



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

**MAGISTRATE DR.
JACQUELINE PADOVANI**

Sitting of the 6 th April, 2011

Number 141/2007

**POLICE
INSPECTOR PAUL BOND
INSPECTOR THERESE SCIBERRAS
VS
PETER ROY SEED**

The Court, having seen the charges brought against Peter Roy Seed, son of Anthony and Dorothy nee' Hare, born in Lytham St'Anne's on sea, Lanchashire, England on the 23 of June 1962, resident at 'Santa Maria Appts', Apt.10 Santa Maria Estate, Mellieha and holder of Identity Card number 38568(A);

Charged with having on the 8 of October 2007 at about 11:30p.m. whilst at 'La Palma Pub' Artikli Street, St.Paul's Bay, by means of a broken glass, hit James Tony Hannan in his face and caused him injuries of grievous nature as certified by Dr. Nicola Aquilina M.D. of St.Luke's Hospital;

Having heard the evidence tendered on oath;

Having seen the consent of the Attorney General (a fo.19) and that of the accused (a fol.12) for the case to be treated with summary proceedings;

Having heard the oral submissions of the parties;

Having seen the note of submission of the prosecution of the 2nd February 2010.

Deliberates:

Inspector Paul Bond (at page 13 et seq.) stated that he was informed by PS 581 Buttigieg that a report was lodged at Qawra Police Station concerning a fight, which took place at 'La Palma Pub' in St. Paul's Bay between Peter Roy Seed and James Tony Hannan and, as a result of which, Hannan suffered facial injuries and was taken to hospital. Inspector Bond stated that Dr. Nicola Aquilina of St. Luke's Hospital, certified that Hannan sustained facial injuries of a grievous nature. Inspector Bond stated that he spoke to James Tony Hannan who informed him that he and Seed were having an argument, the money that they were allegedly earning from time-shared projects and that Hannan alleged that the accused, during this argument, suddenly hit him with a glass that he had in his hand and broke it in his face.

Inspector Bond exhibited the statement of the accused (Doc.PB3) which statement was signed by the accused. Inspector Bond stated (at page 15) that the accused told him that it was true that he hit Tony Hannan in the face but that he had acted in self defence; *"James Tony Hannan tried to hit him and in order to defend himself, he hit him with his hand, to defend himself, he hit him with the glass that at the time he had in his hands..."*

Medical certificate was exhibited as Doc.PB4.

In cross examination, Inspector Bond confirmed that, after this, the accused left the pub because he was afraid of Mr. Hannan. Inspector Bond confirmed that the accused

told him that when Mr. Hannan was about to punch him, the accused moved back and put his arms in front of him to protect himself; that he had a glass in his right hand and the glass shattered in his hand and in Hannan's face (at page 16).

In his statement (Doc.PB3 a fol.21 et seq.) Peter Roy Seed stated that he worked on a time-shared project, as an Assistant Manager, and the Company had thrown a party for the employees, for which he was present. After dinner, his bus gave one of the employees seventy Maltese Lira (Lm70) to buy several drinks and they went to 'La Palma Pub' and spent the money on three (3) bottles of champagne. James Hannan arrived at 'La Palma Pub' and shared the drinks with them. He started bragging that he would make more money than the accused and became very aggressive towards him. The accused stated that James Hannan was much taller in stature than he was. After a few minutes of arguing, James Hannan tried to punch the accused with his fist:

"I immediately moved back and put my arms in front of me, to protect myself. During this process I had the glass in my right hand and the glass shattered in my hand and in his face with the consequence that he (Hannan) was injured in his face and I was injured in my right hand." (at page 22)

The accused stated that after this, Hannan, kept trying to lunge at him and was restrained by the owner of the bar. There was another man who was trying to speak to Hannan and Hannan was aggressive towards this third man as well. The accused stated that, at this stage, he realized he had to run away and, in fact, Hannan ran after him, shouting that he was going to kill him. The accused ran to the establishment called 'Fuego' and requested the security personel to phone for a taxi. As he waited, the Police arrived and escorted him to the police station.

Dr. Ian Farrugia exhibited Doc.IF, medical certificate.

Dr. Nicola Aquilina (at page 24) confirmed Doc.IF and stated that the patient Hannan told her that he had been involved in a fight with a work colleague and that his face has been cut by a piece of glass.

