



COURT OF CRIMINAL APPEAL

**THE HON. MR. JUSTICE
DAVID SCICLUNA**

Sitting of the 24th March, 2010

Criminal Appeal Number. 46/2010

The Police

v.

Kaman Ivanov Lazarov

The Court,

Having seen the charges brought against the said Kaman Ivanov Lazarov before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having on the 24th June 2008 at around 02.30 hrs. at Hannobal Complex, Flat 6, Mullet Road, St. Paul's Bay:

(1) inflicted bodily harm of a slight nature on his wife Nataliya Aleksandrova Medvedeva as certified by Dr. Mistella Caruana, reg. 2069, of Mosta Health centre;

(2) caused his wife Nataliya Aleksandrova Medvedeva to fear that violence will be used against her or her property or against the person or property of any of her ascendants, descendants, brothers or sisters or any person mentioned in article 222(1), in terms of article 251B of Chapter 9 of the Laws of Malta;

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 27th January 2010 whereby that Court, having seen articles 221(1) and 251B of Chapter 9 of the Laws of Malta, found the said Kaman Ivanov Lazarov not guilty of the second charge and acquitted him from said charge, but found him guilty of the first charge and, in terms of article 22 of Chapter 446 of the Laws of Malta, discharged him on condition that he does not commit another offence within the period of one month from date of judgement;

Having seen the application of appeal filed by Kaman Ivanov Lazarov on the 8th February 2010 wherein he requested that this Court reform the appealed judgement and thus confirm it in the part where he was acquitted of the second charge and acquit him as well from the first charge as well as from any punishment;

Having seen the records of the case and the documents exhibited;

Having heard the evidence;

Having heard submissions made by the prosecution and the defence;

Having considered:

Appellant's grievances are in synthesis the following: (1) that his version was more credible than that of his wife. Moreover, although the prosecution should produce the best evidence, the doctor who released the medical certificate did not testify. Furthermore the photographs are undated and just a photocopy; (2) the affidavit by W.P.C.

267 J. Grima should have been notified to him in the English language.

As regards the second grievance, this Court states at the outset that this is not justified. Indeed, the affidavit at page 13 of the records of the proceedings and which was exhibited in Court on the 27th January 2010, is in English save for the preliminary details and the declaration that it had been confirmed on oath. In reality the affidavit should have been in the English language in its entirety since the party charged was English-speaking, and the Commissioner of Police should make provision for this in the future. For this reason this Court will be ordering that this judgement be notified to the Commissioner of Police. Moreover, in the instant case it results that when the affidavit was presented before the first Court, no opposition to it was registered and therefore appellant's grievance at this stage of the proceedings is not acceptable.

As to appellant's first grievance, this requires a reappraisal of the evidence in the case and it is not normal for this Court to disturb the appraisal made by the first Court if it finds that that Court had reached its decision in a legitimate and reasonable manner. This case undoubtedly required an assessment of the credibility of the one or the other parties, i.e. whether the version given by Nataliya Aleksandrova Medvedeva was to be considered as more credible than that of appellant, or whether appellant's version was to be considered as more credible. The first Court clearly concluded that Medvedeva's version was the more credible one.

Now, although there is a clear conflict between both versions – Medvedeva alleging that she was punched by her husband and appellant declaring that he never punched her – this does not preclude the Court from accepting one of them. As has been stated repeatedly by these Courts¹:

¹ See, viz. Criminal Appeal **Il-Pulizija v. Habesh Ismael**, 25 ta' Frar 2009.

“Imbaghad, bil-fatt li jkun hemm zewg verzjonijiet kontrastanti, ma jfissirx illi Qorti tkun prekluzja milli taccetta verzjoni jew ohra. Wara kollox, ix-xiehda ta’ xhud wiehed biss, jekk emmnut, hija bizzzejjed biex tikkostitwixxi prova shiha u kompluta minn kollox, daqs kemm kieku l-fatt ikun gie pruvat minn zewg xhieda jew aktar². U kif gie ritenut minn din il-Qorti diversament presjeduta fis-sentenza fl-ismijiet Il-Pulizija v. Joseph Thorne tad-9 ta’ Lulju 2003, *‘mhux kull konflitt fil-provi ghandu awtomatikament iwassal ghal-liberazzjoni tal-persuna akkuzata. Imma l-Qorti, f’kaz ta’ konflitt fil-provi, trid tevalwa l-provi skond il-kriterji enuncjati fl-artikolu 637 tal-Kodici Kriminali u tasal ghall-konkluzjoni dwar lil min trid temmen u f’hiex ser temmnu jew ma temmnux’*³.”

This Court has done precisely that and come to the conclusion that the first Court could in fact have legitimately and reasonably reached the conclusion it did. It does not seem credible to this Court that Medvedeva returned home already injured and gave no explanation as to how she was injured. If that had happened, she would have told her husband what had led to the injury and they would have together filed a report with the police. From Medvedeva’s evidence it results that she did eventually go to the police station, but to report her husband; that she went to the Mosta Health Centre to be examined by a doctor; and that a few days later she had photographs taken of her face. It is clear that when this incident happened, appellant suspected that his wife might have been in a relationship, and that that suspicion was spurred on by his wife’s late entry home.

Appellant makes much of the fact that the doctor who released the medical certificate did not testify. But evidence about injuries and the nature of such injuries is not something that depends necessarily and exclusively on a medical opinion.⁴ The evidence tendered by the

² See article 638(2), Cap. 9.

³ See also Criminal Appeal **The Police vs Graham Charles Ducker**, 19th May 1957.

⁴ See, viz. Criminal Appeal **Il-Pulizija v. Peter Azzopardi**, 10th January 2005.

injured party may be sufficient. And in this case there are the photographs, which Medvedeva confirmed relate to this incident, which clearly show bruising below the left eye.

Consequently appellant's grievances are to be dismissed.

For these reasons:

This Court denies the appeal and confirms the judgement delivered by the first Court, saving that the period of one month for which appellant has been conditionally discharged shall start from today. This Court has explained to appellant in ordinary language that if he commits another offence during the period of conditional discharge, he will be liable to be sentenced for the original offence. Furthermore, in view of what has been said above with regards to the second grievance, orders that this judgement be notified to the Commissioner of Police.

< Final Judgement >

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