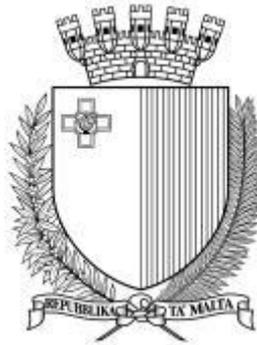


Grievous bodily harm with aggravating circumstances – Cap. 9, Art. 216(1), Art. 222(1) – Slight bodily harm – Cap. 9, Art 221, Art. 202(h) – Uttering of insults or threats – Cap. 9, Art. 339(1)(e) – Disturbance of public good order or public peace – Cap. 9, Art. 338(dd) – Harassment with aggravating circumstances – Cap. 9, Art. 251A, Art. 222(1)



COURT OF MAGISTRATES (MALTA)
As a Court of Criminal Judicature

MAGISTRATE
Dr. Victor George Axiak LL.D. Dip. Tax

Sitting held on 5 July 2020

The Police
(Inspector Matthew Galea)

vs

Majid Javed
(Pakistani National ID Card no. 17201-7917336-3)

The Court,

1. Having seen the charges brought against Majid Javed, of 29 years of age, son of Javed Khan and Faheema Khan, born at Pakistan on the 9th September 1990, residing at 172, Triq il-Kappillan Mifsud, Hamrun, holder of Italian “Permesso Di Soggiorno” Number I15057510 and Pakistani National Identity Card Number 17201-7917336-3, who was brought before it as a Court of Criminal Inquiry accused of:
 1. Having on the fourth (04) day of July 2020, at around two thirty in the morning (02:30hrs) whilst at Markiż John Scicluna Street, Santa Venera, “without intent to kill or to put the life of any person in manifest jeopardy,

caused grievous harm to the body or health of Luchhwani Rohan Gopal as certified by Dr. Nichole Zerafa M.D. Med Reg. No. 4466 of Floriana Health Centre”.

2. *Having at the same time, place and in the same circumstances “without intent to kill or to put the life of any person in manifest jeopardy, caused slight harm to the body or health of his former partner Maria Elena Galea as certified by Dr. Nichole Zerafa M.D. Med Reg. No. 4466 of Floriana Health Centre”.*
 3. *Having at the same time, place and in the same circumstances “uttered insults or threats not otherwise provided for in the Criminal Code, or being provoked, carried his insult beyond the limit warranted by the provocation”.*
 4. *Having at the same time, place and in the same circumstances “in any manner not otherwise provided for in the Criminal Code, wilfully disturbed the public good order or the public peace”.*
 5. *Having on the 04th July 2020 around five minutes to two in the morning (01:55hrs) whilst at these islands “pursued a course of conduct which amounted to harassment to his former partner Maria Elena Galea and/or had pursued a course of conduct which you knew or ought to have known that it amounted to harassment of your former partner Maria Elena Galea”*
2. *Having seen that the Court was “humbly requested to consider this case as a case of Domestic Violence in terms of Chapter 581 of the Laws of Malta”.*
 3. *Having seen that the Court was “kindly being requested that in case of finding of guilt, apart from awarding the lawful punishment, to order the person charged to pay the expenses relating to the nomination of experts as per article 533 of Chapter 9 of the Laws of Malta.”*
 4. *Having seen that the Court was “kindly requested, in order to provide for the safety of Luchhwani Rohan Gopal and Maria Elena Galea or for the keeping of the public peace, or in order for protection of the mentioned person and their family from harassment or course of conduct that causes fear of violence, to issue a protection order against the person charged in terms of Article 412C of Chapter 9 of the Laws of Malta, and in case of guilt the Court is requested to provide for the security of the persons effected and their families in terms of Articles 382A, 383, 384, 385 and 412D of Chapter 9 of the Laws of Malta.”*

