



**QORTI TAL-MAGISTRATI (MALTA)  
BHALA QORTI TA' GUDIKATURA KRIMINALI**

**MAGISTRAT  
DOREEN CLARKE**

Seduta tas-26 ta' Settembru, 2011

Numru. 1244/2010

**The Police  
(Inspector Therese Sciberras)**

**vs**

**Pavels Mileika  
Andrejs Voronovskis**

**Case Number: 1244/2010**

**Today the 26<sup>th</sup> September, 2011**

The Court,

Having seen the charges against

Pavels Mileika, son of Peter and Natalija nee' Osipova,  
born in Riga (Latvia) on the 2<sup>nd</sup> July, 1984 and residing at  
"Dolphin Court", Flat 2, Giuseppe Despott Street,

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St.Paul's Bay, holder of passport number LV 3310289  
and

Andrejs Voronovskis, son of Valerijs and Romulada nee' Tukarskaja, born in Aiskraukle (Latvia), on the 17<sup>th</sup> of April, 1983 and residing at "Jonero Apts", flat 2, Tamar Street, St.Pauls' s Bay, holder of identity card number LL 0728024.

Accused with having

On Sunday the 21<sup>st</sup> of November, 2010 between 08:00pm and 09:00pm, whilst in Gifen Street, St.Paul's Bay, attacked Leone Bugeja and after pushing him to the ground, kicking him for several times with the result that he suffered injuries of grievous nature on his person and head as certified by Dr.Anna Grushenko MD (Ref. 5301) and by Dr.Christine Zerafa M.D (Reg. 5257) of Mater Dei Hospital.

Moreover, with having on the same date, time and place, voluntarily, caused injuries of slight nature save complications on the person of Anthony Bugeja as certified by Dr.Stephen Muscat M.D (Reg. 1455) of Mater Dei Hospital.

Furthermore, with having on the same sate, time and place, disturbed the public good order and peace by fighting and shouting or in any other manner.

Having seen the note of the Attorney General whereby the acts of the proceedings were sent in order for accused to be tried by this Court as a Court of Criminal Judicature for the offences contemplated in the following sections of the Criminal Code:

- (a) 214, 215 and 218(1)(b);
- (b) 214, 215 and 221; and
- (c) 338(dd).

Having seen that the defendants had no objection to their case being tried summarily.

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Having heard the evidence and oral submissions by the parties.

Having seen the acts of the proceedings.

Having considered

That this case refers to an incident that took place on the 21<sup>st</sup> November 2010 in Saint Paul's Bay in which incident there were involved the defendants and two siblings: Leone Bugeja and Anthony Bugeja; all four persons involved suffered some injuries.

It must be stated at the outset that, other than the police officers who were called on sight after things had quietened down, the doctors who examined each of the persons involved and the experts nominated by the Court, the only witnesses who gave evidence were the siblings Bugeja and the defendants. It must also be stated that there is a considerable conflict between the version given by the siblings Bugeja on the one hand and the defendants on the other hand. In reality there is agreement as to some facts, in particular how the incident began, that it took place in two stages and that Anthony Bugeja was involved only in the second stage; other than that the versions given are conflicting.

It appears that defendants had stopped close to a shop where one of them bought a packet of cigarettes; Pavels Mileika was standing on the pavement gesticulating with his hands whilst talking to the other defendant. Leone Bugeja had also gone out to buy a packet of cigarettes and whilst he was walking on the pavement he was hit by defendant Pavels Mileika. It was at this point in time that the fight between defendants and Leone Bugeja broke out.

