



## **Criminal Court of Appeal**

**Hon. Judge Dr. Consuelo Scerri Herrera, LL.D., Ph.D.**

**Appeal Nr: 415 / 2022**

**The Police**  
**Inspector Sherona Buhagiar**  
**vs.**  
**Sava Rajakov**

Today the, 27<sup>th</sup> January, 2023

The Court,

Having seen the charges brought against Sava Rajakov, aged 27 years, born in Serbia on the 17<sup>th</sup> March, 1995 residing at 136, FL 4C, Luqa Briffa Street, Gzira and holder of ID Card 0181074 A, before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having:

on the 13<sup>th</sup> August, 2022 between 1600hrs and 1900hrs at 20, Pirinej Street, Qrendi and/or on the Maltese Islands;

1. Without the intent to kill or to put the life of his partner Maxine Sammut in manifest jeopardy, voluntarily caused bodily harm or ill health causing an offence of grievous nature on his partner Maxine Sammut as certified by Dr. Jeremy Caruana (Med Reg. 6477).
2. Attempted to use force with intent to insult, annoy or hurt his partner Maxine Sammut unless the fact constitutes some other offence under any other provision of the Criminal Code.

The Court is being kindly requested to issue a Protection Order, during the proceedings against Sava Rajakov for the benefit of Maxine Sammut as per Article 412 C of Chapter 9 of the Laws of Malta.

The Court is kindly requested to provide for the safety of Maxine Sammut or for the keeping of the public peace, in addition to, or in lieu of the punishment applicable to

the office, requires that Sava Rajakov to enter into his own recognizance in a sum of money fixed by the court as per article 383 et seq of Chapter 9 of the Laws of Malta.

The Court is humbly asked that in case of a conviction, besides the decided punishment according to law, the Court orders Sava Rajakov to incur the payment of costs in the employment of experts, as provided in article 533 of Chapter of the Laws of Malta.

Having seen the judgment meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 5th September, 2022, whereby the Court after having seen articles 7, 8, 31, 214, 216 (1) (b), 202 (h (v) (vi) ) (i), 222 (1) (a) and 339 (1) (d) of Chapter 9 of the Laws of Malta, found the accused guilty of all charges brought against him and condemns him to twenty four (24) months effective imprisonment.

Also, in terms of Article 412 C of Chapter 9 of the Laws of Malta, the Court issued a Protection Order against the accused for a period of five (5) years from today for the protection of Maxine Sammut. The Court explained to the accused Sava Rajakov in plain language, his liabilities according to the conditions imposed by the Protection Order, which decree was attached with this judgement, also forming an integral part of the same judgement.

Furthermore, in addition to the punishment being inflicted, the Court in terms of Article 383 of Chapter 9 of the Laws of Malta, ordered Sava Rajakov to keep the peace with Maxine Sammut and in order to provide for the safety of the said person, ordered Sava Rajakov to enter into his own recognisance in the sum of two thousand Euro (€2,000). This obligation is to remain in force for a period of twelve (12) months from the day that Sava Rajakov is released from prison.

The Court ordered that a copy of this judgement together with the attached decrees are notified to the Commissioner of Police.

Having seen the appeal application presented by the Attorney General in the registry of this Court on the 19th September 2022, whereby he humbly requests that this Honourable Court to vary the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature given on the fifth (5th) of September of the year two thousand and twenty-two (05.09.2022), and this by:

1. Confirming that part of the judgement where the Court of First Instance found the appellant guilty of charges brought against him, whilst annulling and revoking that part the judgment referring to punishment, of

2. Varying that part of the judgement where the appellant was condemned to twenty-four (24) months effective imprisonment;
3. And instead imposing a punishment which is more fit and appropriate in the circumstances of the case.

Having seen the acts of the proceedings;

Having seen the updated conduct sheet of the appealed, presented by the prosecution as requested by this Court.

