(4) of Chapter 9 of the Laws of Malta;

After having heard the Prosecution read and submit under oath the charges brought against the accused;

After having heard the accused declare that he has no objection to his case being dealt with summarily and pleading that he is not guilty of the charges brought against him;

After having heard testimony by Inspector Malcolm Sammut during the sitting held on the 6th May 2019¹ and after having considered the document - namely the Police Incident Report - submitted by Inspector Sammut exhibited at folios 37 to 39 of the records of the proceedings;

¹ Folio 35 and 36 of the records of the proceedings.

After having considered the sworn declarations by Anthony Camilleri and Darleen Luko exhibited by the Prosecution at folios 41 and 42 of the records of the proceedings;

After having heard Defence Counsel declare that the accused finds no objection to the submission of the sworn declarations by Anthony Camilleri and Darleen Luko and does not therefore insist on their appearing before the Court to confirm the withdrawal of their complaints against him *viva voce* and further does not object to the fact that the said sworn declarations are in the Maltese language and does insist on a translation of the same;

After having considered that during the sitting held on the 22nd October 2019 the Prosecution declared that in view of the sworn declarations of Anthony Camilleri and Darleen Luko submitted during the sitting held on the 13th June 2019, the Prosecution has no further evidence to submit and after having heard the Defence declare, during the said sitting of the 22nd October 2019, that the accused choses not to testify in these proceedings and has no further evidence to submit;

After having considered all the records of the proceedings;

Considers:

The accused is being charged with having on the 1st January 2012 at about 6:00a.m., in Zarb Apartments situated in St. Georges Road, St. Paul's Bay: (i) caused grievous bodily harm on the person of Christian Anthony Camilleri, holder of Identity Card Number 21958(A), and on the person of Anthony Camilleri, holder of Identity Card Number 445851(M); (ii) caused slight bodily harm on the person of his wife Darlene Luko; and (3) insulted or threatened Darlene Luko. The accused declared that he is not guilty of the charges brought against.

During the sitting held on the 6th May 2019 the Prosecution brought forth as a witness Inspector Malcolm Sammut who at the time of the incident forming the merits of these proceedings was a Police Constable at the Qawra Police Station. During his testimony Inspector Sammut declared that: *on the 14th January 2012, I was instructed by my Sergeant at that time, PS 914 Evan Mifsud, to take the statement of a certain person Igor Luko. I can confirm that the statement that I took in the Police database system was updated by my PC Number which is PC1214 and I confirm that I did that update².* To further complement his testimony Inspector Sammut submitted the Police Incident Report pertinent to the incident forming the merits of these proceedings - Doc. "MS" at folios 37 and 38 of the records of the proceedings - and confirmed that the accused had filed the following report: *Igor Luko called at Qawra Police station and stated that after consulting his lawyer he was advised to report his version of events in said report. Igor Luko stated that it was New Years Day and he went to see his wife at the mentioned above flat [95, Zarb, Fl.3, St. George's Road, St. Paul's Bay] as he doesn't live there anymore. Igor stated that he went to visit his wife Darleen Luko. While Igor was at said apartments he waited in the common area for his wife as outside the apartment he noticed that her car was not parked. After some time his wife (Darleen Luko) came together with another guy (Christian Camilleri). They went into the flat and left the door open. Igor Luko came down the stairs and basically Igor punched Christian and then Igor started arguing with his wife. Christian went on the stairs and after 5 minutes*

² Folio 35 of the records of the proceedings.

he came down without a jacket and basically he wanted to continue fighting, attacking Igor verbally and physically such as swinging punches with his right fist and his wife was between himself and Christian. At that point the father of Christian, Anthony, came down the stairs in the company of his 2 sons in law and those two guys were trying to prevent that guy from punching him and Tony came towards Igor pushing Igor to the wall into the flat and he started the conversation and they didn't fight. Igor was asking what was going on, why his son (Christian) is in the flat and at that point his son rushed again into the flat and attacked him by trying to punch him and Christian started grabbing and pushing. Igor just wanted to leave and he just turned around and left. He also stated that during the argument Christian said that he is going to find Igor and kill him during the fight for several times³.

