



MALTA

**COURT OF MAGISTRATES (MALTA)  
AS A COURT OF CRIMINAL JUDICATURE  
MAGISTRATE DR.  
MIRIAM HAYMAN**

Sitting of the 2 nd October, 2014

Number. 893/2008

**The Police  
Inspector Bernard Spiteri  
Inspector Trevor Micallef**

**VS**

**Aniceta Belara Delina, daughter of Bonifacio Belara and  
Fortunata nee' Labi, born on the 27<sup>th</sup> June, 1962 in  
Philippines, residing at Flat 4, Arthur's Flats, Ball Street,  
St Julian's, holder of Maltese identity card 25903A, or  
Philippines passport No VV0724755**

**The Court;**

Having seen charges brought against the above-mentioned **Aniceta Belara Delina** who was charged of having:

1. In these Islands, on the 3<sup>rd</sup> September, 2008, at about 7.00am at Portomaso, Block 17, App 101, Vjal Portomaso, St Julian's, with the intent to commit a crime, manifested such intent by overt acts, without the intent to kill, or to put the life in manifest jeopardy of Denise Bonello, attempted to cause grievous bodily harm on Denise Bonello, which crime was not completed in consequence of some accidental cause independent of her will;
2. Also of having carried a sharp and pointed instrument without the license issued by the Commissioner of Police;
3. Also of having threatened or insulted Denise Bonello;
4. Also of having during the weeks preceding the 3<sup>rd</sup> September, committed the theft of several belongings to the detriment of Denise Bonello which theft is aggravated by 'amount' (more than €232.56 but less than €2,325.58), 'person' and 'place'.

Seen that due to the fact that accused is English speaking the Court ordered that proceedings be conducted in the English language.

Seen accused non-guilty plea at the stage of her arraignment (folio 5);

Seen Attorney General's consent for summary proceedings, to which accused declares that she had no objection;

Seen all the records of the case – all evidence brought and presented.

**Inspector Bernard Spiteri** on his part testified that on the 18<sup>th</sup> September, 2008 a report was received about Delina Belara who allegedly had threatened a person by the name of Denise Bonello with a knife. Allegedly she had stolen t-shirts and money. She released a statement which he exhibited as Dok ABD (folio 17).

On his part **Inspector Martin Sammut** testified that he was informed through PS 1585 about a report filed by a certain Denise Bonello that her maid had gone to her residence and attacked her by means of a knife.

He thus requested the arrest of Aniceta Delina to have her investigated accordingly. He obtained a warrant of arrest in her regard. He testified that upon trying to execute the warrant he received information that she had left Malta, though she was later spotted at the Dragonara Casino in St Julian's. She was in fact arrested at the Casino.

**Denise Bonello** – the alleged injured party, testified that on one occasion she was packing to go abroad and found some clothes – tops, missing. She called the accused – her house cleaner, and asked her if she had taken any of her clothes. She further said that Ani (the accused) replied she had not taken her tops but that she wanted to go and talk to her. She took a top back with her, a top that belonged to the witness. Bonello further added it was one of the tops she found missing. However she added she had found other tops missing that the

accused denied having taken. Bonello added that she also found missing money. With regards to the missing tops she counted another four - a white one, a purple one, a black one and a red one, as described by her. She added that she had bought all three for two hundred Maltese Liri (Lm200.00). She confirmed one top was however returned to her (by accused).

About the missing money she said that these were kept in her husband's wardrobe. The accused rejected the claim that she took such monies and the other tops. Bonello added that on Wednesday the accused went to her apartment because she wanted to talk to her, denying the allegations above-said. She said that she had her daughter with her - her three (3) year-old daughter. She said that at his point the accused got her knife out of her bag. At this point she was at the door, she had not entered the house. Bonello said that Aniceta told her she was not leaving Malta and that she would kill her and proceeded with the knife towards her. She closed the door and thus the door ended up being scratched and this further resulted the knife fall between the doors. She said she gave the knife to the police who arrived at her house about fifteen(15) – twenty(20) minutes after the recounted incident. She said this incident happened on a Wednesday after the 29<sup>th</sup> of the August.

