



THE CRIMINAL COURT

The Hon. Mr. Justice Aaron M. Bugeja M.A. (Law), LL.D. (melit)

The Republic of Malta

vs.

Bojan CMELIK

Today the 13th October 2021

The Court,

Having seen the bill of indictment filed by the Attorney General on the 28th February 2019 bearing number 2 of 2019 wherein **Bojan CMELIK** was accused of having :

FIRST COUNT

Wilful Homicide of Hugo Chetcuti.

The Facts of the Case:

That on the sixth (6th) day of the month of July of the year two thousand and eighteen (2018) at around half past ten in the evening (22:30hrs.) Police Officers at the St. Julians Police Station were informed that a person

had been stabbed near Hugo's Boutique Hotel in Paceville. That when Police Officers arrived close to the crime scene they were approached by a certain Isaac Chetcuti who informed them that the person just stabbed was his brother Hugo Chetcuti. Isaac explained that whilst he was outside at St. Rita's Steps with his brother Hugo a private 'function, a male person approached his brother opening his arms as if he was going to hug him but instead this person was quick enough to stab Hugo Chetcuti twice in his abdomen and flee the scene;

That as Isaac Chetcuti directed the Police to the crime scene same described the aggressor as wearing a dark blue shirt, light coloured shorts and a big straw hat. Moreover, Isaac explained that he had chased the aggressor but had to abandon the chase at the whereabouts of Burger King restaurant as the perpetrator was a faster runner and had accumulated a lot of distance. Isaac further explained that the aggressor kept running in the direction of the Balluta Church.

That on the basis of this information the Police, including members of the Rapid Intervention Unit (RIU) started a search operation for the perpetrator, who was noticed a couple of times running in the direction of Sliema. The perpetrator was in fact apprehended by the Police in St. Helen Street, Sliema, notwithstanding that he aggressively resisted his arrest;

That on his person the perpetrator had a knife, which knife was later examined by forensic experts and found to contain Hugo Chetcuti's DNA on it, hence confirming that it was the weapon used in the stabbing;

That Police investigations showed that the perpetrator was the accused Bojan Cmelik, from Serbia.

Originally his birth name was Mitic Bojan which he subsequently changed to Cmelik Bojan in the year two thousand sixteen (2016). **Cmelik** came to Malta that same year, precisely on the first (PI) day of June of the year two thousand and sixteen (2016). Incidentally, whilst in Malta, the accused **Bojao Cmelik** worked in a couple of establishments owned by the deceased Hugo Chetcuti;

That with regards to the victim Hugo Chetcuti, he was rushed to Mater Dei Hospital by a private vehicle where he was immediately admitted in the Intensive Therapy Unit (ITU). Upon medical examination it transpired that he had two (2) stab-wounds in his abdomen and was exhibiting signs of hypovolemic shock. Being in imminent danger of loss of life, the surgeon in charge decided to operate on Mr. Chetcuti immediately. It resulted that the patient had a number of tears in his bowels and massive internal haemorrhage. The tears were sutured and the blood drained, and Hugo Chetcuti was transferred back to the ITU in a stable condition. However, during the following night (that is the night between the seventh (7th) and eighth (8th) July) his condition deteriorated such that he was operated-upon once again whereby a damaged part of his intestine was removed. Unfortunately, however, his condition continued to deteriorate, until on the

twelfth (12th) day of July at around half past seven in the evening (19:30hrs), Hugo Chetcuti passed away. The medico-legal post mortem concluded that the cause of death was due to septicaemia following bowel perforation caused by stab wounds.

The Consequences:

That by committing the above-mentioned act with criminal intent, the accused Bojan **Cmelik** rendered himself guilty of **wilful homicide**, namely that during the night of the sixth (6th) of July of the year two thousand and eighteen (2018) in Paceville, St. Julians, Malta, maliciously with intent to kill Hugo Chetcuti or to put his life in manifest jeopardy, manifested such intent by stabbing Hugo Chetcuti in his abdomen causing his death.

The Accusation:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses Bojan Cmelik of being guilty of wilful homicide, namely that on the sixth (6th) day of July of the year two thousand and eighteen (2018), in Paceville, St. Julians, Malta, maliciously, with intent to kill another person (Hugo Chetcuti) or to put the life of such other person in manifest jeopardy, caused the death of such other person (Hugo Chetcuti).

The Punishment Demanded:

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused Bojan Cmelik be proceeded against according to law, and that he be punished with imprisonment for life as is stipulated and laid down in articles 17, 23, 31, 211(1), 211(2), and 533 of the Criminal Code, Chapter 9 of the Laws of Malta, or to any other punishment applicable according to law to the declaration of guilt of the accused.