In her second testimony, Dr. Aquilina (at page 27 et seq.) confirmed Doc.PB4, medical certificate of James Hannan who presented himself with a facial wound which started from his left ear and proceeded all the way down to his mouth, *“with a skin flap consisting of skin and muscle at the angle of the mouth. He also had another small wound below the mandible and the forehead.”* She classified the injuries as grievous as it was likely that the injuries would leave a permanent scar in his face. She stated that the suturing had been extensive and had to be reviewed a couple of times in order to remove dead tissue. She confirmed that the laceration was a ‘clean cut’.

James Tony Hannan (at page 35 et seq.) stated that, on the night in question, there was a “works evening”. He stated that he had just returned from the UK that same evening and went to ‘La Palma Pub’, he stated that he met Peter Roy Seed there and they were debating over their ability to outperform each other at work. He stated that the debate got more heated and they exchanged words so that it became quite uncomfortable for their work colleagues, who decided to move away. He stated that, at this point in time, he had no inkling whatsoever that the situation was going to turn violent.

“My memory flashes back at what I describe...it felt like a wet slap and then I turned and saw and focused on Peter Roy Seed, he had a glass in his hand, it was a broken glass, he then struck me again which I defended myself by raising my right arm over that side of my face and I was struck again and I also have stitches in this part of my body.” (vide testimony at page 35 and 36)

James Hannan stated that he recalled seeing Peter Roy Seed run away and hearing people say that the police and the ambulance were called. Hannan stated that he ran to the end of the road to see which direction Peter Roy Seed

had taken, but that, unfortunately, the police came, at this point in time, and held him “*by instinct,*” and he was able to give them a quick description of Mr. Seed, the clothes he was wearing and direction in which he ran. After that, he was taken to hospital by an ambulance.

James Tony Hannan identified the accused (at page 37).

Mr. Hannan denied that he tried to punch the accused before he was hit with the glass. He denied attempting to strike Peter Roy Seed in any way. Hannan exhibited six (6) photographs of his facial injuries (Doc.H) which were taken by his partner Damiana. He confirmed the medical certificates (Doc.IF and Dok.PB4) At page 40, Hannan stated that he landed in Malta at nine o'clock in the evening (9:00p.m) and then arrived at 'La Palma Pub' at ten o'clock in the evening (10:00p.m.). He stated that he consumed three (3) glasses of champagne that evening, that he had not consumed any alcohol on the plane and that the accused was also drinking champagne.

In cross examination, James Tony Hannan confirmed that he had known the accused for two (2) years. Hannan admits that the argument started because:

“We were showing off to one another because we are the top of our field in what we do both, professionally. So there is that sort of ‘bravado’ between us, there is this healthy competition.” (at page 43)

James Tony Hannan denied that he was aggressive or that he became so. He denied trying to punch Peter Roy Seed and confirms that the accused just came along, with a glass in his hand, and broke the glass in his face. He stated that during the ‘bravado’ they tried to bet on who would make more money between the following Wednesday and Saturday. Hannan confirmed that, once they were arguing, they both were standing up but were not gesticulating. Hannan did not know whether the accused had hurt his own hand. James Hannan denied that he was restrained by a third person from hitting the accused again. He stated that after he was hit by the

accused in the face, with a broken glass, he was very agitated, he was crying and screaming, because he was in a state of shock. At page 48, Hannan stated that he did not hear the sound of broken glass, before he received the injury to his face. He stated that there was only one person who saw the way he was assaulted and this was Morten Dam, who is a friend of his and a friend of the accused Peter Roy Seed.

PS 581 Loreto Buttigieg exhibited the police report, Doc PS at page 56 et seq. He confirmed that the police received a call for police assistance and an ambulance. He said that an argument had ensued at 'La Palma Restaurant', and that two men were casing one another. PS 581 confirmed that the man with a cut on his face, was taken to hospital in an ambulance. The police then searched the area and arrested the accused whose hands were also bleeding. PS 581 stated that the accused did not tell him that the injured party tried to punch him before he acted in self defence (vide page 54 & 55).

In the report at page 58 Hannan informed the police that during the heated argument, the accused "smashed a glass on the table and put the broken glass in the direction of Hannan's face – then ran away". In the same report the accused stated that the person filing the report (P/F/R) attacked him, the table went up in the air, and that he ran away as he was being pursued by the person filing the report.

