

**In the Court of Magistrates (Malta)
As a Court of Criminal Judicature**

Magistrate Dr. Claire L. Stafrace Zammit B.A. LL.D.

The Police

[Inspector Roderick Agius]

vs

Aleksandar Pendarovski

Compilation number: 106/19

Today, 26th July 2021

The Court;

Having seen the accusations brought against Aleksandar Pendarovski that on the 15th February 2019 at about 20:15hrs at Saint Joseph Band Club Haz-Zebbug and in these Islands, Aleksandar Pendarovski had:

1. Uttered insults and/or threats towards Nicola Bonnici (Art 339(1)(e) Chapter 9 of the Laws of Malta);
2. At the same date, time, place and circumstances, without the intent to kill or to put the life in manifest jeopardy, caused slight bodily harm on the person of his partner Nicola Bonnici (Art. 221(1) 222(1)(a) Chapter 9 of the Laws of Malta).

The Court was requested to provide for the safety of Nicola Bonnici according to article 383 Chapter 9 of the Laws of Malta and for the purpose of protecting the injured person or other individuals from any form of violence, to issue a protection order against the accused under article 412C Chapter 9 of the Laws of Malta.

Having seen that the accused pleaded not guilty to the accusations brought against him.

Having seen the accused's police conduct which is clean.

Having seen the note of the Attorney General dated fifteenth (15th) day of June of the year two thousand and twenty (2020) whereby the accused is requested to be found guilty under the following articles:

1. Articles 17, 31 and 533 of the Criminal Code;
2. Articles 339(1)(e) of the Criminal Code;
3. Articles 214, 215, 221(1) and 222(1)(a) of the Criminal Code;
4. Articles 383, 384, 385 and 412C of the Criminal Code.

Having seen that the accused did not have any objection for these proceedings to be tried summarily after the articles of the Law were read out to him.

Having considered:

That the **accused Aleksander Pendarovski** in his statement said that **Nicola Bonnici** is his fiancée and that he has known her for the past two years. He explained that they argued because she was drunk. He told her to stop drinking but he later found her at a bar. He said that he pulled her from her hand to take her home and at that point she took off her top and started punching him and thus he grabbed her from her hair. The Police calmed the situation. The accused said that he didn't want to press charges against **Nicola Bonnici**.

That the victim **Nicola Bonnici** stated that she was at St. Philip's Bar in Zebbug in February 2019 when the accused came from behind

her and grabbed her hair without uttering one word. The accused, whom she recognized in Court, was her partner for two and a half years. When the Police came the accused was still there. She said this wasn't the first time he was abusive. The victim said that she had a cut under her left breast. Under cross-examination she explained that she arrived at the bar at about quarter to six in the evening and that she stayed there for just fifteen minutes. She confirmed that she lived on and off with the accused but she denied having agreed to meet the accused on the date of incident at the bar in question. The victim confirmed that the accused did not insult her on the day. She said that when the Police arrived she was near the Church in the piazza in her bra since the accused took her top off.

That **Marilyn Agius** from Agenzija Appogg stated that she conducted a risk assessment on the victim Nicola Bonnici on the 15th February. She added that the victim: "*had a smell of alcohol, she was confused, she was very agitated as well and was in a rush to complete the assessment to leave.*" The witness said that the assessment resulted in a score of 24 which is considered high risk.

That **Inspector Roderick Agius** declared that he was informed at about 8:15 at night of a domestic violence case near the Zebbug piazza. He said that the victim and the accused are well known to the regional Police. He added that the victim sustained injuries and produced a medical certificate wherein the injuries were classified as slight. He explained that he ordered a risk assessment to be carried out on the accused too but since he didn't file a report an assessment couldn't be carried out. The Inspector added that Nicola Bonnici has a past of alcohol and drug abuse as well as a mental condition. He added that he believed that two risk assessments should have been carried out (one on Nicola Bonnici and one on the accused) since he knows Nicola Bonnici's past and that she used to be aggressive.

That **Dr. Christopher Muscat** confirmed on oath the medical certificate which he issued and which is exhibited at folio 24 of these proceedings. He confirmed that Nicola Bonnici had an abrasion on the right and one on the left elbow. He classified the injuries as being slight in nature.