SECOND (2nd) COUNT

Assault or Resistance on Police Officers

The Facts of the Case:

That as previously stated in the First Count of this Bill of Indictment, namely on the night of the sixth (6th) of July of the year two thousand and eighteen (2018) as soon as the Police were informed that the person who had stabbed Hugo Chetcuti, later identified as the accused Bojan Cmelik, had fled the crime scene and headed towards the Balluta area, a thorough search was conducted with the assistance of the RIU officers within the peripheries of Sliema. The accused was in fact apprehended in St Helen's Street, Sliema;

That when the Police Officers approached the accused Bojan Cmelik, the latter reacted in an aggressive manner whereby he not only ignored their instructions and orders but at a certain point in time he charged towards them while trying to pull something out from his shirt. Being aware of the fact that the accused was most probably armed with a knife or similar sharp instrument (as he had just committed a stabbing), the Police were left with no option other than to fire a taser gun at the accused to temporarily immobilise him in order to arrest him without further risks of injury. Yet, despite being hit by the said taser, the accused Bojan Cmelik still managed to get back up and resist his arrest violently, kicking and punching and causing slight injuries to Police Officers PC 877 Glenn Vella, PC 142 Joseph Camilleri and PC 606 Joseph Ellu), persons lawfully charged with a public duty. Upon being adequately restrained, a knife was indeed found on the person of Bojan Cmelik.

The Consequences:

That by committing the above-mentioned acts with criminal intent, the accused Bojan Cmelik rendered himself guilty of assault or resistance, namely that during the night of the sixth (6th) of July of the year two thousand and eighteen (2018), he assaulted or resisted by violence or active force not amounting to public violence, the above-mentioned Police Officers - persons lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority.

The Accusation:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses Bojan Cmelik of being guilty of assault or resistance, namely that during the night of the sixth (6th) of July of the year two thousand and eighteen (2018), assaulted or resisted by violence or active force not amounting to public violence, any person lawfully charged with a public duty (Police Officers PC 877 Glenn Vella, PC 142 Joseph Camilleri and PC 606 Joseph Ellul when in the execution of the law (lawful arrest) or of a lawful order issued by a competent authority.

The Punishment Demanded:

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused Bojan Cmelik be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for a term from six (6) months to two (2) years and to a fine (multa) of not less than four thousand Euro (€4,000) and not more than ten thousand Euro (€10,000) as is stipulated and laid down in articles 17,23,31, 96(a) and 533 of the Criminal Code, Chapter 9 of the Laws of Malta, or to any other punishment applicable according to law to the declaration of guilt of the accused.

THIRD (3rd) and FINAL COUNT **Carrying a knife without a licence.**

The Facts of the Case:

That as explained in the previous two (2) counts of this Bill of Indictment, on the night of the sixth (6th) of July of the year two thousand and eighteen (2018) the accused Bojan Cmelik decided to go outside in the streets of Paceville, St. Julians, Malta, carrying a knife on his person which knife was used to fatally stab Hugo Chetcuti as explained in the First Count of this Bill of Indictment, and was later seized from said accused upon his arrest in Sliema. The accused Bojan Cmelik did not have a licence or permit from the Commissioner of Police as required by law to carry such knife outside any premises or appurtenances thereof.

The Consequences:

That by committing the above-mentioned acts with criminal intent, the accused Bojan Cmelik rendered himself guilty of carrying a knife without a licence or permit from the Commissioner of Police, namely that during the night of the sixth (6th) of July of the year two thousand and eighteen (2018) the accused was carrying a knife or cutting or pointed instrument outside any premises or appurtenances thereof (in the streets of Paceville, St. Julians, and Sliema) without a licence or permit from the Commissioner.

The Accusation:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses Bojan Cmelik of being guilty of carrying a knife without a licence or permit from the Commissioner, namely that during the night of the sixth (6th) of July of the year two thousand and eighteen (2018) the accused was carrying outside any premises or appurtenance thereof, a knife or cutting or pointed instrument of any description without a licence or permit from the Commissioner

The Punishment Demanded:

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused Bojan Cmelik be proceeded against according to law, and that he be sentenced to the punishment of a fine (multa) of one hundred and sixteen Euros and forty-seven cents (€116.47) as is stipulated and laid down in articles 6 and 51(7) of Chapter 480 of the Laws of Malta and articles 17, 23, 31 and 533 of Chapter 9 of the Laws of Malta, or to any other punishment applicable according to law to the declaration of guilt of the accused.