Bugeja stated that when he got close to Mileika he realised that he was going to be hit so he grabbed Mileika's arm with his hand. Bugeja continued to state that as soon as he grabbed his arm, Mileika confronted him and immediately after Voronovskis punched him. Mileika

and Bugeja fell to the ground and, whilst Mileika was punching him as they lay on the ground, Voronovskis started kicking him. When the defendants stopped hitting him he got up and slowly walked home. On the way home Bugeja passed by defendants again; although one of them tried to provoke him he continued on his way home and nothing happened. When Bugeja got to the block of apartments where he lives he knocked on his brother's apartment (his brother lives in the ground floor apartment in the same block). By the time his brother, Anthony Bugeja, realised who was knocking and opened the door the defendants had also arrived, this time with something in their hand, and they started hitting both Leon and Anthony Bugeja. Leon Bugeja could not say what defendants had in their hand and did not recognise the wooden stick exhibited by the prosecuting officer.

Anthony Bugeja stated that he was at home when he heard someone knocking on his door and window; he looked out and saw his brother who was bleeding. He went out and by the time he went out he saw the two defendants approaching his brother; he tried to take his brother inside but the defendants started hitting both him and his brother until some passers by separated them. Anthony Bugeja did not notice that defendants had anything in their hand.

The defendants for their part both stated that when Mileika accidentally hit Leone Bugeja, Bugeja reacted violently by hitting Mileika. On seeing this Voronovskis pushed Bugeja away who fell to the ground but immediately got up and walked away. Defendants also walked away but soon after saw five or six men approaching them with sticks in their hand; these men attacked the defendants who tried to defend themselves by hitting back; at a certain point both defendants lost consciousness; when they came to no one was around but someone was calling from a balcony to inform them that she had called the police; the police in fact came soon after. Whilst the police were questioning the persons involved they noticed, in close proximity to the place

where the incident took place, a wooden stick which had blood stains.

The finger prints lifted from the stick did not have sufficient identification points for comparison and identification purposes. Of the two swabs taken from the wooden stick a full DNA profile was obtained only from one; this was of a male but following a comparative exercise it was established that this profile did not belong to either of the defendants.

It was established through the medical certificates exhibited in the course of the proceedings that Leone Bugeja had a number of lacerations and bruises in his face and he also suffered fractures of the facial bones; Anthony Bugeja had some abrasions and haematomas; Pavels Mileika had some lacerations and a haematoma; whilst Andrejs Voronovskis had a laceration and a degloving injury in his right little finger. The injuries sustained by Leone Bugeja were described as grievous; the injuries suffered by the other persons involved were described as being of a slight nature.

Having considered

That in his submissions defence counsel argued that the testimony given by the siblings Bugeja should be discarded as inadmissible in view of the fact that the proceedings commenced against them regarding the same incident are still pending, and that consequently they are to be considered as co-accused.

The Court however does not share the same views. In the first place it has not been definitively established that proceedings were in fact taken against siblings Bugeja and whether these have been concluded or not. However, even if by application of the principle in *dubbio pro reo* the Court were to assume that proceedings have been taken and that these are still pending, it has not been shown that they were charged with the same offences.

The principles which have guided our Courts in this regard are well established in our jurisprudence. In the judgement given in the case Republic of Malta vs Domenic Zammit et<sup>1</sup> it was said that ... *persuna li tkun akkuzata, kemm bhala komplici kif ukoll bhala ko-awtur, b'l-istess reat<sup>2</sup> migjub kontra akkuzat iehor ma tistax tingieb bhala xhud favur jew kontra dak l-akkuzat l-iehor sa kemm il-kaz taghha ma jkun gie definittivament deciz. Dan il-principju japplika sia jekk dik il-persuna tkun akkuzata f'l-istess kawza ta'l-akkuzat l-iehor – b'mod li jkun ko-akkuzat fil-vera sens tal-kelma – u sia jekk tkun giet akkuzata fi proceduri separati. Fi kliem il-kompjant Imhalled William Harding: Maltese Law considers as incompetent to give evidence (except on his own behalf) anyone charged with **the same offence<sup>3</sup>** in respect of which his deposition is required, unless the proceedings against him are put an end to....*

In the case under examination it would be very hard to believe that siblings Bugeja were charged with the **same offences** imputed to the defendants i.e. with having caused bodily harm to themselves. Consequently by application of the principles above quoted the siblings Bugeja can be considered competent witnesses.

