



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.
JACQUELINE PADOVANI**

Sitting of the 23 rd April, 2008

Number 914/2004

POLICE
INSPECTOR TEREZA SCIBERRAS
INSPECTOR RAYMOND AQUILINA
VS
SEBASTIAN FRANCIS De BONO
ZACHARY De BONO

The Court,

Having seen the charges brought against the accused Sebastian Francis De Bono of 20 years, son of Ivan and Jaqueline Elaine nee' Henri, born in Pieta' on the 15th May 1984 and residing at "Debonville" No.12, Triq il-Qrenpuc, San Gwann, holder of Identity Card number 351584(M), and;

Zachary De Bono of 19, son of Ivan and Jaqueline Elaine nee' Henri, born in Pieta' on the 4th October 1985 and residing at "Debonville" No.12, Triq il-Qrenpuc, San Gwann, holder of Identity Card number 588758(M) and

Informal Copy of Judgement

charged with on the night of the 25th of August and the 26th of August 2004, at Paceville, limits of St.Julian's;

- 1). By lewd acts defiled minor Melissa Etheridge and further;
- 2). During the same date time and place, committed and offence against decency or morals by any act committed in a public place or in a place exposed to the public.

Having heard the evidence on oath;

Having seen the consent of the Attorney General (at page 4) and the consent of the accused (at page 11 and 12) for the case to be heard by summary proceedings.

Having seen all exhibited documents and the record of the proceedings;

Having seen the note of final submissions, exhibited by the Commissioner of the Police of the 17th January 2007;

Having seen the oral submissions of the parties;

Deliberate:

From the record of the proceedings it transpires that Helena Denaro formerly reported to the police at the date cited in the charges brought by the accused that the minor, Melissa Etheridge, a student who is living with her, had been raped. Ms. Denaro stated on oath that she could not contact her parents who were overseas and therefore decided to make a report in locus parentis. Helena Denaro stated that Melissa Etheridge did not in fact want to report the alleged aggressor, Sebastian De Bono to the police:

“But she refused. She just wanted to forget about it. She wanted to forget him...” (vide page 16).

Whilst she was at the police station, Mr.Denaro stated that she was approached by Inspector Sciberras, who informed her that what Melissa had stated was in fact

suspect. (at page 16). Helena Denaro stated that Melissa was interrogated again by CID Officers were she admitted that she had had a previous sexual encounter with Sebastian's brother, Zachary, that same evening.

Miss Denaro at this stage had decided that it was best to stop charges. (vide page 16).

Miss Denaro stated that she was present on the two occasions when Melissa was being interrogated by the police and that in her second statement she had started to retract her previous statement. Melissa had admitted in the second statement that she had had full sexual intercourse with Zachary De Bono in a public garden, which intercourse was consensual. Thereafter she went back to the bar Pitstop. During the second statement Melissa said that there might have been a misunderstanding, as regards the significance of the word 'stop' i.e. Sebastian and Melissa may have misunderstood each other in the manner cited at page 17. Miss Denaro stated that after having heard Melissa second statement she decided against pressing charges and on being questioned by the Court, confirmed that in fact these were wishes of Melissa's parents whom she had managed to contact subsequently. (vide page 17).

Inspector Raymond Aquilina at page 20 et seq. stated that he was informed by Inspector Sciberras of a minor girl in Paceville on the 22nd August in 2004. A Magisterial Inquiry was initiated and several experts appointed to the case. Inspector Aquilina stated that he interview Melissa Etheridge, who told him that she was at St.Julian's with some friends and they stopped at several pubs. She told him she met Sebastian De Bono at 'Babylon' pub and had met with Zachary at the 'Moschito' bar, and thereafter at 'Pitstop' bar. Melissa stated that she knew both the accused and that she had had several drinks throughout the evening, and that, during the early part of the morning Melissa and Zachary had gone to the Westin Park Gardens and that she and Zachary had had full sexual intercourse in the same gardens. Melissa told him that after this intimacy, Zachary had ignored her and went

back to Paceville ahead of her, whilst she was left alone at the 'Pitstop' pub. In this pub, she had met Sebastian De Bono and had bad mouthed his brother Zachary.

Melissa stated that Sebastian had started to flirt with her and began to touch her and that she had stopped him and that she was escorted into the bathroom where Sebastian resumed his ardour. Melissa stated that they had full sexual intercourse in the bathroom, that the door did not close and that she saw someone peeping during this intercourse. She stated that she had never consented to this sexual intercourse and had asked Sebastian to stop, to no avail.

Inspector Aquilina informed the Court that Melissa "did nothing" i.e. did not scream, and did not try to get out of the bathroom, and that the only thing she said to Sebastian was, "to stop because of Martina" (Sebastian's ex-girlfriend), and that Sebastian had told her, "No shut up because Martina is finished." Inspector Aquilina stated at page 23, that he had also interrogated the accused Zachary De Bono who admitted that he had had full sexual intercourse with Melissa in the gardens of the Westin Hotel. He also stated that Melissa had practiced oral sex on him.

