



MALTA

COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR.
NEVILLE CAMILLERI

Sitting of the 12 th March, 2015

Number. 1269/2012

The Police
(Inspector Edmond Cuschieri)

vs.

Trevor Edward Cook

The Court,

Having seen the charges¹ brought against **Trevor Edward Cook**, sixty three (63) years old, born on the 14th. August 1949 in the UK, son of Alfred William Cook and Barbara Joan Stanworth, holder of British Passport Number 461975343 and currently having no fixed address in Malta, charged with having on the 28th November 2012 at around 18:30hrs in Triq Horatio Nelson, San Pawl il-Bahar:

1. without intent to kill or to put the life of Edward Russel in manifest jeopardy, he has caused him harm to the body or health and which injuries are of grievous nature and this in terms of Sections 214 and 216 of Chapter 9 of the Laws of Malta;
2. on the same date, time, place and circumstances breached the public order and peace.

The Court was asked to provide for the security of the victim Edward Russel by applying Article 383 of Chapter 9 of the Laws of Malta.

Having seen the documents exhibited and all the acts of the proceedings.

Having seen the Articles of Law sent by the Attorney General on the 17th. December 2013 (*a fol.* 196) namely:

- (a) Articles 214 and 216 of Chapter 9 of the Laws of Malta;
- (b) Article 338(dd) of Chapter 9 of the Laws of Malta;

¹ *A fol.* 2.

- (c) Articles 383 and 412C of Chapter 9 of the Laws of Malta;
- (d) Article 533 of Chapter 9 of the Laws of Malta.

Having seen that, during the sitting of the 6th. January 2014 (*a fol.* 198), the Articles of Law sent by the Attorney General on the 17th. December 2013 (*a fol.* 196) were read out, during which sitting the accused declared that he does not object for his case to be tried and decided summarily.

Having heard all the evidence brought forward by the Prosecution.

Having heard the testimony given by the accused.

Having heard the witness brought forward by the defence.

Having heard oral submissions by the Prosecution and the defence (*a fol.* 239 *et seq.*).

Considers

That, during the sitting of the 10th. of December 2012, Prosecuting Officer **Inspector Edmond Cuschieri** gave his testimony (*a fol.* 27 *et seq.*) regarding the investigations carried out following the incident involving the injured party and accused. He says that when the accused was spoken to, he was very vague about the incident saying that he was next to the bar with his partner when all of a sudden commotion broke out

near him, he remembers being hit with something and that he fell on the floor. He also says that when the injured party was spoken to he was more specific, saying that he went in the bar, argued with his ex-girlfriend, Elizabeth Gabrielle Schiller and that at one point the accused, whom he knows, interfered and told him to let it go since Schiller was just a girl and then the accused started inviting him for a fight. The injured party told the Prosecuting Officer that commotion broke up and that a certain Kenneth Caruana hit him with a chair but according to the injured party no harm was done and as he was going towards Kenneth Caruana, the accused went near him and smashed a pint of glass in his face, which was where he was hit.

That, during the sitting of the 10th. of December 2012, **PS 914 Ivan Mifsud** also gave his testimony (*a fol. 30 et seq.*) regarding the report drawn up by him, which report was exhibited and marked as Doc. "IM 1" (*a fol. 33 et seq.*). He says that the injured party informed him that he was attacked with a pint of glass by the accused. He says that the accused ended up suffering slight injuries. Asked if had spoken to any other persons regarding this incident at the bar in question, he replies in the affirmative stating that he had spoken to Kenneth Caruana, Francis Delmar, Elizabeth Gabrielle Shiller, Mark Lynch and Daniela Bonavia. He says that they all stated that there was a brawl and everybody started hitting each other and throwing chairs.

That, during the sitting of the 21st. January 2013, **Dr. Paul Zammit** gave his testimony (*a fol. 57*) regarding the medical certificate drawn up by him after examining the injured party, which medical certificate was exhibited and marked as Doc.

“PZ 1” (*a fol. 59*)². He classified the injuries suffered by the injured party as being grievous.

