



## **Criminal Court of Appeal**

Hon. Judge Edwina Grima, LL.D

Appeal No: 453/2021

**The Police**

**(Insp. Trevor Micallef)**

**vs**

**Savo Bogicevic**

Today, the 10<sup>th</sup>. June, 2022

The Court,

Having seen the charges brought against appellant Savo Bogicevic, holder of Bosnian passport number B19543321, wherein he was accused in front of the Court of Magistrates (Malta) as a Court of Criminal Inquiry of having on the 22nd August 2018, between 4:00a.m. and 4:30a.m., in St George's Road, St Julians or in the vicinity:

1. Without the intent to kill or to put the life in manifest jeopardy, caused grievous bodily harm on the person of Paul Forderreuther.
2. On the same date, time, place and circumstances, provoked a tumult or an affray for the purpose of committing a homicide or a bodily harm to the detriment of Paul Forderreuther.

3. On the same date, time, place and circumstances, wilfully disturbed the public peace and order.
4. On the same date, time, place and circumstance, operated as a private guard agency or acted as a private guard or offered his services as such, without a licence in accordance with the provisions of Act 389.

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature dated the 30th of November 2021, wherein the same Court found the accused guilty of the first (but only in relation to article 216 of Chapter 9 of the Laws of Malta), second, third and fourth charges and condemned him, for the first, second and third accusation, to a two year term of imprisonment, which by the application of article 28A of Chapter 9 of the Laws of Malta, is to be suspended and shall not enter into effect for a term of four (4) years, and for the fourth accusation to a fine (multa) of four thousand Euros. Furthermore, the Court, after having seen article 383 of Chapter 9 of the Laws of Malta and in order to provide for the safety of Paul Forderreuther and to ensure the keeping of the public peace, placed the offender Savo Bogicevic to enter into his recognisance for the sum of two thousand Euros for a period of twelve months from the date of judgement.

Having seen the appeal application of appellant Savo Bogicevic, filed on the 17th of December 2021, wherein he requested this Court to:

1. Confirm that part of the judgment in which appellant was declared not guilty of the offence indicated in Article 218 of Chapter 9 of the Laws of Malta and consequently was acquitted from this offence;
2. Cancel and revoke that part of the judgment in which appellant was declared guilty of the first (but only in relation to Article 216 of Chapter 9 of the Laws of Malta), second, third and fourth charges and declare him not guilty and consequently acquit him according to law;
3. Alternatively, reform the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 30th of November 2021, in the names The Police vs Savo Bogicevic in that part relative to the penalty imposed on appellant and instead of the penalty applied, apply a penalty which is more equitable and just in the circumstances.

Having seen the grievances put forward by appellant.

Having seen all the records of the case.

Having seen the updated conduct sheet of appellant, exhibited by the prosecution as requested by this Court.

Having heard submissions by the parties.

### **Considers:**

That appellant laments in his appeal application that in its finding of guilt:

1. The Court of First Instance made an erroneous application of the law which renders the judgment given unsafe and unsatisfactory.
2. The facts of the case as proven could not lead to a conviction by the First Court of any of the charges levied against the appellant.
3. There is serious doubt as to the credibility of the evidence of the alleged victim and his friend Marcos Reguera Gomez.
4. The appellant's version of events is more credible than that of the alleged victim.
5. The punishment imposed on appellant is excessive.

These grievances as thus outlined all centre around the merits of the case and the evaluation of the same made by the First Court in the light of the charges brought forward against appellant, and so this Court will deal with them collectively. Consequently the Court has re-examined the acts of the proceedings and this in order to be in a position to examine whether the evaluation of the evidence found in the acts as carried out by the First Court was a reasonable and legally valid one<sup>1</sup>.

