

The Court of Magistrates  
(Court of Criminal Judicature)  
Magistrate Dr. Monica Vella LL.D.; M.Jur.

The Police  
(Inspector Colin Sheldon)

Vs

Sven Reyckers

Compilation No.: 378/19

Today the 02<sup>nd</sup> July 2024;

The Court,

Having seen the charges presented by the Executive Police on the 24<sup>th</sup> June 2019 against **Sven Reyckers** age 46, born in Belgium, on the 4<sup>th</sup> March 1973 and resides at White House, Flat 5, Triq Nazju Ellul, Gzira holder of identity card number 137052A

Accused that on the 1<sup>st</sup> November 2018 and/or the days before in these Islands:

Caused slight bodily harm on your wife Anna Stupko as certified by Dr. Darren Mifsud M.D. from Gzira Health Centre and Dr. Robert Patiniott M.D. (Med. Reg. 1860) and this per articles 214, 215, 221(1) and 222(1)(a) of Chapter 9 of the Laws of Malta.

The Court was requested to provide security to Anna Stupko and apply the provisions of articles 383, 384, 385 and 412 of Chapter 9 of the Laws of Malta.<sup>1</sup>

Having seen the conviction sheet of the accused.<sup>2</sup>

Having seen the note of the Attorney General whereby she gave the consent that this case is heard summarily.<sup>3</sup>

Having seen that the accused asked for the proceedings to be conducted in the English Language and on the same day the Court acceded to this request.<sup>4</sup>

Having noted all the acts of the case.

Having heard the witnesses brought in these proceedings.

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<sup>1</sup> Folio 2 of the case file.

<sup>2</sup> Folio 4 of the case file.

<sup>3</sup> Folio 5 of the case file.

<sup>4</sup> Folio 11 of the case file.

Having considered all the documents and all the evidence brought in these proceedings.

Having heard the final submissions of the parties.

Having seen that the case was adjourned for judgement for today.

Considered:

Facts In Brief.

The case relates to various alleged aggressions allegedly committed by the accused against his wife Anna Stupko on the 1<sup>st</sup> November 2018 and on the previous days. According to the victim she was assaulted by the accused and he caused her slight bodily harm.

On the other hand, the accused claims that he intervened between his wife and his mother and there was no aggression on his part. The accused claims that the aggression against his mother was made by the alleged victim and he was bound to intervene.

**Considered:**

Evidence

**Dr. Robert Patiniott** presented an affidavit dated 9<sup>th</sup> July 2019 whereby he confirmed that he examined the victim and the injuries were considered to be slight.<sup>5</sup>

**Dr. Darren Micallef** gave evidence on the 23<sup>rd</sup> January 2020 and confirmed that he issued a medical certificate dated 1<sup>st</sup> September 2018. His patient was Anna Stupko.<sup>6</sup>

Cross examined he confirms that the hematomas are compatible even with bumping into something.

**Anna Stupko** requested on the 28<sup>th</sup> May 2021 to testify in another sitting stating she was feeling unwell.<sup>7</sup>

**PS 157 Brian Mifsud** testified on the 18<sup>th</sup> May 2022 whereby he confirmed that a report was filed on the **31<sup>st</sup> October 2018** by Anna Stupko against her husband Sven Reyckers. When the latter entered the police station he was assaulted by Anna Stupko and they had to intervene to calm down the situation. The witness exhibited the police report. He confirmed that both parties accused each other about other incidents.<sup>8</sup>

**Anna Stupko** testified on the 18<sup>th</sup> May 2022 whereby she recounted of various incidents whereby she was allegedly assaulted by the accused. Some of these incidents date back to 2015<sup>9</sup>. She recalls the aggressions

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<sup>5</sup> Folio 14 of the file. Although the affidavit says that a medical certificate is annexed the Court could note that there was none.

<sup>6</sup> Folio 18 of the file.

<sup>7</sup> Folio 38 of the file.

<sup>8</sup> Folio 47 of the file.

<sup>9</sup> Folio 54 of the file.

by her ex-husband. She states that he was in most cases under the influence of alcohol and/ or drugs.<sup>10</sup> The witness tells that in November 2018 the accused stole her child. She provided medical reports to the police.

