



MALTA

COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE
AARON BUGEJA

Sitting of the 13 th February, 2015

Number. 507/2014

The Police

(Inspector Trevor Taliana)

vs

Boris Dodek

The Court after seeing the charges dated 22nd May 2014 in respect of Boris Dodek, son of Milan and Snezana nee Verebelsi, born in Serbia and residing at St. Paul's Bay holder of Serbian passport number 011518344 and Hungarian passport number BD9362177 who was charged with

“having in these islands on the 02nd May 2014 between three and four in the morning (03:00a.m-04:00a.m) in St. Julians or in the vicinity:-

1. Without the intent to kill or to put the life in manifest jeopardy, caused grievous bodily harm on the person of Clayton Grech. (Art. 216, 218 Chapter 9 of the Laws of Malta).
2. Accuse him further for having on the same date, time, place and circumstances committed slight bodily harm on the persons of Mario Farrugia and Ingrid Galea (Art. 221 Chapter 9 of the Laws of Malta).
3. Accuse him further for having on the same date, time, place and circumstances with the intent to commit a crime hence to commit wilful grievous bodily harm on the person of Mario Farrugia manifested such intent by overt acts which was followed by a commencement of the crime, which crime was not completed in consequence of some accidental cause independent of the will of the accused. (Art. 41 (1)(a) 216, 218 Chapter 9 of the Laws of Malta)
4. Accuse him further for having on the same date, time, place and circumstances took part in an accidental affray and caused bodily

harm on the persons of Clayton Grech, Mario Farrugia and Ingrid Galea (Art. 237 (b)(c)(d) Chapter 9 of the Laws of Malta).

5. Accuse him further for having on the same date, time, place and circumstances provoked a tumult or an affray for the purpose of committing a homicide or a bodily harm to the detriment of Clayton Grech, Mario Farrugia and Ingrid Galea. (Art. 238 (b) Chapter 9 of the Laws of Malta).

6. Accuse them further for having on the same date, time, place and circumstances wilfully disturbed the public peace and order. (Art. 338(dd) Chapter 9 of the Laws of Malta).

The court is kindly requested that if the accused are found guilty to provide for the safety of Clayton Grech, Mario Farrugia and Ingrid Galea according to article 383, Chapter 9 of the Criminal Law.

The Court is humbly requested that in case that accused is found guilty, provide for the safety of ... Clayton Grech, Mario Farrugia and Ingrid Galea or for the keeping of the public peace or for the purpose of protecting the injured persons or other individuals from harassment or other conduct which will cause a fear of violence, issue a Protection Order (Art. 412C Chapter 9 of the Laws of Malta)."

Having seen that during the sitting of the 22nd May 2014 this Court ordered that proceedings be carried out in the English language after that it ascertained that the accused is English speaking in terms of law.

Having seen that on the same date the Prosecuting Officer confirmed the charges on oath and during the examination of the accused in terms of Article 392(1)(b) of the Criminal Code the accused declared that he was not guilty.

Having seen that in terms of a formal written accusatory document issued on the 12th January 2015 the Attorney General found that from the preliminary investigation in this case there might result an offence or offences under the provisions of :

- a. Articles 214 and 216(1)(b) of the Criminal Code, Chapter 9 of the Laws of Malta;
- b. Articles 214 and 221(1) of the Criminal Code, Chapter 9 of the Laws of Malta;
- c. Articles 41(1)(a) and 216(1)(b)(d) of the Criminal Code, Chapter 9 of the Laws of Malta;

- d. Article 237(c)(d) of the Criminal Code, Chapter 9 of the Laws of Malta;
- e. Article 238(b) of the Criminal Code, Chapter 9 of the Laws of Malta;
- f. Article 338(dd) of the Criminal Code, Chapter 9 of the Laws of Malta;
- g. Articles 17, 31, and 533 of the Criminal Code, Chapter 9 of the Laws of Malta;
- h. Articles 383, 384, 385 and 412C of the Criminal Code, Chapter 9 of the Laws of Malta;

And decided in terms of Articles 370(3)(a) of the Criminal Code to send the accused for trial by this Court subject to no objection being made by the accused in accordance with Article 370(3)(b)(c)(e) of the Criminal Code.

Having seen that during the sitting held on the 19th January 2015 the Prosecuting Officer declared that the Prosecution had no further witnesses to produce and that it was resting its case. During the same sitting in terms of Article 370(3)(b) of the Criminal Code, the Court, after reading out the contents of the formal accusatory document to the accused, requested the accused whether he found any objection to his case being dealt with summarily. After giving the accused a reasonable

time within which to reply, and after consulting his Legal Counsel, he declared that he had no objection to his case being dealt with summarily. The Court therefore took note of this declaration in writing in the records of these proceedings in terms of Article 370(3)(c) of the Criminal Code.

Having seen that after that the accused tendered evidence he further declared that he did not have any further witnesses to produce and Defence Counsel declared that it was resting its case.