Having seen that the appellant is submitting this Appeal with regards to the punishment awarded to him and this because he feels that the punishment should have been more equitable and proportionate in view of the circumstances of the case.

That the appellant's grounds for appeal are clear and manifest and consist in the following:

1. That the appellant felt aggrieved by the fact that the punishment awarded is too exaggerated in the circumstances of the case and that the Court should have given a more equitable punishment reflecting truly the circumstances of the case and this without promulgating a judgment of effective imprisonment in view of the following submissions and in view of jurisprudence that will be pointed out during the oral submissions of the present appeal.
2. That the appellant collaborated with the police and entered a guilty plea at an early stage of the proceedings during the arraignment on the 16th August 2022.
3. That the appellant is a first-time offender and has a clean conviction sheet and he has now been living in Malta for a number of years.
4. That the appellant works in Malta and supports himself.
5. That the court stated that it could not ignore the seriousness of the charges of which the appellant was being accused of. The appellant is by no means trying to undermine the fact that he still committed a wrongful act of which he must pay for, however the punishment given was not proportionate to his role in the incident and exaggerated in the particular circumstances of the case.

That the Maltese jurisprudence is in favour of reparative justice whereby a person who commits a mistake is given a chance and is helped out in order to integrate back to society. There must be a balance between the damage caused to society and the reform of the person committing the act. A sentence of effective imprisonment will cause more harm than good, considering the particular circumstances of the case

Moreover, such effective imprisonment sentence will lead to him losing his current job, whereby he would not be able to continue working and contributing and paying taxes, and supporting himself in Malta:

That the appellant admitted at a very early stage and during the arraignment as he wanted to take full responsibility to what he had done. However, he humbly submits that the first court should have taken consideration the early guilty plea, and the fact that precious time was spared in the proceedings

That Appellant humbly submits that, in similar circumstances, a suspended sentence is usually given and would have been more appropriate and adequate to the current case. A suspended sentence would be a deterrent, where however the applicant would still be able to work

That the appellant never had any problems with the law and has realised his mistake,

That the appellant humbly believes that the penalty imposed is an exaggerated one and that he should be given a punishment that is more fit and appropriate to the circumstances of the case.

Considers,

As it has already been stated, the appellant's grievance consists of the fact that, the punishment meted out by the First Court was disproportionate to the facts of the case and an exaggerated one. The appellant stated that the First Court did not take into consideration the fact that the appellant is a person of good conduct with a clean conviction sheet; that he collaborated with the police and entered a guilty plea at an early stage of the proceedings and that he works in Malta to support himself.

This Court would like to start off by stating that **it is not the function of this Court as a Court of appellate jurisdiction to disturb the discretion of the First Court as regards the qualitas and quantum of punishment unless such discretion has been exercised outside the limits laid down by the law or in special circumstances where a revision of the punishment meted out is manifestly warranted.**

Maltese jurisprudence is crystal clear on appeals concerning the punishment awarded to the accused following an admission from his end. In the case in the names **Ir-Repubblika ta' Malta vs. Serag F. H. Ben Abid**, decided on the 4<sup>th</sup> December, 2003 the Court stated the following:

*'Issa fit-termini tal-gurisprudenza ormai kostanti tal-Qrati taghna, meta jkun hemm ammissjoni huwa xi ftit jew wisq odjuz appell minn piena sakemm din tirrientra fil-limiti li tipprefiggi l-ligi. Dan huwa hekk peress illi min jammetti jkun qiegħed jassumi r-responsabilita` tad-decizjoni li jkun ha u jirrimetti ruhu għal kull decizjoni dwar piena li l-Qorti tkun tista' tasal għaliha. Naturalment dan ma jfissirx li din il-Qorti u Qrati ohra ta' appell ma jidhlux f'ezami akkurat tac-cirkostanzi kollha biex jaraw jekk il-piena nflitta kenitx eccessiva jew le. Mhuwiex normali pero`, li tigi disturbata d-diskrezzjoni ta' l-ewwel Qorti jekk il-piena nflitta tkun tidhol fil-parametri tal-ligi u ma jkun hemm xejn x'jindika li kellha tkun inqas minn dik li tkun inghatat'*

