



MALTA

**QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI**

**MAGISTRAT DR.
JACQUELINE PADOVANI**

Seduta tas-26 ta' Settembru, 2003

Numru. 454/2001

POLICE
INSPECTOR STEPHEN J GATT
INSPECTOR SANDRO ZARB
VS
GIUSEPPE VICHI

The Court,

Having seen the charges brought the accused Giuseppe Vichi, 39 years, son of Benito and Rosaria Caruso, born Comiso, Ragusa Sicily on the 19th September 1961 residing on the island at Palma Springs, Flat 4, SalinaRoad, Salini I/o Naxxar and also having his address abroad at No 7, Via E Mattei, Comiso Sicily Italian Id Card No AC1063893 and charged him with having on the 31st July 2001 at about 1.30pm at Tal Qroqq Imitis of Msida wilfully committed spoil, damage or injury to or upon any movable or immovable property belonging to Nadia Muscat from Mosta, which damages do not exceed five hundred maltese liri but exceeds fifty maltese liri,

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During the same day, time, place and circumstances, caused injuries of slight nature on the person of Nadia Muscat as certified by Dr Scicluna MD (Reg No 1777).

During the same day, time, place and circumstances, attempted to use force against Nadia Muscat from Mosta, with intent to insult, annoy or hurt such person.

During the same day, time, place and circumstances, uttered insults or threats towards Nadia Muscat from Mosta.

During the same day, time, place and circumstances, in any manner wilfully disturbed the public good order or the public peace.

Having heard the evidence on oath.

Having seen the consent of the Attorney General and of the accused for summary procedure.

Having seen the appointment of expert Martin Bajada and his report duly exhibited and sworn.

Having heard the oral submissions of the parties.

Having seen the note of submissions produced by defence council.

Having seen that the prosecution failed to exhibit any response.

Deliberates:-

The evidence produced by the prosecution in this case is to the effect that complainant Nadia Muscat filed a report, at the police station to the effect that her ex boyfriend, the accused, assaulted her, grabbed her from the arms, damaged clothing, the same handbag and stole her mobilephone. (see notes of proceedings at pg 9 – 19).

The incident happened at University, that is, the place where the complainant worked. It is alleged that accused phoned up the complainant with a view to meeting her. Whilst complainant was walking together with some friends, accused approached her and an argument occurred. Following this complainant stated to the police that the accused hit her, was very arrogant and threatened her. It was stated that the accused expected complainant to handover the mobile phone that he had given to her as a present since the relationship was over.

Complainant told the police that the relationship between herself and the accused had ended some months before that and that the accused kept persisting her to make it up.

In the signed statement made by the accused to the police (see dok SG at pg 20) the accused declared that he had an intimate relationship with the complainant which had lasted for several months which had come to an end. However they were still communicating with each other with a view to reconcile. In fact the reconciliation had taken place a week before the incident when the accused noticed that the complainant was acting with some indifference and wanted to know the reason for this. This was the intention behind the meeting outside university.

The accused denies that he pushed the complainant or wilfully tore of her clothing. He said that he tried to grab the phone he had bought her.

Complainant had also told the police that he had broken her sun glasses during the incident. The report to the police was filed at 17.00hrs and the incident took place at 13.30hrs. The police did not see any visible injuries or the person of the complainant.

The damaged goods were given to the police the day after the incident.

Nadia Muscat testified (see pg 28-37) and confirmed the incident she had explained to the police in detail. She

confirms that she was afraid of the accused even after she ended her relationship because he had threatened to beat her up if he saw her with another person. He also told her that should she leave him he would commit suicide.

On the day of the incident she declared that he had phoned her up repeatedly at work with a view to meeting her, she had hung up and thereafter her boss answered the phone to tell him that Muscat was not in.

Muscat said that when she finished work at 1.30pm she went out with her colleagues and found the accused waiting for her. She walked to her car, he grabbed her, tore her shirt and bag, stopped her and took her sighted sunglasses, and went to his car. Muscat said that she followed because she needed her glasses, where upon he wrenched them and threw them on the floor. This happened in front of Evelyn, Claudine, Denise, Janice and Jan Farrugia. Muscat says that accused took her mobile phone forcibly because it was he who had bought it for her as a present.

Asked by the Court, whether she wanted to give her phone back to him, Muscat said, "No I just gave it to him". Thereafter she stated that he forced her to give it to him.

Complainant stated that the cost of sunglasses was Lm70, that the handbag cost Lm15, and the top Lm10.

Nadia Muscat also stated that after she ended her two years relationship with accused she went out with him seven times however she never phoned him up herself.

She denied ever insisting with the accused to meet her or had wanted to go to Sicily with him. She confirms that she made the police report when accompanied by her mother. She confirmed that accused's lawyer had sent her a letter offering to pay any damages sustained in the incident and that her lawyer did not answer the letter.

Denise Jones (fol 38 to 43) confirmed that Nadia Muscat panicked when she realised that her boyfriend was present out University and asked her to stay with her. Jones stated that she called Jan. She said that Nadia walked up to her car then came running back.

