



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

MAGISTRATE DR MARSE-ANN FARRUGIA LL.D.

Sitting held today, Monday, 11th December 2023

**The Police
(Inspector Ryan Vella)**

vs

Davinder Singh

The Court,

1. Having seen charges brought against Davinder Singh, 32 years old, son of Harbhajan and Jasvir nee' Kaur, born in Punjab, India on the 12th April 1990, without a fixed residential address and holder of an Indian Identity card number 3493 6977 1955

Charged with having committed several acts along with another person, during the night between the 18th of January 2023 and the 19th of January 2023 in Triq Sant'Artistarku, Saint Paul's Bay and /or around the Maltese Islands:

1. With the intent to commit a crime, manifested such intent by overt acts which were followed by the commencement of the execution of the crime, where the crime was not completed in consequence of some accidental cause independent of the will of the offender where if the offence had been executed, could have been theft

aggravated by the amount where the value does not exceed two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37), means and time to the detriment of Allan Curmi, and/or of other person/s and/or, other entities.

Articles 41, 42, 261(b)(c)(f), 263, 267, 270 and 278(3) of Chapter 9 of the Laws of Malta

2. Wilfully committed any spoil damage or injury to or upon any movable or immovable property which damage exceeds €250 but does not exceed €2,500 to the detriment of Allan Curmi and/or of other person/s and/or other entities.

Articles 42 and 325(1) of Chapter 9 of the Laws of Malta

Also with having during the night between the 22nd January 2023 and 23rd January 2023 in the shop named Paul's Arcade, Triq il-Kahli, Saint Paul's Bay and/or around the Maltese Islands;

3. Committed theft of Euro 1,700 in cash and 4 cigarette cartons with the value of Euro 220, which theft is aggravated by the amount where the value does not exceed two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37), means and time to the detriment of Victor Agius and/or other person/s and/or other entities.

Articles 261(b)(c)(f), 263, 267, 270 and 278(3) of the Chapter 9 of the Laws of Malta

4. Wilfully committed any spoil, damage or injury to or upon any movable or immovable property which damage exceeds €250 but does not exceed €2,500 to the detriment of Victor Agius and/or of other person/s and/or other entities.

Article 325(1)(b) of Chapter 9 of the Laws of Malta

Also with having on the 27th January 2023 and in the previous days and/or weeks in the locality of Saint Paul's Bay and/or around the Maltese islands:

5. Led an idle and vagrant life.

Article 338(w) of Chapter 9 of the Laws of Malta.

The Court was requested that in the case of guilt, in addition to the punishment in accordance to law, orders the accused to pay the costs, incurred in connection to the employment of any experts.

Article 533 of Chapter 9 of the Laws of Malta

2. Having seen the consent of the Attorney General in terms of Article 370(4) of the Criminal Code for this case to be dealt with summarily and having heard the defendant declare that he has no objection that his case be dealt with in this manner.
3. Having heard the evidence and having seen all the records of the case and the documents exhibited.
4. Having seen the notes of submissions of the Prosecution and of the defence.

The Facts

6. The facts which gave rise to these proceedings are in brief the following:
 - (i) On the 23rd. January 2023, at about ten past eight in the morning (8.10am), Victor Agius filed a report at the Qawra Police station that earlier that morning he had entered his retail shop named Paul's Arcade in Triq il-Kahli, Saint Paul's Bay, and found that all the cash was missing. From investigations done by the Police on site, it resulted that the thief used a tool to cut a circle in the glass of a window of the shop, to gain access to the shop. Next to the glass there was a piece of metal pipe with a chunk of cement at its end, and small pieces of glass on the cement, indicating that it was probably used to hit the glass. Victor Agius stated that the thief had stolen a total of one thousand and seven hundred Euro (€1,700) in cash and four (4) cartons of cigarettes which were worth to hundred and twenty Euro (€220). An inquiry *in genere* was opened on this theft.
 - (ii) Inspector Ryan Vella stated that from the CCTV footage one could see that the person who committed the theft was wearing a beige trousers, dark blue jacket with white and red stripes on the sleeve and white shoes. His face was not visible because he was wearing a hoodie.

