



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL INQUIRY
MAGISTRATE DR. GABRIELLA VELLA**

The Republic of Malta

Vs

Sweetson Robert Ferreira

Today, 8th April 2024

The Court,

Considered the charges brought against **Sweetson Robert Ferreira**, born on the 8th January 1993 and holder of Maltese Residency Card Number 293169A, of having at some time on the days of the 24th and the 25th March 2024, in St. Paul's Bay and/or at any other place in the Maltese Islands:

1. Engaged in non-consensual carnal connection, that is to say, vaginal, anal or oral penetration with any sexual organ of the body of another person, that is Tina Walter Carvalho, and which crime was committed on the person living in the same household as the offender or on a person who lived with the offender before the offence was committed, and on a person who was in a relationship with the offender whether with the intention of marriage or not, in violation of Sections 198(1) and 202(h)(v)(vi) of Chapter 9 of the Laws of Malta;
2. On the same date, place and circumstances, committed any non-consensual act of a sexual nature on Tina Walter Carvalho, which does not, in itself, constitute any of the crimes, either completed or attempted, referred to in the Sections preceding Section 207 of Chapter 9 of the Laws of Malta; and which crime was committed on the person living in the same household as the offender or on a person who had lived with the offender before the offence was committed, and on a person who was in a relationship with the offender whether with the intention of marriage or not, in violation of Sections 207 and 202(h)(v)(vi) of Chapter 9 of the Laws of Malta;

Considered the requests put forth by the Prosecution, for the Court: (i) to issue a Protection Order in terms of Section 412C of Chapter 9 of the Laws of Malta during the course of these proceedings, and in case of guilt, in terms of Sections 383, 384 and 385 of Chapter 9 of the Laws of Malta, in favour of Tina Walter Carvalho; (ii) in case of guilt, in addition to the punishment in accordance to Law, to order Sweetson Robert Ferreira to pay the costs incurred in connection with the employment of any experts as provided in Section 533(1) of Chapter 9 of the Laws of Malta; and (iii) order that the decision, in case of guilt, be registered according to Section 6(2) of Chapter 518 of the Laws of Malta;

Considered the documents submitted by the Prosecution marked as Doc. “JS1” to Doc. “JS4”;

Heard the accused plead that he is not guilty of the charges brought against him;

Heard Inspector John Spiteri inform the Court that when she was being examined by a Court appointed Expert, Tina Walter Carvalho, the alleged victim in these proceedings, declared that she does not want to proceed with her case against the accused;

Heard testimony given by Tina Walter Carvalho during the sitting held on the 26th March 2024 and heard her request that the proceedings against the accused be stayed;

Heard Inspector John Spiteri inform the Court that following the accused’s arrest, there was no further contact, verbal or otherwise, between the said accused and the alleged victim Tina Walter Carvalho;

Took cognisance of the Protection Order in terms of Section 412C of Chapter 9 of the Laws of Malta, issued against the accused in favour of Tina Walter Carvalho by virtue of a Decree dated 26th March 2024;

Considered Section 543(e)(f) of Chapter 9 of the Laws of Malta;

Considers:

The accused is being charged of having at some time on the days of the 24th and the 25th March 2024, in St. Paul’s Bay and/or at any other place in the Maltese Islands: (1) Engaged in non-consensual carnal connection, that is to say, vaginal, anal or oral penetration with any sexual organ of the body of another person, that is Tina Walter Carvalho, and which crime was committed on the person living in the same household as the offender or on a person who lived with the offender before the offence was committed, and on a person who was in a relationship with the offender whether with the intention of marriage or not, in violation of Sections 198(1) and 202(h)(v)(vi) of Chapter 9 of the Laws of Malta; (2) On the same date, place and circumstances, committed any non-consensual act of a sexual nature on Tina Walter Carvalho, which does not, in itself, constitute any of the crimes, either completed or attempted, referred to in the Sections preceding Section 207 of Chapter 9 of the Laws of Malta; and which crime was committed on the person living in the same household as the offender or on a person who had lived with the offender before the offence was committed, and on a person who was in a relationship with the offender whether with the intention of marriage or not, in violation of Sections 207 and 202(h)(v)(vi) of Chapter 9 of the Laws of Malta.

The accused pleaded that he is not guilty of the charges brought against.

During the arraignment of the accused before this Court held on the 26th March 2024, the alleged victim Tina Walter Carvalho took the stand and under oath requested that these proceedings against the accused be stayed. Asked to explain the motivation behind her request, Tina Walter Carvalho, under oath, stated that if these proceedings against the accused continue, he could loose his job here in Malta and she does not want this to happen to him since he needs this job and if he looses it, he would have to leave his home. She further declared, always under oath, that she still loves the accused and she does not want to see him going to jail.