5. Having seen the documents exhibited in the acts of the case.
6. Having seen that during the sitting, the Prosecution declared that it was re-dimensioning the first charge in the sense that article 218 of the Laws of Malta was not being invoked by the Prosecution.
7. Having seen that after the Court explained to the accused the nature of the charges preferred against him and after having given the caution to the accused in accordance with Art. 392(2) of Chapter 9 of the Laws of Malta, the examination of the accused was carried out in accordance with Art. 392 of Chapter 9 of the Laws of Malta.
8. Having seen that when the accused was asked by the Court if and what he wished to reply to the charge, the accused pleaded guilty.
9. Having seen that notwithstanding that in accordance with Art. 392A(1) of Chapter 9 of the Laws of Malta, the Court warned the accused in the most solemn manner about the legal consequences of his admission and after having allowed him a period of time for him to reply, the accused persisted in his statement of guilt and reiterated such admission.
10. Having seen that the offences with which the accused is charge are liable to a punishment not exceeding twelve years imprisonment.
11. Having seen that therefore in accordance with Art. 392A(2) of Chapter 9 of the Laws of Malta the Court as a court of criminal judicature may proceed to pass on the accused such sentence as would according to law be passed on an accused convicted of the offences.

Considered

12. That as regards punishment, both the Prosecution and the Defence informally agreed to invite the Court to award a custodial sentence and to suspend its operation in terms of law.
13. That although the Court is not bound by such informal agreement as this is not regulated under Art. 392A(5) of Chapter 9 of the Laws of Malta, it is however customary for our courts to positively consider such informal requests or agreements with the aim of facilitating proceedings and avoiding unnecessary delays.

14. That the Court considers that the crimes with which the accused is charged are of a serious nature and could have had severe repercussions on the injured parties. The Court acknowledges however that the accused cooperated with the Police, registered an early admission and moreover has an unblemished police conduct. In these circumstances the Court feels that it would be appropriate to accede to the parties' request to apply the provisions of Article 28A of the Laws of Malta.
15. That, while there isn't any good reason in accordance with Art. 392A(3) of Chapter 9 of the Laws of Malta to doubt whether the offences reflected in the first four charges have really taken place, the same does not apply to the fifth charge, relating to harassment under Art. 251A(1)(a). For the accused to be found guilty of this offence, the Prosecution must prove that the accused pursued a course of conduct amounting to harassment. This Court has on countless occasions established that one isolated incident does not constitute a "course of conduct" and that at least two or more incidents are required over a span of some time. The wording of the charge, making reference to a specific date and time when the alleged "course of conduct" occurred, automatically negates the existence of such "course of conduct". Therefore the Court cannot find the accused guilty of this fifth charge.
16. That all the other charges have however been satisfactorily proven in terms of law on the strength of the accused's admission and the documents exhibited by the Prosecution. For all intents and purposes, with regard to the first charge, the Court took into consideration the Prosecution's declaration that it was not invoking Art. 218 of Chapter 9 of the Laws of Malta. With regard to the second charge, upon the Court's request for clarification, the Prosecution affirmed that Maria Elena Galea was neither the former spouse nor the former civil union partner of the accused. Moreover she did not cohabit with the accused, did not have a child with him, did not live under the same household or with the accused and was not formally or informally engaged with him with a view to get married. Therefore given that with regard to the second charge, the charges sheet also made reference to the aggravating circumstances under Art. 222(1) (and indirectly, also Art. 202(h)), the Court will not find guilt under such article given that such aggravating circumstances did not and do not subsist.

Decide

- 17. For these reasons, the Court having seen the relevant articles of the law (Articles 17(d), 28A, 214, 215, 216(1), 221(1), 338(dd) and 339(1)(e)) of Chapter 9 of the Laws of Malta) acquits him of the fifth charge, finds the**

defendant guilty of the first four charges brought against him and condemns him to two (2) years imprisonment which sentence shall not however, in accordance with Art. 28A(1) of Chapter 9 of the Laws of Malta, take effect unless within a period of four years from today, the offender commits another offence punishable with imprisonment. The Court explained to the offender in ordinary language his liability under article 28B of Chapter 9 of the Laws of Malta if during the operational period he commits an offence punishable with imprisonment.

18. The Court moreover issued a Protection Order in accordance with Art. 412C of Chapter 9 of the Laws of Malta in favour of the injured parties under the conditions laid out in such order.

19. Finally with regard to the Prosecution's request to order the offender to pay the expenses relating to the nomination of experts as per article 533 of Chapter 9 of the Laws of Malta, the Courts abstains from considering such request given that no such experts were nominated.

**Dr. Victor George Axiak
Magistrate**

**Yesenia Maria Pace
Deputy Registrar**