



In the Criminal Court

Onor. Madame Justice Consuelo Scerri Herrera, LL.D., Ph.D.

Bill of Indictment number: 53/2024

The Republic of Malta

vs

Malcolm McNally

Today, the 20th of December 2024

The Court,

Having seen the bill of indictment number fifty three of the year two thousand and twenty four brought against **Malcolm McNally** holder of Maltese identity card no. '116956A', **wherein the Attorney General in the bill of indictment premised:**

FIRST (1ST) COUNT

RAPE

The facts:

That on the tenth (10th) of August of the year two thousand and twenty-one (2021) the Executive Police at the Qawra Police Station were informed by a phone call from the domestic violence unit that a female had called to request police assistance due to the fact that she had been raped in her residence by her partner. District Police from the Qawra Police Station went to Bgravia A, Flat 4, Ibhra Street, St. Paul's Bay where

they found Natalizia Balbi (the victim). The victim stated that during the same morning her partner, the accused Malcolm McNally, without her consent, penetrated her private part with his private part.

The victim explained that she has been in a relationship with the accused Malcolm McNally for the past four years and used to reside with him at his residence Belgravia A, Flat 4, Ibhra Street, St Paul's Bay. During the course of their relationship the accused Malcolm McNally was admitted to Mount Carmel Hospital on various occasions due to his alcoholism. The first six months of the relationship were pleasant however, after these six months, the accused Malcolm McNally started drinking and the relationship changed.

The accused Malcolm McNally often wanted Natalizia Balbi to be intimate with him and that he would order her to stay naked at home. He also wanted her to stay naked in bed 'ready for him'. He would penetrate her vaginally and/or anally with his fingers and with his sexual organ multiple times during the day and during the night, at times without her consent and despite clear objections from her end. When told by the victim that his acts were hurting her, the accused Malcolm McNally told the victim that he did not care what she was feeling as long as he was ok.

The accused Malcolm McNally used to threaten the victim Natalizia Balbi that if she were to leave him, he would kill her dog 'Snoopy' whom she loved dearly. It is only when she gave the dog up for adoption that she felt she could make a change in her life and report the accused Malcolm McNally.

It was the events that occurred at the early hours of the tenth (10th) of August of the year two thousand and twenty-one (2021) which led to the arrest of the accused Malcolm McNally. On this day, the victim Natalizia Balbo was woken up in the middle of the night due to the fact that the accused Malcolm McNally had gotten on top of her and penetrated her vaginally with his sexual organ, without her consent, whilst touching her breasts, until he ejaculated inside the victim Natalizia Balbi's private

part. The victim recounts telling the accused Malcolm McNally to stop his actions however he replied that this was the way in which she had to pay rent.

This behaviour of the accused Malcolm McNally, that is to say, penetrating the victim Natalizia Balbi vaginally and/or anally without her consent, that is raping his partner, which behaviour was repeated and spanned over several years, with the frequency depending on the accused's sexual appetite. Finally, when the victim Natalizia Balbi could not take it any longer, on the early morning of the tenth (10th) August of the year 2021, after the accused Malcolm McNally, had once again, without her consent, penetrated her vaginally with his sexual organ despite her objections that the victim plucked up the courage and asked for help from the executive Police.

The consequences:

In view of the abovementioned facts, the accused Malcolm McNally, on the tenth (10th) of August of the year 2021 and in preceding days, weeks, months and years, by means of several acts committed by himself, even if at different times, which constitute violations of the same provision of the law, and have been committed in pursuance of the same design, in St Paul's Bay, and in these islands, rendered himself guilty of **engaging in non-consensual carnal connection, that is to say, vaginal or anal penetration of a sexual nature with any bodily part, and, or any object, or oral penetration with any sexual organ of the body of another person**, provided that such crime is aggravated since it has been committed on the person of the current or former spouse, civil union partner or cohabitant, and on the person of another person living in the same household as the accused, and moreover, the offence, or related offences, were committed repeatedly.

The charges:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the circumstances of the facts abovementioned and as a consequence of the same, accused the accused Malcolm McNally, of, on the tenth (10th) August of the year 2021 and in preceding months and years, by means of several acts committed by himself,

even if at different times, constitute violations of the same provision of the law, and have been committed in pursuance of the same design, in St Paul's Bay, and in these islands, rendering himself guilty of **engaging in non-consensual carnal connection, that is to say, vaginal or anal penetration of a sexual nature with any bodily part, and, or any object, or oral penetration with any sexual organ of the body of another person**, in that such crime is aggravated since it has been committed on the person of the current or former spouse, civil union partner or cohabitant, and on the person of another person living in the same household as the accused, and moreover, the offence, or related offences, were committed repeatedly.

