



FIL-QORTI TAL-MAGISTRATI (MALTA)
Bhala Qorti ta' Ġudikatura Kriminali

MAGISTRAT
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Kumpilazzjoni numru: 615/2018

Police
(Inspector Roderick Attard)
vs
Uchena Obi

Today, the 28th of June, 2022

The Court;

Having seen that:

Uchena Obi .33 years old, son of Ekwemme Obi and Elizabeth nee' Odruke, born in Olu Nigeria. on the 20th of. September 1984 residing at 64 St Andrews Flt 3, Nicolo Isouard street, Sliema. holder of identity card number: 37136A

Accused that on the 26th of Novernber 2017, at about seven o'clock in the morning (7am) in Birzebbugia:

1. Without the intent to kill or to put the life in manifest.jeopardy, caused grievous bodily harm on the person of John Chibuzour Bolenus. (Art 218 Chapter 9 of the Laws of Malta)
2. Accuse you further for having on the same date, time, place and circumstances attempted to use force against John Chibuzor Bolenus with intent to insult, annoy or hurt such person or others, unless the fact constitutes some other offence under anv other provision of this Code. (Article 339(1) (d)) of chapter 9 of the Law,s of Malta)

3. Accuse you further for having on the same date, time, place and circumstances willfully disturbed the public peace and order. (Art.338 (1) (dd) Chapter 9 of the Laws of Malta).
4. Accuse you further for having on the same date. time. place and circumstances uttered insults or threats not otherwise provided for in this Code, or being provoked, carried your insult beyond the limit warranty by the provocation. (Art.338(1) (e) Chapter 9 of the Laws of Malta.

Having seen the Prosecuting Officer, cioe Inspector Roderick Attard read out and confirmed on oath the charges in the Maltese language on 6th December 2018.

Having seen all the documents submitted in the proceedings; NPS Report, the accused's conviction sheet, current incident report dated 26th November, 2017, Declaration of the right for legal assistance, the accused's statement dated 28th November, 2017, DOK RA1, DOK SV1, DOK JM1, DOK DP1, DOK MS1, DOK MS2

Having heard the testimonies of: PS 816 Sean Vassallo, Inspector Roderick Attard, John Chubuzur Bolenus, Inspector Charlotte Curmi, PC 733 Leander Spiteri, PC 1193 Ryan Zammit, Dr. Mario Scerri, PC 459 Ibrahim Hussein, PS 794 Gilbert Lia, John Chibuzor Bolenus, Uchena Obi, Dr. Mario Scerri

The parties made their Submissions.

Considers:

This case arose from an argument regarding a pair of shoes. The accused and the injured party had known each other since 2006 and were friends. The accused Uchena Obi, had ordered a pair of shoes which John Bolenus bought for him on the internet. The shoe was not of the right size and the accused Obi wanted to return it, when Bolenus told him to throw it away. On the 26th of November 2017, Obi went to Bolenus' house in Birzebbuga

and went knocking on his door. When Bolenus opened the door a verbal argument arose regarding the shoe, Bolenus kept insisting that Obi should throw away the shoes, whilst Obi wanted to return the pair of shoes in exchange for the money he paid to Bolenus. Therefore, Obi left the shoes on Bolenus' doorstep and walked away towards the direction of the bus stop. Bolenus followed Obi asking him why he left the shoes on his doorstep, with his hand firmly inside his jacket, and as Obi recalls at one point whilst signalling the bus to come to a halt on the bus stop, Bolenus hit Obi with a pair of scissors gravely injuring him, and Obi tried to push him away by pushing his face away, resulting in a punch which left Bolenus without a molar, which has to be replaced. Obi called for the ambulance and whilst the police repaired on site, Obi identified his aggressor as Bolenus. The police confirmed that they saw blood on Obi and soon after they arrested Bolenus whilst Obi was taken to Mater Dei Hospital for further treatment. Whilst John Bolenus was being held in police custody he was complaining of pain and he was certified that he had suffered grievous injuries too.

In fact, the medico-legal expert Dr Mario Scerri examined on the order of this Court both John Bolenus and Uchena Obi, and it resulted that Bolenus has lost a molar which had to be removed due to the injuries sustained during this argument, and Obi has visible scars completely compatible to an injury made by a pair of scissors.

Having Considered;

That Article 223 of Chapter 9 of the Laws of Malta states the following,

“No offence is committed when a homicide or a bodily harm is ordered or permitted by law or by a lawful authority, or is imposed by actual necessity either in lawful self-defence or in the lawful defence of another person.”

For a plea of self defence to be successful it has to be shown that the danger that the accused was trying to react to a danger which was sudden, actual and absolute. According to Professor Sir Anthony Mamo: The accused must prove that the act was done by him to avoid an evil which could not otherwise be avoided. In other words, the danger must be sudden, actual and absolute. For if the danger was anticipated with certainty the act is not justifiable. In the second place the danger must be actual: if it had already passed, it may, at best amount to provocation or, at worst, to cold-blooded revenge, and not to legitimate defence; if it was merely apprehended, then other steps might have been taken to avoid it. Thirdly, the danger threatened must be absolute, that is, such that, at the moment it could not be averted by other means.