---

<sup>1</sup> Ara, fost ohrajn, l-Appelli Kriminali Superjuri: Ir-Repubblika ta' Malta v. Rida Salem Suleiman Shoaib, 15 ta' Jannar 2009; Ir-Repubblika ta' Malta v. Paul Hili, 19 ta' Gunju 2008; Ir-Repubblika ta' Malta v. Etienne Carter, 14 ta' Dicembru 2004 Ir-Repubblika ta' Malta v. Domenic Briffa, 16 ta' Ottubru 2003; Ir-Repubblika ta' Malta v. Godfrey Lopez u r-Repubblika ta' Malta v. Eleno sive Lino Bezzina 24 ta' April 2003, Ir-Repubblika ta' Malta v. Lawrence Ascjak sive Axiak 23 ta' Jannar 2003, Ir-Repubblika ta' Malta v. Mustafa Ali Larbed, 5 ta' Lulju 2002; Ir-Repubblika ta' Malta v. Thomas sive Tommy Baldacchino, 7 ta' Marzu 2000, Ir-Repubblika ta' Malta v. Ivan Gatt, 1 ta' Dicembru 1994; u Ir-Repubblika ta' Malta v. George Azzopardi, 14 ta' Frar 1989; u l-Appelli Kriminali Inferjuri: Il-Pulizija v. Andrew George Stone, 12 ta' Mejju 2004, Il-Pulizija v. Anthony Bartolo, 6 ta' Mejju 2004; Il-Pulizija v. Maurice Saliba, 30 ta' April 2004; Il-Pulizija v. Saviour Cutajar, 30 ta' Marzu 2004; Il-Pulizija v. Seifeddine Mohamed Marshan et, 21 ta' Ottubru 1996; Il-Pulizija v. Raymond Psaila et, 12 ta' Mejju 1994; Il-Pulizija v. Simon

## Considers:

That this case revolves around a beating that the alleged victim Paul Forderreuther received in Paceville on the 22nd of August 2018, from which he sustained grievous injuries. The same Paul Forderreuther had identified appellant as being the person who had punched him in the face, which resulted in the grievous injuries sustained by him, appellant consequently charged in Court as the perpetrator of the crime.

That appellant is contending that the evidence brought against him was sparse and that the alleged victim and his friend Marcus Gomez were not credible witnesses. The Court has examined this evidence from which it is evident that the alleged victim and his friend gave a diametrically opposed version of facts to the one given by appellant and his colleagues. The Court deems also that there were a number of gross discrepancies in the version of events as recounted by injured party and his friend Marcus Gomez. When the alleged victim was spoken to by the Police on the 23rd of August 2018, which version is recorded in the PIRS Report exhibited before the First Court, he stated as follows: -

**I was inside Footloose Club and a girl came up to me and slapped my face. I was shocked and as a reaction, I pushed her away and she went to the bouncer. Then the bouncer came and told me to leave and with no discussion we went outside. After leaving the club, a bouncer came running after me and hit me in the face. Then I was trying to walk away and some friends helped me. After this, another bouncer from the same club came and hit me using a metal stick.**

The alleged victim then changed his version when testifying in Court :-

**We were sent outside. We were dancing inside the club, we had a couple of drinks, then we were sent outside. And I walked outside with Marcus. We walked 15 metres approximately left side to go to another bar and then suddenly I got hit ... in my left eye.**

When asked why he had been sent out of the club, injured party replied: **"I was sent out of the club because someone accused me of harassing a woman"**. When asked

who this woman was, he replied: **“I don’t know. She never came up to me. She never said anything and I never saw her before”**.

That, this version given by injured party under oath before the First Court merely days after the incident, is diametrically opposed to that which he had given to the Police *a tempo vergine*. There, he had said that a girl had slapped him and that he had pushed her, however under oath, he completely removed this girl from the equation.

The Court also notes with interest that when injured party was spoken to by the Police on the 23rd of August 2018, which version is recorded in the PIRS Report exhibited in the acts, he **“identified that Bogicevic Savo was the bouncer who had told him to get out of the club and not the bouncer who punched him”**. Yet then two days later, injured party showed up at the Police Station with a photo of appellant downloaded from *Facebook* indicating that the latter was the person who had punched him, going on to identify appellant before the First Court as his aggressor. This Court fails to see how injured party closer to the incident, had completely ruled out appellant as being the one who had punched him, but days after, he then pinned the blame on appellant. It is also worth noting that injured party described his aggressor as a bald headed, well-built man wearing a black shirt, black pants and black shoes. What the Prosecution fails to prove, however, is whether on the same date, time and place, there were other bouncers present who could fit this same generic description, many bouncers presenting themselves wearing similar clothing, and having a similar stature.