Having seen the records of the proceedings;

Having seen the verdict of the jurors reached today wherein the jurors declared as follows:

First Count

The jurors with **eight votes in favour and one vote against** found the accused **guilty** according to the First Count of the bill of Indictment that is to say of the crime of wilful homicide of Hugo Chetcuti.

Second Count

The jurors **unanimously** found the accused guilty according to the Second Count of the bill of Indictment, that is to say, of the crime of assault or resistance of police officers.

Third Count

The jurors **unanimously** found the accused guilty under the Third Count of the Bill of Indictment that is to say of the crime of carrying a knife outside any premises or appurtenance thereof without a licence or permit issued by the Commissioner of Police.

Consequently, this Court declares **Bojan CMELIK**:

1. Guilty under the First Count of the bill of indictment as mentioned above that is to say guilty of **wilful homicide**, namely that during the night of the sixth (6th) of July of the year two thousand and eighteen (2018) in Paceville, St. Julians, Malta, maliciously, with intent to kill Hugo Chetcuti or to put his life in manifest jeopardy, manifested such intent by stabbing Hugo Chetcuti in his abdomen causing his death;
2. Guilty under the Second Count of the bill of indictment, that is of the crime of assault or resistance of police officers in terms of article 96(a) of the Criminal Code as mentioned above;
3. Guilty under the Third Count of the bill of indictment, that is to say of the crime of carrying a knife outside any premises or any appurtenances thereof without the licence or permit issued by the Commissioner of Police in terms of articles 6 and 51(7) of Chapter 480 of the Laws of Malta as mentioned above.

Having seen the updated criminal record sheet of the accused;

Having heard the submissions made by Dr. Joseph Giglio acting on behalf of the family of the victim Hugo Chetcuti, duly admitted as injured party in these proceedings, by reference to the punishment to be meted out to Bojan CMELIK, namely that the punishment of imprisonment for life was the punishment to be meted out for both legal and factual reasons set out below:

The legal reasons :

1. In article 211 of the Criminal Code, the Law clearly states that:

Whosoever shall be guilty of wilful homicide shall be punished with imprisonment for life.
2. The verdict of the jury was a very clear and strong one. The accused has been found guilty by eight votes in favour to one against. This was much more, by far, than the minimum legal vote required for a conviction in criminal proceedings.
3. This vote sent a very strong message, because a vote of eight in favour and one against is almost a unanimous vote.
4. It was true that article 492(2) of the Criminal Code said that it shall be lawful for the Court to award a sentence of imprisonment for a term of not less than twelve years in lieu of the punishment of imprisonment for life if, in establishing a fact involving the latter punishment, the jury shall not have been unanimous. But this article did not lay down the rule that Courts cannot give life sentences when the jury was not unanimous. This article gave a discretion to the Court not to apply life imprisonment and it did not establish a hard and fast rule. So, by article 492(2) of the Criminal Code, the Court was not obliged not to impose a life sentence.
5. This became even stronger in a case like this where the verdict of the jury was eight votes in favour and only one against.
6. Apart from the fact that the accused was found guilty of the crime of wilful homicide, the accused was also, unanimously, found guilty of another two criminal offences. This gave rise to another legal reason stemming from the provisions of article 17(a) and 17(b) of the Criminal Code. According to article 17(a) of the Criminal Code:

A person guilty of more than one crime liable to punishments restrictive of personal liberty, one of which is for life, shall be sentenced to this punishment with the addition of solitary confinement.

However, section 17(b) of the Criminal Code said that:

a person guilty of more than one crime liable to temporary punishments restrictive of personal liberty, shall be sentenced to the punishment for the graver crime with an increase varying from one-third to one-half of the aggregate duration of the other punishments;

7. This was another legal reason why, in case of a person who was sentenced to a crime that carried the sentence of imprisonment for life and who was also found guilty of another criminal offence together with it, had to be sentenced to imprisonment for life together with solitary confinement. The reason was that the law said that the person found guilty of more than one crime that were punishable with imprisonment, one of which is for life, he **shall** be sentenced to imprisonment for life with the addition of solitary confinement. So the Law was mandatory in relation to the imposition of the imprisonment for life in this case and imposed also the solitary confinement. This legal argument was further strengthened by article 17(b) of the Criminal Code which provided that a person guilty of more than one crime liable to temporary punishments restrictive of personal liberty, shall be sentenced to the punishment for the graver crime with an increase varying from one-third to one-half of the aggregate duration of the other punishments. Article 17(b) of the Criminal Code did not cater for the case for life imprisonment, as this was catered for by article 17(a) of the Criminal Code, which therefore left no option. In this case the accused was found guilty not only of the wilful homicide but also of the other criminal offences mentioned in the second and third counts of the bill of indictment. So the scenario in this case was that opened by

article 17(a) of the Criminal Code, which obliged the Court to impose a life sentence, given that the accused was also found guilty of the crime under article 96(a) of the Criminal Code which also imposed the punishment of imprisonment.