Morten Hedegaard Dam at page 59 stated that during a staff party/drinks at 'La Palma Bar' Qawra, the accused and James Hannan were "measuring the masculinity", arguing who was the best at the job and betting on who was going to make more money over a given period of time. Dam stated that he stopped paying attention to their ridiculous behaviour. He said that at one point in time, he heard a glass smash, he saw blood all over Hannah's face, and he saw something in the accused's hand going towards James Hannah in the direction of his underarm. Morten Dam stated that before he heard the glass shatter, Hannah and the accused had been talking for about 10 minutes and that their voices were getting louder and

louder. He did not see any displaced furniture during the incident.

Dam stated that the staff had been drinking at the dinner at the Radisson Hotel. He drank beer, gin and tonic, and wine during the dinner, and then drank champagne at 'La Palma'.

He stated at page 65 that Peter Seed and James Hannan did not seem intoxicated, or incoherent, they were steady on their feet and did not slur in their speech.

Dam stated that he told James Hannah that he was a potential witness in a text message. He confirmed that he used the Visa card of James Hannan's mother in order to pay for an air ticket during the Christmas period and had paid James Hannan the next day. He said that both parties had asked about the content of his testimony and that he told everybody what he had seen. No one had tried to influence him in any way.

In his testimony, the accused Peter Roy Seed confirmed on oath the essence of his statement after this was read out to him. (vide page 85). He reiterated that when Hannan turned up at 'La Palma' he started to brag that he was better at his job than the accused. The accused said that he then suggested that they bet their Christmas bonus on the better time share salesman. The accused said that at this point in time, Hannan's face drew very close to his, then Hannan backed away and hurled a fist in the direction of the accused's face. The accused said that he instinctively raised his arms to protect his face. At page 87, the accused gave a blow by blow account of the manner in which the complainant hurled a fist towards his face, how the accused backed away as far as the table behind him aloud, how the accused instinctively put both arms up to protect his face, how the accused was still clutching the champagne glass in his right hand and how this glass shattered in Hannan's face as Hannan was moving towards the accused to punch him.

The accused said that after this, and in spite of the fact that Hannan's face was bleeding and the fact that his (the accused)'s hand was bleeding, Hannan kept urging the accused to go outside to fight, that the bar owner restrained Hannan, and that Hannan turned on to the bar owner and challenged him to a fight. In cross examination

the accused repeatedly denied breaking the glass and then hitting Hannan in the face with it. He said that he did not see anything in Hannan's hands. The accused also said that he was "quite a bit drunk that night", as was everybody else, including Hannan.

Deliberates:

Before examining in detail the above evidence, the Court feels it incumbent to state at the outset that the prosecution in this case failed to produce several witnesses that could have shed light on the manner in which this incident happened. This is being said due to the fact that both the complainant and the accused stated at a very initial stage of the investigation that there were at least 20 employees that had been invited to this staff party and that the owner of 'La Palma Bar' was in fact a rather pertinent witness. None of these witnesses were produced by prosecution similarly, none of them were produced by the defence.

It needs to be said that the proceedings were conducted by summary procedures wherein the role of the Court was immediately one of a Court of Judicature and not a Court of Criminal Inquiry.

A detailed examination of the evidence of the prosecution highlights some glaring inconsistencies. Mr James Hannan gave the police a very different account of the events of the night in question than the one he chose to recount to this Court.

Indeed during the initial police investigation as recorded in the police report Dok PS exhibited in these acts, James Hannan stated that there was a heated argument with Peter Roy Seed that during this argument Peter Roy Seed **smashed the glass on a table** and "put the broken glass in the direction of the victim's face".

In his testimony before this Court however James Hannan changed that version and told the Court that during the heated argument/bravado with no warning at all, the accused smashed the champagne glass in his face (aggression after chasing).

The only "independent" witness produced by the prosecution was Morten Dam. Apart from the fact that

Dam stated categorically **that he never saw the blow that cut James's face** for he only looked after he heard a glass break and saw Hannan's bleeding face, (he did see the accused, with a broken glass in his hands approaching Hannan's underarm), his testimony is compromised by the payment of an air ticket by James Hannan effected via his mother's Visa card.

It is true that Dam, in his evidence before this Court retorted that he paid Hannan the following day, but no documentary evidence of this was produced.

Had his testimony not been so compromised it would have tended to corroborate the accused's version of events – rather than Hannan's 1st account of it.