Upon being specifically asked by the Court, Tina Walter Carvalho declared, and also reiterated upon being asked again, that she is asking for the stay of the proceedings against the accused voluntarily and no one was forcing her to do so. The Court also took note of the fact that during the arraignment held on the 26th March 2024, Inspector John Spiteri informed the Court that following the arrest of the accused, there was no further contact, verbal or otherwise, between said accused and Tina Walter Carvalho.

In view of the testimony and request by Tina Walter Carvalho, the Court must necessarily consider Section 543(e) **and** (f) of Chapter 9 of the Laws of Malta., which provisions of the Laws stipulate that: *It shall be lawful for the Police to institute proceedings even without the complaint of the private party in any of the following cases: ... (e) in the case of any offence involving domestic violence: Provided that for the purposes of this paragraph “domestic violence” shall have the same meaning assigned to it by article 2 of the Gender-Based Violence and Domestic Violence Act: Provided further that it shall be lawful, after proceedings have commenced before the court in virtue of this article for an alleged victim of an offence involving domestic violence to request the court to stay proceedings against the alleged perpetrator, and when such a request is made the Court may decide and direct the continuation of proceedings against the alleged perpetrator, giving particular consideration to the best interests of the complainant, any minors involved, and any other relevant third parties, and shall cause such request and decision to be registered in the records of the case; (f) in the case of rape as defined in article 198: Provided that it shall be lawful, after proceedings have commenced before the court in virtue of this article for an offence mentioned in this paragraph, for an alleged victim to request the court of stay proceedings against the perpetrator, however, if such request is made, the court may decide to continue the proceedings against the perpetrator, giving particular consideration to the best interests of the complainant, any minors involved, and any other relevant third parties.*

From these provisions of the Law it is clear that: (i) proceedings regarding offences involving domestic violence; and (ii) proceedings regarding rape as defined in Section 198 of Chapter 9 of the Laws of Malta, can be instituted *ex officio*, that is without the complaint of the injured party. However, in both of these cases the injured party has a right to request that the proceedings instituted against the alleged perpetrator be stayed, this request being however subject to the Court’s discretion who must still nonetheless consider the best interests of the complainant, any minors involved, and any other relevant third parties.

The Court deems that these provisions apply in this present case in view of the request put forth by Tina Walter Carvalho because, first and foremost the first charge brought against the accused is clearly a charge of rape in terms of Section 198 of Chapter 9 of the Laws of Malta, and secondly from testimony given by the said Tina Walter Carvalho it clearly results that she and the accused were in a relationship and they lived together, two elements which fall under the definitions of “domestic violence” and “family or domestic unit” under Section 2 of the Gender-Based Violence and Domestic Violence Act, Chapter 581 of the Laws of Malta.

Various judgements delivered by the Maltese Courts over the years concerning the alleged victim’s right to request the stay of proceedings against the alleged perpetrator, have established the principle that in such cases, the Court, even though the Law allows it a measure of discretion in the matter, must bear in mind that *l-enfasi tal-Ligi f dan il-proviso qiegħed fuq l-għażla tal-vittma aktar milli fuq id-diskrezzjoni tal-Qorti*. Therefore, the emphasis at Law is on the wishes of the victim rather than on the discretion of the Court.

Even though the above-mentioned principle has been pronounced by the Courts mainly in proceedings where the alleged victim exercised the right to stay proceedings against the alleged perpetrator under Section 543(e) of Chapter 9 of the Laws of Malta, this Court deems that this same principle must also apply when considering the right of the alleged victim to request the stay of proceedings against the alleged perpetrator under subsection (f) of Section 543 of Chapter 9 of the Laws of Malta.

The Court considered the testimony given by Tina Walter Carvalho and also her demeanour on the witness stand whilst giving her testimony, and it is the Court's opinion that Tina Walter Carvalho really and truly, and most importantly voluntarily and freely, wants that the proceedings against the accused be stayed. The reasons given by her clearly show that her wishes need to be respected in spite of the serious nature of the offences with which the accused is being charged.

In view of the above and in terms of the second proviso of subsection (e) and the proviso of subsection (f) of Section 543 of Chapter 9 of the Laws of Malta, the Court upholds the request put forth by Tina Walter Carvalho on the 26th March 2024 and orders the stay of these proceedings against the accused.

The Court orders that the Attorney General be granted access by electronic means to a scanned copy of the records of this inquiry, together with a copy of this decision and all the exhibits related to the case, within three (3) working days.

MAGISTRATE

DEPUTY REGISTRAR