



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

**MAGISTRAT DR.
EDWINA GRIMA**

Seduta tal-31 ta' Ottubru, 2012

Numru. 1101/2009

**The Police
(Inspector Spiridione Zammit)**

Vs

**Sadiq Ali Bush of 40 years of age, son of Ali Bush and
Fatima Abdalla born in Sudan on the 1st of January
1972 and residing at Marsa Open Centre holder of
identity card number 35052(A) and Police Immigration
number 05G007 and**

**Sadiq Shemu Bakhret of 35 years of age son of
Shemu and Maria born at Sudan on the 1st January
1977 and residing at Marsa Open Centre, holder of
identity card number 35796A and Police Immigration
Number 05GG18**

The Court,

Having seen the charges brought against the accused, Sadiq Ali Bush and Sadiq Shemu Bakhret being charged with having on the 14th September 2009 at about 11:00p.m. and time after whilst in Marsa Open Centre situated at Princess Albert Town Marsa, without intent to kill or to put the life of any person in manifest jeopardy, caused grievous bodily harm on the person of Matar Khamis Hasan from Marsa as certified by Consultant A. Cassar from Mater Dei Hospital.

With having on the same date, place and circumstances made use of arms improper (stone)

With having on the same date, place and circumstances in any manner not otherwise provided for in the Criminal Code willfully disturbed the public good order or the public peace.

With having on the same date, place and circumstances attempted to use force against Matar Khamis from Marsa with intent to insult, annoy or hurt such person.

Having seen the documents exhibited and all the acts of the proceedings

Having seen the consent of the Attorney General of the 20 day of October of the year 2009 for the case to be tried summarily by this Court.

Having heard the evidence.

Having heard submissions by the parties.

Considers,

That from the evidence tendered in this case it results that both accused live at the Marsa Open Centre. At the time of the incident injured party Hasan Khamis also resided there. From the acts it also results that Khamis had serious mental problems, suffered from a depression and

had problems regarding alcoholism.¹ In fact he was also hospitalized from a period of time at Mount Carmel Hospital due to his condition. It seems that his alcohol problem was a well known fact at the Centre, which problem eventually led to his untimely death. In fact pending the outcome of these proceedings , Khamis passed away in an unfortunate drowning incident at St.George's Bay where it is alleged Khamis was drunk at the time of the incident.²

The Court feels it apt to make these remarks prior to putting forward its considerations on this case since the only evidence in the acts linking the accused to the charges brought against them is the evidence of injured party Matar Khamis Hasan. The Court therefore has to weigh the reliability of his evidence against that tendered by both accused. Also injured party failed to turn up several times even though summoned to give his testimony. When he finally makes an appearance in court, he alleges that on the day of the incident he was drinking at the bar found in the Open Centre. He alleges that this bar is run by accused Sadiq Bush. He states that at one point Bush forced him to leave the premises and once outside both accused came out and asked him to leave. He refused to do this and was then assaulted by the two men. In fact he states that Sadiq Bush picked up a stone and hit him on the left hand side of his face, breaking his jaw in the process. The other accused then hit him on the forehead with the result that he fell to the ground. They then let him go and Khamis states that he went to the office looking for help but since he found nobody there, he decided to wait until morning and then go to hospital. In fact in the morning he was taken to hospital by Ahmed Bukri, manager at the Marsa Open Centre.³

Both the accused deny all this, both when they are interrogated by the police upon being arrested, as well as in their testimony during these proceedings. Accused Sadiq Ali Bush states that the first time he saw injured

¹ Vide police report at folio 23 and Mater Dei certificate at folio.28

² Vide police report Dokument S29 exhibited at folio 70 et.seq.

³ Evidence of Hasan Matar Khamis is found at fols.47 and 48 of the court records.

party, the latter was lying on the floor already injured. He states that Khamis was vomiting and he had blood oozing out from his face. In his hands he had a carton of alcohol. He states that he picked up injured party and placed him on a bench at which point in time Khamis looked up at him and asked him who he was. He was also unaware of his whereabouts and asked Bush where he was. Accused Sadiq Bush states that he was alone at the time of this incident and had just woken up and walked out of his room to go to the toilet when he spotted Khamis lying on the floor. He states that he then washed Khamis's face and took him to his room where he left him.

Accused Sadiq Shemu Bakhret, from his part, totally denies having been present during this incident. He denies even seeing Khamis Hasan on that night and also denies having been in Sadiq Bush's company.⁴

The accused bring forward an independent witness, a certain Mohammed Kamal. This witness confirms that on the night in question he was at the restaurant watching television. Injured party was also there and he observed that he was drunk. At one point he states that Hasan Khamis turned violent and broke a table and attacked two people who were also present at the place. Upon being questioned by the Court he states that neither of the accused was at the restaurant on this evening and that the two people who were attacked by Khamis have since been resettled in Germany. Khamis was then dragged out of the restaurant by some people and told to go to bed. After this he did not see Khamis again until he got to know in the morning that he had been taken to hospital due to some injuries.⁵

From the acts of the case it results that Hasan Khamis actually suffered injuries during the night of the 14th September 2009. These injuries were of a grievous nature as certified by Dr. Alex Cassar. In fact Khamis suffered from a fracture of the left angle of the mandible and had to

⁴ Vide statements Documents SZ4 and SZ5 at folio 24 et seq of court records and evidence of both accused at folio 66 and 68 of the court records.

⁵ Vide evidence of Mohammed Kamal Abdulgelil at folio 68 and 69 of the court records.

be operated. According to Dr. Alex Cassar the injuries were compatible with a blunt trauma and could have even been caused by a fall.⁶

In view of the evidence found in the Court records there exist serious doubts as to the sequence of events that occurred on the night of the 14th September. As already pointed out injured party had a serious alcohol problem. This sheds serious doubts as to the reliability of his testimony especially in view of the fact that there is no other evidence in the records to corroborate his evidence. Both the accused give a different version of events and it results from an independent witness that on the night of the incident injured party was seriously drunk and also got involved in a fight with third parties. The Prosecution, from its part, failed to bring forward other people who could have possibly witnessed the incident. It is a well known legal maxim that in criminal proceedings the charges have to be proven beyond reasonable doubt by the Prosecution. On the other hand the defense need bring forward evidence enough to convince the Court that on a balance of probabilities what the accused are affirming is the truth. The Court cannot find the accused guilty of the charges brought against them on the basis only of the evidence given by injured party who, it results had serious mental health problems and was also heavily drunk on the date of the incident.

Consequently in view of the conflicting evidence found in the acts of the case the Court cannot but acquit the accused of all the charges brought against them due to lack of sufficient evidence at law.

< Sentenza Finali >

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⁶ Vide medical certificate exhibited Dokument SZ1 and testimony of Dr. Alex Cassar at folio 34 et seq of the court records.