

COURT OF MAGISTRATES (MALTA)

As a Court of Criminal Judicature

Magistrate

Dr. Rachel Montebello B.A. LL.D.

Compilation of Evidence Number: 447/2016

**The Police
(Inspector Jeffrey Scicluna)**

Vs

**DJIBRIL GANIOU
(Italian Identity Card Number
IO5450666)**

Today, 13th November 2018

The Court,

Having seen that **DJIBRIL GANIOU**, holder of Italian Identity card number IO5450666, and *omissis*, was arraigned and accused of having:

On the 22nd August 2016 between eleven o'clock at night and midnight (23:00-00.00hrs) inside 41, Fl2, Triq il-Miratur, Floriana and in these islands;

1. Without the intent to kill or to put the life of any person in manifest jeopardy, caused grievous harm to the body or health of Mamadou Dian Dallo, as certified by Dr. J. Farrugia Preca MD med. no. 3298 from

Floriana Health Centre and this in breach of article 218 of the Chapter 9 of the Laws of Malta;

Djibril Ganiou alone was accused of having at the same date, place, time and circumstances of having:

2. Without the intent to kill or to put the life of any person in manifest jeopardy, caused grievous harm to the body or health of Mohammed Jallow, as certified by Dr. J. Farrugia Preca MD med. no. 3298 from Floriana Health Centre and this in breach of article 218 of the Chapter 9 of the Laws of Malta;

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

Having seen that the Court during the hearing of the 25th April 2017 ordered that the proceedings are conducted in the English language and was duly exempted from ordering the translation of those acts of the proceedings requiring translation into such language.

Having seen that on the 2nd May 2018 the Attorney General in terms of Section 370(3)(a) of Chapter 9 of Laws of Malta, indicated that the accused can be found guilty of any and all of the crimes prescribed in terms of Articles 214 and 218(1)(a)(b)(2) of Chapter of the Laws of Malta and Articles 17, 23, 31 and 533 of said Chapter 9 and consequently sent the accused for trial for the same crimes by this Court.

Having seen that the accused did not object to this case being dealt with summarily¹.

¹ Fol. 131, hearing of the 17th May 2018.

Having seen the evidence brought forward by the Prosecution.

Having seen that the defence exempted the Prosecution from the necessity of producing before the Court as presently presided those witnesses who had already testified before the Court as previously presided.

Having heard the oral submissions of both the Prosecution and the Defence during the hearing of the 26th September 2018.

Having seen that the said co-accused Caroline Magri passed away on the 30th September 2016 (vide death certificate exhibited at fol. 52) and that during the hearing of the 29th November 2016 the Court declared the action in respect of the said Caroline Magri extinguished.

Having considered;

That from the testimony of the various witnesses and documents produced by the Prosecution, and particularly from the version of events reported in the Police report a fol. 15 (Dok. E)², it would result that on the 23rd August 2016 at circa 1.00 a.m. the Police were informed of an argument in an apartment at 41, Gunlayer Street, Floriana.

That in this context, reference is being made by the Court to the depositions of the most relevant witnesses produced by the Prosecution and to the salient parts of such testimony:-

PS 1338 Noel Apap testified³ that the Valletta Police were informed of an incident in Gunlayer Street, Floriana. When he arrived on site accompanied by other Police officers, he found the accused and Caroline Magri outside the

² Also Dok. AF fol. 67 *et seq.*

³ 14th September 2016.

block of apartments 41, Gunlayer Street, Floriana, who informed him that there had been an argument in the apartment where the accused resided with a number of other persons, and that the accused and Caroline Magri had been attacked by one of these persons who the accused identified as Mohammed Jallow. The witness also testified that the accused and Caroline Magri as well as Mohammed Jallow were accompanied to the Floriana Health Centre and he recalls that said Mohammed Jallow suffered injuries on his face in the region of the eye as a result of this incident. Under cross-examination, he also recalled that when he entered the apartment where the incident allegedly took place, the place was found to be in a disastrous state.

WPS 217 Alison Formosa exhibited the incident report (Dok. AF fol. 67) that she drew up regarding the incident which had been reported to her by Caroline Magri and the accused, and confirmed that the said persons had gone personally to the Valletta Police Station to report that they had been attacked while inside an apartment in Gunlayer Street, Floriana. In her testimony, the witness refers to the accused as the injured party. She also stated that she had gone to the apartment at 41/2, Gunlayer Street, Floriana accompanied by other Police officers, where she spoke to Mohammed Jallow and Mamadou Dian Dallo both of whom she noticed had injuries on their face which she stated were later certified to be grievous injuries, while the others had slight injuries.

