



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.
LAURENCE QUINTANO**

Sitting of the 6th May, 2009

Number 1312/2006

**The Police
(Inspector Keith Arnaud)**

Versus

Okbalidet Abe Bariya.

The Court

Having seen the charge laid against Okbalidet Abe Bariya, son of Abe and Zefan nee Tella, born in Eritrea on the 10th November 1979 holder of ID Card Number 34607(A) and residing at 13 Rue D'Argens Msida

Charged with having on the 16th December 2006 at around 08.00 in the morning at 13 Rue D'Argens Msida, without intent to kill or to put the life of his wife Gabriela Brhane Hussein, an Eritrean national and holder of ID 34920 A) in manifest jeopardy caused same Gabriela

Brahane Hussein greivous bodily harm which can give rise to any permanent defects or permanent disability or deformity or disfigurement in the face.

Having seen all the acts and documents in the proceedings including the current incident report filed by the alleged victim Gabrelle Bultani Hussen (fol 2 3 and 24), the photocopy of the ID of the defendant, the statement that the defendant made to the Police, the Not guilty plea filed by the defendant (fol 9), the certificate issued by Dr.Jonathan Joslin (fol 26), the declaration made by the defence that it was exempting the prosecution from summoning witnesses to verify that the statement was freely given by the defendant (fol 51), the decree by which the Court appointed Dr.Anthony Cutajar to translate from Maltese into English and vice versa, the translation prepared by Dr Anthony Cutajar (fol 56), the list of articles sent by the Attorney General (fol 74)

Having heard the witnesses on oath.

Having heard the submissions made by the Prosecution and the Defence.

Has Considered

According to the version of events given by the alleged victim, Gabriela Brhane Hussein, her husband, the defendant beat her on the day in question. He used his hands to beat her on her head. She then went to the Police Station to file a report. It seems that the quarrel broke out because the couple could not agree on whether to take the baby to hospital or not. (Fol 16). This was the first time that she and her husband had fallen out and she reported the matter because she was afraid that he would beat her again.

Then the witness said that she was no longer angry with her husband. (Fol 19). She expressed her wish that her husband would no longer be held in prison.

In fact, on the 8th January 2007, she testified that she did not like the proceedings to go on against her husband. (fol 27). She also said that she was ready to have her husband back in the house once he was granted bail. Later on (see fol 67) she testified that she had been reluctant to testify against her husband from the very start.

PS 1043 Francis Pace testified that the alleged victim had called at the station and that she had been to hospital. Dr.Joslin had phoned the police station stating that the victim was suffering from greivous injuries.

The medical certificate reveals that the victim had a fracture in her nasal bone, was suffering from concussion and haemorrhage from both her sinuses and had contusions in her arms and legs. The nature of these injuries was described as 'greivous per durata'.

Dr Jonathan Joslin testified that the alleged victim could hardly open her eyes and her face was swollen. Her abdomen was also swollen. The CT scan revealed fractures in her nose and fractures of the maxillary sinuses and of the ethmoidal sinuses between her eyes. These were full of blood and were the result of an assault. He confirmed the certificate which appears at fol.26.

Inspector Jeffrey Cilia testified that the defendant came to Malta on the 30th July 2005. He alleged that he was an Eritrean and was given the number 05W047. He is in Malta on a temporary protection basis. The witness confirmed the identity of the accused.

The Attorney General decided to send the defendant for trial by this Court after having established that the defendant may have committed offences under articles 214, 215, 216 and 222(1)(a) of Chapter 9 and under articles 31 and 533 of Chapter 9.

Dr Beppe Micallef Trigona confirmed that the Gabriella Brahne Hussein stayed in hospital between the 16th and the 19th December 2006. She had a swollen eye, and a bruised eye while the CT scan revealed a small fracture.

The witness presented a record sheet with a case summary. (Fol 80).

The Prosecution declared that it had no further evidence on the 25th November 2008.

Gabriella Brahne Hussein was a witness for the defence. She confirmed that currently she and her husband were living together again. Since the incident the couple have had two more children. She added that she was no longer afraid of her husband. She was also ready to forgive her husband.

Considerations of the Court.

According to section 635 (1)(a) of Chapter 9, the wife is a competent witnesses if she is herself the victim of violence. It is then up to the Court to exercise its discretion under article 633.

The Court heard the alleged victim state what had happened on the 16th December 2006 when she herself had reported the matter to the police. The certificate at page 26 as confirmed on oath by Dr.Jonathan Joslin who examined the witness shows that the witness had a fracture in hier nsoe besides toehr injuries. This amounts to a grievous bodily harm under section 216(1)(b) and section 222(1)(a) also applies. There is no doubt that this grievous injury was inflicted by the defendant not only because of the testimony of the wife but also because of the current incident report which is based on what the alleged victim reported to the Police.

The Court fully understands that the wife may have had second thoughts after filing the report. It notes that the alleged victim and the defendant are living together and that they have had two children since the incident. Moreover, it appears that they fell out over a very minor matter – simply whether one of their children should be taken to hospital or not.

Conclusion

The Court, having seen articles 214, 215, 216, 222(1)(a), 31 and 533 of Chapter 9 of the Laws of Malta finds the defendant guilty as charged but in view of the present circumstances and the repeated statements made by the wife that she would have preferred to forgive and forget rather than go on with the proceedings, instead of condemning the defendant is discharging him on condition that he does not commit another crime within a year from today. The Court explained section 22 of Chapter 446 to the defendant in simple terms.

< Final Judgement >

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