



MALTA

CRIMINAL COURT

**HON. MR. JUSTICE
JOSEPH GALEA DEBONO**

Sitting of the 8 th July, 2004

Number 12/2003

The Republic of Malta
Vs
Ilija Vukadinovic

The Court,

Having seen the bill of indictment no. 12/2003 against the accused Ilija Vukadinovic wherein he was charged under the only count that:

Ilija Vukadinovic was a Yugoslav national who first arrived in Malta on the tenth June of the year two thousand and two. He was a foreigner in Malta surrounded by a number of mysterious circumstances. After first residing at the Metropole Hotel, he then proceeded to stay in an unknown apartment in the Gzira/Ta' Xbiex area. Till the twenty sixth of June of said year 2002, he had come to overstay in Malta. This he did intentionally as he did not want to return to his native land for reasons known only by

him, and wished for anything to force the Maltese authorities to keep him here. Indeed, he was even ready to commit any crime so as to spend time behind bars in Malta as long as possible.

In the early hours of Wednesday, twenty sixth June of the year 2002, Vukadinovic was walking along the Strand in Gzira right in front of the Black Gold Salon. He had been to Paceville in some unknown Bar having a couple of drinks. He was just killing time thinking and devising a plan of how he could somehow remain in Malta and was just thinking of walking back home to Sliema when he came across a person unknown to him, by the name Joseph Drago.

Joseph Drago was, rightly or wrongly, known to be a person with somewhat devious sexual tendencies, yet definitely not to be any harmful or violent person. On the day in question it somehow happened that Joseph Drago tried to strike a friendly chat with Ilija Vukadinovic. During this short chat, Drago turned, or rather tried to turn the conversation, to sexual matters. Vukadinovic soon realized that Drago was somehow trying to entice him, in a most friendly and unthreatening manner, into a kind of intimate relationship. Vukadinovic immediately saw unfolding in front of him a good opportunity to attack and beat up Joseph Drago under the pretext that the latter was allegedly making sexual advances to him. This, however, was far from the truth. Vukadinovic wanted to commit a crime, but somehow wanted to invent circumstances so as to limit the gravity and fatality of the crime he wished to commit.

It was thus that at one point during this brief encounter, Ilija Vukadinovic with the specific, positive and indirect intention of putting Joseph Drago's life in manifest jeopardy, went about pouncing on the latter's head. The first blow did not directly hit Drago in the face, but merely brushed against it. Mr. Drago went to take refuge behind a bench a few meters away. Ilija Vukadinovic went after him, got hold of him from the shoulders and hit him hard three times in the face. Mr. Drago started to become

unconscious as a result and as he was stuttering on his feet, Ilija Vukadinovic hit him hard with both feet, in his shoulders and in his face. Mr. Drago was now bleeding profusely from the severe wounds suffered by Ilija Vukadinovic's blows all over his body. He was also practically unconscious, yet Vukadinovic left him there lying on the ground for dead, and decided to walk back home in Sliema. There he washed himself and went to sleep, only to wake up a few hours later whereupon he proceeded to the nearest Police Station where he turned himself in.

A few minutes after Mr. Drago suffered these grievous injuries as a result of Ilija Vukadinovic's assault and blows, he succumbed to those same injuries and died on the spot.

By committing the abovementioned acts with criminal intent, Ilija Vukadinovic rendered himself guilty of willful homicide.

Wherefore, the Attorney General, in his aforesaid capacity, accused Ilija Vukadinovic of being guilty of having, maliciously, with intent to kill another person or to put the life of such other person in manifest jeopardy, caused the death of such other person.

Demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life, as is stipulated and laid down in sections 211(1)(2), 492, 20, 22 and 533 of the Criminal Code, including the issue of a Removal Order with respect to accused in terms of sections 5(2)(b) and 15 of the Immigration Act, or to any other punishment applicable according to law to the declaration of guilty of the accused.

Having seen the verdict of the jury of today's date by which it found the accused by eight (8) votes in favour and one (1) vote against not guilty of the charge of wilfull homicide by guilty of having caused grievous bodily harm to the person of Joseph Drago from which death ensued

solely as a result of the nature or the natural consequences of the harm and not of any supervening cause and which death ensued within forty (40) days from the midnight preceeding the crime.

Having seen also the recommendation of the jury of the accused to the mercy of the Court by five (5) votes in favour and four (4) votes against and this for the reason of his previous conduct.

Declares the accused not guilty according to the charge in the Bill of Indictment but guilty of having on the 26th June 2002 at about 5.00 a.m., in The Strand, Gzira, caused grievous bodily harm to the person of Joseph Drago from which death ensued solely as a result of the nature or the natural consequences of the harm and not of any supervening cause and which death ensued within forty (40) days from the midnight preceding the crime.

Having heard and considered **ALL** submissions of Counsel for the Defence for the plea in mitigation of punishment which are duly recorded and in particular but not only the following :

That the accused was only twenty (20) years old when the incident took place;

The circumstances how the incident came about;

That he was in the wrong place at the wrong time and had he not been approached by the victim he would not have been facing trial today;

That he has been under preventive arrest for the past two (2) years;

That the verdict was not an unanimous one;

That five of the nine jurors felt they had to recommend him to the mercy of the Court;

That this was his first time abroad and he found himself in this situation;

That he was a first time offender both in Malta and in his own country and that it was he who actually went to the Police Station and released a statement.

Having considered also the submissions of Counsel for the Prosecution who stated that the jury in their eight – one verdict showed that they did not accept accused's plea of self defence and that his reaction had been completely out of all proportion and he had no reason to react as he did.

It was also submitted that there was no room for clemency in this case as the accused during the trial had resorted to all attempts to hide his guilt and it resulted that he had never shown any remorse whatsoever. He had even tried to be smart with the Police witnesses in this trial and at one point even with the presiding Judge. He therefore submitted that the punishment in this case should be close to the maximum of twenty (20) years.

Having seen sections 220 (1)(a), 484 and 533 of Chapter 9 of the Laws of Malta and sections 5 (2) (b) and 15 of the Immigration Act.

Condemns Ilija Vukadanovic to a term of imprisonment of fifteen (15) years from which must be deducted any term spent under preventive custody only in connection with this offence and furthermore orders that he pays the sum of one thousand three hundred and thirteen Maltese Liri and forty five cents (LM1313.45,0) by way of all Court expenses incurred in connection with this case and issues a Removal Order so that Ilija Vukadinovic will be deported from these islands as soon as he has served his term of imprisonment.

< Final Judgement >

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