

**Court of Magistrates (Malta)**  
**As a Court of Criminal Judicature**  
**Magistrate Dr Claire L. Stafrace Zammit B.A., LL.D.**

**The Police**  
**(Inspector Paul Camilleri)**

**vs**

**Ali Abubakar**

**Case Number:91/19**

**Today, 30th of October 2023**

**The Court,**

**Seen the charge brought against the accused Ali Abubakar holder  
of residence permit 9000492A accused with:**

That on the 29th of October 2018 at around seven in the morning in Paola Square, Paola:

1. Without intention to kill or to put the life of any person in manifest jeopardy, caused grievous bodily harm on Jonathan Fidelis as certified by Dr. Krishe Mercieca ID. 142891M of the Paola Health Centre.

The was requested that in case of guilt, apply the requisits of articles 382A and 383 of chapter 9 of the laws of Malta

The Court was rquested to provided for the security of Jonathan Fidelis by applying the requisits of article 412C of Chapter 9 of the laws of Malta.

Having seen all documents presented;

Having heard all evidence and submissions of both parties;

Seen note of the Attorney General dated 6th January 2020 where the Articles of the Law under which guilt is sought are the following: –

(a) Articles 214, 215, 218 of Chapter 9 of the Laws of Malta;

(b) Articles 382A, 383, 384, 385, 386, 412C and 412D of Chapter 9 of the Laws of Malta;

(c) Articles 17, 31, 532A, 532B and 533 of Chapter 9 of the Laws of Malta.

Having heard that the accused acquiesced that this Court tries these proceedings summarily after reading out same Articles of the Law.

### Having Considered

That the alleged victim Jonathan Fidelis testified in Court that on the day of the alleged incident in the morning he had met the accused near the Paola bus stop and allegedly the accused started

uttering the words *“Is it not you? Is it not You? I find you. I find you”*. He says that the next thing he remembers is that the accused punched him on the face twice with a certain force. He says that then they started fighting and both fell on the floor. He says also that the accused hit the witness’ hand on a chair (most probably the chairs of the bus stop) and in that instance he caught sight of the owner of a bar opposite whereby he said that this person tried to rescue him but was soon caught up by a group of policemen who came to intervene. He says that when the police came, the accused fled the scene. He described his injuries in his arm saying that he had to go to hospital and had an operation. He described his only injuries in his right hand.

Under counter examination he confirmed that soon before the incident he was alone and not accompanied by anyone however he confirmed that both him and his roommate by the name of Aswana had an incident with the accused the month before and when he was questioned if the incident related to them taking drugs, he started being very evasive and did not give a reply on what the incident of September actually was.

The witness presented a document Dok. JF1 which represented a prescription for free medicinals of paracetamol and codeine for three (3) days.

Doctor Kristie Mercieca testified and confirmed that the alleged victim went to the Paola Health centre on the day of the incident where she examined him and found him to suffer from swelling of the surface of the right hand which were tender in touch but the patient was able to move all his fingers and there was also a fracture of the fourth metacarpal bone resulting from a X-Ray and so the nature of the injuries were deemed to be grievous. The witness exhibited a document which was marked as Dok. KM1.

Under counter-examination the doctor confirmed that the victim did not complain of any other injury apart from the hand and if he did, she would have certainly put it down. Also, she confirmed that the injuries in the hand were compatible with giving a punch.

Dr Isaac Balzan took the witness stand and confirmed that he issued a discharge summary of the alleged victim which confirmed the injuries described by the doctor before him and also stated that

the victim had to undergo a small procedure known as open reduction and internal fixation for the fracture. The witness exhibited a document which was marked as Dok. IB1.

The wife of the accused Roxanne Giordano took the witness stand after been given the caution that she can refuse to testify since she is the partner of the accused, but she decided nonetheless to testify. She stated that in the incident subject to these proceedings she was not present, but she could relate to the incident between the accused and the victim together with Aswana in September.

Sabrina Debattista testified that the accused was renting a property owned by herself and confirmed that she had terminated the lease agreement due to the fact that he was subletting the property to someone else, something which was not in the contract. She also testified that she was privy of the fight between the accused and someone else which she did not mention.

Dr Jesmond Cassar took the witness stand for the defence and whilst he presented the medical records of Ali Abubakar, he confirmed that on the next day of the incident the accused was

examined in the Cospicua Health Centre where he was found to be suffering from a swollen lower lip with a puncture wound in the lower inner aspect of the lip this being compatible with a hard blow and the puncture being by his own teeth when punched. The witness presented a document which was marked as Dok. JC1.