The Court further notes that in his testimony injured party also states –

**I was sitting outside the club for 10 mins approximately putting ice on my face ... then we walked up the road and then there was another man approaching us from behind with a short metal bar and he was starting to fight with me as well.**

In his version to the Police, he had identified this man with the metal bar as another bouncer from the club yet under oath, he failed to make the same observation. With third parties seemingly involved in the assault, it would be difficult to reach the

conclusion, and this beyond a reasonable doubt, that the grievous injuries sustained by injured party had actually been inflicted by appellant. This doubt is further compounded by the testimony of PS 211 Michael Vella, wherein it transpires that the alleged victim had initially indicated that two different bouncers from the club had hit his face in succession, one of them hitting him in the face and the other one hitting him with a metal stick. Once more, this piece of information was not divulged before the First Court in victim's testimony.

That these discrepancies in victim's testimony put doubt as to the credibility of his version of events and especially with his identification of appellant as being the person who caused the grievous injuries suffered by him during the assault. Even the eye witness who was present with injured party, being his friend a certain Marcus Regeura Gomez, also gives conflicting versions. Upon being spoken to by the Police on the 22nd of August 2018, which version is recorded in the PIRS Report exhibited before the First Court, Gomez stated that on that day at around 4am, he was with his friend Paul at Footloose Club in Paceville when he noted his friend being pushed out of the club by a bouncer. He therefore followed him out of the club and when they had walked around 10 metres away, the same bouncer followed them and punched his friend, who fell to the ground. Gomez state that he intervened and the bouncer walked away. After that he tried to obtain some ice for his friend to place on his injuries and waited on the opposite side of Footloose Club until Paul recovered. He continues to state that as they started to walk towards the taxi booth intent on leaving the place to go back home, **"the same bouncer came with a metal bar and was followed with other guys which were wearing the same clothes all black"**, which men started once again punching his friend in the face.

The Court notes that there are some discrepancies in this version of events when compared to that tendered by the alleged victim. First of all, injured party had clearly stated that the man with the metal bar had not been appellant, but another bouncer whilst his friend Marcus Gomez states the opposite. Also injured party never mentioned a group of people attacking him, let alone punching him in the face, however his friend gives yet again a different version of the facts.

In his testimony before the First Court, Marcus Gomez adds more substance to his version of facts: -

**I went outside with him and we just like walked like outside the club down street like 20 metres and then the same bouncer came again running from the inside of the club and punched my friend from the back and then started kicking him.**

Both the victim and his friend Gomez however concur on one fact being that the aggression was unprovoked and that they did not retaliate to the assault. They also however agree that appellant was not initially aggressive towards the victim when he escorted him out of the club. They in fact describe his demeanour as “gentle” and “calm”, however giving no explanation then as to the aggressive behaviour demonstrated by appellant later after they had walked away from the Club resulting in an uncalled for beating for no apparent reason.

On the other hand, appellant presents a consistent version of facts. In his statements to the Police, given on the 23rd August 2018 and on the 25th August 2018, he stated as follows:-

**I was at my position at the club, near the DJ stand, a girl from the bar, Biljana, came to the manager to give him something, there was a guy who grabbed from her ass, she turned around, pushed him and he slapped her. I grabbed him and took him out, that is it, I did not punch him nothing, I just went to my position once again ... I only took 10 seconds to take him out and went back to my position.**

Appellant reiterated this same version of facts when he chose to testify in front of the First Court. He also explained that he had merely escorted the alleged victim to the front door of the club where other bouncers stationed there had taken over. Moreover, the fact that he had immediately returned back to his post was confirmed under oath by the young girl by the name of Biljana Keneski who had earlier been harassed by victim, thus putting into doubt victim’s version that appellant had run out after him and assaulted him on the street.