Inspector Jeffrey Scicluna confirmed in his testimony⁴ that the accused together with Caroline Magri had reported to the Valletta Police that they had suffered some injuries during a fight that was alleged to have taken place at 41, Flat 2, Triq il-Miratur, Floriana. Witness stated that when Police officers reported on site they found signs of a scuffle and another two injured persons, Mamadou Dian Dallo and Mohammed Jallow who were suffering from grievous injuries and who identified their aggressors as the accused and

⁴ 25th April 2017, 30th January 2018 and 3rd May 2018.

Caroline Magri. He also stated that the accused and Caroline Magri were certified to have suffered from slight injuries.

The said witness confirmed that he interrogated the accused and Caroline Magri who each released a statement, where Caroline Magri stated that she was not involved in the fight but that the accused was involved in the fight against Mamadou Dian Dallo and Mohammed Jallow. The witness also stated upon interrogation that the accused declared that he tried to separate two persons who were fighting and was attacked by Mohammed Jallow. He also exhibited two medical certificates regarding the injuries suffered by the accused and Caroline Magri and confirmed that Mohammed Jallow no longer resides in Malta and cannot be traced.

PC 1210 Christopher Formosa testified⁵ that he had accompanied other Police officers to Gunlayer Street, Floriana, where he saw the accused outside in the street in front of where the alleged incident took place. Caroline Magri was also present. However there were other foreigners inside the apartment. The witness confirmed that the accused resides in the said apartment and was accompanied by Police officers to the Floriana Health Centre, while Caroline Magri who was also present on site, arrived with her own vehicle. The witness recalled that the accused might have had injuries on his back and face and that he together with Caroline Magri were taken to the Valletta Police Station and subsequently arrested.

PS 610 Mark Anthony Pisani testified⁶ that in August 2016 he was alerted about an incident that took place around midnight in Floriana and when he arrived on site together with other Police officers there was some commotion inside the apartment where, according to the witness, many persons resided. The witness also noted many things scattered around the apartment and a

⁵ 30th January 2018.

⁶ 30th January 2018.

person who had injuries in his head and back. Although he could not recall whether this person was the accused, he saw that this person was sitting down in a corner of the apartment, relating his version of events to another Police officer. Witness recalled that one of the injured persons was taken to the Polyclinic in Floriana but there were two injured persons.

PS 780 Ian Camilleri testified⁷ for the Prosecution and confirmed Dok. D at fol. 13 as being the statement of the accused taken by Inspector Jeffrey Scicluna on the 23rd August 2016. Witness recognised his signature on the said statement, as well as that of Inspector Jeffrey Scicluna and confirmed that when the accused released the statement he was not accompanied by a lawyer although he had chosen to consult with Dr Amadeus Cachia prior to releasing said statement.

In her testimony⁸, **Dr. Justyne Farrugia Preca** confirmed that she issued the medical certificate⁹ dated 23rd August 2016 at 1.30 a.m. which certified that Mohammed Jallow was suffering from a lacerated contused wound below the left eye requiring stitches and abrasion on right elbow and right hand, which injuries she classified as of a grievous nature since the lacerated contused wound was on the face. Witness stated that she did not review the patient and could not confirm whether the wound would leave a scar, however she declared that from the medical point of view injuries on the face are generally classified as grievous.

Said witness also confirmed that she examined Mamadou Dian Dallo on the same day at 1.35 a.m. and classified his injuries¹⁰ as grievous by nature since he was suffering from a lacerated contused wound on the face - the right cheek

⁷ 15th February 2018.

⁸ 27th March 2018.

⁹ Dok. A for 9.

¹⁰ Dok. B fol. 10.

needing stitches - abrasions on the back and on the left shin requiring steri-strips.

Dr. Tara Waheed stated in her testimony¹¹ that she issued the medical certificate dated 23rd August 2016¹² after examining Djibril Ganiou before, whom she recognised as the accused, and confirmed that he had slight injuries as well as the contents of said medical certificate.

WPS 173 Alyssia Scicluna confirmed¹³ the contents of the Police incident report dated 23rd August 2016 and stated that she reported what she was told by Caroline Magri at the Police Station.