That, during the sitting of the 15th. April 2013, the injured party **Edward Russell Shaw** gave his testimony (*a fol. 77 et seq.*) saying that on the 28th. November 2012 he had just finished work and went to the bar where the accident took place to tell his girlfriend (Schiller), whom he had some problems with, to move out, since they were living together. She didn't move out, so he went to pack her bags, put them on the doorstep and went back to the bar and told her to collect her stuff. He says that it was at this point that the accused turned to him and told him that his girlfriend was just a girl and that he (the injured party) told him that it was none of his business. He says that the accused, whom he had around in their house for dinner two weeks before and classifies him only as an acquaintance, invited him to have a fight outside the bar, to which he replied he was not interested. He says that there were people screaming and shouting and that Frank the barman tried to separate people at the time from fighting each other. He says that he (Shaw) tried to get out of the bar completely which is when Kenneth Caruana put a chair over his head and when he (Shaw) turned round to confront Kenneth, the accused hit him in the face with a glass. He says that he was hit in his left eye with the accused's right hand. He also says that he didn't see anyone hit the accused at all.

During cross-examination he denies being drunk on the night in question, denying also that he had been drinking before going to the bar.

² This is the same document as Doc. “EC 3” (*a fol. 14*).

That, during the sitting of the 15th. April 2013, **Mark Lynch** (*a fol. 83*) chose not to testify so as not to incriminate himself.

That, during the sitting of the 15th. April 2013, **Frank Delmar** gave his testimony (*a fol. 85 et seq.*) saying that he already banned the injured party from going to his bar since about fifteen days before, the injured party had gone to his bar and argued and shouted with his girlfriend. He says that on the 28th. November 2012, the injured party and the accused ended up fighting specifying that someone was hit with a glass, not knowing who did so.

During cross-examination he says that the injured party had gone to his bar already drunk. He says that as soon as the injured party entered his bar, he went straight to the accused. Asked if he smelled alcohol on the injured party, he replies in the negative, saying: *“Ma xammejt xejn jiena, imma rajtu li dahal bir-rabja ghalih u ma kienx qieghed f’siktu, jiccaqlaq ‘l hawn u ‘l hemm”* (*a fol. 88*). He says that he could hear the injured party calling his girlfriend being a bitch. He says also that he could hear the injured party tell his girlfriend to collect her stuff since he had thrown them away. Asked how the accused was involved, he replies: *“Jien imbaghad rajt jaghtu go xulxin huma, bdew jaghtu go xulxin”* (*a fol. 90*).

That, during the sitting of the 15th. April 2013, **Kenneth Caruana** gave his testimony (*a fol. 92 et seq.*) saying that first the injured party’s girlfriend had gone to the bar, then the injured party went to the bar and left after some time with Mark Lynch and returning back after twenty minutes accompanied by Mark Lynch. He says that the injured party and Mark Lynch pushed the accused’s wife on the floor and called her bitch and when

the accused went to help his wife, who was on the floor, the injured party and Mark Lynch smashed the accused's glasses in his face. He says that he does not know why the injured party ended up with injuries on his face. Referring to the accused, he says: "*Jiena rajt jaqla' xebgha gravi dak ir-ragel li hemm bil-qieghda ingustament*" (a fol. 95).

That, during the sitting of the 23rd. May 2013, **Dr. Mario Scerri** gave his testimony (a fol. 107 et seq.) saying that he examined both the injured party and the accused. He exhibited his report which was marked as Doc. "MS 1" (a fol. 109 et seq.). As regards the injuries suffered by the injured party, in his report, Dr. Scerri concludes: "*Illi l-lacerazzjoni deskritta fuq in-naha tax-xellug tal-wicc ta' Russell Edward Shaw akkompanjata minn periorbital haematoma fuq in-naha tax-xellug kienet kompatibbli ma' blunt trauma. Illi l-lacerazzjoni deskritta fuq in-naha tax-xellug tal-mohh (forehead) kienet kompatibbli ma' blunt trauma*" (a fol. 128). He says that these might heal with the formation of scar and they might remain as permanent mark on the face yet saying that they might be visible within talking distance (a fol. 108).

That, during the sitting of the 25th. November 2013, **Dr. Ramon Casha** gave his testimony (a fol. 177) regarding the medical certificate drawn up by him after examining the accused, which medical certificate was exhibited and marked as Doc. "EC 1" (a fol. 179).