- (iii) Four days later, on the 27th January 2023, in the morning, Victor Agius called the Qawra Police Station and informed the police that he had just met a person wearing the same clothes as the person who committed the theft on the 23rd January 2023. The Police went on site and stopped and arrested this person on reasonable suspicion that he committed the theft. The person arrested was the defendant.
- (iv) After he was informed of his rights according to law, the defendant informed the Police that he was living in the Oriana Hotel, which was closed for business, because he was currently homeless. The Police went to this hotel, where there was another man sleeping on a mattress on the floor. This man was Depti Naval, who had criminal proceedings against him, and was not living in his own residence. During the search in the hotel, the Police found two (2) screw drivers and a tool to cut glass. Depti Naval was arrested as well, and both he and the defendant were taken to the Qawra Police station.
- (v) At the police station, the Police seized the beige trousers and the dark blue jacket with white and red stripes which the defendant was wearing. A photo was also taken of the shoes which the defendant was wearing when he was arrested. The shoes were a pair of Nike white shoes. From the investigations carried out by the Police, these clothes were also compatible with the clothes another thief was wearing in an attempted theft which took place on the 19th January 2023 in the early hours of the morning, from Ohio Mini Market, situated in Triq Sant Aristarku, Saint Paul's Bay.
- (vi) From the CCTV footage in connection with this attempted theft, it resulted that two (2) men tried to cut the glass door with a tool and then tried to smash the door, but failed to do so, and left when they saw the owner Alan Curmi coming towards them. Alan Curmi had been alerted that someone was trying to break into his shop.
- (vii) In this attempted theft, one of the men was wearing a beige pants, white shoes and blue jacket with hoodie. The second man was wearing dark jeans, red shoes, and a blue jacket with some words on the back. The Police noticed that Depti was also wearing red shoes and a blue jacket, like the second man involved in the attempted theft.

(viii) For these reasons, separate criminal proceedings were instituted both against the defendant as well as against Depty Naval.

Considerations as regards to the Guilt of the Defendant

7. In this case, the Prosecution is submitting that the defendant is guilty of both the attempted theft and the subsequent theft for two reasons:
 - (a) In both cases, the thief used the same *modus operandi*, namely to cut the glass in the shape of a circle, and a tool to cut glass was found in the place where the defendant was residing;
 - (b) From the CCTV footages exhibited¹, the thief was wearing a blue jacket with white and red stripes, beige trousers and white slippers in both the attempted theft and the completed theft. According to the Prosecution these clothes matched perfectly with the clothes which the defendant was wearing when he was arrested. These clothes were exhibited in Court by the Prosecution.

8. Both in his statement to the Police, as well as in his note of submissions, the defendant does not deny the fact that the thief in both incidents is wearing clothes matching the clothes which he was wearing when he was arrested. However, he explains that he was living in an abandoned hotel with other people. He also refers to the evidence given by Depty Naval in these proceedings that the people living in the hotel used to share the clothes, because they were all homeless. Hence, the defence is submitting that on a balance of probability, it has managed to prove that the statement of the defendant that he is not the person seen in the CCTV footages wearing the same clothes as the ones he was wearing when he was arrested, is quite possible true.

9. The Court states from the outset that it has noticed quite a number of inconsistencies between the statement of the defendant and the evidence of Depty Naval. In his statement, the defendant states he had been living in the hotel for the last three (3) nights prior to his arrest, and that he was there with two of his friends, one of them Depty Naval.

¹ Dok RV 14 and Dok MB 1 a fol. 30 and a fol. 71 of the proceedings.

When he was asked how many nights did Depty Naval stay there, he replied “*in those last 3 nights I was there Naval was there also and slept there.*”² On the other hand, when Depty Naval was asked by the Court whether he used to live in the hotel with the other homeless persons, he clearly replied “*No, no, I did not live; I come and I take drugs and I go home*”, but he said he used to see the other persons sharing clothes.³ Clearly either the defendant or Depty Naval, or both, are not saying the truth.

10. Moreover, in his statement, the defendant does not expressly state that they used to share clothes, although he was asked several times to explain how he happened to be wearing the same clothes as the two thieves in the CCTV footage. First he replied “*The jacket is not mine. Maybe someone else wore it like that.*” Later on, he replied “*Yes, it’s the same jacket but it is not me. Many people can wear those clothes.*” When he alleged that a certain Sagar, who he said used to sleep with them, committed the crimes, and he was asked whether Sagar took his (the defendant’s) clothes, he replied “*We live 3 or 4 together so everyone maybe shared the same clothes.*”⁴ If they were truly sharing clothes, the defendant would certainly have had no problem in stating so expressly, and not answer vaguely, and then finally only puts the issue of sharing clothes as a mere possibility, with the use of the word “*maybe*” – either they were voluntarily sharing clothes, or they were not doing so.
11. An even more important and relevant is the fact, that in his statement the defendant stated that he started living in the hotel the last three nights before he was arrested. He was arrested on the 27th January 2023 in the morning. This means, that according to his own version of events he started living and sleeping there on the 24th January 2023. The attempted theft took place during the night between the 18th and the 19th January 2023, and the other theft took place during the night between the 22nd and the 23rd January 2023. This means that these two crimes took place at a time when the defendant, according to his own version of events, had not yet started living in this abandoned hotel, and hence he could not have been sharing clothes with the other homeless persons living there, as he is now alleging.