8. To a certain extent even the provisions of article 31(1)(b)(e) of the Criminal Code supported this argument.

Apart from these legal reasons there were also factual reasons why in this case this Court should impose a life sentence.

1. From the acts of the proceedings and from this trial it emerged that this wilful homicide was committed cold bloodedly and in a treacherous manner. The accused not only used a knife to kill Hugo Chetcuti but he also used a hug to kill him. This was so cold blooded that the accused hugged the victim so as to draw him closer to him in order to reach his murderous intention.
2. This was a premeditated homicide. It was no coincidence that Bojan CMELIK was at Hugo Boutique Hotel in the afternoon. CMELIK knew that Hugo Chetcuti used to be in the hotel precincts. It was not a coincidence that the accused acted when James Farrugia had left the scene. One needed much less than four or five minutes to reach Seafood and Cocktail Bar from Hugo's Pub. CMELIK tried to gain the attention of Hugo Chetcuti by calling his name. CMELIK knew that Hugo was opening his arm to hug him. Even PS St. John said how bubbly and jovial Hugo Chetcuti was. This too was no coincidence. The premeditation was also seen from the fact that Bojan CMELIK was carrying a knife held in a holster tied around his waist with straps. So this was no coincidence, like if he came across a knife and used it.

3. Furthermore, another factual reason why in this case the punishment of life imprisonment had to be meted out was that the accused did not show any sign of remorse for what he did. His character showed no remorse.
4. Moreover, this homicide of Hugo Chetcuti was carried out for no apparent reason. The only reasons that came out from the trial were those mentioned by Noel Falzon relating to the fact that CMELIK's employment was terminated. But this was a non-reason. One could not kill another person simply because one's employment was terminated. God forbid should such an act be tolerated. Whereas Noel Falzon and Hugo Chetcuti showed compassion to CMELIK, they were paid back by CMELIK killing Hugo Chetcuti in a cold blooded, premeditated manner.
5. CMELIK stole a father, a son, a brother, a grandfather and also took away a friend to many people. On the 1st June 2016, CMELIK was allowed entry in Malta, he was given employment, he was given chances, and yet for not reason at all or for a reason so trivial he showed no remorse and killed the person who showed such compassion towards him.
6. CMELIK also killed a citizen of Malta and this too was in the interest of the Republic of Malta to repress. A strong message had to be sent that these acts are simply unacceptable.
7. In the records of the proceedings, the Prosecution presented two documents that were forwarded to them from Belgrade, showing that CMELIK had previous convictions in Serbia for crimes against property and crimes against the person.

The parte civile Lawyer concluded that Bojan CMELIK deserved nothing less than life imprisonment for his cold blooded premeditated treacherous murder.

Having heard the submissions made by the Attorney General by reference to the punishment to be meted out to Bojan CMELIK, namely:

1. The punishment for wilful homicide was imprisonment for life.
2. The message sent by the Jury was clear – eight votes to one was almost a unanimous verdict.
3. Article 17(a) of the Criminal Code found application in this case and therefore a life sentence with solitary confinement was due.
4. This was a premeditated wilful homicide where Bojan CMELIK did not hesitate to use the knife on the person of Hugo Chetcuti and was not going to hesitate to use it again on the Police Officers.
5. His actions were unacceptable in a civil society.
6. CMELIK showed complete indifference and displayed no remorse. Not only that, but he showed pride.
7. CMELIK was a threat to society. He was accepted in Malta, he was given a chance, and yet he paid back by committing this stabbing in public. Had it not been for Isaac Chetcuti his actions could have even been worse.
8. Apart from this CMELIK's actions were directed towards those persons who gave him a chance in life.
9. Bojan CMELIK deserved no punishment other than life imprisonment with solitary confinement for the crime committed.