The accused, Zachary De Bono stated that something was going on between Sebastian and Melissa because he was standing outside the bathroom of 'Pitstop' and after a few minutes, he saw his brother Sebastian emerging from the toilets, without his shirt, and that he was followed by Melissa. Zachary De Bono, in his statement, informed the police that he has made fun of his brother, informing him that he had just had a full sexual intercourse with Melissa.

Sebastian De Bono also released a statement wherein he admitted that he had sexual intercourse with Melissa at the 'Pitstop Bar's' toilets and that Melissa was consenting and that the only denial that she had uttered related to her ambivalence towards the fact that Sebastian had been going out with her best friend Martina, to which Sebastian

De Bono answered that there was no Martina and that that relationship had ended months ago.

The proces verbal of the incident is exhibited as Dok.AC on page 35 et seq.

PS1244 exhibited the police report of the incident at page 38.

Melissa Etheridge stated on oath at page 45 et seq., that she had been living with Helena Denaro for the previous eight months, priors to which she was in a boarding school for four years, due to the fact that her parents reside permanently abroad. She confirmed that she had filed a police report against Sebastian De Bono who had violated her. She stated that she had gone out in the evening with a couple of her friends and had stopped at several clubs in Paceville, including 'Paparazzi', 'Pitstop' and 'Mosquito' and 'Hacienda', where she had consumed several glasses of wine. Whilst she was at the 'Mosquito' bar she had met Zach and she went for a walk with him in the Westin Gardens Park Area where she had full sexual intercourse with Zachary with her consent. She stated that she had been acquainted Zachary for around six months. She stated that she had never dated Zachary but she had had several sexual encounters or adventures with him. Melissa Etheridge stated that at one point in time Zachary had asked her to practice oral sex with him, and that she was not comfortable doing that and that at this point in time he just walked off leaving her to trail behind him. Melissa Etheridge stated that she was rather angry – "mad" – to be precise, and that she had followed him to the 'Pitstop' club. It was there that she met Sebastian De Bono with whom she started a conversation. Melissa Etheridge stated that Sebastian kissed her and she kissed him back. However she started to feel guilty about making out with Sebastian because her best friend Martina had gone out with the same Sebastian. After repeated questioning by the Court, it transpired that the relationship between Sebastian and Martina had ended three to four months previous to this incident. In fact, Melissa admits at page 51 that when Sebastian told her to shut up, this was

because the relationship between him and Martina had terminated months before. Melissa stated that she stood up because things were getting uncomfortable and that Sebastian “led her into the bathroom.” Melissa stated that Sebastian had full sexual intercourse with her and that during this intercourse she told Sebastian the words “No Martina” and that Sebastian told her again to shut up about Martina. Asked whether she tried to get out of the door, Melissa answered in the negative:

“At that time I didn’t know what to do, I didn’t scream or anything. I didn’t yell or like say no” (vide page 52)

Melissa stated that she did not struggle or move in any way that she was shocked because she had actually known Sebastian De Bono, “He was a very very nice person...”

At page 53, Melissa admitted that she never tried to push Sebastian off at any time. Asked as to her height and she stated that she was five foot nine inches tall, and that she had been wearing heels that evening. Asked whether she had suffered any bruising on any part of her body, Melissa Etheridge answers in the negative. Melissa stated that in the first part of their conversation, she was complaining about his brother Zach and that Sebastian has answered her that Zach had no feelings and that he was messed up, and that she was to forget about him. She said that whilst they were having this conversation she was sitting on Sebastian. Asked as to her manner of her sitting, Melissa Atheridge stated that she first tried sitting sideways on his lap and then sat astride on his lap facing him even though she admitted that she had a short flouncy skirt on. Asked as whether Sebastian could have interpreted this as provocative or flirtatious, Melissa answered “I can see how it can be yes.” (vide page 57). At page 58, Melissa describes the level of intimacy, Sebastian and herself reached whilst they were still outside, that she had started to become uncomfortable **not because there were other people around**, but because of Martina, and that this had led to Sebastian escorting her to the bathroom. At page

59 and 60 Melissa admits that having had sexual intercourse on several occasions with several boys.

Melissa Etheridge stated at page 60 that on leaving the bathroom she saw Zachary De Bono outside the bathroom that she did not know of his presence there and just left the 'Pitstop' bar and went home. Asked whether she ran for help on leaving the bathroom, Melissa said that she did not speak to anyone, and went home, and took a shower, waited for her room-mate to return, went to bed, and it was only the following morning that she confided with a friend and told her not to divulge anything. Her friend however told her mother who phoned up Helena Denaro, who persuaded her to go to the police station and to the hospital. Melissa Etheridge said at page 62 that she had deliberated whether to tell her parents and decided against it, and it was then that her guardian Helena Denaro decided to talk to the police. Melissa Etheridge stated that she was not close with her parents, that she saw them for a couple of weeks every fourth month and two months during the Summer time and that she had been in boarding school in Malaysia since the age of eleven, before coming to Malta. Melissa Etheridge confirmed in cross examination that she had had sexual relationship with a friend of the accused, called Matthew.