The accused on the other hand was consistent throughout. In his statement to the police at page 21-22, he gives a detailed account of what happened and this is mirrored in the account given in testimony before this Court.

There is no doubt that the injury suffered by James Hannan are grievous injuries in terms of Art 218 (1)(b) such that they cause a serious permanent scar which disfigures the face. This has been proven beyond a shadow of doubt by the medical certificate exhibited and duly authenticated by Dr Aquilina, the set of images of the sutured scars exhibited by Hannan and the healed scar that the Court had ample opportunity to observe. There is no doubt that the complainant, shall carry this scar for the rest of his life.

The Court will have to examine whether Peter Roy Seed's action on the night in question, constitutes legitimate self defence under Maltese Law.

Deliberates:

According to Art 223 of Criminal Code:

“No offence is committed when a homicide or a bodily harm is ordered or permitted by law or by a lawful authority, or is imposed by actual necessity either in lawful self-defence or in the lawful defence of another person.”

In judgement **Police vs Augusto Auguliario** decided on **26 August 1998**, the **Criminal Court of Appeal Chief Justice Dr Vincent De Gaetano** held:

*Mhux kull min "jagixxi biex jiddefendi ruhu necessarjament jista' jinvoka l-Artikolu 223 tal-Kodici Kriminali. Il-ligi titkellem car dwar "il-bzonn attwali ta' difiza legittima" ta' dak illi jkun jew ta' haddiehor. Kemm fid-dutrina kif ukoll fil-gurisprudenza taghna, huwa ormai stabbilit li biex wiehed jista' jinvoka din l-iskriminanti, **l-aggressjoni subita trid tkun ingusta, gravi u inevitabbli. L-element ta' l-inevitabbilita jigi nieqes** meta wiehed minnflok ma jevita l-inkwiet, ossia l-glied illi jara gej, meta dan jista' b'mod ragonevoli jigi hekk evitat, **imur minghajr raguni valida jaffrontah b'mod li jipprecipita hu stess il-konfront fiziku.**"*

Translated as:

"Not everyone acting in self defence may invoke Art 223 of the Criminal Code. The wording of the law is clear "actual necessity" of one's legitimate self defence or the defence of another person.

According to doctrine and to jurisprudence, it is a well established concept that in order to successfully invoke the plea of legitimate self defence, the sustained aggression must be unjust, grave and inevitable. The element of inevitability is missing where instead of avoiding trouble/or a fight, when this can be reasonably avoided, one actually confronts another without a valid reason, thereby precipitating the actual physical confrontation.

Indeed Lord Justice Widgery held in *Police vs. Julien (1967) 1WLR839: it is not ... the law that a person threatened must take to his heels and run in the dramatic way suggested by Mr. McHale; but what is necessary is that he should demonstrate by his actions that he does not want a fight. He must demonstrate that he is prepared to temporise and disengage and perhaps to make some physical withdrawal, and that that is necessary as a feature of the justification of self defence is true in our opinion,*

whether the charge is homicide charge or something less serious.” (at page 843)

In the case under examination, the manner in which Hannan attempted to punch the accused, classifies under aggression that was “unjust”.

It classifies as being “inevitable” in so far as it happened quickly and without warning making it virtually impossible to the accused to disengage or walk away. It cannot however be categorized as grave. The evidence shows that Hannan did not have a firearm or knife or other weapon in hand or anything that could have turned the aggression into a fatal threat. The accused was well aware of this and says so in his evidence.

The evidence shows however that the accused’s actions of instinctively protecting his face by raising his arms, clutching on to his glass rather than throwing it away, tends to show that he exceeded the limits of self defence but that this was due “to the person being taken unawares or to fear or fright”, and this in terms of the proviso of Art 227(d) of the Criminal Code (Chap 9 of Laws of Malta) made applicable to the case of wilful bodily harm by virtue of Art 230 of the Criminal Code.

The Court therefore finds the accused had indeed caused grievous bodily harm on James Hannan, that the accused acted in self defence when so doing, that he exceeded the limits of self defence, but that the said excess was as a result of the accused being taken unawares or through fear or fright and this in terms of Art 218 (1)(b), 230, 223, and the proviso of 227(d) the Criminal Code Chapter 9 of the Laws of Malta. Therefore acquits the accused.

< Final Judgement >

-----END-----