Having heard the final oral submissions of the Prosecuting Officer and of the Legal Counsel to the accused the Court adjourned this case for judgment in terms of Article 377 of the Criminal Code.

Having analysed the documents that were exhibited and all the records of the proceedings;

This Court considered that :-

At folio 30 Clayton Grech states that “Boris’ friend” (“sieħeb Boris”) teased his girlfriend Ingrid Galea for three times and he also pulled her arm. Then Galea moved back towards this witness. It was at this point

that this witness declared that he spat some water towards this person. At that stage "Boris' friend" whistled and gave his friends closeby a signal to come near him. According to Grech the accused was among this group of six men. These men started hitting and beating Grech – punching and kicking him. As a consequence of this aggression Grech suffered two black eyes and had his ear and eye lash area sutured. At folio 32, Grech states that he clearly recalled "Boris' friend" involved in this aggression. However, while stating that the accused was together with this friend of his, due to the confusion and commotion that ensued, this witness could not identify exactly who beat him. At folio 33 he also states that he could not clearly state that he saw the accused beating him, also because he went unconscious for a while. However he recalls that in the aftermath of this aggression, after that they left the club where this incident took place, he saw the same party of aggressors hiding behind a corner and as soon as the witness and his friends saw them, they went back inside the club. This party followed them and the witness says that he saw the accused, forming part of a party of (now) 7 men who were standing behind the glass door of the club making the sign of fists and urging the witness and his friends to get out of the club in order for them to be further beaten. This witness says that the accused was part of this party and he saw him doing the sign of the fist. At folio 35 this witness states that he alerted the Police about the accused's involvement in this aggression when this witnesses was summoned in Court to testify in the case instituted by the Police against

Boris' friend – now named as Alexev. This witness states that he saw the accused with Alexev as he went to Court together with Alexev – the man who gave rise to the fight leading to the aggression that this witness succumbed to.

At folio 49 Ingrid Galea testified that she saw the accused in the club during the fight. She says that there was more than one aggressor that took part in this fight. She says that she remembers that there was another man apart from the accused who was involved in the fight. According to this witness the accused was there, present and engaged in the aggression against Clayton Grech. At folio 50 she says that she was sure that the accused was present during the fight. However she also states that while Clayton was in the toilet room washing the blood away, she went in this toilet room and saw a man talking to Clayton “bil-barrani” – the Court understands this to mean a foreign language – not Maltese. At that point she realized that this man was together with the party of aggressors. Then she urged Clayton to move out of the toilet room. Then security officers intervened and escorted these foreigners out of the club. Then she saw these foreigners head-butting the glass panes of the club door. This witness reiterates that she saw the accused standing next to the man wearing a red shirt who was out of the club head-butting the glass door.

Mario Farrugia testified at folio 57. He recounts the incident and states that he intervened in order to assist his friend Clayton Grech. There were five persons hitting him while he was already pushed to the ground. He says that there were four to five persons hitting Clayton – punching him and knee striking him. This witness says that even though this club was dark inside, he recognized the accused. He says that he recognized the accused as one of the men involved in this fight – however he adds that at one stage he blacked-out. Asked by the Court whether he blacked-out before he saw the accused or after he saw the accused, this witness reiterated that he recalls seeing the accused on site however he could not state at which stage of this incident the accused was present. At folio 61 Farrugia recalls that when he and his friends were going out of this club the accused and his friends once again tried to approach them. Then he saw (“s-Serb l-ieħor”) the “other Serbian man” trying to force himself inside the club and he started head-butting the glass panes of the club door. The accused was standing beside him – however the witness could not recall clearly what the accused did at that point. He remarks that the accused was standing outside next to this other Serbian man, waiting for them.

At folio 82 Charlot Magro testified that he was together with his friends Clayton Grech and Mario Farrugia. He recalled that his friends were involved in a fight – however even though there were more than one aggressor, he could not state their precise number. Asked by the

Prosecuting Officer whether he could recognize any person involved in this fight in the Court room, this witness replied that he could not.

Glenn Frantz, the club DJ, who was present when the incident took place and who was standing right in front of the place where this fight broke out testified that there was a fight in the club but he could not recall why this incident happened because he was heavily focused doing his job; and in particular he could not remember anything...

Gaynor Spangol testified that she was present when this fight broke out. She went to buy a drink and all of a sudden she saw commotion and did not involve herself. There were a lot of people engaged in this brawl jumping on each other. At folio 197 she testified that she could not recognize anyone in the Court room as being involved in this fight.

Considers further

The Court took note also of the testimony of the accused. He states that indeed he was present at Moove Club together with his friend Alex. They were also joined by two other friends. Then at one stage together with his friend Nemanja, the accused went to buy food from Chick King some distance away from this club. After purchasing food they returned

back to the club when, from some distance he saw that the lights went on. He walked inside the club and saw two men – one was on the floor the other was helping him to stand up. At that point nothing particular happened as almost all people had left the club and there was no fighting going on.

The accused categorically denies being involved in this fight.