Under cross-examination regarding the incident of the 1<sup>st</sup> November she recalls that she went to the police station in the morning. She states that her ex- arrived at around 5 o' clock in the morning and started hitting her. She was hit several times. She stated that the incident was witnessed by others but she did not elaborate in her testimony. The witness confirmed that when the accused was aggressive she always went to the police. The witness exhibited various documents.<sup>11</sup>

**Sven Reychers** gave evidence on the 23<sup>rd</sup> November 2022 and he stated that he recalls that on the 1<sup>st</sup> November 2018 in the house there was his mother who came for a holiday. The alleged victim, his then wife, became aggressive and violent. So he and his mother decided to move out of the house and take the child with them and stay in a hotel<sup>12</sup>. He does not recall that his wife sustained injuries on that day. The attack begun from her towards him and his mother and he defended himself. He confirms that he tried to defend himself, the mother and child. He holds that the Maltese Courts granted him full custody of the child.

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<sup>10</sup> The Court informed the witness that she has to stick to the testimony related to the charge that is the 1<sup>st</sup> November 2018 and the previous 7 days. Folio 58 of the file.

<sup>11</sup> Folio 92 till 98. The Court will not take note of such documents since they do not relate to the period of the charge.

<sup>12</sup> Folio 100 of the file.

Under cross examination he confirms that at the time his child was 5 months old. He confirms that it was his ex-wife that tried to attack his mother. He stated that he is not saying that the attack commenced for no reason and there were words exchanged between the two. He denies that he was aggressive with his ex-wife. He confirms that neither his mother nor himself went to the polyclinic.

**Considered:**

The charges brought against the accused involve Article 214 and Article 215 of Chapter 9 of the Laws of Malta which provide:

**214. Whosoever, without intent to kill or to put the life of any person in manifest jeopardy, shall cause harm to the body or health of another person, or shall cause to such other person a mental derangement, shall be guilty of bodily harm.**

**215. A bodily harm may be either grievous or slight.**

**Considered:**

It is the duty of the prosecution to prove its case beyond reasonable doubt. The evidence has to be intrinsically linked to the charge. *The charge reads 1<sup>st</sup> November and/or the days before.* The Court of Appeal in **Il-Pulizija vs Carmel Polidano** (Appell Nru. 312/13DS) decided on the 26<sup>th</sup> October 2016 by Mr. Justice David Scicluna stated:

**‘16. Issa, l-Avukat Ġenerali jsostni li l-prosekuzzjoni gabet provi skjaċċanti li juru minghajr dubju dettat mir-raġuni li l-appellat ma kellu l-ebda permess mill-awtoritajiet kompetenti sabiex jarmi terrapien fil-baħar. Qabel xejn, pero`, irid jiġi stabbilit jekk saritx prova li ntema terrapien “fis-17 ta’ Awwissu 2006 u fil-ġranet ta’ qabel din id-data”, kif jinsab akkużat l-appellat. Jiġi stabbilit illi l-kliem “fil-ġranet ta’ qabel” ċertament jirrestringi l-perijodu għal mhux aktar minn ġimgħa. F’dar-rigward qed issir referenza għax-xhieda tal-prosekuzzjoni<sup>13</sup>’.**

The same Court of Criminal Appeal in the case **Il-Pulizija vs John Paul Azzopardi** (Appell Nru. 506/2016) decided on the 30<sup>th</sup> November 2017 per Madame Justice Dr. Edwina Grima held:

**‘Illi dan l-istess principju gie riaffermat minn din l-istess Qorti f’ diversi kawzi ohra inkluz dawk fl-ismijiet Il-Pulizija vs Warren Piscopo u Pulizija vs Rita Theuma, it-tnejn decizi fid-19 ta’ Ottubru 2011.<sup>14</sup> Dan għaliex il-Qorti qatt ma tista’ issib htija dwar kummissjoni ta’ xi reat li ikun sehh mhux biss fi zmien iehor, izda ukoll f’xi post iehor mhux dak indikat fl-akkuza, cirkostanza li hija tant materjali u sostanzjali fil-kaz imressaq ‘il quddiem mill-Prosekuzzjoni<sup>15</sup> .....Issa jekk il-fatti ikunu gew indikati hazin, allura l-binarji ta’ l-azzjoni ma ikunux gew definiti jew jekk ikunu gew ikunu gew definiti hazin. Issa f’dan il-kaz l-appellanti qatt ma jista’ jinstab hati fil-hin indikat fl-akkuza għaliex jidher illi f’dak**