That the accused **Aleksander Pendarovski** testified that he went to Nicola Bonnici's house and found her drunk. They were in a relationship at the time and he was happy but he added that she started drinking and taking drugs again. He stated that on the day Nicola stopped him from leaving her house so that he gives her money to continue drinking. In the evening of the same day, after work, the accused went back to her house and again she asked for money. He left but she stopped him with a broom and broke his chain. He managed to leave and Nicola went to a bar in Zebbug to continue drinking. She called him from there and started threatening him. She was angry at him that day cause he didn't give her money. He explained that he refused to give her money so that she doesn't spend it on drinks. He stated that he knew at which bar she would be and he went to collect the key to his apartment. It was at that point that he took the key and she tried to punch him. He added that she wanted to fight since she was drunk, "*she is like that*". He said that when the Police came he was defending himself and got confused at how the system works. When asked about the injuries the victim is alleging she sustained the accused said that she suffered injuries in the Police station. He said that when she punched him he controlled her. He admitted to having pulled her

hair a bit after she had already punched him. He said that he grabbed her hair to prevent her from punching him. He said that he had small bruises but nothing big and thus he opted not to go to the doctor.

That the Court noted that in the sitting of the 28th June 2021 **Inspector Roderick Agius** declared that the parte civile Nicola Bonnici had suffered from mental issues during the period that he was stationed in District 2 which can be confirmed by other cases related to the parte civile, however he couldn't say whether Nicola Bonnici at the time and date of the alleged incident was suffering from any mental issues.

Considers:

That as the defence correctly pointed out during its oral submissions, no evidence whatsoever was produced by the Prosecution that could uphold the first accusation brought against the accused, that being that the accused uttered insults and/or threats towards the victim, Nicola Bonnici.

That not only no evidence was brought forth to this effect, also, the victim herself under oath stated that the accused did not utter a single word. Moreover no other witnesses were produced by the Prosecution from the bar who could have possibly shed some light as to whether the accused really insulted or threatened Nicola Bonnici. The only other witnesses produced consisted of social workers who were not present at the time of incident but rather were on site afterwards to speak with the victim.

That in view of the lack of evidence produced the Court cannot find guilt with regard to the first accusation.

That the second accusation speaks of slight bodily harm. A clear conflict emerges between the testimony of the victim herself, who stated that the accused grabbed her from her hair and that she suffered a cut under her left breast, and the medical certificate which was confirmed on oath by Dr. Christopher Muscat who examined the victim right after the incident. Said certificate speaks of abrasions on the elbows of the victim. That this conflict obviously leaves much room for doubt. This doubt was not cleared throughout the course of the proceedings. As a matter of fact the

Prosecution did not produce any eye witnesses who happened to be at the bar and who could have testified as to what really happened that night between the accused and the victim. The Court finds it hard to believe that there weren't any eye witnesses considering that the incident happened in a public place, a bar to be exact.

That the other witnesses produced by the Prosecution, consisting of social workers, were not present during the incident and thus their testimony is only tantamount to *detto del detto*. That moreover the accused in his testimony states that it was Nicola Bonnici who punched him and that he grabbed her by the hair to prevent her from punching him further. He denied causing any abrasions to the victim.

That in the light of the victim's testimony being in conflict with a medical certificate and in conflict with the accused's version of events, the Court feels that the victim's testimony isn't a credible one. That the Court cannot rely on a testimony that isn't credible and seeing that the proceedings lack any form of corroborating evidence the Court certainly cannot find guilt on the second charge.

That as the author Manzini upheld, “*onus probandi incumbit qui asserti*” and therefore it is up the Prosecution to prove beyond a reasonable doubt that the accused is guilty of the charges brought against him, however upon examining the acts of the case the Court considers that no evidence was produced which could lead to the conviction of the accused.

Therefore for the above mentioned reasons the Court acquits the accused Aleksander Pendarovski of all charges brought against him.

**Ft./Dr Claire L. Stafrace Zammit B.A. LL.D.
Magistrate**

**Benjamina Mifsud
Deputy Registrar**