

N. 1/21 R.G. Trib.

N. 10/21 R.G.N.R.

N. 100/22 R.G. Sent.

TRIBUNAL OF ROME

Single-Judge



ITALIAN REPUBLIC

IN THE NAME OF THE ITALIAN PEOPLE

The Judge, Dr XXX, at the public hearings held on Thursday, 26 January 2022, issued and published the following

JUDGMENT

With the participation of the Prosecutor, Dr XXX

In the criminal proceeding n. 1/21 against the defendants:

- *John D.*, born in Rome on *, represented by his lawyer *
- *Mary J.*, born in Rome on *, represented by her lawyer *

CHARGED

- With the crime of *aggravated wounding with intent to cause grievous bodily harm and using a weapon*, under Articles 110, 582, 583 para. 1 n. 1, 585 para. 2 n. 2, of the Criminal Code (hereinafter “cc”), because, in complicity, they caused grievous bodily harm to the victim Bill. In particular, while Mary J. was falling over the victim Bill and leaning over him with her hands on his neck, John D. wounded Bill’s neck with a screwdriver, injuring his artery that started to bleed profusely.

With the aggravating circumstance under Article 61 n. 1 for both defendants, since the criminal act was committed due to futile and vile reasons.

With the recidivism under Article 99 para. 4 for John D. since he had already been convicted five and three years ago, and nonetheless he committed another crime during the last five years.

With the mitigating circumstance under Article 62 n. 2 for both defendants, since they committed the crime in a state of anger due to the victim’s provocation.

The Crime has been allegedly committed on Friday, 26 March 2021.

REASONING OF THE JUDGMENT

On 26 June 2021, the Preliminary Hearing Judge of Rome, pursuant to Article 429 of the Code of criminal procedure (hereinafter “ccp”), issued a decree for committal to trial, stating that both the accused *John D.* (25 years old) and *Mary J.* (23 years old) were called to face an ordinary trial before the Tribunal of Rome – Single-Judge Bench.

The first hearings of the ordinary trial before the Tribunal of Rome were scheduled for 26 October 2021.

At the Preliminary Hearing, the victim of crime (Bill) was represented by his lawyer, hence he joined the proceeding with the qualification of the so-called “civil party”. Pursuant to Articles 74 and 79 of the ccp, the victim of the crime may bring a civil action against the accused for damage compensation.

At the first hearings, on 26 October 2021, both Mary and Bill’s defence counsel presented a preliminary-issue request under Article 491 ccp, asking for the exclusion of the “civil party” Bill from the trial.

The reasoning of that preliminary-issue request was, essentially, that the document containing the special power of attorney requested by Article 100 was not formally authenticated. Nonetheless, the Single-Judge Tribunal decided to reject the request.

For this Judge, the victim may participate in the proceedings as a “civil party” for the preliminary hearing or afterwards, until the required actions provided for in Article 484 are carried out, and no nullities are to be found. Bill’s signature conferring the special power of attorney was authenticated by Bill’s lawyer himself, in accordance with the consolidated jurisprudence of the Supreme Court of Cassation.

After having rejected the defence request under Article 491, and after having completed the activities referred to in Articles 484 and the following norms – such as the respect of all the formalities regarding the ongoing trial and its jurisdiction – this Judge declared that the trial was opened.

Therefore, pursuant to Article 492 ccp, the charges against both defendants were read.

In short, John D. and Mary J. were accused of the crime of aggravated wounding with intent to cause grievous bodily harm and using a weapon, under Articles 110, 582, 583 para. 1 n. 1, 585 para. 2 n. 2 cc, because – in complicity – they caused grievous bodily harm to the victim Bill.

Moreover, both of the defendants were charged with the aggravated circumstance under Article 61 n. 1 cc, since the criminal act was committed due to futile and vile reasons, alike with the mitigating circumstance under Article 62 n. 2 for both of the defendants, since they committed the crime in a state of anger due to the provocation of the victim Bill.

Additionally, John D. was also charged with recidivism under Article 99 para. 4 cc, since he had already been convicted five and three years ago, nonetheless he committed another crime during the last five years.

At the same first hearings, on 26 October 2021, following the rules contained in Article 493, the Public Prosecutor, the lawyer of the civil party as well as the defence, requested the admission of their evidence, specifying the facts they intended to prove.

At the following public hearings, held respectively on 26 November, 26 December, and 26 January 2021, all the witnesses were examined and cross-examined by the parties.

The victim Bill stated that on the evening of 26 March 2021 he was with his friends Bob, Ben and Peter, at the pub “Blue Moon”. At around 10.30 pm, another guest of the local (namely the defendant John) got into a heated argument with him. They had never met before.

Bill said that John was there with a girl (namely the defendant Mary) and another young boy (his brother Jack, who is currently being tried by the Criminal Juvenile Court of Rome, since aged seventeen).