Having considered;

That the Prosecution also exhibited the statements released by the accused and by the former co-accused Caroline Magri¹⁴ where they both denied having injured Mohammed Jallow and Mamadou Dian Dallo. Both the accused and Caroline Magri claimed in their statements that when they arrived at the apartment where the accused resides, they found two persons fighting and that when the accused tried to separate them, he was attacked.

The accused in his statement added that when he tried to stop the fighting he was punched in the face by Mohammed Jallow who also pushed Caroline Magri to the floor. He also claimed that said Mohammed Jallow grabbed a stone and wanted to throw it at him at which point accused locked himself inside his room. He denied having thrown, together with Caroline Magri, a wooden chair at Mohammed Jallow and also denied that Caroline Magri hit

¹¹ 17th May 2018.

¹² Exhibited by Inspector J. Scicluna as Dok. PO, fol. 129.

¹³ 27th March 2018.

¹⁴ Dok. C and Dok. D – fol. 11 *et seq.*

Mamadou Diani Diallo at any point. Upon being asked to explain how Mamadou Diani Diallo got injured, accused stated:

“I don’t know, all I know is he punched me in the eye and as I was going to start and fight with him, Carol came between us.”

Having considered;

That the two persons who the accused is charged with having caused grievous injuries, Mohammed Jallow and Mamadou Dian Dallo, gave their versions to the Police officers who went on site, which versions result from the Police report (Dok. AF fol 67). Mamadou Dian Dallo stated the following:-

“At 2300hrs I was inside my room and the other man (Djibril) and the woman (Caroline) were in another room. Two other men in my room started fighting after I separated them. I told them to stop quarrelling and one of them went to explain to Carmel who is the tenant of this apartment what had happened between them. Then I told them I wanted to sleep, The man (Djibril) and the woman (Caroline) were in the corridor. After the man who was with the woman started shouting at the other boy (Mohammed) and he started telling him that he was crazy because he was always causing problems. The man together with the woman grabbed a wooden chair and started hitting him (Mohammed) with the chair. I came out from my room to calm down the situation. Both the man and the woman told me that I had to tell my friend to stop fighting. Then I told them that I already did so. The man (Djibril) told me that this was not true and I asked him what he wanted me to do. The man told me (Djibril) that I was a big liar. I tried to separate them but the man started attacking me. I tried to defend myself. The woman (Caroline) picked an object and started hitting me with it in my face while the man (Djibril) started hitting me in my back. Then someone called the police.”

The said Police report indicates Mohammed Jallow as having confirmed the version given by Mamadou Dian Diallo and having added that the accused had hit him with a wooden chair in his face.

Having considered;

That the said persons with whom accused in charged as having caused grievous injuries, were not produced to testify during the proceedings, while the accused himself chose not to testify.

Having considered further;

That in line with the general rule of evidence in criminal proceedings, the Prosecution bears the legal burden of proving all elements in the offence with which the accused is charged and which are necessary to establish the accused's guilt. It is a necessary corollary of this rule that whenever there is a plea of not guilty, everything is in issue and the prosecution is required to prove the whole of their case. Finally, the standard of proof that the prosecution is required to bring in order for the accused to be found guilty, is that of proof beyond reasonable doubt.

In **Miller vs. Minister of Pension**, Lord Denning¹⁵ explained what constitutes “proof beyond a reasonable doubt”:-

“Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence ‘of course it is possible but not in the least probable’ the case is proved beyond reasonable doubt, but nothing short of that will suffice”.

In **Woolmington vs. DPP**, the House of Lords¹⁶ held, at pp. 481–2, as follows:-

¹⁵ 1974 - 2 ALL ER 372.

¹⁶ Per Viscount Sankey LC: [1935] AC 462 – cited in Blackstone’s Criminal Practice (2012 Edition) Vol.1 2370.

“But while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence. ...”

It is also a general rule of evidence that it is the duty of the prosecution to produce the best evidence available. This rule is enshrined in Article 638 of Chapter 9 of the Laws of Malta:-

638. (1) In general, care must be taken to produce the fullest and most satisfactory proof available, and not to omit the production of any important witness.

