



**Court of Magistrates (Malta)
As a Court of Criminal Inquiry**

Magistrate Dr. Doreen Clarke LL.D.

Today, 11th April 2022

**The Police
(Inspector Eman Hayman)**

vs

Omissis

Case Number: 146/2022

The Court

Having seen the charges against Omissis

Charged her with having on the 11th March 2022 between 10.00pm and 11.00pm in Saint Paul's Bay voluntarily inflicted grievous bodily harm on her partner Omissis 1 as certified as such by Dr. Enala Asajle Med Reg 4235 of the Saint James Hospital;

And also charged with having on the night between the 21st February 2022 and the 22nd February 2022 in San Pawl il-Bahar voluntarily inflicted slight bodily harm to her partner Omissis 1.

The Court was requested to issue a protection order, during court proceedings against Omissis for the protection of Omissis 1 and his family as per article 412C of Chapter 9 of the Laws of Malta.

The Court was also requested to provide for the safety of Omissis 1 and his family and for the keeping of the public peace, in addition to, or in lieu of the punishment applicable to the offence, by requiring that Omissis enter into her 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 also requested, in case of a conviction, besides the punishment according to law, to order Omissis to pay the costs incurred in the employment of experts, as provided in article 533 of Chapter of the Laws of Malta.

Having heard the evidence of the prosecution.

Having heard the submissions of the parties regarding whether there are sufficient grounds for the accused to be committed for trial on indictment.

Having seen the acts of the proceedings.

Having considered

In virtue of these present proceedings the accused is being charged with having caused her partner Omissis 1 bodily harm on two separate occasions; in one instance grievous bodily harm and in the other instance slight bodily harm.

In his testimony the prosecuting officer Inspector Eman Hayman explained to the Court that on the 11th March 2022 Omissis 1 went to the police Domestic Violence Unit to report that earlier his partner Omissis, the accused, came to his appartement and they had an argument regarding a mobile phone. Omissis 1 also told the police that some time before a protection order had been issued against him in favour of the accused. Omissis 1 told the police that in spite of the protection order he allowed the accused in his appartement but soon after an argument ensued in the course of which the accused hit him with a mobile phone and a decorative rock. Omissis 1 also told the police that inspite of the protection order the accused and Omissis 1 had communicated on a number of

occasions. Inspector Hayman explained that there was an other incident prior to that of the 10th and 11th March in which it was alleged that accused also hit Omissis 1 with a decorative rock however Omissis 1 had not filed a report at the time of the incident because of the protection order that was in force. Inspector Hayman spoke to the accused who explained the circumstances which led to the issuing of the protection order in her favor; she also explained that in spite of that protection order she used to meet Omissis 1 regularly and that she was now pregnant with his twins who were conceived while the protection order was in force. Inspector Hayman explained to the Court that there were no witnesses to these incidents.

Inspector Haymen presented:

- A medical certificate issued on examination of the accused in the early hours of the 11th March 2022. From this certificate it appears that Omissis 1 had a fresh lesion on his forehead and two older lesions: one on his left anterior shoulder and one on his right bicep.
- Two medical certificates issued on the 11th March 2022 on examination of the accused at the Floriana Health Centre and Mater Dei Hospital respectively following allegations of pain. She was certified as suffering from slight injuries.
- Photos of injuries sustained by Omissis 1 Omissis 1.
- The statement released by the accused.
- The Current Incident Report regarding this incident.

Omissis 1 Omissis 1 was called by the prosecution to give evidence but he opted to prevail himself of his right to silence and consequently did not give evidence.

In her statement the accused says that she was in a relationship with Omissis 1 Omissis 1 and that in October of 2021 she had lodged a complaint against him and that a protection order was issued against Omissis 1; the criminal proceedings relative to this complaint are still pending. She said that in spite of the protection order she has been living in St Paul's Bay with Omissis 1 in the last two months. Asked regarding the incident reported to have taken place in the night of the 10th and 11th March she denied having hit Omissis 1 with a mobile phone or a decorative rock. She also denied having caused him any injuries; having been shown photos of injuries sustained by Omissis 1 she claimed that those injuries were caused by Omissis 1 himself. Not only did she deny any wrong doing but she claimed that it was Omissis 1 who hit her. She did say that there was an other argument the week before regarding her mobile

phone but it was just a verbal argument. Asked about the incident reported to have taken place in the night between the 21st and 22nd February 2022 she claimed to have no knowledge of the injuries sustained by Omissis 1 in his bicep, and she said that she knew of the injury in his face because Omissis 1 had sent a photo to a common friend saying that he had injured himself and that friend sent the photo to accused.

Having considered

Before proceeding to the merits of the charges brought against the accused reference must be made to the date, as indicated in the writ of summons, in which the facts leading to the first charge allegedly took place.

All evidence adduced, including the testimonny given by the prosecuting officer and the Current Incident Report, shows that the facts leading to the first charge took place on the night between the 10th and 11th March 2022. In the Current Incident Report it is specified that the incident took place on the 10th March 2022 between 22:00hrs and 23:00hrs. The medical certificate issued after Omissis 1 Omissis 1 was examined at St James Hospital shows that he was examined on the 11th March 2022 at 00:56hrs which lends credibility to what is stated in the Current Incident Report.

The writ of summons however, in the first charge, refers to 11th March 2022 between 10.00pm and 11.00pm as the day and time when the offence with which the accused is being charged. This is clearly wrong since the facts took place on the 10th March 2022 between 10:00pm and 11:00pm.