The punishment demanded:

Therefore, the Attorney General demands that the accused Malcolm McNally be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for term **from eight (8) to thirty (30) years**, as is stipulated and laid down in articles 17, 18, 31, 198(1),(3),(4), 202(h)(i)(v), 202(j), 382A, 383, 384, 385, 412D, 532A and 533 of Chapter 9 of the Laws of Malta and article 6 of Chapter 518 of the Laws of Malta or to any other punishment applicable according to law to the declaration of guilty of the accused Malcolm McNally.

SECOND (2ND) COUNT

NON-CONSENSUAL ACT OF A SEXUAL NATURE

The facts:

That, during the same period, place and circumstances as narrated in the First Count of this Bill of Indictment, from the very early months in their relationship till the tenth (10th) August of the year two thousand and twenty-one (2021), that is, during almost the whole course of their four-year relationship, in St Paul Bay and in these islands, the victim Natalizia Balbi endured various non-consensual acts of a sexual nature from the accused Malcolm McNally. As already described in the first count of this Bill of Indictment, the accused Malcolm McNally was not capable of taking 'no' for an answer and used to, without the victim's consent and despite her clear objections, perpetrate

acts of sexual nature such as sucking her breasts. Whilst doing so, the accused Malcolm McNally used to be so aggressive that blood used to come out of her breasts. This behaviour on the part of the accused Malcolm McNally used to take place regularly during their four year relationship.

On another occasion, that is, in the early hours of the tenth (10th) August of the year 2021, and in the preceding months and years the accused Malcolm McNally repeatedly forced himself onto the victim Natalizia Balbi, undressed her, touched her breasts and her genitals and even though Natalizia Balbi repeatedly told the accused Malcolm McNally to stop, he persisted with his actions.

The victim Natalizia Balbi was always clear in her response to the accused Malcolm McNally's sexual advances, wherein on various occasions, the victim made it clear that she was not consenting to the acts of a sexual nature that were being perpetrated by the accused Malcolm McNally. Despite the victim's refusal and clear objections, the accused Malcolm McNally would nonetheless perform acts of a sexual nature on the victim, his partner, Natalizia Balbi.

The consequences:

In view of the abovementioned facts, the accused Malcolm McNally, on the tenth (10th) of August of the year 2021 and in preceding months and years, by means of several acts committed by himself, even if at different times, which constitute violations of the same provision of the law, and have been committed in pursuance of the same design, in St Paul's Bay, and in these islands, rendered himself guilty of **engaging in non-consensual acts of a sexual nature** provided that such crime is aggravated since it has been committed on the person of the current or former spouse, civil union partner or cohabitant, and on the person of another person living in the same household as the accused, and moreover, the offence, or related offences, were committed repeatedly.

The charges:

Wherefore, the Attorney Generali, in the name of the Republic of Malta, on the basis of the circumstances of the facts abovementioned as a consequences of the same, accuses the accused Malcolm McNally of, on the tenth (10th) of August of the year 2021 and in preceding months and years, by means of several acts committed by himself, even if at different times, constitute violations of the same provision of the law, and have been committed in pursuance of the same design, in St Paul's Bay, and in these islands, rendering himself guilty of **engaging in non-consensual act of a sexual nature**, in that such crime is aggravated since it has been committed on the person of the current or former spouse, civil union partner or cohabitant, and on the person of another person living in the same household as the accused, and moreover, the offence, or related offences, were committed repeatedly.

The punishment demanded:

Therefore, the Attorney General demands that the accused Malcolm McNally be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for a term **from five (5) to nine (9) years**, as is stipulated and laid down in articles 17, 18, 31, 207, 202(h)(i)(v), 202(j), 382A, 383, 384, 385, 412D, 532A and 533 of Chapter 9 of the Laws of Malta, or to any other punishment applicable according to law to the declaration of guilt of the accused Malcolm McNally.

During the sitting of the 12thDecember 2024 the Court informed the accused of the joint application that was presented in the registry of this court on the 2nd December and proceeded to ask the accused if he wanted to plead guilty to the charges as set out in the Bill of Indictment and accept the punishment proposed in the joint application.

The accused after given enough time insisted on registering his guilty plea and to remitting himself to the punishment proposed in the joint application.