Inspector Terese Sciberras at page 66 confirmed the evidence of Inspector Raymond Aquilina at page 66 to 76 and the findings of her investigation. In cross examination Inspector Sciberras confirmed that Melissa Etheridge, on more than one occasion varied her version of events.

Robert Cardona at page 77 presented his report of Dok.RC, after being nominated in an inquiry. The results of his analysis were negative as far as presence of blood and 'acid phosphatase'.

Louisa Tufigno at page 113 exhibited the license of the 'Pitstop' bar and restaurant which is marked as Dok.LT at page 112.

Matthew Miggiani at page 121 confirmed that the accused where his best friends and that he knew Melissa Etheridge and he had full sexual intercourse with her which he described as a sexual encounter. He said that this had not been her first sexual experience.

Considers:

The facts of the case, and more specifically, the demeanour of the minor Melissa Etheridge show that this sixteen year old is a personality beset with anger and feelings of abandonment towards her parents. This same minor was very willing to have participated in full sexual intercourse and oral sex with the accused Zachary Debono in an open garden which was accessible to the public.

The record shows that during this consensual intercourse, Melissa Etheridge was left feeling used and was very angry at the manner in which Zachary Debono, having satisfied himself, left her and walked off ahead.

It was with this '*animo*' that she met up with his brother Sebastian on whom she vented her spleen as regards Zachary's outrageous behaviour.

Sebastian Debono, who was unaware of the intimate connection that had taken place minutes before between his brother Zachary and Melissa, started to flirt with the same Melissa who in reality was only annoyed that all this was taking place in public.

Sebastian led her by the hand into the toilet of a bar, Pitstop, where Melissa and Sebastian had full sexual intercourse. It is pertinent to note at this stage that there was a misinterpretation of the word "Scrooted" with reference to the manner in which Sebastian accompanied Melissa to the bathroom of the Pitstop. It is this Court's considered opinion that Melissa Etheridge used the word "Escorted" which was misunderstood by the police. Indeed the Court after repeated questioning discovered that Melissa was simply led by the hand by Sebastian De

Bono to the bathroom, no force being used at all and this according to her own testimony.

Melissa Etheridge tried to impress upon the Court that she said no.

The Court has absolutely no doubt that Melissa knew exactly what was happening and what was intended when she was led into the bathroom. On the strength of Miss Etheridge's own testimony she admitted to having kissed Sebastian outside, to having sat astride on his lap, facing him in spite of her short attire and that they were being fresh.

The Court therefore has, no doubt that Melissa Etheridge knew what was about to happen into the bathroom to which she was led. The Court has no doubt that Miss Etheridge did not in any way resist to her being in the ladies bathroom together with Sebastian.

It is ludicrous to imagine a rape in a toilet whose door does not close properly between a 16 year old who was significantly taller and better built than the accused Sebastian De Bono who is of medium stature. It is equally ludicrous to believe otherwise when there is no evidence of injury, severe bruising, scratches or lacerations on the person of Melissa Etheridge – who never screamed, shouted or tried in any way to avoid contact with Sebastian.

Melissa states that she said no and that Sebastian told her to shut up, however the Court understands that this discourse was in relation to her babbling on about the fact that she was feeling guilty about having sex with the boyfriend of her best friend – but not enough to stop.

Having examined the record of the proceedings, this Court has no compunction in stating that the whole incident with Sebastian De Bono was engineered as a form of vengeance because of Zachary De Bono's shabby use of Melissa Etheridge.

There is sufficient evidence in this record of the proceedings for this Court to find and declare that Melissa Etheridge was defiled no further in the incidents mentioned in these charges as it is abundantly clear that Miss Melissa Etheridge had several previous sexual adventures with several youths in spite of her age.

The Court therefore finds the accused not guilty of the first charge and acquits them of the same.

The Court, furthermore, finds that Helena Denaro waived proceedings with regard to the first charge brought against the accused, after consulting with the parents of Melissa, this was her intention, though admittedly, this was poorly conveyed in the record of the proceedings.

With regard to the second charge of lewd acts in public, the Court understands that with regard the accused Sebastian De Bono, the intimate connection between him and Melissa was conducted in a bathroom of a bar where although the door was not locked is a place which is not accessible to the public unless it is vacant. It needs hardly be added that the toilet in a club or restaurant is essential an enclosed space normally with a lock on and that whoever uses such facility has the privacy that one requires. The fact that this particular toilet did not lock well is irrelevant to the issue. This toilet was occupied and the fact that someone knocked and Sebastian promptly denied access is indeed sufficient proof of the same.

With regard to Zachary De Bono however the position is different. The accused Zachary De Bono admitted fully to having sexual intercourse and oral sex with Melissa Etheridge which acts of intimacy were conducted in a public garden.

This Court therefore find the accused Zachary De Bono and Sebastian De Bono, not guilty of the first charge and acquits them of the same, finds Sebastian De Bono not guilty of the second charge and acquits him, find Zachary De Bono guilty of the second charge of committing lewd acts in public and after having seen Art 209 Chapter 9, and Art 22 Chapter 446 of the Laws of Malta, discharges him on condition that he does not commit another offence within a period of eighteen (18) months

< Final Judgement >

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