During the sitting held on the 13th June 2019, the Prosecution submitted two sworn declarations by Anthony Camilleri and Darleen Luko. In his declaration Anthony Camilleri under oath declared that: *ġejt infurmat li hemm proċeduri kriminali kontra Igor Luko, bil-karta ta' l-identità numru 54057A. Illi da parti tiegħi jien ma għandi l-ebda interess illi nipproċedi kontra l-istess Igor Luko u qiegħed nirtira kull rapport/proċedura legali/ġudizzjarja kontrih li hemm pendenti u/jew seta' kien hemm pendenti/instigata minni/mill-Pulizija Eżekuttiva a bażi ta' xi rapport jew dikjarazzjoni li jien stajt għamilt, u niddikjara li m'għandi l-ebda pretensjoni kontrih u ebda interess li niftaħ u/jew inkompli ebda tip ta' proċedura legali kontra l-istess Igor Luko fuq ebda bażi sa' llum. Illi inoltre fuq talba tal-Pulizija in konnessjoni ma' dan il-każ, pruvajt diversi drabi nagħmel kuntatt ma' ibni Christian Camilleri però ma rnexxilix nikkomunika miegħu għax tlift il-kuntatt miegħu, ma rnexxilix nirrintraċċjah u ma nafx fejn jinsab⁴.* In her declaration Darleen Luko under oath declared that: *ġejt infurmata li hemm proċeduri kriminali kontra Igor Luko bil-karta ta' l-identità 54057A. Illi da parti tiegħi jien ma għandi l-ebda interess illi nipproċedi kontra l-istess Igor Luko u qiegħda nirtira kull rapport/proċedura legali/ġudizzjarja kontrih li hemm pendenti u/jew seta' kien hemm pendenti/instigata minni/mill-Pulizija Eżekuttiva a bażi ta' xi rapport jew dikjarazzjoni li jien stajt għamilt, u niddikjara li m'għandi l-ebda pretensjoni kontrih u ebda interess li niftaħ u/jew inkompli ebda tip ta' proċedura legali kontra l-istess Igor Luko fuq ebda bażi sa' illum⁵.*

Following the submission of these sworn declarations - which were not objected to by the accused, even though they are in the Maltese language - the Prosecution declared that it has no further evidence to submit. The accused in turn declared that he will not testify in these proceedings and that he too has no further evidence to submit⁶.

Even though the Prosecution has submitted a sworn declaration by Anthony Camilleri wherein he expressly waives and withdraws his complaint against the accused and declares that he is not interested in pursuing further action against him, the Court cannot, in spite of said declaration, declare that the proceedings against the accused in so far as concerns **Anthony Camilleri** are waived and withdrawn.

The accused is being charged of having caused **grievous bodily harm** to Anthony Camilleri, an offence which in terms of the Law can be prosecuted without the need of a complaint by the injured party. In other words the proceedings against the accused in so

³ Folio 38 of the records of the proceedings.

⁴ Folio 41 of the records of the proceedings.

⁵ Folio 42 of the records of the proceedings.

⁶ Vide minutes of the sitting held on the 22nd October 2019, folio 44 of the records of the proceedings.

far as concerns Anthony Camilleri, and also Christian Anthony Camilleri, are proceedings instituted by the Police *ex officio*.

From Sections 214 *et seq.* of Chapter 9 of the Laws of Malta, as applicable at the time when the incident forming the merits of these proceedings occurred, that is 2012, it clearly results that the Police need a complaint from the injured party in order to proceed only in cases of **slight bodily harm**. In fact it is only Section 221 of Chapter 9 of the Laws of Malta which states that a complaint by the injured party is required for the Police to proceed. The said section of the Law, as applicable in 2012, provided that: *(1) A bodily harm which does not produce any of the effects referred to in the preceding articles of this sub-title, shall be deemed to be slight, and shall be punishable with imprisonment for a term not exceeding three months, or with a fine (multa). (2) Where the offence is committed by any of the means referred to in article 217, it shall be punishable with imprisonment for a term from two months to one year. (3) Where the effect, considered both physically and morally, is of small consequence to the injured party, the offender shall, on conviction, be liable to: (a) imprisonment for a term not exceeding three months or a fine (multa), if the offence is committed by any of the means referred to in article 217, or is committed on any of the persons mentioned in article 222(1)(a) and (b); (b) the punishments established for contraventions, in any other case. (4) **In the cases referred to in subarticles (1) and (3), proceedings may not be taken except on the complaint of the injured party, unless the offence is committed on any of the persons mentioned in article 222(1)(a) and (b)***⁷.