Having considered further

From the summary of the evidence adduced it is clear that the only facts, relevant to the charges imputed to the accused, that have been shown are that Omissis 1 Omissis 1 sustained some injuries some days prior to the 11th March as well as an other injury during the night between the 10th and 11th March 2022. No evidence whatsoever has been brought as to how and in which circumstances and by whom those injuries were caused. The absence of any such evidence is no fault of the prosecution since the only two witnesses to the incident were Omissis 1 Omissis 1, who chose not to give evidence, and the accused. The accused was interrogated but in the course of her interrogation not only did he deny all the facts attributed to her by Omissis 1 in his report, but claimed that it was Omissis 1 who hit her.

Whilst it is true that in the acts there is the testimony of Inspector Hayman and there is also exhibited the Current Incident Report in which there is recorded the version of events given by the parties, those versions cannot be taken into consideration as to the truth of the facts therein alleged.

In the judgement given in the case *Repubblika ta' Malta vs Mario Azzopardi* on the 24th October 2011 the Criminal Court held that while there are exceptions to the rule regarding inadmissibility of hearsay evidence, Current Incident Reports can only constitute proof that a report was filed and that certain facts were reported to the police. The Court further held that such reports cannot be held as evidence as to the truth of the facts reported. In that judgement the Court referred to the case *Subramaniam vs Public Prosecutor* where it was stated that

'Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made.'

The Criminal Court went on to say that

Jekk wieħed jimxi mal-prinċipji ta' dan il-każ allura ċerti persuni li magħhom ikun tkellem l-allegat vittma jistgħu jkunu prodotti (per eżempju, psikologu, għalliem jew social worker, il-ġenituri jew qraba fil-qrib tal-allegat vittma). Dawn jistgħu jixhdu li l-allegat vittma tassew qal hekk. Tali xhieda hija biss prova li l-allegat vittma tassew qal hekk, iżda mhux li dak li qed jgħid l-allegat vittma huwa tassew minnu. Jekk wieħed jeżamina l-ewwel sentenza tal-artikolu 599 tal-Kap 12, wieħed jista' jikkonkludi li l-hearsay rule fil-Liġi tagħna mhix daqshekk assoluta. U fil-fatt hekk qalet il-Qorti Kostituzzjonali hija u tiddeċiedi il-każ 'Joseph Mary Vella et versus Il-Kummissarju tal-Pulizija' (13 ta' Jannar 1988) fejn il-Qorti kkonfermat digriet tal-Prim'Awla biex jithalla jixhed Prokuratur Legali li kien marbut bis-sigriet professjonali. Dan

thalla jixhed mingħajr ma kellu jikxef isem it-terza persuna li kienet qattlu biex il-fatti li fuqhom kellhom jixhed il-Prokuratur Legali. Peress li d-depożizzjoni, li tista' tkun hearsay, tista' tkun prova diretta li ntqal xi haġa, ma tistax tiġi eskluża fl-istadju tal-eċċezzjonijiet preliminari.

F'dak li huma deċiżjonijiet kriminali, il-Qorti tagħna issa ilhom sew isegwu il-prattika dwar il-hearsay rule. (Ara dwar dan il-punt: Ir-Repubblika versus Meinrad Calleja). Reċentement il-Qorti tal-Appell Kriminali diversament preseduta qalet hekk:'

*Fil-limit tal-użu li għamlet l-ewwel Qorti tal-okkorenza msemmija, ma hemm xejn irregolari. **Hu ben stabbilit li waqt li prova hearsay ma hix prova tal-kontenut ta' dak li jiġi rapportat li ntqal, hi prova li dak rapportat li ntqal fil-fatt intqal fiċ-ċirkostanzi, data, post u hin li ntqal u in kwantu tali hi ċirkostanza li mehuda ma' provi u ċirkostanza oħra tista' wkoll tikkontribwixxi għall-apprezzament li tagħmel il-Qorti¹.**' (1 t'April 2011 'Il-Pulizija versus Fabio preseduta mill-S.T.O. il-Prim Imħallef Dr Silvio Camilleri).*

By application of these principles to the case at hand,² it is clear that the Current Incident Report filed in the acts of the proceedings constitutes proof as to the fact that a report was filed by Omissis 1, and it also proves that Omissis 1 alleged certain facts. But that Current Incident Report can never be accepted as evidence of the facts thereby reported. For the same reasons neither can the testimony of Inspector Hayman³ be taken as evidence of the truth of the facts reported by Omissis 1.

In the absence of any other evidence it cannot be said that the prosecution proved, even on a level of *prima facie*, how and in which circumstances did Omissis 1 sustain the injuries; neither did it show that those injuries were caused by the accused.

Wherefore the Court, finds that there are not sufficient grounds for committing the accused for trial by indictment and is ordering her discharge.

¹ Emphasis of this Court

² Which were consistently upheld by our Courts; ref also *Il-Pulizija vs Janis Caruana* (decided on the 14th May 2012) and *Repubblika ta' Malta vs vs Angelus Vella* (decided on the 30th July 2015) both decided by the Court of Criminal Appeal.

³ And the testimony of the police officer who received the report had he been called to give evidence.

By application of article 401(3) of Chapter 9 of the Laws of Malta the court is ordering that the record of the inquiry, together with all the exhibits in the case are transmitted to the Attorney General.

DR. DOREEN CLARKE
MAGISTRAT