



**IN THE COURT OF MAGISTRATES (GOZO)
AS A COURT OF CRIMINAL JUDICATURE**

Magistrate Dr. Jean Paul Grech B.A., LL.D
M.Juris (Int. Law), Adv. Trib. Eccl. Melit

JUDGEMENT

Given today, Tuesday, the eighteenth (18th) March 2025

Case Number 172/2024

The Police
(Inspector Keith Xerri)

Vs

Samuel Kelly

The Court,

Having seen the charges brought against **Samuel Kelly**, son of Samuel and Patient nee Morabe, born in Edo State, Nigeria on the fourteenth (14th) of September 1999 and residing at Maycar Flats, Flat 1, Triq il-Puniċi, Xlendi, Munxar, Gozo holder of Maltese identity card number 9005055(A) for having on the second (2nd) of October 2023 at around

half past seven in the evening (19:30hrs) at Puniči Street, Xlendi, Munxar, Gozo:

(1) uttered insults or threats not otherwise provided for in this Code, or being provoked, he carried his insults beyond the limit warranted by the provocation against Charlton Cassar;¹

(2) and also for having assaulted and caused injuries on the person of Charlton Cassar which injuries are of a slight nature as certified by Dr Nicholas Vella Med. Reg. NO 4297 MD of the Gozo General Hospital.²

In the case of a finding of guilt, the court was also kindly requested to apply article 383 of Chapter 9 of the Laws of Malta.

Having seen that the case was assigned to this Court as presided following an order dated nineteenth (19th) day of February 2024 issued by the Chief Justice in terms of Article 11(3) of Chapter 12 of the Laws of Malta and Article 520 of Chapter 9 of the Laws of Malta;

Having seen all the acts of the proceedings;

Having heard the evidence submitted;

¹ Article 339(1)(e) of Chapter 9 of the Laws of Malta.

² Article 221(1) of Chapter 9 of the Laws of Malta.

Having seen the evidence tendered and the documents filed in the case **Ir-Repubblika ta' Malta vs Charlton Cassar** (Case Number 5/2024), since all the evidence compiled in that case is to apply to this case as well;

Having heard the final submission of the parties;

Having seen the court minute of the twenty-eighth (28th) of January 2025 wherein the case was put off for today for judgement;

Considered;

The facts of the case are as follows: on the second (2nd) of October 2023 at about quarter to eight in the evening (19:45hrs), the Police were requested to attend to an incident in Triq il-Puniċi, Xlendi, Munxar, Gozo. A certain Melissa Tabone had called the Victoria Police Station and had informed the Police that a black person was going to assault her and other persons.

The Police repaired on site. There they met the parte civile Chalton Cassar – Melissa Tabone's partner – who informed them that he and his partner had had an argument with a black person who had been residing in their apartment. This person had escaped. Cassar and Tabone were instructed to go to the Gozo General Hospital so that they

could be medically examined and to report to the Victoria Police Station afterwards to lodge a formal complaint as regards the incident.

In the meantime, an ambulance was seen leaving Xlendi. As soon as the nurse inside the ambulance saw the Police, he informed them that inside the ambulance there was a person who was alleging that he had just been assaulted by another person. The person in the ambulance required medical care. From verifications carried out on site by the Police Officers, it transpired that the person inside the ambulance was the same person who had had an argument with Cassar and Tabone. This person was eventually identified as Samuel Kelly.

From investigations carried out by the Police, it transpired that Cassar and Tabone on the one hand and Kelly on the other had had an argument between them. They had started to argue while they were still in the common parts of the block named "Avalon", Triq il-Puniċi, Xlendi, Munxar. The matter escalated further and allegedly Cassar and Kelly ended up fighting in Triq il-Puniċi. A piece of wood and an iron frame were also used during the incident. These were seized by the Police.

As a result of this incident, the accused was certified as having suffered grievous injuries whereas Cassar and Tabone were certified as having suffered slight injuries. Tabone informed the Police that she did not

wish to proceed against Kelly and infact she signed a waiver to this effect.

Considered;

As this Court pointed out in the case ***Il-Pulizija vs Ahmed Mohammed Abdulkadir***³:

“għas-sejbien ta’ htija fl-imputat għar-reati li dwarhom ikun ġie mixli fiċ-Ċitazzjoni, jeħtieg li l-Prosekuzzjoni tipprova rabta ossia a link of causation fil-każ ta’ kull reat addebitat, bejn l-imputat u l-event kriminuż: ness li jrid jikkonvinċi lill-Qorti sal-grad taċ-ċertezza morali illi kien proprju l-imputat u hadd iktar, li seta’ wettaq dan l-att kriminuż. Din iċ-ċertezza trid tkun imnissla mir-riżultanzi ta’ s’tharriġ s’hih u bir-reqqa tal-evidenza kollha miġjuba, tal-provi ammissibbli kollha li jkunu tressqu quddiemha u s-sottomissjonijiet, li jiffirmaw parti mill-atti proċesswali, u f’xejn iktar jew inqas minn hekk.” (Enfazi tal-Qorti).