### Having Considered

From the outset this Court points out that the prosecution didn't manage to prove its case beyond reasonable doubt and this according to the judgment given by the Court of Appeal in the case Police vs Emad Masoud (dec 16/05/2019) wherein it was stated:

*“Illi jinkombi fuq il-prosekuzzjoni sabiex tressaq l-ahjar prova u sabiex tipprova l- kaz taghha fuq bazi ta' minghajr dubju dettat mir-raguni. Filwaqt li d-difiza ma ghandha bzonn tipprova xejn.*

*Dwar l-oneru ta' prova, kif ikkunsidrat fis-sentenza fl-ismijiet 'Il-Pulizija (Supretendent Ian Joseph Abdilla)(Spettur Kevin Borg) vs. Joseph Baldacchino Farah*

*Kirpalani Philip Micallef (Deciza mill-Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali nhar l-24 ta' Mejju, 2017 (Numru 809/2005) ghalkemm dwar mertu u imputazzjonijiet differenti minn dawk in kwistjoni:*

*Illi huwa l-oneru tal-Prosekuzzjoni li tressaq l-ahjar provi sabiex tikkonvinci lill-Qorti li l-imputazzjonijiet addebitati fil-konfront tal-imputati huma veri u dan ghaliex kif jghid il-Manzini fil-ktieb tieghu Diritto Penale (Vol. III, Kap. IV, pagna 234, Edizione 1890):*

*“Il così detto onero della prova, cioè il carico di fornire, spetta a chi accusa - onus probandi incumbit qui osservit”. Huwa principju baziku pprattikat mill-Qrati taghna fil-procediment kriminali li, biex l-imputati jigu ddikjarati hatja, l-imputazzjonijiet dedotti ghandhom jigu pruvati oltre kull dubju ragjonevoli, cioè oltre kull dubju dettat mir-raguni.*

*Hawnhekk il-Qorti taghmel riferenza ghas-sentenza moghtija mill-Qorti tal-Appell Kriminali fis-7 ta'*



*Settembru 1994 fl-ismijiet Il-Pulizija vs. Philip Zammit et u tghid pero' mhux kull icken dubju huwa bizzatejed sabiex persuna akkuzata tigi ddikjarata liberata, hemm bzonn li "dubju jkun dak dettat mir- raguni".*

*Fil-fatt fis-sentenza moghtija mill-Qorti tal-Appell Kriminali nhar il-5 ta' Dicembru 1997 flismijiet Il-Pulizija vs. Peter Ebejer, dik il- Qorti fakkret li l-grad ta' prova li trid tilhaq il-Prosekuzzjoni hu dak il-grad li ma jhalli ebda dubju dettat mir-raguni u mhux xi grad ta' prova li ma jhalli ebda ombra ta' dubju. Id-dubji ombra ma jistghux jitqiesu bhala dubji dettati mir-raguni. Fi kliem iehor, dak li l-Gudikant irid jasal ghalih hu, li wara li jqis ic-cirkostanzi u l-provi kollha, u b'applikazzjoni tal-bon sens tieghu, ikun moralment konvint minn dak il-fatt li trid tipprova l-Prosekuzzjoni. Fil-fatt dik il-Qorti ccitat l-ispjegazzjoni moghtija minn Lord Denning fil-kaz Miller vs. Minister of Pension - 1974 - 2 ALL ER 372 tal-espressjoni "proof beyond a reasonable doubt".*

*“Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence ‘of course it is possible but not in the least probable’ the case is proved beyond reasonable doubt, but nothing shall of that will suffice”.*

In that the prosecution failed to make a comprehensive investigation before actually proceeding to issuing charges against the accused whereby if they did so they would have realised that the accused also suffered injuries due to this incident, which injuries tallied with what was actually stated by him in his statement. It would have resulted that the accused was actually the one who suffered the blow to his face and not the alleged victim Jonathan Fidelis who in his testimony under oath testified that he had been punched twice by the accused apart from the hit in his right hand against the chair.

In that the testimony of the alleged victim was not corroborated by any evidence tendered primarily because no injuries to the face were ever notified and there is a strong probability that the injuries to his hand were due to the punch, he gave to the accused who suffered a blow to his lip.

Furthermore, from the testimony of Jonathan Fidelis, mention of a bar owner who apparently intervened in the argument was made but the prosecution failed to produce this person to testify about his involvement. Same with the police who went on site to stop the argument who according to the alleged victim they were a group of around four (4) policemen who when they arrived on site, the accused fled the scene. Nothing that vaguely corroborated his version of events of presented. On the contrary, the version of the accused was both corroborated by scientific facts and by other evidence such as the argument that happened between the two a month before.

Therefore, this Court cannot possibly entertain the prosecution's case and has to acquit the accused on want of evidence.

On the above basis this Court does not find the accused Ali Abubakar guilty of the charges brought against him as they were not proven beyond reasonable doubt and thereby acquits him.

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

**Magistrate**

**Benjamina Mifsud**

**Deputy Registrar**