

Court of Magistrates (Malta)
As a Court of Criminal Judicature

Magistrate Dr. Donatella M. Frendo Dimech LL.D., Mag.Jur.(Int. Law)

St. Julian's District Sitting

The Police
(Inspector Nico Zarb)

-vs-

Salvatore Federico Lo Monte bearer of Identity Card Number 409718A.

Today 26th March, 2024

The Court,

Having seen that the defendant **Salvatore Federico Lo Monte** was arraigned before this court for having:

On the 16th October 2023 at about 03:45 hrs whilst in Carmel Strret, St. Julians

1. Committed an offence against decency or morals of Bajwa Muhammed Abdul Rehman by any act committed in a public place or in a place exposed to the public;
2. Subjected Bajwa Muhammed Abdul Rehman to an act of physical intimacy;
3. Subjected Bajwa Muhammed Abdul Rehman to any act and or conduct with sexual connotations, including spoken words, gestures and, or the production, display or circulation of any written words, pictures, and, or any other material, where such acts, words and, or conduct is unwelcome to the victim, and could be reasonably regarded as offensive, humiliating, degrading and, or intimidating towards that person.

Having heard witnesses.

Having seen all the acts and documents exhibited.

Having heard the prosecution and defence counsel make their final submissions.

Considers,

The complainant Bajwa Muhammad Abdul Rehman testified in great detail whilst explaining how on the night between the 15th and the 16th October 2023 he was on duty, as a Bolt food courier and in the early hours of the 16th October was called on a delivery to Carmel Street St. Julians.

It was there that he delivered food to the defendant who appeared on the door step in his boxers, a fact which the defendant himself confirms when testifying *viva voce*. After Rehman got paid and was still on his bike outside Lo Monte's residence, the defendant reappeared and decided to take out his genitals. This led to the complainant reporting the incident to the Police.

The defendant on his part confirms that he got a delivery by the complainant and merely states that he was in his boxers and after he paid him he never emerged from his door again.

Considering this evidence, not least the fact that Mr. Rehman would most definitely not have invented such a story had it not truly happened, wasting time to report the police and attend court sittings regarding the matter, coupled with his attention to detail as his testimony manifestly attests given the meticulous account of that which occurred with this particular delivery, leads the Court to believe his version of the facts. An incident which left him deeply offended so much so that he immediately reported same to the Police.

Article 251A(2) of the Criminal Code is clear in its import and dictates that for purpose of the said article, the person whose course of conduct is in question, ought to know that it amounts to harassment of another person if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other person.

The Court finds without a shadow of doubt that the exhibition of one's genitals in the particular circumstances of this case amounts to harassment. The defendant was not involved in an act of intimacy, nor in a bathroom and neither undergoing a medical examination at the time and hence the Court cannot fathom any legitimate reason, why Lo Monte found the need to expose himself on his doorstep, the street and in front of a Bolt courier!

Moreover the Court notes that the defendant failed to bring any evidence in his defence to show that his conduct could be one envisaged by Article 251A(3) of the Code.

Punishment

In its considerations on punishment the Court considered the nature of the offences of which the defendant is being accused. Moreover with reference to the three charges the principle of formal concurrence of offences applies with the graver punishment being that contemplated for the second and third offences which carry the same punishment, namely Article 251A(1)(c) and 251A(1)(e) of the Criminal Code.

Decide

For the said reasons, the Court, having seen articles 17(b)(h), 31, 209 and 251A(1)(c)(e) of the Criminal Code finds the defendant guilty and condemns him to **nine (9) months imprisonment** which by application of Article 28A of the Criminal Code are being suspended for 2 years.

The court explained to the defendant in clear words the consequences should he commit another offence during the operative period of this sentence.

Dr. Donatella M. Frendo Dimech
Magistrate