Having seen the joint application filed on the 2nd December 2024 the Attorney General and the accused advised the court that they had reached an agreement in terms of

article 453A(1) of the Criminal Code and jointly requested that, in the event that the accused pleads guilty to all the charges preferred against him in the Bill of Indictment, the punishment to be awarded by this court should consist of a term of imprisonment of ten (10) years effective imprisonment in addition to the payment of expert costs incurred in this case in terms of article 533 of Chapter 9 of the laws of Malta and any sanction and/or consequence to the declaration and finding of guilt in terms of Chapter 9 of the Laws of Malta and any other sanctions, punishment, expense and consequence relative to the accused admission of guilt in terms of the, Chapter 9 of the Laws of Malta

In the sitting held on the 12th of December 2024 the court informed the accused that it was ready to accept the punishment proposed in the joint application presented before this court on the 2nd of December, 2024.

The accused, after being asked, in terms of article 450 of the Criminal Code, whether he is guilty of the offences charged in the indictment, stated that he is guilty of all those offences mentioned in all the Counts of the Bill of Indictment.

The court then, as required under article 453 of the Criminal Code, solemnly warned him of the legal consequences of such admission, explained the consequences of the request made by him jointly with the Attorney General and allowed him a short time to retract his statement. The accused however persisted in his statement, which was then recorded in the acts of these proceedings.

The Court, therefore, declares Malcolm Mc Anally guilty of the charges preferred against him in the bill of indictment, namely of the following of having on the 10th August, 2021:

1. Raped Natalizia Balbi, and from the very early months of their relationship till the 10th of August 2021 committed: -
2. Nonconsensual act of a sexual nature.

Having seen articles 17,18, 31, 198 (1) (3) (4), 202 (h) (i) (v), 202 (j), 207, 382A, 383, 384, 385, 412D, 532A and 533 of Chapter 9 of the Laws of Malta , 202 (h) (i) , 214, 215, 221, 221 (1) (a) ,211 (1) (2), 251B, 251H (a) (h), 339 (1) e), 382A and 533 of the Criminal Code, and having reviewed the sanction requested by the parties in terms of article 453A of the Criminal Code, the Court is satisfied that the sanction requested is one which it would have been lawful for it to impose upon conviction for the offence to which the accused has pleaded guilty and finds no cause to order the trial to be proceeded with for a reason referred to in article 453(2) of the Criminal Code, or for any other reason to reject the request.

The Court, therefore, as requested by the parties jointly, declares the accused Malcolm Mc Anally guilty of all charges and sentences him to a term of imprisonment of ten (10) years.

In terms of article 22 of the Criminal Code, any time prior to today during which the person sentenced was in prison for the offences for which he has today been convicted and sentenced, not being time in prison in execution of a sentence, shall count as part of the term of imprisonment under this sentence.

In terms of article 533 of the Criminal Code the court further sentences Malcolm Mcnally to the payment to the Chief Executive Officer of Courts of the costs incurred in connection with the employment in the proceedings of all experts namely the following: -

1. The sum of **€103.55** which were paid to PS 959 Daniel Formosa fol. 55 of the proceedings.
2. The sum of **€78.09** which were paid to PS 111 Braden Borg as per Dok BB fol. 73 of the proceedings.
3. The sum of **€275.14** which were paid to Dr Marisa Lautier Mifsud as per Dok MLH fol. 96 of the proceedings.

4. The sum of **€2,603.43** which were paid to Dr Marisa Cassar as per Dok MC fol. 113 of the proceedings.
5. The sum of **€636.57** which were paid to Dr Katya Vassallo as per Dok KV fol. 243 et seq of the proceedings.
6. The sum of €454.60 which were paid to Dr Joseph Vella Baldacchino as per Dok JVB fol. 127 et seq of the proceedings.

Total ta' €4,151.38.

This court will not condemn the accused to pay the expenses involved and paid to the court appointed expert Dr Martina Schembri as per Dok MS fol. 139 of the proceedings since there is no mention of the quantum of the payment made.

Thus, the accused must pay the Director of Courts within sixty (60) days from when he is so summoned the total sum of **€4,151.38** in default of which the sum of money that will still be due will be converted to a further term of imprisonment according to law.

In addition, in terms of section 382A (2) of the Criminal Code the court is also issuing a restraining order against the accused in favour of Natalizia Balbi for the maximum period allowed by law for three years, and such period shall commence to run from the date of the remission of the punishment.

The court orders that a copy of this judgment is sent to the Director of the Criminal Court so that he may collect the expenses that the accused was condemned to pay to the Chief Executive Officer of Courts.

Dr Consuelo Scerri Herrera
Hon Madame Justice

Maria Grech
Deputy Registrar