Having considered

That as already stated in the present case there is a clear conflict in the versions given by the two parties. But it is a well established principle in our judicial system that a conflict in the version of facts given to the Court need not necessarily lead to an acquittal of the defendant provided the Court is satisfied that it can give credibility to one version rather than the other.

In the present case siblings Bugeja gave the same version of facts at each stage of the proceedings. They first gave their versions of facts to the police officers who went on site, they were again questioned by the police

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<sup>1</sup> Decided by the Court of Criminal Appeal on the 31<sup>st</sup> July 1998

<sup>2</sup> Emphasis of this Court.

<sup>3</sup> Emphasis of this Court.

inspector who further investigated the case, and they gave evidence before this Court; in all three instances they gave the same version of facts. Further more their version of events is compatible with the nature of the injuries each of them suffered and is corroborated by other evidence like the presence of the blood splatters near the window and door of the flat belonging to Anthony Bugeja.

Defendants' versions of facts on the other hand vary in some details particularly when they refer to the number of persons who attacked them. They told the police officers who went on site that they were attacked by many men claiming that they were coming out like spiders, they told the inspector that they were attacked by six to eight persons and in Court they said that they were attacked by five to six persons.

However what really discredits the defendants is not this inconsistency but their version of events in most of its aspects. They claim that, apart from the initial punch to Pavels Mileika's eye by Leon Bugeja, they were attacked by five or six persons who were armed with wooden sticks and that for a full two minutes these five or six people were hitting them with these sticks and kicking them to the extent that both defendants fell unconscious on the ground. In spite of this beating defendants refused medical attention and it was only after being taken to the police station that they accepted medical assistance. It then transpired that both defendants suffered injuries of a slight nature; injuries which are in complete contrast with the type of beating they described in their testimony. It is also to be pointed out that the one stick which was found on site did not have blood which could be matched with that of the defendants.

Defendants also say that they acted in defence and that they hit out to protect themselves claiming that they **might** have hit someone but only to ward off their assailants. The defendants fail credibility even in these assertions particularly when the nature of the injuries sustained by Leone Bugeja is taken into consideration. The injuries he

sustained are not compatible with an incidental blow in attempt to ward him, or somebody else, off but are compatible with repeated intentional blows.

In view of the foregoing, taken in the light of all the evidence produced, the Court considers that the version of events given by siblings Bugeja is credible and that these versions reflect the actual sequence of events. Consequently the Court is satisfied that the defendants not only disturbed the public peace during the incident in question but that they also caused Leone Bugeja and Anthony Bugeja bodily harm.

From the certificates and medical evidence produced it is very clear that the injuries sustained by Anthony are of a slight nature while the injuries sustained by Leone Bugeja are of a more serious nature. However after having had the opportunity of seeing Leone Bugeja, the Court is not satisfied that the injuries he sustained fall within a definition of section 218(1)(b) of the Criminal Code cited by the Attorney General. Whilst there can be no doubt that the injuries Leone Bugeja sustained are grievous in nature they fall within a definition of section 216(1)(b) and 216(1)(d) of the Criminal Code and it is of the offence contemplated in these sections that the defendants are being found guilty with regard to injuries sustained by Leone Bugeja.

With regards to the penalty to be meted out the Court took into consideration the nature of the offences of which defendants are being found guilty and their clean conviction sheet.

For these reasons the Court, after having seen sections 214, 215, 216(1)(b)(d), 221 and 338(dd) of Chapter 9 of the Laws of Malta, finds defendants guilty of the charges brought against them however with regard to the first charge they are being found guilty of the offence contemplated in section 216(1)(b) and (d) of the said Chapter 9 of the Laws of Malta, and condemns each of them to one year imprisonment. Each of the defendants is also being condemned to immediately pay to the Registrar



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of this Court the sum of €540.74 representing expenses incurred in the nomination of experts in the course of the proceedings which amount is to be converted to forty seven (47) days imprisonment if it is not paid.

**< Sentenza Finali >**

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