Further confirmation that criminal proceedings as the present ones are instituted by the Police *ex officio* results from Section 543 of Chapter 9 of the Laws of Malta which in 2012 provided that: *It shall be lawful for the Police to institute proceedings even without the complaint of the private party in any of the following cases: (a) in the case of crime for which the law does not expressly provide that the complaint of the private party is requisite; (b) in the case of any offence consisting in the carrying of prohibited weapons, or in the case of any offence against any law relating to fishing, vehicles or boats or to any art or trade; (c) in the case of any offence committed against a person who, by reason of physical or mental infirmity, is incapable of instituting criminal proceedings, even though such offence be one in respect of which, if committed against any other person, the complaint of the private party would be requisite; (d) in the case of any offence affecting public order or the community in general; (e) in the case of any offence involving domestic violence: Provided that for the purposes of this paragraph 'domestic violence' shall have the same meaning assigned to it by article 2 of the Domestic Violence Act. Provided further that it shall be lawful, after proceedings have been commenced before the Court in virtue of this article for an offence mentioned in this paragraph, for an alleged victim of an offence involving domestic violence to request the court to stay proceedings against the alleged perpetrator, and when such a request is made the Court may decide and direct the continuation of proceedings against the alleged perpetrator, giving particular consideration to the best interests of any minors involved, and shall cause such request and decision to be registered in the records of the case.*

From Section 545 of Chapter 9 of the Laws of Malta it transpires that proceedings which can be instituted on the complaint of the injured party can be withdrawn by the said injured party, and this only if the accused does not object to such withdrawal. The said

⁷ Emphasis by the Court.

provision of the law provides - and in 2012 provided - that: (1) *When proceedings cannot be instituted except on the complaint of the private party, the complainant may, at any time before final judgement is delivered, waive his complaint.* (2) *The party charged or accused may object to any such waiver, in which case the trial shall be proceeded with as if the complaint had not been waived.* (3) *If the complaint is waived after the opening of the trial and it appears that the complaint is frivolous or vexatious, or made with the object of extorting money or other effects, or of making any other gain, the court may, notwithstanding the waiver, proceed to deliver judgement, acquitting the person charged or accused and directing that proceedings be instituted against the complainant, in accordance with the provisions of article 528: Provided that if the complaint does not amount to any of the offences specified in the said article, it shall be lawful for the court to sentence the complainant to detention or to a fine (multa or ammenda), according to the gravity of the case.*

From all of the above it clearly transpires that proceedings against the accused in so far as concerns Anthony Camilleri cannot be withdrawn on the basis of the sworn declaration by the said Anthony Camilleri. Having said that the Court deems that it cannot find the accused guilty of the charges brought against him in so far as concerns Anthony Camilleri **and** Christian Camilleri, that is the first charge brought against the accused, since the Prosecution did not produce and put forth any evidence which proves beyond reasonable doubt that the accused is indeed guilty of the charge so brought against him.

As already observed, the Prosecution summoned only one witness in this case, that is Inspector Malcolm Sammut, since following the submissions of the declarations by Anthony Camilleri and Darleen Luko it declared that it had no further evidence to submit. The testimony by Inspector Sammut merely refers to the report lodged by Igor Lukol, and recorded by him, concerning the incident which occurred on the 1st January 2012. The report lodged by Igor Luko on the 14th January 2012 and recorded by Inspector Malcolm Sammut, at the time a Police Constable at the Qawra Police Station, cannot in any way be used as evidence against the accused since it is not and cannot be considered to be a statement given by him in terms of law and in any case he was not at any point in time during the lodging of his report cautioned or given the right to consult a lawyer both of which were rights which the accused had in terms of the Law as it stood in 2012. Barring the testimony of and documentation submitted by Inspector Sammut there is no other evidence in these proceedings which shows - least of all beyond reasonable doubt - that the accused indeed caused grievous bodily harm of Anthony Camilleri and/or Christian Anthony Camilleri. The latter individual, who for all it's worth didn't even waive his complaint against the accused, was never brought before the Court to testify in these proceedings.

