

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 Melvyn Camilleri]

vs

Martyn Paul Underwood

Case. No: 221/2019

Today, 18th October 2021

The Court;

Having seen the charges against the accused Martyn Paul Underwood, holder of British Passaport number 557795742 and

accused him of having in Birzebbuga and/or other places in Malta on 6th April 2019 and in the preceding days:

1. Caused grievous injuries on the person of her partner Kay Layla Johnston Power, a person with whom you share the same house;
2. Caused another person, cioe Kay Layla Johnston Power, a person with whom you shared the same house, to fear that violence will be used against her or her property or against the person or property of her ascendants or descendants;
3. Pursued a course of conduct which amounted to harassment against Kay Layla Johnston Power or pursued a course of conduct which you ought to know amounts to harassment;
4. Failed to honour any one of the conditions of the Protection Order issued in favour of Kay Layla Johnston Power by a Court decree as per Magistrate Dr. J. Mifsud dated 25th January 2019;
5. Committed a crime in an operative period of a Probation Order under which you were discharged by a sentence of the

Court of Magistrates (Malta) presided by Dr. J. Mifsud and dated 25th January 2019;

The Court was requested to issue a protection order in favour of Kay Layla Johnston Power in terms of Article 412 (C) of Chapter 9 of the Laws of Malta.

The Court was further requested to provide for the security of Kay Layla Johnston Power in terms of Article 383 et sequitur of Chapter 9 of the Laws of Malta.

Having seen the examination of the accused whereby he replied not guilty for the charges brought against him;

Having seen the criminal record of the accused which was clean;

Having seen the note of the Attorney General dated 13th May 2021 wherein the articles of the law were listed which are:-

- a) Articles 214, 215, 216, 222(1)(a) with reference to article 202(h)(v) of Chapter 9 of the Laws of Malta;

- b) Articles 251B(1)(2)(3)(a)(b) as it was prior to the amendments introduced by Act No. III of 2020 and Act No. II of 2021; 251C; 251H(a)(f); 251HA with reference to article 202(h)(v) and 251I of Chapter 9 of the Laws of Malta;
- c) Article 251A(1)(a)(b)(2)(3)(4) with reference to article 222(1)(a) and article 202(h); 251C; 251H(a)(f); 251HA with reference to article 202(h)(v) and 251(l) of Chapter 9 of the Laws of Malta;
- d) Article 412C(1)(2)(3)(a)(b)(c)(d)(e)(f)(4)(5)(6)(7)(8)(a)(b)(c)(9)(10)(11)(12) of Chapter 9 of the Laws of Malta;
- e) Articles 23(1)(a)(2)(4) of Chapter 446 of the Laws of Malta;
- f) Articles 17; 31; 382A; 383; 384; 385; 386; 412C; 412D; 532A; 532B; and 533 of Chapter 9 of the Laws of Malta;

And wherein after these articles were read out the accused Martyn Paul Underwood did not have any objection for the said proceedings to proceed and to be decided by this Court;

Having heard witnesses namely PS 816 Sean Vassallo who was the officer taking the report of the alleged victim and where he said that Kay Layla Johnston Power went to the police station stating that she had an argument with her partner Martyn Paul Underwood which they found a few metres away from the said police station where he was arrested. He confirmed that both the accused and the victim had visible injuries. The witness said that she had injuries on the face and missing teeth and the accused had a scar on his face and he was bitten on his hand. He confirmed that this was not the first incident between the two parties. He confirmed that proceedings were taken against the two parties.

Heard also the aggrieved party Kay Layla Johnston Power after being given the caution not to testify so as not to incriminate herself she stated that on that day they went out and had a couple of drinks and then she went back to sleep because she had work later in the day. She said that when Martyn came back, he was drunk, and she told him that she did not want to be with him anymore. She said that Martyn would become abusive when drunk.

She stated also that after work she went to the Labour Club to have more beers at around 2:30 a.m. and she went back home at around

four in the morning (4:00 a.m.). It was here when the accused got violent, she said that he tried to strangle her, punched her in the face thereby knocking her teeth off and then at one point she went to the police station. On cross-examination the witness confirmed that the two used to have frequent arguments with Kay being very abusive but on other occasions they could have have a good night together.

Dr. Bernard Bezzina testified that he had seen the victim on the sixth (6th) of April 2019 and was referred to the Dental Department from the Health Centre whereby she had swollen lips and two missing teeth. No fractures to the gum were seen. She had previously also chronic gum disease which meant that the missing teeth came out easily and didn't need extra pressure to come off.

Dr Sarah Sant confirmed her medical certificate at fol. 9 of the proceedings and confirmed that the victim had swollen lips and front teeth missing and congenital eritimaie on the left eye and she referred her for ophthalmic assessment.

Finally Mr Justin Agius who was a court appointed dentist to examine Kay Layla Johnston Power; after various summoning by

dentist to alleged victim to examine her; proved futile, dentist finally examined Johnston Power months after the trauma and he confirmed that Power had a bad gum condition because she never looked after her teeth so the least trauma could have created a lot of trouble to her teeth. He confirmed that it could be the reason why she lost her two front teeth and she still had a scar on the inside of her lip which obviously he couldn't confirm if this was due to the alleged incident or was there before. He confirmed also that there was no damage to the bone.