It is of importance that case law is examined to see the requested elements at law regarding the plea of self-defence:

The elements of self-defence were explained in the judgement **Il-Pulizija (Spettur Roseanne Debattista) vs Tony Curmi et**, where the Court of Magistrates (Malta) as a Court of Criminal Judicature stated the following;

*“Illi kif inhuwa ben sapat, il-gustifikazzjoni għal-legittima difesa tirriżulta meta persuna tilqa’ b’ forza l-vjolenza jew aggressivita’ ta’ persuna oħra diretta lejha jew lejn terzi, kontra liema persuna hekk aggredita l-aġir tad-difensur imputat huwa dirett. Fil-legittima difesa trid tkun inħolqot sitwazzjoni ta’ perikolu, dannu, theddida u/jew minacċja tal-istess, bl-aġir tal-aggressur u mhux da parti tad-difensur, sitwazzjoni kkreata unikament mhux minn min jadotta dik it-tip ta’ difiża, iżda minn min qed juri jew jimmanifestaw dak il-perikolu jew theddid jew dannu attwali kif jiispjega **Antolisei** –*

“occorre in fine che l’ aggressione abbia creato per il diritto presso di mira un pericolo attuale.”

*Fil-**Manuale di Diritto Penale Generale** pg 261, insibu li*

“pericolo attuale e’ il pericolo presente.”

Jiġi rilevat li d-dritt għal-legittima difesa jitwieled u huwa konsegwenza naturali mid-dritt fundamentali ta' kull bniedem li jipproteġi l-illu minn xi aggressjoni jew dannu anke bl-użu tal-forza. Iżda l-liġi timponi ċerti kondizzjonijiet biex din l-eċċezzjoni tiġi milqgħuha. Cioe t-theddid ta' xi aggressjoni jew dannu jew perikolu jrid ikun ingust, gravi u inevitabbli. Id-difiza trid tkun saret biex jiġu evitati konsegwenzi li jekk jeffettwaw ruħhom jikkagunaw ħsara rreparabbli lid-difensur, jiġifieri ħsara jew offiża lil-ħajja, ġisem u/jew partijiet tal-ġisem tad-difensur. L-imputat difensur irid jipprova li dak li hu għamel, għamlu, stante li fl-istat psikoloġiku li kien jinsab fih f' dak il-mument, biex jevita xi perikoli li ma setgħux jiġu evitati b' mod ieħor. Jiġifieri l-perikolu għandu jkun attwali, istantaneu u assolut u ma jridx ikun xi perikolu antiċipat. Il-perikolu għandu jkun attwali, ta' dak il-ħin, u mhux xi theddida ta' perikolu li tkun saret ħinijiet qabel għax dan jista' jagħti lok għal provokazzjoni u mhux difesa legittima. Il-perikolu jrid ikun assolut, cioe li f' dak il-mument li kien qed iseħħ ma setax jiġi evitat b' xi mod ieħor. Iżda hawnhekk għandu jiġi applikat it-test oġġettiv kif diversi awturi u sentenzi tal-Qorti dejjem speċifikaw, u mhux biżżejjed li wieħed jgħid x' seta' għamel jew x' messu għamel jew x' messu għamel id-difensur (imputat) qabel ma ħa l-azzjoni in difesa bl-użu tal-forza.”

“Fil-fatt kif jgħid il-Professor Mamo fin-noti tiegħu:

“The danger against which the accused reacts should be viewed not necessarily as it was in truth and in fact, but rather as the accused saw it at the time.”

Wieħed għalhekk irid ipogġi l-illu minn xi fiċ-ċirkostanzi kif ħassu dak il-ħin u mument cioe imbeżza' u l-ħsieb tiegħu li ser jiġi aggreddi; [...]

[...][F]id-difesa legittima, huwa m' għandux jadotta metodi li huma in eċċess jew minaccja ta' perikolu. Iżda anke hawn [...] għandu wkoll jiġi kkunsidrat sew l-istat mentali tal-vittima tal-aggressjoni jew minaccja ta' perikolu, cioe l-imputat. Rinfaccjat b' perikolu serju u imminenti kif ħaseb hu f' dak il-mument, wieħed ma jistax jippretendi li kellu jzomm

il-kalma u fil-fatt il-ligi stess f' ċirkostanzi bħal dawn taċċetta miskalkolazzjonijiet u errors of judgement.”

Professor Mamo in his notes states,

“The accused must prove that the act was done by him to avoid an evil which could not otherwise be avoided. In other words, the danger must be sudden, actual and absolute.”