In cross-examination she agreed she had lent the accused money but kept her passport in her custody. She also agreed she had given her shirts because her daughter was dying and she pitied her.

Under further cross-examination she agreed Delina had access to every room in her residence in Portomaso; also that the concerned money was kept in her daughter's money box. The monies were coins. She calculated the monies – coins, stolen amounted to four hundred (400) to five hundred (500) Euros,

though she admitted that they were not counted, but had amounted to such a sum when previously changed.

She agreed that accused denied stealing the money; as also that she had given her some hand-me-downs, but she denied having given her any tops. She insisted the accused just returned one top – the black one, a Guess one.

She agreed she kept accused's passport against an eight hundred Euros (€800) loan, the accused was to satisfy by working for the family.

She said there were still owed seven hundred Euros (€700) by accused as she had only worked to the amount of one hundred Euros (€100).

She also recognised the knife when shown to her, as well as the scratches suffered by her door after seeing a photo thereof, one taken by PS 516 Alfio Borg and exhibited as Dok AB.

**Michael Bonello** - previous witness' husband, testified that accused was engaged with his household as a cleaner. Shown Dok AB - the photo taken by PS 516 Alfio Borg, he recognised that it showed the main door of the apartment and the scratch. He confirmed that he had, on the duration the accused was working in his apartment, advanced her a loan. He recalled that she started working for them on a Saturday and that between that and Monday they started receiving messages from her saying that one of her relatives was dying and that she needed money. He continued that Monday she walked in and started crying and that she was really down and said she needed five hundred Euros (€500) to send abroad. He decided against his wife's wishes, to pay her upfront for her work, albeit only after having known her for just three (3) days. He gave her the money but withheld her passport as a guarantee.

He said that the deal was that as soon as she worked to the amount of five hundred Euros (€500) he would give her back her passport. He considered that she had already paid up, therefore worked up to the amount of two hundred twenty Euros (€220). He stated that the outstanding amount was two hundred fifty Euros (€250). He said that they also advanced her thirty (30) or forty (40) Euros for medicine. He recalled that one morning his wife found a missing top.

He further recalled that a small HSBC moneybox in which he put loose coins for his daughter, was also forced open at the side. He had no idea how much money was however missing there from.

He also recalled, because he was present, that his wife called the accused when she found the missing top, and the accused returned back the black top his wife had asked for. He said accused had told them her sister had died, and she took this top and stuck it on the wall because it was a nice top (folio 53). He added that his wife started crying, and so Ani was asked to leave the apartment and refund them the sum of one thousand Euros (€1,000). He said he was not there for the story of the knife. He said that the one thousand Euros (€1,000) were the estimated amount of the missing coins, including his wife's tops missing, make up, and other missing items he did not however mention.

**PS 63 James Weatherhill** testified that on receiving a report from GHQ that a certain Philippine female tried to stab another person at the latter's residence, he went to speak to Denise Bonello at her apartment in Portomaso who was crying. Bonello mentioned Aniceta Belara Delina who used to work for her as a cleaner. She alleged she found three (3) shirts missing and four hundred Euros (€400) coins. Bonello reported to him that she and Delina agreed the latter would

return the things on a Wednesday and exactly as Bonello opened the door, she brought a knife out of her bag and tried to stab Bonello.

He added that Bonello tried to close the door thus the knife ended inside. He actually took the knife and even the passport held by Bonello. He said that he tried to phone Delina who however answered only once, and when he identified himself as a policeman and that he needed to talk to her at the police station, she turned her mobile off and according to witness he was unable to contact her again.

**PS 157 Brian Mifsud** was also called on site after receiving the phone call alleging the attack. He said that Denise Bonello pointed out the knife on the ground that was allegedly used in the attack. He confirmed that Delina was difficult to contact. He exhibited the PIRS report of the incident in examination, exhibited as Dok BM.

As above-mentioned, accused released a statement to the investigating officer. The statement was taken on the 18<sup>th</sup> September, 2008 – obviously at that time the right of legal counsel was not mandatory at Law.

She was duly cautioned as obligatory by the Law in application in 2008.