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<sup>13</sup> Sottolinejar tal-appellant. Ara ukoll is-sentenza tal-Qorti tal-Appell **Il-Pulizija vs Jesmond Seguna** (App. Nru. 59/2023) per Onorevoli Imhallel Consuelo Scerri Herrera u **Il-Pulizija vs Saviour Sultana et** deciza fl- 14 ta’ Lulju 2023 (seduta distrett) per. Magistrat Dottoressa Donatella Frendo Dimech.

<sup>14</sup> Ara ukoll **Il-Pulizija vs Ramon Mifsud Grech et-** 23/04/2012 (Qorti tal-Magistrati)

<sup>15</sup> Sottolinejar tal-appellant.

**il-hin huwa kien jinsab gewwa Triq il-Ferrovija u mhux fi Triq il-Kappillan Mifsud.....Madanakollu il-Prosekuzzjoni ghalkemm kellha kull opportunita' titlob il-korrezzjoni mehtiega fl-akkuza, baqghet inattiva.'**

**Considered:**

The Court notes that from the acts of the case there *is no police report filed on the 1<sup>st</sup> November 2018*. The only police report filed and relevant to the matter under examination was filed by the alleged victim on the 31<sup>st</sup> October 2018.<sup>16</sup> This report does not relate to any incident on the 1<sup>st</sup> November 2018. Moreover, according to PS 157 Brian Mifsud on the date in question, that is the 31<sup>st</sup> October 2018, Anna Stupko attacked the accused at the police station and not the other way round! There is no medical certificate to support any injuries suffered by the victim on the 31<sup>st</sup> October 2018.<sup>17</sup>

The only link to something that might have happened on the 1<sup>st</sup> November 2018 is the copy of the medical certificate exhibited by the alleged victim at folio 74. Dr. Robert Patiniott who gave evidence through the affidavit, although stating in same that he is exhibiting the certificate apparently did not and the original was never exhibited.<sup>18</sup> This is surely not the best evidence in the circumstances of this particular case! One would have expected that the original of the certificate is presented and Dr. Patiniott confirms it under oath. The Court also notes that although, for argument's sake, one would accept

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<sup>16</sup> Folio 49 of the file.

<sup>17</sup> **The medical certificate issued by Dr. Darren Micallef dates 1<sup>st</sup> September 2018 which is outside the parameters of the charge.**

<sup>18</sup> Folio 14 of the file.

such certificate because what is reported in the testimony of Dr. Patiniott is identical to the copy of the certificate presented by Ms. Stupko, the medical practitioner did not shed light on the circumstances in which such injuries were made on his patient.

**Considered:**

The Court, besides the points already raised above also took note of the testimony of Ms. Anna Stupko. Her testimony about what allegedly happened on the 1<sup>st</sup> November 2018 is neither safe nor satisfactory. At best it is confusing. It is not coherent and she continues to skip from one incident to another without giving any details.

On the other hand, the testimony of the accused is more credible and this Court also question the statements made by the *parte civile* whereby in two occasions she requested an adjournment in order to reach an amicable agreement.<sup>19</sup> While this Court notes positively that parties try to reach amicable solutions in this particular case these requests have been seen by the Court as an excuse to prolong proceedings to say the least.

The Court still has a lurking doubt of what happened, if something actually happened, on the 1<sup>st</sup> November 2018. There seems to be no incidents attributable to the accused on the previous week before the 1<sup>st</sup> November 2018. Thus, according to law, any doubt should also always go in favour of the accused.

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<sup>19</sup> Sitting 30/10/20 -Folio 30 and sitting 8/1/21- Folio 31.

**Thus, this Courts finds no reason in fact and at law to attribute any guilty to the accused upon the charge brought against him.**

**Decides:**

**Thus, for these reasons, the Court having seen Articles 214, 215, 221(1) And 222(1)(a) of Chapter 9 of the Laws of Malta declares the accused SVEN REYCKERS NOT GUILTY of the charge brought against him and acquits him of the same.**

Dr. Monica Vella

Magistrate

Deputy Registrar

Annalise Mifsud