That, this Court also notes what is written down in the PIRS Report, forming part of the Acts of Proceedings, and this in relation to the related persons to this incident -

**While outside the club, Paul was punched by an unknown person in his left eye. Paul and Reguera left to walk up and after that, Marko Faruncuski, working as a bar tender and also the boyfriend of Biljana Keneski walked out of the club and meet both of complainants where the argument continued outside the club.**

This version of events which results from the police investigation gives a different picture to that presented by the parties in their testimonies since it is evident that third parties were involved in an argument that took place outside the Club and this following the harassment by injured party of a young girl inside the club.

In view of all the above, this Court does not deem that the First Court was correct in its declaration of guilt in respect of the first three charges brought against the appellant. There are far too many discrepancies and inconsistencies in the evidence brought forward by the Prosecution putting doubt first and foremost on the identification made by appellant of his aggressor and this since it is evident that third parties were involved in the scuffle that ensued as a result of the incident that had occurred inside the Club when injured party has molested a young girl. The First Court relies on what appellant stated that he had exited the club for a few seconds when he escorted injured party out of the club, thus admitting that he had accompanied injured party and his friend outside in which time he could have hit injured party as alleged. What the First Court fails to note however is that both injured party and his friend state that they had walked away for about ten to twenty metres from the bar when appellant allegedly followed them and hit injured party on the eye from behind. Also it is not clear whether the grievous injuries sustained by appellant were in actual fact a direct result of an aggression he suffered at the hands of appellant being the fist punch or else as a direct hit with a metal rod caused during an argument that ensued between injured party and third parties, Dr. Alistair Bezzina, being the medical officer who certified the injuries suffered fails to indicate whether the same were compatible with a blunt trauma from a fist punch or from the use of a metal rod. In fact the injuries sustained consists of a laceration in the left superior lid, the injury being therefore compatible with an injury with a sharp object or by impact injury from a blunt object or force, leading to infraorbital haematoma with emphysema and an underlying left orbital floor fracture and also a right lower



orbital wall fracture, such injuries therefore could only have been caused by a severe blunt trauma. There is doubt also to the number of bouncers involved in the altercation, there is also doubt as to the person who allegedly assaulted injured party with a metal rod, there is also doubt whether a third party being the boyfriend of the molested young lady by injured party, was also involved in the incident. Thus resulting in doubt as to who actually was responsible for the grievous injuries sustained by injured party in this assault. This is put into further doubt by the fact that the identification of his assailant by injured party is also unreliable. Therefore, the First Court's declaration of guilt *vis-a-vis* the accused in relation to the first three charges brought against him was unsafe and unsatisfactory and will hence be overturned.

**Considers:**

That, however this Court deems that from the evidence brought forward, the fourth charge brought against the appellant, that he operated as a private guard agency or acted as a private guard or offered his services as such, without a licence in accordance with the provisions of Chapter 389 of the Laws of Malta, was satisfactorily proven and that the First Court was correct in finding him guilty for the said charge.

**Consequently, for the above mentioned reasons, the Court partially upholds the appeal filed by appellant and reforms the judgment delivered by the First Court in the sense that it:**

- 1) Confirms the same where it found the appellant guilty of the 4th charge brought against him, and**
- 2) Revokes the said judgment where it found the appellant guilty of the 1st, 2nd and 3rd charges brought against him and subsequently acquits him of these charges.**
- 3) Consequently revokes the Protection Order issued by the First Court for the safety of Paul Forderreuther and to ensure the keeping of the public peace in terms of Article 383 of Chapter 9 of the Laws of Malta, and,**

- 4) Revokes the judgment where it imposed a fine (multa) of four thousand Euro in respect of the 4th charge brought against appellant, and consequently condemns appellant to a fine (multa) of five hundred Euro.

**Edwina Grima**

**Judge**