That, during the sitting of the 25th. November 2013, the Prosecuting Officer **Inspector Edmond Cuschieri** exhibited a medical certificate drawn up by Dr. Marika Caruana, which medical certificate was marked as Doc. "EC 2" (a fol. 180). In

this medical certificate, the injuries suffered by the accused were classified as being slight save complications.

That, during the sitting of the 12th. May 2014, the accused **Trevor Edward Cook** gave his testimony (*a fol. 214 et seq.*) saying that his wife was a friend of the injured party's girlfriend and that they knew her for about two years. He says that before the incident in question, he had met the injured party twice or three times saying also that on the night of the incident they went to the bar and Schiller was there with Daniela and Kenneth Caruana. He says that the injured party and Mark Lynch were also there and that at some time the injured party started shouting and started being aggressive towards Schiller and after some time Shaw, Lynch and another man left the bar and that after ten-fifteen minutes, Shaw and Lynch returned and continued being very abusive towards Schiller and Daniela. He says that after a while, the injured party passed Schiller and poked her and said something to her, he (the accused) could not hear. He says that both the injured party and Lynch were drinking and continued being aggressive and at some point he (the accused) told the injured party to leave the girls alone since they are girls. He testifies that after a few seconds, Lynch hit his wife in the chest and punched her and knocked her on the floor and she was bleeding very badly. He says that the injured party hit him (the accused) very hard with an object, smashing his glasses and his nose and he (the accused) ended on the floor and tried to stop him (the injured party) hitting him and pushing him. He says that about seven or eight persons pushed outside both the injured party and Lynch and they continued fighting outside. He says: "*They were also fighting outside [...]. I couldn't see Mark Lynch fighting but I could see Russell Shaw fighting. There were maybe 7 or 8 people in there. Glasses were going over. Tables were going over, chairs were going over*" (*a fol. 218*). He says that he (the accused) was

inside the bar and they were outside. He says also that he does not know why the injured party testified that he (the accused) was the person who hit him, saying that may be the injured party was too drunk because he could clearly smell him of alcohol.

Under cross-examination he denies interfering between the injured party and his girlfriend, saying that he just told the injured party not to treat girls like that. He does not know if the injured party told him that it was not his business and not to interfere but says that the injured party started shouting and swearing at him. He denies inviting the injured party for a fight outside the bar. He denies seeing Kenneth Caruana hitting the injured party with a chair, saying: *"I saw lots of people fighting outside. I didn't see who was hitting who. There was may be 8 or 9 people"* (a fol. 222). The accused denies hitting the injured party with a glass or a bottle.

That, during the sitting of the 28th. July 2014, **Maria Dolores Fenech** (Assistant Registrar - Criminal Court - a fol. 228) gave her testimony exhibiting three judgments delivered against Edward Russell Shaw, which judgments were marked from Doc. "MF 1" to "MF 3" (a fol. 229 et seq.).

Considers

In the statement (Doc. "ECA" - a fol. 8) released by the accused to the Prosecuting Officer, which statement was released after the accused was given the right to consult a lawyer, which right was renounced to, the accused denies ever smashing a pint of glass in the face of the injured party, saying also: *"I did not hit*

anyone. I was the one that got hit, there were lot of people falling over and I think everyone was pushing everyone" (a fol. 8 tergo).

Considers

That the accused is being charged with having breached the public order and peace and of having caused grievous injuries to the injured party.

That the Court notes that whereas the injured party testifies that the accused hit him in the face with a glass, the accused denies this saying he hit nobody.

That before the Court considers what types of injuries were suffered by the injured party, the Court has to consider who was responsible for these injuries. The Court notes the following:

- The injured party and the accused stuck to their version of what had happened on the 28th. November 2012 from the moment they spoke to the Prosecuting Officer before the present charges were filed against the accused to the moment they gave evidence in front of the Court.
- PS 914 Ivan Mifsud (*a fol. 30 et seq.*) said he had spoken to Kenneth Caruana, Francis Delmar, Elizabeth Gabrielle Shiller, Mark Lynch and Daniela Bonavia who all stated there was a brawl and everybody started hitting each other and throwing chairs.

