



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

MAGISTRATE DR MARSE-ANN FARRUGIA LL.D.

Sitting held today Wednesday, 6th January 2021

**The Police
(Inspector Godwin Scerri)**

vs

**Giorgi Kvinikazde also known as Giorgi
Gvaladze**

The Court:

1. Having seen charges brought against:

Giorgi Kvinikadze also known as Giorgi Gvaladze of 34 years, son of Reso and Raina nee Kiradze, born in Kutaisi Georgia, on the 21st March 1986, without a fixed address, holder of Georgian Identification card document number 181B93206

Charged with having, on the 17th October 2020 at around 05:00hrs;

1. Committed the theft of cash and alcohol bottles from 'Nine Lives' Restaurant situated in St. Paul's Bay, with such theft aggravated by means, value and time to the detriment

of SRGN Company Limited, in breach of Articles 263, 267, and 270 of Chapter 9 of the Laws of Malta.

2. and also of having on the same place, date, time and circumstances committed voluntary damages to the detriment of SRGN Company Ltd, in breach of Article 325(1)(b) of Chapter 9 of the Laws of Malta

The Court was requested that, if found guilty, considers the accused of being a recidivist in breach of Articles 49, 50 of Chapter 9 of the Laws of Malta.

The Court was requested that if the accused is found guilty, condemns the same to the payment, wholly or in part, to the registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee in terms of Article 533 of Chapter 9 of the Laws of Malta.

2. Having seen the consent of the Attorney General in terms of Article 370(4) of the Criminal Code for this case to be dealt with summarily and having heard the defendant declare that he has no objection that his case be dealt with in this manner.
3. Having heard the evidence and saw all the records of the case and the documents exhibited.
4. Having seen that in the sitting of the 25th November 2020, the defendant registered a guilty plea to the charges brought against him.
5. The Court warned the defendant of the serious consequences of his registering a guilty plea and in particular that the maximum punishment for the offences preferred against him is imprisonment for a period of 5 years and to refund the injured party the amount of €1331 which were sustained as damages.
6. The Court suspended the sitting so that the defendant could consult with his defence lawyer to see whether he wanted to retract his guilty plea.

7. When the case was called again, the Court asked the defendant whether he had enough time to consult his defense lawyer and he answered in the affirmative and when asked by the Court whether he was going to confirm his guilty plea, the defendant replied in the affirmative.

8. The Court heard the submissions by the parties regarding the punishment.

The Court considered that:

9. From the evidence submitted, as well as from the guilty plea registered by the defendant himself, the defendant is guilty of all the charges brought against him.

10. As regards punishment, the Court took into account the fact that the defendant registered a guilty plea at a very early stage of the proceedings, and hence he did not waste time and money of the Police and of the Court.

11. From the evidence, it does not result how long the defendant has been living in Malta, but from his conviction sheet, it results that he has one conviction in 2016 for having falsified Georgian document for purposes of immigration.

12. Although after registering a guilty plea, the defendant said he was going to pay the amount due by him to the injured party, in the following sitting the defendant declared that right now he does not have this amount of money to pay all at once.

13. For the purpose of determining punishment, the second charge of voluntary damage is to be considered as designed for the commission of the graver offence of qualified theft, contemplated in the first charge.

14. During oral submissions, the Prosecuting Officer submitted that the defendant should be punished with a suspended sentence of imprisonment, since there is the intention to deport

him, after these proceedings are terminated. However, once the defendant has been found guilty of being a recidivist, the Court cannot condemn him to such a suspended sentence, because this is prohibited by Article 28A(7)(b) of the Criminal Code.

15. According to Article 278 of the Criminal Code, the punishment for theft aggravated by “means” only is imprisonment from a term of five (5) months to three (3) years. Where the theft, besides being accompanied with the aggravating circumstance of "means", is also accompanied with two or more of the other aggravating circumstances, with the exception of that of "violence", the said punishment shall be increased by one degree and shall not be awarded in its minimum.

16. Moreover, the defendant has been found guilty of being a recidivist and hence the punishment should be increased by another one degree, in terms of Article 50 of the Criminal Code.

17. Hence the defendant is liable to a punishment for a term of nine (9) months to five (5) years, which punishment cannot be given in its minimum. In terms of Article 20 of the Criminal Code, when the law expressly provides that a punishment shall not be awarded in its minimum, the punishment to be awarded shall always include at least one-third of the difference between the minimum and the maximum.

18. Hence the minimum punishment which can be awarded for the charges of which the defendant has been found guilty is 17 months imprisonment.

19. Considering all the circumstances of the case, the Court is of the opinion that the minimum punishment of 17 months imprisonment is sufficient punishment, apart obviously from being condemned to refund the injured party the damages suffered.

Conclusion

20. In view of the abovementioned reasons, the Court:

1. after seeing Articles 261(b), (c), (f), 263, 267, 270, 325(1)(b), 49 and 50 of Chapter 9 of the Laws of Malta finds the defendant guilty of the charges preferred against him and condemns him to seventeen (17) months imprisonment;
2. Moreover, in terms of Article 15A of Chapter 9 of the Laws of Malta, and in terms of Article 24 of Chapter 466 of the Laws of Malta, made applicable to these proceedings by Article 532A of Chapter 9 of the Laws of Malta condemns the guilty person to pay the amount of one thousand three hundred and thirty one Euro (€1331) to SRGN Company Limited, as compensation for the damages suffered as a result of the criminal offences committed by the guilty person.

This order shall constitute an executive title for all intents and purposes of the Code of Organisation and Civil Procedure.

Magistrate

Doreen Pickard
Deputy Registrar