Then Nadia went back to her boyfriend car asking for her glasses and he threw them out of the window; she confirmed that the strap of Muscat's top was torn and she was holding it up with her hand. Jones denies seeing the accused hitting Muscat at any times or handling her in any way.

Jan Farrugia stated (see pg 44) he was present at this incident and was called by Denise Jones and that there seemed to be a quarrel between Muscat and the accused. The accused wanted to talk to Nadia, Nadia and the accused went behind the car and she came back with tears in her eyes. She went back towards the accused car because of her specs and the accused wrenched them. There were no threatening words or insults, no assaults but Jan stated that accused appeared to be angry. Jan Farrugia confirms that Muscat complained about the bag but did not see the cause of the damages in any way. He continued that the accused and Muscat went out of her sight for two or three minutes only.

Inspector Gatt (pg 54) exhibited the medical certificate relating to the complainants injuries which were classified as slight. (dok SGX1) and the receipt of damaged sunglasses (Dok SG2).

Evelyn Chetcuti (pg 56 – 62) confirmed that she received a phone call for Nadia Muscat from the accused who sounded rather angry on the phone.

Gladys Abela confirmed the receipts dok SG2 for the amount of Lm70.

Dr Scicluna (pg 69) confirmed the medical certificate.

John Spiteri Debono (pg 77) confirmed that the repair of the sighted sunglasses in question cost Lm4.

Nadia Muscat (pg41) in cross examination stated that she did not send any SMSs to the accused after breaking up her relationship with him however if she had, she had only done so because she was so terrified of him. She confirmed that he tore the straps of her top, punching her and confirmed making her report at 5pm when the incident happened at 1.30pm.

The accused stated that he and Muscat had a two and a half years intimate relationship and that till two days before the incident the complainant had continued to SMS him. The Sim card was exhibited before the Court. The accused furthermore stated that Madia Muscat's mother was very opposed to their relationship and the couple had planned to go to Sicily together on the 9th of August. When accused tried to talk to her some days before, Muscat answered in an aggressive way and he wanted to clear the air and asked her to meet him by means of a phone call at her place of work. Accused stated that he had already reserved the booking for the flight to Sicily

He went to university at 1.30pm to talk to her, went up to her and asked for a few words in private. She told him it was all over and he asked for the return of the mobile. She gave him the mobile and then snatched it back to retrieve personal information. He took her glasses so that she would give him the phone book. He took out the sim Card, took the phone back.

As she was going away he asked for the return of the watch which was another gift. He insisted that because Nadia Muscat's stature is a slight, he tried to stop her by clutching off her straps, she turned and elbowed him and the strap snapped. The accused states that he apologized and he went back to his car. He sat down and it was then that he realised that he had put Muscat's glasses in his back pocket and had sat on them. This is how the glasses got damaged. He stated that when he went to see Nadia

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Muscat he was sad and demotivated not angry whereas Muscat was aggressive.

Martin Bajada presented his report which contains several SMS with messages from Muscat up to the 28th of July.

During the course of the second testimony Vichi declared that he had phoned Muscat to ask rather than to demand a meeting with Nadia Muscat.

Vichi denies that he ever assaulted Muscat in any way or that he raised his hands to her face or scratched her neck. He admits however that he succeeded in removing Muscat's sunglasses from her face.

Deliberates:-

The facts of this case show clearly that the accused and complainant had an intimate and regular relationship of a two years standing and that the accused wanted to discover the reason behind the apart break up of this relationship in view of the fact that complainant had just expected to travel with the accused to Sicily a few weeks prior.

This Court believes that there was a row between the parties and believes further more that there was some man handling to induce the return of gifts that had been previously exchanged. During this process the objects mentioned in the citation were damaged.

These objects or articles of clothing in no manner exceed the sum of Lm50 and the Court finds that the Lm4 estimate of the cost of the repair various greatly from the Lm70 estimate claimed by the complainant.

Furthermore, this Court examined the medical certificate of the complainant and is aware of the superficial nature of the injuries sustained in the scuffle.

The Court is of the opinion that after examining the testimony brought before it, that the case brought to its

attention is nothing more than a storm in a tea cup. This does not mean that the Court is any way condemns the actions of the accused, or the manner with which he forcible demanded to be seen and heard and forcibly demanded the return of the presents given earlier. This Court merely states this to bring the case to its proper perspective in view of the grave charges brought against accused.

Therefore the Court finds the accused guilty of the first charge where however the value of damaged property does not exceed Lm50 and of the second charge. The Court finds him not guilty of the third, fourth and fifth charge brought against him and acquits him of the same.

In view of all the circumstances and after examining Art 325, 221 Chapter 9 and Art 22 Chap 446 and the Court discharges the accused on condition that he does not commit another crime within a period of six months.

With reference to the prosecution's request that the accused be declares an illegal immigrant, the Court is hereby denying the said request since the charges with which the accused was found guilty, do not qualify in terms of Art 15 of Chapter 217 of the Laws of Malta.

< Sentenza Finali >

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