The Court needs therefore to analyse whether in the light of the evidence submitted this link of causation exists.

³ Decided on the sixteenth (16th) December 2024 – Case Number 272023.

After having sifted through all the evidence submitted, the Court notes the following:

- (a) The parte civile who was the main witness in this case opted not to testify so as not to incriminate himself. This weakened the Prosecution's case to a substantial extent since the Court was not provided with first-hand information of what really happened;
- (b) Melissa Tabone who had also witnessed the incident did not testify since she did not want to incriminate her partner Charlton Cassar. This in view of the fact that criminal proceedings were also taken against Cassar in connection with this same incident;
- (c) Superintendent Bernard Charles Spiteri and PS 364 David Borg Grima only testified on the contents of the reports which were received by them or on the contents of the statements given to them. Therefore, their evidence amounts to hearsay evidence. Furthermore, though in the course of the hearing of this case it was indicated that the wooden plank and the iron frame involved in this same incident were seized by the Police, these items were not filed in the acts of these proceedings. Nor were photos of the same items submitted as evidence;
- (d) PC 413 Adrian Debrincat, PC 53 Stefan Spiteri and PC 68 Jeffrey Zammit who repaired on site declared that when they arrived on site, they did not witness any arguments and that the alleged

incident was over. Hence in their testimony they could not shed any light on what had happened. Moreover, it does not seem that the same Police Officers attempted to determine whether there were any CCTV cameras in the vicinity which could have captured the incident. Nor did they try to see whether any other persons had witnessed the same incident.

Therefore, there is a serious deficiency in the evidence submitted. There are practically no substantial elements of proof which link the accused to the assault and the slight injuries suffered by the parte civile Charlton Cassar.

It is true that the during the sitting of the twenty-ninth (29th) of October 2024, Inspector Keith Xerri exhibited a footage of the alleged incident. However, the Court cannot consider this footage as a sufficient piece of evidence which can secure a conviction. This for the following reasons:

(a) Although this footage was traced by Superintendent Bernard Charles Spiteri, the footage was not filed in Court by the Superintendent but by another Police Officer. Hence it was not confirmed on oath by the same Superintendent who had originally identified it;

- (b) The footage does not contain any indication of the date and time when the said footage was taken. Hence, the Court does not have the required confirmation that the footage refers to the incident subject of these proceedings. It is to be noted that no reference was made to this footage when the parte civile was giving his statement to the Police. Had this footage been shown to the parte civile, the Court would have had at least a confirmation that the footage refers to the incident relative to these proceedings;
- (c) Although one can hear the voice or voices of the persons taking the footage, these persons were never identified and hence they did not confirm the same footage. Reference as to how this footage was acquired can only be found in PC 1136 Nathan Joseph Cini's evidence. Cini explains how Superintendent Spiteri had sent him a link of a video footage which was uploaded on Facebook by Lovin' Malta. Cini had simply downloaded this footage and saved it on CD. The Court appreciates that a journalist needs to offer protection to his sources. However, there would not have been a violation of this obligation had the Prosecution summoned a representative of Lovin' Malta simply to confirm the authenticity of the footage which was handed over to Lovin' Malta and to provide details as to the date and time this footage was handed over to them;
- (d) Since the Lovin' Malta representative did not testify, the Court could not confirm either whether the footage which was

uploaded was the entire footage which had been sent to Lovin' Malta or whether it had been edited;

(e) The initial part of the footage shows the first part of the altercation between two (2) individuals. Then for some reason or another the person/s taking the video moves his mobile away from the physical altercation which was taking place and a part of the incident is not captured. The person concerned then manages to film the final phases of the argument. Hence it cannot be said that the footage is complete and that it is showing the incident from beginning to end. The Court notes that that part of the incident which was not captured on camera was crucial in this case. This because in the initial part of this incident the black person is seen with a piece of wood in his hand whereas in the final part of the incident the piece of wood appears to be in the hands of another man who was not wearing any top. The Court cannot assume or speculate as to what happened in the meantime when the camera was not focused on the altercation which was taking place. Had the parties involved testified in these proceedings, they could have thrown light on what happened. However, this was not the case;

(f) The audio in the footage is not clear enough. The only words which can be heard are those uttered by the person or persons who were taking the video. The words which were exchanged

between the two persons who were fighting are not decipherable.

Bearing in mind all the above the Court does not consider that it can arrive to pronounce guilt by simply basing itself on the video footage. This because of the various deficiencies in this piece of evidence which make it inadmissible. Furthermore, as already highlighted, there are no other elements of proof which can safely suggest that the accused is guilty of the charges brought against him.

- **Decide**

Therefore, for the reasons expounded above the Court is not finding the accused guilty and consequently it is acquitting him of all charges brought against him.

(sgd.) Dr. Jean Paul Grech
Magistrate

(sgd.) Diane Farrugia
Deputy Registrar

True Copy

For The Registrar