In the light of the above the Court deems that it cannot find the accused guilty of the first charge brought against him and consequently must acquit him from the said charge.

In so far as concerns Darleen Luko and the effects of her sworn declaration, the situation is somewhat different.

Even though the accused is charged of having caused slight bodily harm to Darleen Luko and of having insulted and threatened her (the latter being a contravention in terms of Section 339(e) of Chapter 9 of the Laws of Malta) since Darleen Luko was at the time the accused's estranged wife, proceedings against him with reference to her were also

instituted by the Police *ex officio* and this in terms of Section 221(4), concerning the crime of slight bodily harm *inter alia* on any one of the spouses, and Section 543(e) of Chapter 9 of the Laws of Malta, concerning offences involving domestic violence as defined in Section 2 of the Domestic Violence Act⁸ that is: ‘domestic violence’ means any act of violence, even if only verbal, perpetrated by a household member upon another household member and includes any omission which causes physical or moral harm to the other; ‘household member’ includes (i) persons married or formerly married to each other; (ii) persons living in the same household as the offender or who had lived with the offender within a period of one year preceding the offence; (iii) persons whose marriage has been dissolved or declared null; (iv) parents and their children; (v) other adults sharing the household; (vi) persons who are, or have been, formally or informally engaged with a view to get married; (vii) persons who are related to each other either by consanguinity or affinity up to the third degree inclusively; (viii) persons having or having had a child in common; (ix) the child conceived but yet unborn of any one of the persons mentioned in paragraphs (i) to (viii), both inclusive.

In spite of the fact that the proceedings instituted against the accused with regard to Darleen Luko are proceedings instituted by the Police *ex officio*, in terms of the second proviso of Section 543(e) of Chapter 9 of the Laws of Malta Darleen Luko, as the injured party and alleged victim of domestic violence, has the right to request the stay of proceedings against the accused, a request effectively put forth by her in her sworn declaration, namely in para. 2 of the declaration where she states and declares: *Illi da parti tiegħi jien ma għandi l-ebda interess illi nipproċedi kontra l-istess Igor Luko u qegħda nirtira kull rapport/proċedura legali/ġiudizzjarja kontrih li hemm pendenti u/jew seta’ kien hemm pendenti/instigata minni/mill-Pulizija Eżekuttiva a bażi ta’ xi rapport jew dikjarazzjoni li jien stajt għamilt, u **niddikjara li m’għandi l-ebda pretensjoni kontrih u ebda interess li niftaħ u/jew inkompli ebda tip ta’ proċedura legali kontra l-istess Igor Luko fuq ebda bażi sa’ illum***⁹. In this case too however the stay of proceedings requested by Darleen Luko is not automatic but is dependent on the Court’s discretion since it (that is the Court) can still order the continuation of the proceedings against the accused giving particular consideration to the best interests of any minors involved.

In the present case however the Court finds no reason on the basis of which it should or can order the continuation of the proceedings against the accused in so far as concerns Darleen Luko. Apart from the fact that in so far as concerns Darleen Luko too there is no evidence concerning the incident which allegedly occurred on the 1st January 2012, there is also no evidence concerning the relationship and state of affairs between Darleen Luko and the accused prior to or after the incident in question and there is no evidence as to whether there are any minors involved. In view of such lack of evidence concerning these particular issues, the Court reiterates that there no reason why it should ignore Darleen Luko’s request for the stay proceedings against the accused and instead order the continuation of the proceedings against him.

In the light of the stay of proceedings against the accused requested by Darleen Luko, which request is being upheld by the Court, the Court abstains from considering the second and third charges brought against the accused.

⁸ Which Act has been repealed in terms of Act XIII of 2018.

⁹ Emphasis and underlining by the Court.

For all the above-mentioned reasons the Court does not find the accused guilty of the first charge brought against him and acquits him from the same and in the light of the sworn declaration by Darleen Luko, wherein she declares that she waives and withdraws her complaint against the accused and that she has no interest in pursuing further action against him and further requests the stay of proceedings against him, the Court orders the stay of proceedings against the accused and consequently abstains from taking cognisance of the second and third charges brought against him.

MAGISTRATE

DEPUTY REGISTRAR