Having heard evidence of accused Martyn Paul Underwood wherein he recounted that he and Kay moved to Malta in November 2019. He was having problems with his ex wife because he had left her for a woman twenty (20) years younger than her so she was not letting him see his children. He recalls that Kay found a job immediately, but he couldn't find a job, and this put a strain on their relationship. He eventually found a job in Safi so he asked Kay to find a place closer and so they moved to Qajjenza. He adds that due to the fact that his job contract got delayed until February 2020, so he became a little depressed but, in the meantime, he was working as a dishwasher with Kay in the same restaurant. So, he confided in Kay letting her know that he wanted to return them to

England, but she refused. She then became aggressive, tore their passports and held a knife against her neck. The incident ended up the accused with the knife in his foot. He recalls that after he took out the knife from his foot, Kay left the apartment and locked the door and came back two hours later telling him that she had filed a police report since he had spat on her after she threw the knife at him. He says that when the police came, he was arrested. For this he was given a three (3) year probation period but nothing was said in the proceedings about his foot.

The accused then says that after this incident he went to live on his own as he had started working in Safi making good money but, in the meantime, Kay had been admitted to Mount Carmel hospital. When she came out, she went to him and asked him to move back together and that the stabbing incident was only an accident. The accused recounts that there were other incidents where Kay used the Protection Order given in those proceedings to get him into trouble with the police.

As for the day of the incident he says that they woke up, made breakfast and then went to have a couple of beers at Fisherman's Nest in Birzebugia. They returned home at around 15:00 because

she had to go to work that evening so she could rest. He went out again and when he returned back home she was eating and started arguing and punched him in the chest so he went out again until she left for work until he was woken up by her when she returned home from work because he was still fully clothed. He recounts that Kay started hitting him and she also hit him on the head with a broken glass and bit him and obviously he tried to defend himself hence her injuries. He says that after he went out until the police found him.

Having considered:

That these proceedings were characterised by two versions of events which were diametrically opposite in nature one of the victim stating that the accused was drunk and that he was verbally and physically abusive towards her after an argument, and the other one of the accused stating that she provoked the argument and the injuries sustained by her were due to her aggressiveness so much so that even the accused sustained injuries as a result of this incident.

That in these circumstances where there are two conflicting version of events regard must be taken to the credibility of the witnesses brought forward.

Having considered that most of the times even in previous cases which were brought up to the Court of Appeal it was retained that if there is conflicting evidence this must be taken into account for the benefit of the accused and thereby acquitting him. However, the court may examine the credibility of such witnesses as was decided by the Court of Appeal in the case Il-Pulizija vs Graham Charles Ducker decided on the 19th of May 1997 where it was held:

“It is true that conflicting evidence per se does not necessarily mean that whoever has to judge may not come to a conclusion of guilt. Whoever has to judge may, after consideration of all circumstances of the case, dismiss one version and accept as true the opposing one.”

In the case Il-Pulizija vs Joseph Thorne decided on the 9th July 2003 it was stated by the same Court that: –

“mhux kull konflitt fil-provi ghandu awtomatikament iwassal ghal-liberazzjoni tal-persuna akkuzata. Imma l-Qorti, f’kaz ta’ konflitt fil-provi, trid tevalwa l-provi skond il-kriterji enuncjati fl-artikolu 637 tal-Kodici Kriminali u tasal ghall-konkluzjoni dwar lil min trid temmen u f’hiex ser temmnu jew ma temmnux.”

In another case Amabile Cauchi vs Gianni Attard decided on the 21st May 1955, the Court of Appeal stated that:

“biex tezamina l-kredibbilta` tax-xhud, il-Qorti ghandha tezamina d-dettalji - ezami li ghandu jsir dejjem, imma li jakkwista importanza akbar meta hemm zewg xhieda principjanti, wahda tghid abjad u l-ohra tghid iswed. U fost il-kriterji tal-kredibbilta` hemm dak tad-deportament tax-xhud fl-isbarra tax-xhieda, u dak tal-konsistenza tax-xhieda mal-materjal l-iehor li jkollha quddiemha l-Qorti.”

In these proceedings the accused has always been consistent in his version of events, he has always stated that the alleged victim provoked the incident and that she was making it impossible for

him to live with her. It also resulted that exactly after the incident, both had a strong smell of alcohol and both had sustained injuries. It also resulted that after the incident the accused didn't elope or hide but was found near the sea and went voluntarily with the police for interrogation.

The evidence of the victim was in turn less credible, she stated that she was given a punch in her jaw and the accused tried to choke her but she didn't say in her testimony that she had previously bad teeth and that is the reason why they fell off. She tried to exaggerate the issue against the accused to make him look bad in the eyes of the court.

Furthermore, no injuries were found in the neck of Kay Layla Johnston Power thus excluding the fact that the accused tried to strangle her. This Court is more likely to believe the version of the accused that the Johnston Power provoked the incident and because of this collutation the two sustained injuries. This Court is of the opinion that this incident occurred between two parties that were previously together who both had their own problems in life and together they could not live in harmony.

As such as regards criminal responsibility as such this Court cannot be convinced beyond reasonable doubt that the accused intended to sustain those wounds that were present on the alleged victim after the incident.

On the above basis this Court cannot find the accused **Martyn Paul Underwood** guilty of the charges brought against him and consequently acquits him from all the charges.

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

Benjamina Mifsud
Deputy Registrar