



The Court of Magistrates (Malta)

As a Court of Court of Criminal Judicature

Magistrate Dr. Nadine Lia

B.A., LL.M(Kent), LL.D; Barrister at Law (England & Wales)

The Police

(Inspector Joanna Piscopo)

vs

Darko Radeski Kapsimalov

Today the 6th April 2022

The Court after having seen the charges issued against Darko Radeski Kapsimalov aged 42 years, born in Macedonia on the 07/10/1979, residing at 5, Sqaq il-Knisja, Zabbar and holder of ID card number 176969A

And charged him with having on the 2nd December 2020 between 20:30hrs and 23:30hrs in Zabbar and in the Maltese Islands

1. Whosoever, without intent to kill or to put the life of any person in manifest jeopardy, shall cause harm to the face of another person, caused Grievous bodily harm on the person of his wife Aleksandra

Radeska Kapsimalova, as medically examined by Dr Robert Patiniott M.D. (Med Reg: 1860).

2. Without a lawful order from the competent authorities arrested, detained and /or confined the person of your wife Aleksandra Radeska Kapsimalova against the will of the same.
3. Insulted, threatened or provoked his wife Aleksandra Radeska Kapsimalova not otherwise provided for in this Code, or provoked or carried his insult beyond the limit warranted by the provocation.

The Court was requested to issue a protection order, during the proceedings against Darko Radeski Kapsimalov to the benefit of Aleksandra Radeska Kapsimalova and her family as per Article 412C of Chapter 9 of the Laws of Malta.

The Court was requested to provide for the safety of Aleksandra Radeska Kapsimalova and her family or for the keeping of the public peace, in addition to, or in lieu of the punishment applicable to the offence, requires that Darko Radeski Kapsimalov to enter into his own recognizance in a sum of money fixed by the court as per article 383 et seq of Chapter 9 of the Laws of Malta.

The Court was requested to condemn Darko Radeski Kapsimalov to pay all expenses incurred by the appointment of experts during these procedures, and this in terms of Article 533 of Chapter 9 of the Laws of Malta.

Having seen that during the examination of the defendant in the sitting of the 13th January 2022 done in accordance with article 392(1) of the Criminal Code, the defendant pleaded not guilty to the charges against him.¹

Having seen that the accused subsequently registered a plea of guilt during the sitting of the 24th February 2022 and this after the Court repeatedly gave him the opportunity to seek legal advice from his legal counsel and after the Court was authorised to proceed nonetheless;²

In view of the defendant's declaration, the Court warned him in the most solemn manner of the consequences arising out of his guilty plea and granted him a reasonable time within which to retract such guilty plea should he so wish. After the Court granted this time to the accused, and after giving him the option to seek advice from his legal counsel, the accused reiterated that he is guilty as charged.

In view of this declaration, duly reiterated, the Court has no option but to find the accused guilty as charged in accordance with article 392A of Chapter 9 of the Laws of Malta and could proceed to deliver judgment against him.

Having seen that there exist no valid reasons in accordance with article 392A(3) of Chapter 9 of the Laws of Malta for the Court to doubt the validity of such plea of admission, or that the accused is not guilty of the crimes with which he is charged. Therefore, the crimes are sufficiently proven.

Having seen the records of the proceedings as well as the documents filed together with the charge sheet and the particular circumstances of this case;

¹ Page 19 act of proceedings

² Page 53 act of proceedings

Having heard submissions by the parties on the punishment;

Having seen the case was put off for judgment for today;

Having Considered

The facts of the case

This case concerns an incident that took place between the defendant and his former wife. In this incident the defendant and his wife fell out and it resulted in his wife sustaining injuries as a result of assault by the defendant.