At the time of the statement the accused was forty-six (46) years old.

The Court, in determining the applicability of the statement has considered the principles laid down by the Criminal Court of Appeal in the case in the names “*The Police vs Omar Psaila*”, dated 20<sup>th</sup> June, 2014. Here the Court laid down:

*“Illi madankollu tajjeb jigi osservat illi wiehed jista’ jghid li l pożizzjoni legali f’pajjizna għal dak li jirrigwardja*

*sitwazzjonijiet simili (li okkorrew qabel l-emendi fil-ligi fl istess rigward) hija dik stabbilita fis-sentenza tal- Qorti Kostituzzjonali fil-kawża fl-ismijiet “John Attard vs L-Onorevoli Prim Ministru u l-Avukat Ġenerali” deċiża mill-Qorti Kostituzzjonali fil-31 ta’ Mejju 2013. Għaldaqstant il-Qorti se tagħmel din ir-referenza ampja għal dik is-sentenza:*

*“Tajjeb illi qabel xejn ngħidu illi l-Qorti Ewropeja tad Drittijiet tal- Bniedem ma waslix biex tghid illi n-nuqqas ta’ għajjnuna ta’ avukat awtomatikament, ipso facto u immedjatament huwa ksur tal-jedd għal smiġħ xieraq. Tassew, dik kienet ix-xewqa tal-Imħallef Bratza fl-opinjoni separata li ta fil-każ ta’ Salduz:*

*“ . . . the Court should have used the opportunity to state in clear terms that the fairness of criminal proceedings under Article 6 requires that, as a rule, a suspect should be granted access to legal advice from the moment he is taken into police custody or pre-trial detention.”*

*Il-Qorti Ewropeja iżda għustament ma adottatx din il pożizzjoni estrema.*

*Kif għja’ kellha okkażjoni illi tosserva, din il-Qorti ttenni illi l-jedd ta’ għajjnuna ta’ avukat waqt l-interrogazzjoni jingħata mhux biex tinholoq formalita li n-nuqqas tagħha jagħti mezz ta’ difiża lill-akkużat:*

*dak il-jedd jingħata għall-iskop preċiż illi jkun hemm garanzija illi kull stqarrija mogħtija mill-persuna interrogata tkun ingħatat b’għażla ħielsa, b’għarfien tal-jedd li jibqa’ sieket, u bla theddid, wegħdiet, vjolenza jew b’xi mod ieħor abbużivament. Il-ksur tal-jedd għal smiġħ xieraq iseħħ meta l-*



*istqarrija tittiehed abbużivament u mhux bil-fatt biss li tkun ittiehdet minghajr l-għajnuna ta' avukat.*

*Il-kwistjoni għalhekk għandha tkun jekk l-attur kienx daqshekk f'pożizzjoni ta' vulnerabilita, djgħufija jew biża' illi l-esperjenza ta' interrogazzjoni mill-pulizija fl-assenza ta' avukat kellha nfluwenza fuqu hekk li gġieghlu jistqarr htijiet u fatti li ma għandhomx mis-sewwa u li għalhekk toħloq il-perikolu li jinstab hati meta fil-verita' hati ma jkunx."*

Note must be had of the fact that Delina so much understood her rights and was so aware of the delicate position since she was in Malta *ex admissis* illegally. The Court again stresses her age, hardly an immature spring chicken, as also the fact that she chose to evade the police on being asked to go to the station – this leads the Court to deduce that Delina was not so vulnerable on releasing the statement. Furthermore, she herself admitted in the statement that after her altercation with Denise Bonello, she sought a lawyer's council.

Therefore the Court, considering the above-premised, deems the statement exhibited to be admissible and to carry the probatory value attributed to it at Law.

In her statement Delina stated she had worked for a lawyer as a maid and that she came from the Philippines. She stated that though she understood Maltese, she spoke English. She said she had been in Malta for six (6) years, and that she had been working as a maid with Denise Bonello for more than a month.