In the judgement **Ir-Repubblika ta' Malta vs Martina Galea**, the Court stated that

“... huwa appena necessarju jinghad li rekwizit indispensabbli għad-diriment tal-legittima difiza hija l-inevitabbilita', meta l-akkuzat “cannot escape though he would” bil-korollarju li ma nistghux nitkellmu dwar legittima difiza jekk l-akkuzat “would not escape though he could.”

The Court of Criminal Appeal (Inferior) has also spoken regarding the plea of self-defence, in fact, in the case **Il-Pulizija vs Salvu Psaila**, the court stated,

Il-gustifikazzjoni tal-legittima difiza timplika li:

- 1) *Id-deni li jigi repellit mill-agenti jkun ingust fil-kawza tiegħu u l-attakk ta' l-assalitur ikun ingust u illegittimu u għalkemm dan irid jigi rigwardat fis-sens intrinsiku u mill-impresjoni soggettiva li jircievi l-ujolentat eppure min b' l-imgieba u kontenju tiegħu, ikun kawza mmedjata qabel ma jinstab fil-perikolu ma jikkompetilux li jkollu l-impunita pjena jew shiha;*
- 2) *Id-deni jrid ikun attwali u prezenti filwaqt tar-reazzjoni; u fl-ahharnett li*
- 3) *Id-deni jkun inevitabbili l-ghaliex bla ma jkun hemm in-necessita` tad-difiza r-reazzjoni ta' min igib ' il quddiem il-“feci sed jure feci” ma jistax jghid li jkun ipprova lilegittimita` ta' l-att ' per se' antiguridiku tiegħu. Jinghad imbagħad li huwa accertat fid-Dottrina li d-deni minaccjat u l-perikolu sovrastanti jridu jkun ta' gravita u bejniethom (deni minn banda u perikolu minn naha l-oħra)... irid ikun hemm proporzjonalita...*

Lord Justice Widgery in his judgement “**R vs Julien**” stated the following:

“It is not ... the law that a person threatened must take to his heels and run in the dramatic way suggested by Mr. McHale; but what is necessary is that he should demonstrate by his actions that he does not want to fight. He must demonstrate that he is prepared to temporise and disengage and perhaps to make some physical withdrawal; and that that is necessary as a feature of the justification of self-defence is true, in our opinion, whether the charge is a homicide charge or something less serious”.

The accused *a tempo vergine* in his stated has given an explanation which was clear and succinct regarding the argument and what happened during the same argument, the same version which he has continued to confirm during his deposition on the witness stand, a deposition that he decided out of his own volition to convey. He stated that whilst he was being attacked by a pair of scissors by Bolenus, he punched, or hit or somewhat put his hand against the chin or face of of Bolenus to retaliate after he was being attacked and to push him away. And this happened because after he was hit by the scissors he fell on the floor.

This Court does not believe the version given by Bolenus in this case, that he in no way did not harm the accused and that he was the first one to be attacked by him. In fact, the police all saw the blood on Uchena Obi so he was being attacked, he recognised the aggressor *a tempo vergine* and apart from this the scar which Uchena Obi has and which the Court has seen, is completely compatible according to the medico-legal expert with an injury caused by a pair of scissors. Therefore, the version which Obi gave to this Court and which years prior he gave to the prosecution during his statement is completely corroborated by the facts and evidence produced in this case. The accused was not lying, and certainly he was not imagining that he was injured. It is understandable for this Court that the accused had to somehow defend himself whilst being attacked by Bolenus with a pair of

scissors, to try and push Bolenus away with some force, whilst he fell to the floor, a force that resulted in Bolenus losing a molar. The accused had to defend himself from getting further harmed, he suffered grievous injuries.

The accused Obi never did at any point contest the fact that he punched or pushed with force Bolenus with his hand upon his face to try to get away from the attack and therefore the court does not feel that even though Bolenus did suffer injuries in this argument, he was the one who was inflicting harm and pain upon the accused, and the accused is not the one who should be held legally responsible and penalised for trying to defend himself from an attack with a sharp object. The accused at the moment of the attack saw a dangerous situation and he had no other alternative other than to defend himself in the best possible way. The accused was not armed, it was Bolenus who was carrying the scissors, so the only thing that Obi could do to avoid getting harmed further was push away forcefully or punch Bolenus which he did.

This Court finds that the accused managed to prove that he behaved in this manner to defend himself from the attack of the injured party in this case, without the intention to inflict further harm upon Bolenus, but only as a way to try to get away from him, therefore, the court is upholding the plea of self defence according to Article 223 of Chapter 9 of the Laws of Malta. 2

Decide:

The Court after having seen Articles 214, 215, 216(1)(a)(ii)(iii)(b)(d)(2), 218(1)(a)(b)(2), 339 (1)(d), 338(d), 338(1)(e), 17, 19, 31, 382A, 383, 384, 384, 385, 386, 412C, 532A, 532B and 533 of Chapter 9 of the Laws of Malta does not find the accused guilty of all the charges brought against him and acquits him from them.

Dr. Caroline Farrugia Frendo

Magistrate

Maria Grech Cardona
Deputy Registrar