² See fol 12 retro of the proceedings.

³ See fol. 160 of the proceedings.

⁴ See fol. 12 retro and fol. 13 of the proceedings.

11. In the note of submissions, the defence took the Prosecution to task for allegedly not identifying and investigating the person who was found sleeping in the hotel during the search. This allegation is simply factually unfounded. From the evidence of the Prosecuting Officer Inspector Ryan Vella as well as several Police officers, it has been amply proven that the person who was found sleeping there and put on some clothes on the instructions of the police was the witness Depty Navel, who was duly arrested, investigated and arraigned in court in connection with the attempted theft. He was actually identified also from the clothes he was wearing when he was arrested, which matched those of the second thief in the CCTV footage. Depty Navel pleaded guilty to the charges against him, and was condemned to a period of imprisonment.⁵
12. In view of the above considerations, the circumstantial evidence of the identity between the clothes of the thief in the two CCTV footages and those which the defendant was wearing when arrested is univocal, and points only in one direction, namely that the person in both the CCTV footages is the defendant, and hence he committed both the attempted theft, as well as the completed theft.
13. The fact that in his evidence Depty Neval stated that his accomplice in the attempted theft was a certain Nirez and not the defendant, is not sufficient to alter the conclusion of this Court. For the reasons given above, the Court does not consider Depty Neval to be a credible witness. Moreover, in his evidence before this Court, he admitted that when he was arrested he did not divulge to the Police, the name of his accomplice in the attempted theft.⁶ His explanation why he did not do so is that the Police did not ask him whether he was alone or with someone else. This is simply not a credible explanation – the fact that there was a co-author on site does not only result from the CCTV footage, but the charges against Depty Neval, expressly state that the attempted theft took place together with another person.⁷ In these circumstances it is simply not credible that the Police did not question him about the identity of the person who was with him, as can be seen in the CCTV footage.

⁵ See judgement of this Court, differently presided, delivered on the 20th March 2023 a fol. 153 of the proceedings.

⁶ See fol. 161 of the proceedings.

⁷ See fol. 153 of the proceedings.

14. For the sake of completeness, the Court is going to pass a brief comment on the submissions of the defence on the testimony in chief of Victor Agius, as well as on the “report of Dr Marisa Cassar”. As regards the testimony in chief of Victor Agius, it is very clear from this evidence that when he said he recognised the defendant in the court room, he was recognising him solely because he saw him walking in the street with the clothes the thief was wearing in the footage, and in fact in its note of submissions, it is also clear that the Prosecution is in no way alleging otherwise.
15. As regards the “report of Dr Marisa Cassar”, which defence requests that it is removed from the records of the proceedings, the Court points out that Dr Marisa Cassar never gave evidence in these proceedings, let alone presented any report, and this for the reason stated by the defence itself, namely that Dr Marisa Cassar was never appointed as an expert either in the inquiry or in these proceedings, and hence the Police should never have passed the DNA samples to her.⁸
16. As regards, the first charge of attempted theft, the defence did not contest in any manner the evidence given by Allan Curmi that he suffered damages to the amount of two hundred and ninety-five Euro (€295), due to this crime. The Court also has no valid reason not to believe the evidence given by Allan Curmi.
15. As regards, the third charge – namely the theft from the shop Paul’s Arcade, the defence is not contesting that the defendant stole four (4) cartons of cigarettes. But it is submitting that the Prosecution has not managed to prove beyond reasonable doubt that the amount of cash stolen was that of €1,700. In the evidence before this Court, Victor Agius, the owner of the shop simply stated that the amount of €1,700 in cash was stolen. In his evidence before the expert appointed in the inquiry, Victor Agius stated that four hundred Euro (€400) were stolen from one cash register, and another one thousand and three hundred Euro (€1,300) were stolen from another cash register.⁹ However, under cross-examination Agius confirmed that it was Patricia Ebejer who closed the shop the previous day, and he was not personally present, and hence he could not confirm the amount of cash floats left in the cash registers.¹⁰ Patricia Ebejer was not summoned as a witness

⁸ See submissions and relative decree a fol. 63-64 of the proceedings.

⁹ See fol. 41 of the records of the inquiry.

¹⁰ See 143 of the proceedings.

by the Prosecution, and although she gave evidence during the inquiry, she did not say anything on the amounts of cash floats. In his cross-examination, Victor Agius admitted that normally there are three hundred Euro (€300) in each cash register, which is a much more plausible amount. In his evidence, he did not try in any way to explain why on that day, the cash float was €400 in one cash register and €1,300 in the other. Moreover, he did not exhibit the end of day report or end of day chit to prove the cash float left, in order to determine the actual value of the stolen cash.