When these two men were standing up they went towards the toilet room and the accused went inside the same room. The accused states that he knew the promoter of the club and during the day he was helping him and decided to go in the toilet room to see what was going on. The accused saw these men washing blood from their faces and saw the younger one looking at him from the mirror and asked the accused whether the accused was “from their country”. The accused states that since he did not know exactly what happened before he did not reply. This was the only contact that he states to have had with the victims of the aggression in this case.

But at that point the security manager went in and told the accused to walk out of the toilet room. The accused states that then he went home. The accused explained that the second day after the incident the Police

Inspector called his friend Alex and requested his presence at the St. Julian's Police Station. The accused was with Alex and while waiting for Alex next to the Love monument some thirty minutes later a Police Officer invited him inside the Police Station. There the accused was informed that he was arrested and the Police took his belongings. He was interrogated but after a while he was told that he could leave. He was released. His friend Alex was detained. Then when Alex was to be arraigned in Court the accused went to Court together with his employer and another friend named Robert to "support" his friend Alex. At one stage, as they were outside the Court room, the Police came out and told the accused that he was being arrested. He was then arraigned in Court.

These were the main eye-witness accounts received by this Court.

The Court however took note also of the report tendered by Dr. Stephen Farrugia Sacco in relation to the CCTV camera recordings retrieved from the servers of the club in question and that were analyzed by this Court expert. The Court visited both the footage as well as the stills extracted by this Court expert.

The Court could see the acts of aggression exercised against Clayton Grech and Mario Farrugia and the brutality that ensued – conduct unbecoming to human beings, properly so called. From all the footage analyzed that visually depicts step by step the incident as it evolved, as well as the moments preceding it and following it, the Court could not serenely claim to have been able to identify the accused as being one of the party of aggressors that were involved in the aggression exercised against the victims in this case and in particular as one of the persons who physically beat up the victims. While it is true that these young men appearing in this footage had similar hair-cuts and hair-styles, the same footage (though not very clear in its details), gives an indication of the aggressors' physiognomy and physical built – that did not quite match those of the accused.

The Court analyzed in detail the testimony of Clayton Grech, Ingrid Galea and Mario Farrugia and concludes that though they do place the accused in the club, also as being with Alex, and they also place him in the “context” of the fight, their testimony is not really clear as to the **direct involvement of the accused during that precise moment when the fight broke out and thus as being one of the men whose acts of punching and kicking caused the injuries sustained by the victims Clayton Grech and Mario Farrugia and as seen in the CCTV footage.**

The testimony of Clayton Grech and Mario Farrugia as to the involvement of the accused is expressed in rather generic terms. Ingrid

Galea is the one that staunchly places the accused among the party of aggressors beating up Grech and Farrugia. Yet the CCTV footage indicates otherwise.

On his end, the accused does not deny being together with Alex or being a friend of Alex. He does not deny being also present at the club on the date of the incident and of being with Alex before the incident took place. Nor does he contest the fact that after that the incident took place he was back at the club. So much so that he does state that he went into the toilet room and saw the victims washing blood from their faces. This detail is indirectly corroborated by Ingrid Galea when she says that there was a man talking to Clayton “bil-barrani” and at that point she realized that this man was together with the party of aggressors. This is an interesting detail in this case given that it is highly unlikely for a person directly involved in a fight to go back, alone, to place where the victims were – the relatively confined space offered by the toilet room. This reinforces the thesis of the Defence. Indeed the accused was “with them” – he was seen with them before the incident took place and therefore it was relatively easy for the victims to assume that once with them before, he was also with them during the happening of the incident. Indeed they identified him as being with Alex – and so much is true. The reasonable doubt exists whether the accused was with Alex during the precise moments when the incident took place and the acts of beating and aggression unleashed against Grech and Farrugia.

Two other witnesses who were present on site : - Gaynor Spagnol and Charlot Magro - despite being present during this incident and close to where it all evolved, did not recognize the accused as being one of the persons involved in the fight.

The quality of the evidence submitted is such as to convince this Court beyond a reasonable doubt that the accused was indeed present in the club together with Alex and other friends of theirs on the day of the incident – even moments before the fight broke out. However it was not proved beyond reasonable doubt that the accused was one of the persons (who also appear in the CCTV footage) beating up the victims Clayton Grech and Mario Farrugia when the incident took place. Nor was it proved beyond a reasonable doubt that the accused acted as an accomplice to the crimes with which the accused stands charged.

In the circumstances, the Court concludes that, on the basis of the evidence supplied, and in view of the testimony of the accused and the arguments submitted by the Defence, it is neither safe nor satisfactory to find the accused guilty.

Given these conclusions reached, the Court is not going to delve into an analysis as to the nature of the injuries sustained by Grech and Farrugia in this case.

Decide :-

Consequently, this Court, declares the accused not guilty of the charges brought against him and consequently acquits him from all the charges brought against him.

Delivered today the 13th February 2015 at the Courts of Justice in Valletta, Malta.

< Final Judgement >

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