She said that the night before the 3<sup>rd</sup> of September, 2008 Denise had asked her to go to her house or else she would call the police. She said on the date she went to Denise's house at 3.00pm and spoke to her outside her door. She said that she denied with Denise the allegations she was making – that she had stolen tops and money. Delina said that at this stage Denise started shouting and even tried to hit her. Here Delina told her that if she hit her she would fight her back. At this stage, according to accused, Denise locked herself inside. She told Delina she was going to call the police, so accused ran away – later she stated she went to a lawyer.

She denies having a knife at this time, saying she only went to speak to her. She denies initially having any knives at home, similar to that used in the incident.

About the stealing of the coins, she continued the deny this. With regards to the tops, she stated she was given two bags of tops by Denise. However, she did admit to stealing one top which however she insisted she returned.

She insisted that she was staying with a friend not to avoid the police since she was aware they were looking for her, but only because the friend took her to her lawyer employer. Also she felt she needed to be protected because she did not have a work permit.

She insisted she only went to the Casino with her sister who gave her the money.

She admitted that her passport was expired and that her stay in Malta was illegal – that, according to her, was the reason why she was running from the police.

Accused decided to take the stand and testified under oath that Denise Bonello had phoned her up around midnight. She described her as her boss, working in her house at Portomaso for about two (2) to three (3) months as a cleaner. She said she

accused her on the phone at midnight of stealing her clothes, regardless that she had previously given her two bags – baskets full of clothes. Accused said she thus told Denise that she would give her back all her clothes.

She continued that in the morning Denise phoned her and asked her to go to her house to speak to her. She said that once she arrived she took the two bags full of clothes in the house, and then she walked out. She said she was speaking to Denise outside the door when she started shouting at her and also slapped her face and pulled her hair, pulling her to the floor, wherein the accused said she started crying. She here told her to get out of her house. Delina continued that she was crying and proceeded to go home. Again Denise called her and instructed her to go home the next day around seven, since she wanted to talk to the accused.

Delina said because she was scared she carried a knife in a bag. On arriving she stood outside the door. Denise starting shouting. Delina said she noticed that she was trying to pull her hair, so she explained she got her knife and showed it to her. Here, according to Delina, Denise was scared, she screamed. Here Delina says she dropped the knife because according to her Denise grabbed her hand.

She now denied stealing anything from Bonello. However, she agreed she returned to Denise all tops she had given to her.

Under cross-examination she denied the suggestion that the door was hit when she was trying to hit at Denise. She insisted that the scratch was made by Denise herself. She kept denying the knife incident saying she, that is Denise, went to call the police so she ran quickly. She testified the she ran because she did not want the police to realize of her position (dubious) in Malta. She also denied going straight to the Casino, insisting she never goes there. She insisted Denise Bonello “do

*something bad*” to her (folio 154). She insisted she was caught at the Casino because it’s close to where she lives; that she went there only for coffee and cake. She informed that in Malta she had no family, hers being all in the Philippines.

She also informed that the money she borrowed from the Bonello’s was for her family. She also agreed she had not paid it all up, as now she was no longer working with the Bonellos as a cleaner. She insisted she had another employment with a lawyer, doctor, sometimes in very high position, and also that she had five (5) children and two grand children to support.

All evidence having been tendered and presented, the parties presented their note of submissions, which the Court read very carefully.

Considers:

That Aniceta Belara Delina has been accused of attempting to cause grievous bodily harm on Denise Bonello.

First and foremost, it must be premised in considering this offence, that Delina seems to change her version from the statement to her viva voce evidence. In her statement she told the investigating officer that she had not taken any knives with her when she went to face Denise Bonello. However, viva voce she testified she had taken the knife with her as a defence once Denise Bonello had previously attacked her, slapped her face.

Defence Counsel premised in his note, citing the judgment “*Il-Pulizija (Spettur Chris Pullicino; Spettur Sylvana Briffa) vs Darren Psaila*”, that an attempt to commit grievous bodily harm must result only if a direct specific intent to commit such results. This is what we consider when dealing with the

“*mens rea*” element to be the “*animo nocendi*”. Thus the Prosecution had to prove this intentional element beyond any reasonable doubt.