Having heard the submissions made by Dr. Simon Micallef Stafrace for the accused, by reference to the punishment to be meted out to Bojan CMELIK, namely:

1. The legal reasons mentioned by Parte Civile and Prosecution were subject to interpretation by the Court.
2. Even though the punishment for wilful homicide was life imprisonment, the Law allowed the Court to impose a lesser punishment in those cases that warrant such a punishment.
3. The argument raised by reference to article 17(a) of the Criminal Code did not mean that the Court was obliged to impose a life sentence in this case. The provisions of article 492(2) of the Criminal Code still applied.
4. In this case the Jury verdict was eight votes in favour and one against. This was a democratic process which showed that one member of the Jury did not find the accused guilty. This vote had to be respected by the Court through its punishment which should not be life imprisonment.
5. The factual arguments raised by Defence were mainly emotional ones, even though some are factually correct. Yet others were not. Motive should not form part of the considerations of the Court. Nor was the argument of premeditation founded. The Parte Civile presented a scenario stressing the possibility of premeditation.
6. While reference was made by Parte Civile to the previous convictions of CMELIK in Serbia, the law clearly forbade this reference to the Jury. So this Court could not make reference to it.
7. The interpretation of article 17(a) of the Criminal Code was a non-sequitur inasmuch as that article could not be interpreted the way Parte Civile argued.

8. Furthermore, life imprisonment should not be granted in this case.

Having seen the sentencing criteria from various judgments delivered by the Court of Criminal Appeal in its Superior Jurisdiction, including **Ir-Repubblika ta' Malta vs. Dominic Bonnici** of the 11th November 2004 where it was clearly stated that punishments must serve as a deterrent and cases of physical violence must, as a rule be punished by effective imprisonment sentences; and the more vulnerable the victim, the harsher the punishments must be.

The Court also visited other cases decided by the Court of Criminal Appeal, including : **Ir-Repubblika ta' Malta vs. Charles Steven Muscat** of the 8th June 2006 (6 votes to 3); **Ir-Repubblika ta' Malta vs. Jason Decelis et tal-25 ta' Settembru 2008** (6 votes to 3); **Ir-Repubblika ta' Malta vs. Joseph Zammit** of the 20th January 2011 (7 votes to 2); showing that on the other hand, in the case of verdicts that are not unanimous in cases of wilful homicide, the Criminal Court applied the provisions of article 492(2) of the Criminal Code.

Having seen article article 492(2) of the Criminal Code;

While it was true that in this case the Jury was not unanimous, however the verdict was a very clear and strong one: 8 votes in favour and only one against the finding of guilty of CMELIK for the wilful homicide of Hugo Chetcuti, and a unanimous vote in relation to the assault and resistance of police officers as well as the carrying of a knife without a licence.

The sentence for the crime of wilful homicide is imprisonment for life. The wording of the Law was clear. Whosoever shall be guilty of wilful homicide

shall be punished with imprisonment for life. This punishment was fixed by Law and was phrased in mandatory fashion. It was true that the Criminal Court had an element of discretion granted to it by article 492(2) of the Criminal Code. Yet this discretion was to be exercised cautiously in the case of wilful homicide cases given that it entailed a deviation from the punishment fixed by Law. This discretion could be exercised in those cases that deserved the exercise of this discretion. The stronger the verdict convicting the accused for the crime of wilful homicide, the closer it was to unanimity, the less likely would a Criminal Court be to deviate from the punishment that was fixed by Law for the crime of wilful homicide, which was life imprisonment. The decision of the minority was to be respected; but the decision of the overwhelming majority likewise needed to be respected and be reflected in the punishment that was to be meted out by the Court.

Violent crimes, like the one proved in this case, were absolutely not acceptable, no matter who committed them, and no matter who the victim happened to be. More so when they were committed for no apparent reason or for futile motives. They were even more reprehensible when they were premeditated; and also where no remorse was shown.

Violent behaviour like that shown by Bojan CMELIK in this case hit at the very heart of the peace, prosperity and tranquillity that Maltese society deserved. It ruined lives: both of the dead, as well as those of the living relatives who remained behind. Violent behaviour like the one in this case, killed not only the targeted victim, but it also morally and psychologically killed his loved ones. Their lives will never be the same again. And nothing would bring back their killed loved one. No matter who committed the violent act leading to the killing of a human being, be

he Maltese or foreigner alike, once convicted, he should face the full rigour of the Law, especially when a Jury returned a verdict so strong as in this case.

Consequently:

after having seen articles 17(a)(h), 23, 31(1)(a), 96(a), 211(1)(2) and 533 of the Criminal Code as well as articles 6 and 51(7) of Chapter 480 of the Laws of Malta, this Court condemns **Bojan CMELIK to imprisonment for life with one term of solitary confinement** as well as to the payment of the sum of four thousand, four hundred and seventy eight euro ten cents (€4478.10) representing the costs incurred in connection with the employment in the proceedings of any expert or referee, including such experts appointed in the course of the inquiry, within one year from today.

The Court also orders the forfeiture of the corpus delicti and prohibits Bojan CMELIK from obtaining and holding any licence under Chapter 480 of the Laws of Malta for a period of five years.

Aaron M. Bugeja,
Judge