16. The defence submits that in the light of this state of evidence, this Court cannot have moral certainty that the value exceeds the amount of €250 [recte €232.94]¹¹ or whether it exceeds the amount of €2,329.37. The Court does not agree. In the first place, the Court points out that in the third charge, the defendant is being charged that the value of the things stolen does not exceed €2,329.37. In the second place, from the CCTV footage, the defendant can clearly be seen taking the money from one cash register, and in the case of the other cash register, he took the drawer of the cash register together with the money it. The Court is morally convinced that the amounts of cash taken from the cash register together with the value of the 4 cartoons of cigarettes which are worth €220, exceed the amount of €232.94 but obviously do not exceed the amount of €2,329.37, although it cannot be quantified exactly. Hence the theft is still qualified by the value of the amount stolen. However, the fact that the value of the items which have been proven to have been stolen is less than that stated by Victor Agius will be taken into account when meting out the punishment.
17. As regards the amount of damages suffered by Victor Agius, the Court considers the amount of €90 for the cash register and the amount of €24.80 for foil duct and cable ties as reasonable and that they have been duly proven according to law. However, Agius also claimed that he had to pay €1,062 for aluminium works.¹² As can be seen from the relative invoice, Agius substituted the broken glass window with aluminium – the invoice states “*aluminium works instead of glass*”. Antoine Cilia, a representative of North Aluminium Works stated under oath that they were asked to do this work for Paul’s Arcade and explained as follows: “... ... (T)here was a broken glass and we changed it

¹¹ See Article 267 of the Criminal Code.

¹² See fol. 24 of the proceedings.

and we done [sic] aluminium instead of the glass because we couldn't do the glass because there was electric [sic] passing in front of the glass and we done [sic] aluminium but with the same price and everything."¹³ Victor Agius also confirmed that the glass window was replaced by aluminium.¹⁴ No independent evidence was brought forward of the value of the glass window which was broken, nor of the need to substitute this glass window with aluminium. Hence, the Court does not consider the amount of damages of €1,062 as having been duly proven.

18. As regards the fifth charge, namely that the defendant was leading an idle and vagrant life, this has been duly proven by the defendant himself in his statement where he stated that he was unemployed and he was living in an abandoned hotel, since he was homeless.

Considerations on Punishment

19. In meting out punishment the Court cannot really take in consideration the clean conviction sheet exhibited by the Prosecution, because there is no evidence of how long the defendant has been living in Malta.
20. The Court took into consideration that since the defendant was not employed prior to his arrest, there is no real prospect of his refunding the victims for the damages caused.
21. The Court also took into consideration the nature of the offences of which the defendant has been found guilty in the light of the considerations made above.

Conclusion

22. For these reasons the Court decides as follows:

¹³ See fol. 82 of the proceedings.

¹⁴ See fol. 132 of the proceedings.

1. After seeing Articles 41, 42, 261(b)(c)(f), 263, 267, 270 and 278(3), 20, 325(1)(b), and 261(b)(c)(f), 263, 267, 270, 270(3), 20 and 338(w) of the Criminal Code, Chapter 9 of the Laws of Malta, finds the defendant guilty of the first, second, third and fifth charges preferred against him, but makes it clear that in the case of the third charge the amount of cash stolen was not of one thousand seven hundred Euro (€1,700), but the total value of objects stolen exceeded the amount of two hundred and thirty-two Euro and ninety-four cents (€232.94).
2. In the case of the fourth charge, finds him not guilty of the crime prescribed in Article 325(1)(b) of the Criminal Code, but finds him guilty of the crime prescribed in Article 325(1)(c) of the Criminal Code, since this crime is comprised and involved in the fourth charge.
3. in the light of all the circumstances of the case, condemns the person convicted to a period of imprisonment of two (2) years, but the period which the defendant spent in preventive arrest in connection with these proceedings should be deducted from this term of imprisonment.
4. The Court orders the person convicted to pay to the Registrar of the Criminal Courts all the costs incurred in connection with the employment in the proceedings of all the experts, in terms of Article 533 of Chapter 9 of the Laws of Malta. These costs are to be paid within one week from when the Registrar of the Criminal Courts communicates to him the amount due by him. If the person convicted fails to pay this amount or part of it within the time herein prescribed, the amount, or any balance of it, will become immediately due and payable, and in default of payment thereof, the outstanding amount still due shall be converted into imprisonment at the rate established by law.

Magistrate

Doreen Pickard

Deputy Registrar