- Edward Russell Shaw (*a fol. 77 et seq.*) testifies that when he he turned round to confront Kenneth Caruana, the accused hit him in the face with a glass.
- Mark Lynch (*a fol. 83*) chose not to testify so as not to incriminate himself.
- Frank Delmar (*a fol. 85 et seq.*) testifies that the injured party and the accused ended up fighting specifying that someone was hit with a glass, not knowing who did so.
- Kenneth Caruana (*a fol. 92 et seq.*) says that he does not know why the injured party ended up with injuries on his face.
- The accused (*a fol. 214 et seq.*) denies hitting the injured party with a glass or a bottle.

Considers

That the injured party's version of how he ended up with injuries in his face was corroborated by no other witness. In the judgment in the names **Il-Pulizija vs. Jonathan Micallef** delivered on the 2nd. February 2012, the Court of Criminal Appeal stated the following:

*“Huwa minnu illi jista’ jkollok sitwazzjoni fejn numru ta’ xhieda qeghdin jaghtu verzjoni differenti minn ohrajn illi xehdu qabel. B’daqsekk ma jfissirx illi ghax hemm xhieda differenti bil-fors hemm konflitt li ghandha twassal ghal liberatorja. Fil-kawza **Pulizija vs. Joseph Thorn** deciza mill-Qorti ta’ l-Appell Kriminali fid-9 ta’ Lulju 2003, il-*

*Qorti qalet ‘... mhux kull konflitt fil-provi ghandu awtomatikament iwassal ghal liberazzjoni tal-persuna akkuzata. Imma l-Qorti f’kaz ta’ konflitt ta’ provi, trid tevalwa il-provi skond il-kriterji annuncjati fl-Artikolu 637 tal-Kap. 9 u tasal ghal konkluzzjoni dwar lil min trid temmen u f’hiex trid temmen jew ma temminx’ (ara wkoll **Repubblika ta’ Malta vs. Dennis Pandolfino** 19 t’Ottubru 2006).”*

*(Ara wkoll **Il-Pulizija vs. Patrick Mangion et** (deciza fis-17 ta’ Settembru 2012), **Il-Pulizija vs. Michele sive Michael Fenech** (deciza fis-17 ta’ Settembru 2012), **Il-Pulizija vs. Mohammed Mansur Ali** (deciza fl-24 ta’ Jannar 2013), **Il-Pulizija vs. Mario Pace** (deciza fis-6 ta’ Frar 2013) u **Il-Pulizija vs. Hubert Gatt** (deciza fil-11 ta’ Lulju 2013).*

That the Court, apart from noting what has already been noted above, especially that the injured party’s version of how he ended up with injuries in his face was corroborated by no other witness, also notes that Elizabeth Gabrielle Schiller, Daniela Bonavia and Georgina Hellinan were not brought forward as witnesses since the Prosecution had problems notifying them for the Court proceedings. Apart from this, it has already been noted that Mark Lynch chose not to testify so as not to incriminate himself.

That, in view of the evidence found in the Court records, there exist serious doubts as to the events that occurred in the late afternoon of the 28th. November 2012, especially as to who had injured the injured party. The version of the injured party as to who injured him was not corroborated with any other evidence.

Both the injured party and the accused give a different version. For reasons already noted above, the Prosecution failed to bring forward other people who could have possibly witnessed who actually injured the injured party. It is a well known legal maxim that in criminal proceedings the charges have to be proven beyond reasonable doubt by the Prosecution. On the other hand, the defense need bring forward evidence enough to convince the Court that on a balance of probabilities what the accused is affirming is the truth. The Court cannot find the accused guilty of the first (1^{st.}) charge brought against him on the basis only of the version given by injured party as to who injured him. Hence, the accused will be acquitted from the first (1^{st.}) charge brought against him.

That, as regards the second (2^{nd.}) charge brought against the accused, from the Acts of the Case it has not been proven that the accused had breached the public order and peace and for the same reasons mentioned above, the Court will be acquitting the accused even from this charge.

Consequently, the Court, due to lack of sufficient evidence at law, does not find the accused Trevor Edward Cook guilty of all the charges brought against him and hence acquits him from all the said charges.

< Final Judgement >

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