Having considered

The punishment

The Court in its deliberations concerning the punishment took note of the following factors:

- The early admission of the defendant. Whilst the defendant did not register a plea of guilt in the first sitting, he did so in the second sitting and therefore nearly at the earliest opportunity in the proceedings. Therefore, the defendant should benefit from the fact that he registered an admission during the early course of proceedings and this shall serve in his favour in the circumstances of the cases. This is in line with the principles espoused in local case law that by registering an early plea, the Court is saved from entering into unnecessary expenses as well as administratively be able to expedite matters quicker. The Court here makes reference to the cases **Ir-Repubblika ta' Malta vs. Nicholas**

Azzopardi³, Il-Pulizija vs. Emmanuel Testa⁴, as well as legal scholars **ARCHBOLD Sentencing Guidelines 2021⁵** and **BLACKSTONE'S CRIMINAL PRACTICE⁶** on this point.

- The accused has a clean criminal record (applicable only to the period that he has been living in Malta) and it is the first time that he has been charged with offences of this nature.
- The defendant is regretful of his actions.
- The court heard the victim testify about the serious injuries she sustained to her face and head and the traumatising experience she endured when she was subjected to her husband's assault on her.
- The prosecution in its submissions to the Court on the appropriate penalty to be considered, reiterated that it was not insisting on a term of effective imprisonment as a punishment and that a non custodial alternative to imprisonment as well as a Treatment Order and a Restraining Order in favour of the victim would suffice.
- The defence in its final submissions concurred with the prosecution that a non custodial alternative to imprisonment would be the most effective form of punishment considering the circumstances of the case.

Whilst the Court is not bound to apply the proposed terms of punishment by the prosecution and defence, the Court notes that the suggested punishment is legally tenable.

³ Qorti Kriminali deciza 24 ta' Frar 1997

⁴ Qorti tal-Appell Kriminali , [7.7.2002]

⁵ Thomson Reuteurs, S-29

⁶ Blackstone Press Limited – 2006 edition

- Article 142(1) of the Criminal Justice Act 2003 in England establishes five principles that should be considered when calibrating the appropriate punishment:

(a) the punishment of offenders (b) the reduction of crime (including its reduction by deterrence) (c) the reform and rehabilitation of offenders (d) the protection of the public (e) the making of reparation by offenders to persons affected by their offence.

Decide

The Court, upon the unconditional guilty plea registered by the accused charged and after having seen articles 86, 221(3) and 339(1)(e) of the Criminal Code of Chapter 9 of the Laws of Malta, finds Darko Radeski Kapsimalov guilty as charged of all the charges against him and releases him on the condition that he does not commit another offence within the next eighteen (18) months in accordance to article 22(1) of Chapter 446.

The Court explained to the accused the consequences and obligations emanating from the sentence in plain and simple language in accordance to article 22(3) of Chapter 446 of the Laws of Malta.

Furthermore the Court after having seen article 412D of Chapter 9 of the Laws of Malta, places the defendant under a Treatment Order for eighteen (18) months to address his anger management and help him in tackling overcome certain difficulties he is presently passing through and this in accordance with the annexed decree which is considered to be an integral part of this judgment. The Court declares that it made this Treatment Order after having explained to the defendant in simple and plain English the obligations and responsibilities

emanating from this Order and any consequences that may arise if he does not abide by the condition of this Treatment Order.

Communication: Director Probation and Parole

Furthermore the Court after having seen article 382A of Chapter 9 of the Laws of Malta orders the issuance of a Restraining Order against the defendant in favour of the victim Aleksandra Radeska Kapsimalova for a period of two (2) years from the date of remission of this judgment which also gives affect to the provisions mentioned in article 412C(3)(6)(8)-(11) which shall apply *mutatis mutandis*.

Communication: Commissioner of Police.

Furthermore, in view of the fact that no experts were appointed in this case, the Court abstains from taking further cognisance of the prosecutions requests in terms of Article 533 of Chapter 9 of the Laws of Malta.

Finally, the Court, after having seen Article 392A of the Criminal Code orders that this judgment together with the records of the proceedings be transmitted to the Attorney General within six working days in terms of law.

Delivered today the 6th April 2022, at the Courts of Justice in Valletta, Malta.

**Dr. Nadine Lia
Magistrate**

Lorianne Spiteri
Deputy Registrar