The facts show that even though Delina originally denies taking the knife, she in fact admitted this later, now advocating defence. The slap she purported to have received and pulling of the hair at the hands of Denise Bonello do not result, as Michael Bonello was present for the first incident, recalling only that his wife was upset and cried when realising that accused could have taken some of her clothes. Accused also insisted that the scratch on the door was actually caused by Denise. The scratch itself is indicative that the knife was brandished and swung about – the Court is convinced that this was done only by accused. Neither can accused now raise self defence in her favour as any threat she might have perceived was definitely not immediate and present when she turned up at the Bonello’s house to return the top she had actually taken, *del resto* as she admitted!

The Court is convinced that Aniceta turned up with the knife to scare Bonello because she had no work permit and a valid passport. As she said herself in the quoted extract in Defence’s note, she wanted to scare Denise Bonello.

However, the Court is likewise convinced that Aniceta took this further, and Denise Bonello recounted how accused took the knife out of her bag and went towards her stating she did not want to leave Malta and she would kill her.

The scratch on the door is **very (emphasis of the Court)** indicative of the fact that the knife was brandished by accused and that Denise Bonello closed the door abruptly in her face once she felt so threatened.

As a fact and as admitted by accused, she herself felt threatened due to her precarious position in our Islands. The

Court is therefore convinced of her intention because she felt so threatened and having been found out by Denise Bonello was that of inflicting harm. Otherwise, there would have been little scope of her going so far as to carry a knife and attack someone with it.

Therefore, finds her guilty of an attempt to commit a grievous bodily harm.

Moreover, the brandishing of a knife does in the opinion of the Court amount to a threat. A threat can be verbal and physical, and the view of a cutting instrument can certainly be perceived by the viewer as an indication of menace or imminent danger – therefore finds accused guilty as charged.

Aniceta is also charged with theft aggravated by amount, person and place.

Accused as above-premised, admitted to the theft of one top – not four as alleged; and denied any theft of money from the HSBC money box. The other money the Bonellos are pertaining to recoup from Aniceta was handed over to her in the title of a loan and therefore is an issue to be dealt with civilly.

Denise Bonello was very certain about the clothes she found missing, and denied having given accused the four tops as hand-me-downs, also because she claimed they were branded and valued them globally to the amount of two hundred Maltese liri (Lm200.00).

On her part, Aniceta besides rendering a pathetic excuse for taking the top for her sister's death, ventured the excuse of the hand-me-downs.

The Court in fact, believes that accused decided to relief her employer Denise of further tops and finds her guilty as

charged in this regard, as aggravated by amount (Section 267), person (Section 268), and place (Section 269) – all of Chapter 9 of the Laws of Malta.

Spouses Bonello also inputed that money was stolen from the moneybox by accused, and Mr Bonello testified to the fact that his was tampered with, testifying that the sides were broken. Though the Court can very much understand due to the circumstances, why their suspicions fell on Aniceta, it is not convinced beyond reasonable doubt that it was accused who committed such a crime, besides the amount missing was never really properly quantified by the spouses; Therefore acquits her of this part of this theft charge.

Aniceta was also charged with carrying a sharp and pointed instrument without the appropriate license issued by the Commissioner of Police. Without any doubt as premised, Aniceta did brandish a knife at Denise Bonello, she herself now feeling threatened because of her illegal position in Malta. Though by no means must it be understood that the Court approved of such behaviour, considering it to be highly deplorable, Defense rightly pointed out that no evidence was advanced by Prosecution to the fact that she had no valid licence to carry the knife, therefore acquits her of such an offence.

Therefore, the Court finds accused guilty of the first(1), third(3) and fourth(4) charge brought against her, in that the third(3) charge is absorbed in the first(1) charge, this after having seen Sections 41, 214, 215, 216, 339, 261, 267, 268, 269, and 279 of Chapter 9 of the Laws of Malta;

Regarding the punishment to be awarded, having seen accused's conviction sheet and having considered her circumstances;

Seen also Section 17 and 31 of the said Chapter 9 of the Laws of Malta, therefore condemns her to the violence of her acts to the suspended term of imprisonment of eighteen(18) months suspended for three (3) years, after having seen Section 28A of Chapter 9 of the Laws of Malta.

**< Final Judgement >**

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