Having considered;

The Court observes that in this case, as already pointed out, the said persons to whom the accused is charged with having caused grievous injuries, were not produced to testify during the proceedings. According to Article 646(1) of Chapter 9 of the Laws of Malta, witnesses shall always be examined in court and viva voce and consequently, the versions of the incident in question related by the said alleged victims as reproduced in the Police incident report (Dok. D), cannot be considered to have any probative value in support of the charges brought against the accused.

Moreover, the testimony of the Police officers who went on site after the incident was reported, particularly the testimony of PS 1338 Noel Apap, does not constitute direct evidence of the facts as they occurred since it is evident that the scuffle was already over at the time when the Police officers arrived on site. Although PS 1338 Noel Apap did state in his testimony that Mohammed Jallow indicated the accused and Caroline Magri as his aggressors, this person was not brought to testify in these proceedings.

Moreover, while PS 217 Alison Formosa testified that the versions of the incident supplied to her by Mamadou Dian Dallo and another person who was allegedly injured in the fight, are reproduced on the Police Report at fol. 67 *et seq.*, this testimony cannot supplant the requirement that testimony of witnesses is to be heard by the court in the presence of the accused.

Having considered further;

That with reference to the statement released by the accused, the Court observes that during the course of these proceedings, no allegation let alone evidence was brought to show that this statement was obtained from the accused by improper or unfair means. Apart from having been duly cautioned and advised of his right to silence and his right to consult with a lawyer of his choice (which latter right he did effectively exercise), it results that the accused chose to sign the statement. This is also confirmed by PS 780 Ian Camilleri. Moreover, there is absolutely no evidence of any particular circumstances which would tend to show that the accused was a vulnerable person. Consequently, the Court deems that the choice of having released the said statement was undoubtedly made freely and voluntarily by the accused and is therefore admissible in evidence.

In this regard, the Court observes that the accused did not admit at any time and in any manner to having caused any injuries to Mohammed Jallow and Mamadou Dian Diallo. In his statement to the Police, the accused vehemently denied this accusation and claimed that he was attacked by Mohammed Jallow who punched him in the face and pushed Caroline Magri to the floor. Accused also described how, after he had locked himself in his room, said Mohammed Jallow broke the door of his room by hitting it with a stone and also tried to break the plywood partition. This version is substantiated by and

large by the version of events recounted by Caroline Magri in her statement¹⁷: Caroline Magri was also initially charged together with the accused before this Court with causing grievous injuries to Mohammed Jallow and Mamadou Dian Diallo and therefore her statement, although not having the same probative value of that of the accused after the proceedings in her regard were extinguished, cannot be discarded altogether since the Court deems that it is nonetheless relevant for the purpose of controlling the veracity of the accused's version of events.

In the light of all the above considerations, the Court deems that in this case the Prosecution failed to discharge the burden of proving the charges against the accused beyond reasonable doubt. The Court was not given the benefit of hearing the direct testimony of the two alleged victims or of other persons who were present in the apartment and might have witnessed the incident, to weigh into the ensemble of evidence brought by the Prosecution in support of the charges brought against the accused. This deficiency in itself is such as to introduce a reasonable doubt into the Prosecution's case, that is, a reasonable doubt as to whether it was indeed the accused who injured the alleged victims, and secondarily whether the alleged injuries were indeed also grievous in nature.

Although this conclusion in itself is sufficient to lead to the acquittal of the accused of the charges brought against him, the Court cannot but note that in any event, in so far as the accused is charged with causing injuries of a grievous nature to the alleged victims, the evidence produced in support of the allegedly grievous nature of the injuries, does not satisfy the Court that such injuries are indeed grievous. While it is true that Dr. Justyne Farrugia Preca testified that she classified the injuries as grievous upon examination, she stated that she did not review either of the alleged victims and therefore, it was

¹⁷ Dok. C - fol. 11 & 12.

not ascertained whether the injuries suffered were grievous in terms of Article 218 of the Criminal Code. The Court considers that it was the Prosecution's duty to bring the necessary evidence to dispel any doubt regarding the nature of the injuries suffered, although having said this, the Court does appreciate the fact that this evidence was not available once it resulted that the alleged victims were no longer in Malta.

Having considered;

That since none of the charges brought against the accused have been sufficiently proven for the reasons mentioned above, the Court cannot but acquit the accused from both charges brought against him.

Consequently, the Court, due to lack of sufficient evidence at law, does not find the accused DJIBRIL GANIOU guilty of the charges brought against him and consequently acquits him from the all of said charges.

Dr. Rachel Montebello

Magistrate