



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

**MAGISTRATE DR.
IAN FARRUGIA**

Sitting of the 27 th August, 2013

Number 829/2013

**The Police
(Inspector Joseph Busuttil)**

Vs

Mariyan Enchev

The Court,

Having seen the charges brought against Mariyan Enchev, 27 years old, born on the 16 th April 1986, in Dobrich Bulgaria, holder of Bulgarian passport bearing number 359772762 and residing at 159, Bay Square Court, Flat 4, Triq Sant' Antnin, San Pawl il-Bahar, Malta.

Accused of having :

1. on the 4th May 2013 in the Maltese Islands, in Misrah il-Bajja, San Pawl il-Bahar you have caused greivous

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injuries on the person of Clevion Micallef as certified by Dr. Christian Zammit MD: 3261 from the emergency department of Mater Dei Hospital.

2. on the 4th May 2013 in the Maltese Islands, in Misrah il-Bajja, San Pawl il-Bahar you have disturbed the public peace and order by shouting and fighting.

Having seen Article 392A of Chapter 9 of the Laws of Malta;

Having seen all the documents exhibited in the acts of these proceedings;

Having heard prosecuting officer on oath;

Having heard accused plead guilty to all charges brought against him during the arraignment on the 27th of August 2013 and his insistence on such guilty plea after being given time according to law;

Having heard submissions by the prosecution and the defence regarding punishment;

Considers;

That in view of the accused's guilty plea to all charges proffered against him, and since there is no reason emanating from these proceedings why this Court should not accept such plea with regards to the first charge of causing grievous injuries, it is the duty of this Court to proceed with judgement and declare the accused guilty of said charge. The Court however cannot accept the guilty plea as regards the second charge brought under Article 338(dd) of the criminal code. This is a contravention and barred by the lapse of three months. Action was taken after the lapse of the three months and therefore the Court is *ex officio* declaring such charge as barred by prescription.

Considers;

That as regards to the facts of the case, this Court was presented with the version of the prosecution, which was not contested by the accused due to his guilty plea. During the sitting of the 27th August 2013, prosecuting officer Inspector Joseph Busuttil, under oath, explained the circumstances which led to this case. On the 4th of May 2013, at around 02.15hrs, the accused was involved in an altercation with Clevion Micallef at the Black & White Bar in Bugibba, at which bar Mr. Micallef works as a security and manager. At a certain point, while Mr. Micallef was trying to convince the accused and his friend to leave the premises since they were in a drunken state, it is alleged that the accused attacked Mr. Micallef. The said Mr. Micallef suffered grievous injuries to the palm of his hand as certified by Dr. Christian Zammit M.D.

Considers;

That in the final submissions on punishment, the defence argued that the Court is to consider the benefits of an early plea of guilt, that the accused has no previous convictions, that according to the accused, he feels that he has co-operated with the police and that in actual fact it was he who filed the police report. The defence pointed out that the accused suffered grievous injuries himself to his face during the said altercation with Clevion Micallef. In this respect, Mr. Micallef is being charged in court for causing grievous injuries to the accused. On the other hand, the prosecution observed that in the context of punishment, it is advisable to leave the matter in the Court's discretion.

Considers;

That in the context of punishment or sanction to be meted out to the accused, the Court is taking into consideration the following resulting factors, but not only, (1) that the accused pleaded guilty to all charges at the earliest opportunity in these proceedings, (2) that it was the accused himself who approached the police to file the report, (3) that the altercation was mainly the result of consumption of alcohol in such amounts that the offender

could not adequately control himself, (4) that the accused himself suffered grievous injuries to his face, (5) that no plausible explanation was forthcoming which explains why the police did not proceed immediately in court with respect to this incident. It is to be pointed out however that prosecuting officer Police Inspector Joseph Busuttil was not the investigating Police Inspector at the time of the incident.

In view of the above, it is this Court's opinion that, having regard to all the circumstances of the case, the nature of the offences and the injuries and the character of the accused, it is inexpedient to inflict an effective prison term.

THEREFORE, THE COURT, having seen Articles 214, 215, 216(1)(b), 338(dd), and 28A of Chapter 9 of the Laws of Malta, finds and declares offender Mariyan Enchev guilty of the first charge of causing grievous bodily harm and condemns him for a term of imprisonment of three (3) months but orders that, in terms of Article 28A of Chapter 9 of the Laws of Malta, this sentence does not take effect unless, during the period of one (1) year from today, the offender commits another offence punishable with imprisonment. Declares the second charge, that brought under Article 338(dd), as barred by prescription.

The Court, in terms of Article 28A(4), explained to the offender in ordinary language his liability under Article 28B if during the operational period of one year he commits an offence punishable with imprisonment.

The Court orders that the acts of these proceedings together with a copy of this judgement be transmitted to the Attorney General in terms of Article 392A (2) of the Criminal Code.

< Final Judgement >

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