Furthermore, reference is here made to the case in the names **Il-Pulizija vs Colin Spiteri**<sup>1</sup> where it was held:

*'L-appellant jilmenta wkoll dwar il-piena nflitta u jghid li hija eccessiva. Il-principju regolatur in materja ta' piena hu li mhuwiex normali, li tigi disturbata d-diskrezzjoni ta' l-Ewwel Qorti jekk il-piena nflitta tkun tidhol fil-parametri tal-ligi u ma jkun hemm xejn x'jindika li kellha tkun inqas minn dik li tkun inghatat. F'dan il-kaz m'hemm l-ebda dubju li l-piena hija fil-parametri tal-ligi ghax jirrizulta li skond l-artikolu 226(1)(b) tal-Kodici Kriminali l-piena hija ta' prigunerija għal mhux aktar minn sitt xhur jew tal-multa ta' mhux izjed minn elf lira (Lm1000), u l-ewwel Qorti għazlet li timponi l-multa fil-massimu tagħha u minghajr issospensjoni tal-licenzji tas-sewqan.'*

This Court also makes refence to the case in the names **Il-Pulizija vs Ahmed Al Shanburi**<sup>2</sup>:

---

<sup>1</sup> Decided on the 13th February 2006 by the Criminal Court of Appeal Ref Number 160/2005DS.

<sup>2</sup> Decided by the Criminal Court of Appeal (Inferior Jurisdiction) on the 22<sup>nd</sup> November, 2022.

'Anzi dik il-Qorti ttenni li appell fuq tali piena jkun jista' jigi milqugħ jekk jirrizulta li **s-sentenza tkun barra l-parametri tal-piena li tkun applikabbli**:

a. **għall-offiża in kwistjoni u**

b. **għaċ-ċirkostanzi tal-ħati**

u mhux għaliex tkun piena li tkun għola minn dik li kieku l-Qorti tal-Appell kienet teroga għall-każ in kwistjoni. Dawn il-principji ġew ukoll imħadnin minn din il-Qorti, kolleġjalment komposta fis-sentenza **Ir-Repubblika ta' Malta vs Carmen Butler** et decizà nhar is-26 ta' Frar 2009 fejn gie mistqarr ukoll issegwenti :

8. Fil-verita`, dawn il-principji huma rifless tal-principju l-iehor li meta jkun hemm sentenza li tigi appellata mill-hati, il-Qorti tal-Appell Kriminali, bhala regola, ma tiddesturbax il-piena erogata mill-ewwel qorti sakemm dik il-piena ma tkunx manifestament sproporzjonata jew sakemm ma jirrizultax li l-ewwel qorti tkun naqset milli tagħti importanza lil xi aspekt partikolari tal-kaz (u anke, possibilment, lil xi cirkostanza sussegwenti għas-sentenza ta' l-ewwel qorti) li kien jincidi b' mod partikolari fuq il- Page 11 of 12 piena. S'intendi, kif diga` nghad, "sentencing is an art rather than a science" u wiehed ma jistax jippretendi xi precizjoni matematika jew identita` perfetta fit-tqabbil tal- fatti ta' kaz ma' iehor jew tal-piena erogata f'kaz ma' dik erogata f'kaz iehor.

Il-ġurisprudenza prevalenti f'dan il-kuntest, tghallem li meta Qorti tiġi biex teroga piena trid tiehu kont taċ-ċirkostanzi kollha li jsawru l-każ, **jigifieri dawk tal-vitmi, l-interessi tal-komunita kollha kemm hi, kif ukoll dawk tal-ħati.** F'dan is-sens, kemm il-ġurisprudenza lokali kif ukoll dik Ingliża tistabilixxi li fl- ezercizzju ta' revizjoni imħolli lilha, il-Qorti tal-Appell Kriminali trid tistharreg appell fuq il-piena inflitta kemm billi tqis ic-ċirkostanzi kollha prevalenti li l-Qorti tal-Ewwel Istanza setgħet kienet f'qagħda li tara, kif ukoll, skont kif imsemmi fis-sentenza Butler tqis anke, possibilment, lil xi cirkostanza sussegwenti għas-sentenza ta' l-ewwel qorti.'

