



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

**MAGISTRATE DR.
AUDREY DEMICOLI**

Sitting of the 14 th December, 2012

Number. 1355/2011

**Police
Inspector Godwin Scerri
VS
GMGM**

The Court;

Having seen that the accused GMGM of 39 years son of Giorgio and Marlene nee' Cuschieri born in London on the 10th of January 1972 and residing at Manuel Crt, Flat 10 Qasam Street, St. Julians and holder of identity card number 124109(L) was arraigned before it accused with having:

On the 4th of October 2011 in these Islands at around 4:30pm in 'Tasmine Crt' Flat 2 Triq Sir Joseph Carbone, in St. Julians committed violent indecent assault to the detriment of JH of 24 years as per Article 207 of Chapter 9 of the Laws of Malta.

The Court was asked to issue a protection order in terms of Article 412 of Chapter 9 of the Laws of Malta and to prohibit the accused from going near the person and her residence and the places she frequents.

Having seen all the acts of the proceedings including the Attorney General's consent dated 6th December 2011 (exhibited at folio 4 of the proceedings) for this case to be treated summarily.

Having heard the accused declare that he has no objection that this case is heard summarily and decided by this Court.

Having heard all evidence brought forward by the Prosecution and the accused.

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

Having considered:

The facts of this case are briefly as follows. The accused and the alleged victim, JH, got to know each other on the set of a movie which was being filmed in Malta where the accused was a member of the crew and the alleged victim was an extra. The filming in Malta lasted for around two weeks and the accused and H became friends and when the filming came to an end, they spoke to each other on Facebook. On the 4th October 2011 during a conversation which they had on Facebook JH indicated that she was very tired and stressed out and the accused offered to give her a massage but she replied that she would like to have a masage but could not afford it at which point tha accused replied that the massage was free of charge and he offered to pick her up from Floriana. H accepted the offer and the accused picked her up and took her to his apartment in St. Julians whereby he accompanied her into the massage room and told her to undress and cover her private parts with a towel which he handed over and he then left the room until the alleged victim undressed and

lay down on the massage table and covered herself with a towel as instructed by the accused. The accused then proceeded to give JH a full body massage first starting from the back and then proceeding to the front.

JH who gave evidence on the 9th February 2012 said that when the accused was massaging the front part of her body he told her to open her legs and he then proceeded to insert his finger in her vagina twice at which point she commented that they had agreed that this was not to take place and he thereby terminated the massage and she then proceeded to have a shower, put on her clothes and after having helped the accused with something on the computer she left the apartment and went home by bus after having refused an offer made by the accused to give her a lift home. JH said that during filming the accused had flirted with her on more than one occasion but she had made it abundantly clear that she was not interested in him in that way because he was not her type. She also said that she had accepted to go for the massage because she hoped that the accused could give her information about other parts in films since her boyfriend was looking for work. She also said that when she arrived at the accused's apartment they spoke about their respective partners and he told her that his girlfriend was abroad. JH also said that initially she did not want to file a report but her partner convinced her to do so.

The accused gave a statement to the Police on the 21st November 2011¹ whereby he confirmed that he had gotten to know JH on the film set and that subsequently she had contacted him on Facebook. He said that she was always the one to contact him on Facebook and also indicated that he had never fancied H or made any advances towards her because she was not his type but alleged that she had shown him that she fancied him and according to him she has invented this whole story for this reason. The accused confirmed that he had offered to give H a massage when she told him that she was very tired and stressed and that when he took her to the

¹ Inserted at folio 32 and 33 of the acts of these proceedings.

apartment he left the room while she undressed. He absolutely denied that he had touched her genital area or inserted his finger in her vagina. He also stated that the massage lasted around fifty five minutes and after he terminated the massage JH proceeded to take a shower and dress and then she went near him while he was doing something on his computer and helped him with a problem he had on the said computer. He also said that JH gave him a ten Euro tip after the massage to make up for the expenses he had incurred for massage oils and then left his apartment after she refused his offer to give her a lift home. The accused also said that he never charged for his massages because he only did very few of them and although he had trained in America to be a masseur he was not qualified to carry out massages in Malta. The accused also stated that JH had proven to be a very difficult person on the set whereby she was constantly making requests for special food and lamenting about the fact that the actors in the cast had their special requests for food granted while the extras did not. She also gave him the impression that she fancied him and he indicated that when they arrived at his apartment she had asked him about the state of his relationship. The accused gave evidence during these proceedings on the 18th May 2012 whereby he confirmed all that he had said in the statement given to the Police.

It is evident that the Court is faced with two rather conflicting versions of the facts and although not every case of conflicting evidence should give rise to an acquittal in this case the Court has serious doubts about the credibility of JH. The Court finds it rather strange that the said H should choose to go to the accused's apartment for a full body massage when she was aware that he had flirted with her in the past or that she should proceed to fully undress in the said apartment despite knowing that she was alone with the accused or that after having allegedly been sexually assaulted by the accused she should choose to have a shower in his apartment and then proceed to help him out with his computer before leaving. The Court believes that a person who has just been sexually assaulted in the manner indicated by H

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would have left the apartment immediately and not remained there to shower at leisure and then help out the accused on his computer. In view of these doubts the Prosecution cannot be deemed to have proven its case to a grade of beyond reasonable doubt and therefore the accused cannot be found guilty of the charges brought against him.

For the abovementioned reasons the accused is being declared not guilty of the charges brought against him and consequently acquitted from the said charges.

The Court is hereby prohibiting the publication of the name of the alleged victim and of the accused.

< Final Judgement >

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