Moreover, the Criminal Court of Appeal (Superior Jurisdiction) in the judgment in the names **The Republic of Malta vs. Kandemir Meryem Nilgum and Kucuk Melek** decided on the 25<sup>th</sup> August, 2005 stated that:

*'It is clear that the first Court took into account all the mitigating as well as the aggravating circumstances of the case, and therefore the punishment awarded is neither wrong in principle nor manifestly excessive, even when taking into account the second and third grounds of appeal of appellant Melek. As is stated in Blackstone's Criminal Practice 2004 (supra):*

*"The phrase 'wrong in principle or manifestly excessive' has traditionally been accepted as encapsulating the Court of Appeal's general approach. It conveys the idea that the Court of Appeal will not interfere merely because the Crown Court sentence is above that which their lordships as individuals would have imposed. The appellant must be able to show that the way he was dealt with was outside the broad range of penalties or other dispositions appropriate to the case. Thus in Nuttall (1908) 1 Cr App R 180, Channell J said, 'This court will...be reluctant to interfere with sentences which do not seem to it to be wrong in principle, though they may appear heavy to individual judges' (emphasis added). Similarly, in Gumbs (1926) 19 Cr App R 74, Lord Hewart CJ stated: '...that this court never interferes with the discretion of the court below merely on the ground that this court might have passed a somewhat different sentence; for this court to revise a sentence there must be some error in principle.'" Both Channell J in Nuttall and Lord Hewart CJ in Gumbs use the phrase 'wrong in principle'. In more recent cases too numerous to mention, the Court of Appeal has used (either additionally or alternatively to 'wrong in principle') words to the effect that the sentence was 'excessive' or 'manifestly excessive'. This does not, however, cast any doubt on Channell J's dictum that a sentence will not be reduced merely because it was on the severe side - an appeal will succeed only if the sentence was excessive in the sense of being outside the appropriate range for the offence and offender in question, as opposed to being merely more than the Court of Appeal itself would have passed."*

*This is also the position that has been consistently taken by this Court, both in its superior as well as in its inferior jurisdiction.'*

The first Court decided this case in full respect of the law. One can argue that the Court was severe in its approach by punishing the accused with an effective prison sentence. However, this is a case of domestic violence and serious physical abuse on one's partner. These acts of domestic violence must receive zero tolerance in a civilised society. This Court here refers to the case in the names **The Police vs Eva Langridge Stastna**<sup>3</sup> where this zero-tolerance approach towards domestic violence was also enunciated by the Court of Magistrates. In addition, the Court stated that:

*'There is to be no place for such demented actions, for frenzied attacks on persons who due to age or other circumstances can't even be assured protection within the confines of their own homes, attacks on individuals who suffer aggression from those to whom they entrust their care and companionship.'*

Physical violence is never justified, let alone head butting your partner in the face due to a frivolous argument on a toilet brush! This is totally unacceptable.

As already expressed above, the punishment meted out by the First Court was within the parameters laid down in the law. In fact, even though, it is an effective prison sentence, it sways towards the minimum and not the maximum punishment.

Consequently, for all the above-mentioned reasons, this Court rejects the appeal filed by the appellant and confirms the judgement of the first Court in its entirety.

Consuelo Scerri Herrera  
Judge

True Copy

Adrian Micallef  
Deputy Registrar

---

<sup>3</sup> Decided by the Court of Magistrates (Criminal Jurisdiction) on the 17<sup>th</sup> July 2018.