After a short discussion, John’s mates decided to leave the pub. During the accurate cross-examination, Bill expressly admitted that he decided to provoke John, drawing a long and deep scratch across John’s car hood, using a screwdriver. John’s reaction was surely unproportionate and unexpected: he was extraordinary livid with rage, so he got out of his car, threw himself at Bill and wrenched the screwdriver out of Bill’s hands. He threatened Bill with death, saying: *«I’m gonna kill you, you bastard!»* and incomprehensible words. John tried to stab at Bill’s chest and stomach with the screwdriver several times but kept missing him. During the cross-examination Bill said that it was easy to dodge those stab attempts because John was blatantly drunk as well as slow and clumsy.

The situation – harmful and dangerous – was under Bill’s control until he slipped and fell to the ground. Following Bill’s statement and the result of the cross-examination, Mary took advantage of the victim’s vulnerability: she leaned over Bill with her hands on his neck, and in a few seconds, John went through Bill’s neck with the screwdriver, injuring an artery.

After that, Bill started to bleed profusely, since his artery was damaged, and hereinafter he did not remember anything. He said that he had just woken up in a hospital room, after a long surgery operation.

The doctors saved his life and now he is exceptionally healthy.

Bill’s mates (namely Bob, Ben, Peter) substantially confirmed the above-described version. Moreover, their testimonies have been really useful to understand the moment after the injury, since Bill did not remember after having lost consciousness.

Bob, Ben, Peter, explained that after the crime both John and Mary had fled from the scene, without helping the victim and without showing any worries about the injuries that they had caused.

Indeed, it was Ben – Bill’s friend – who immediately called the emergency number requesting an ambulance. The ambulance arrived seven minutes after Jack drove off. At this point, from Bob, Ben and Peter’s testimonies, it clearly emerged that both of the defendants had shown no respect for Bill’s life.

Equally, the other prosecution witnesses expressly confirmed that John and Mary’s acts after the crime were absolutely wrong.

The defendants had literally escaped from the scene, abandoning Bill in a state of danger, and they tried to shirk their responsibilities, in two different modalities.

John had taken advantage of the naivety of Jack, his brother. Jack – who was aged seventeen – drove away without a driving license, with John’s agreement. After around 25 minutes of on-the-road craziness and law violations, as driving the car in the city centre with an average speed estimated to 130 km/h, Jack had lost control of the car and therefore hit and killed a woman, Olivia.

For this murder, Jack is tried separately by the Criminal Juvenile Court of Rome, as noted earlier. For that reason, Jack has been cross-examined – in this trial – with the assistance of his lawyer and with the guarantees of Article 197-bis ccp. Anyway, Jack has essentially confirmed the version of Bill’s friends.

Differently, Mary had fled on foot. She was running away when she was arrested by two police officers on Rose Park Lane, a street about two blocks away from the scene of the incident and around fifteen minutes after the accident.

Furthermore, all the police officers as well as the detective were cross-examined, namely: Greg D. and Cathy P, the police detective Arthur Z. (and Craig H. on the prior criminal records).

In particular, Arthur Z. said that Mary had tried to justify herself, saying that she just wanted to ask for help from her brother Steve J., a paramedic who lives on that street. But, at the question: «So, why did not you – first of all –, call an ambulance?», she was not able to answer.

However, Mary during the cross-examination was collaborative and she answered all the parties’ questions. Her version is essentially that: firstly, she said that she had just tried to separate Bill from John; secondly, she said that she had pressed Bill’s neck to staunch the flow of blood; thirdly, she did not escape, but she ran to fetch her brother, the paramedic.

At this point, Steve, Mary’s brother, was cross-examined, but his testimony just confirmed that he currently was living near Rose Park Lane. In support of Mary’s version, her defence counsel also introduced a shred of documentary evidence: her first-aid certificate.

Differently from Mary, John has refused to cooperate with the authorities and the court at all, and he has exercised his right to remain silent.

Finally, expert evidence has been introduced in this trial, namely the witnesses of Dr Ellen A. regarding John’s blood alcohol level (after a specimen was taken at the scene of the accident), and regarding the causation and type of injuries.

Dr Ellen A. said that John had a blood-alcohol concentration of 1.2 ‰.

Dr Ellen A. also described with accuracy the type of injuries. Even though the injury was serious, Bill was extremely lucky because the arteria was partially saved (probably due to the form of the screwdriver tip, which was small in size).

In fact, if the arteria had been seriously damaged, death would have occurred within 2 minutes. Contrariwise, in this case, the ambulance arrived 7 minutes later, and Bill was in the surgery room no more than ten minutes later.

Indeed, this latter is one of the main reasons that justify the prosecutor's charge of *aggravated wounding with intent to cause grievous bodily harm* and not, on the contrary, of the crimes of *attempted murder*.

Following the foregoing testimonies, this Tribunal, after having evaluated all the exculpatory and inculpatory evidence, has found both defendants guilty of the crime of *aggravated wounding with intent to cause grievous bodily harm and using a weapon*, under Articles 110, 582, 583 para. 1 n. 1, 585 para. 2 n. 2, cc.

Mens rea and *Actus reus* are satisfied, since, for the crime under Article 582 cc, it is sufficient to prove on the one hand, the conduct of causing a personal injury resulting in a disease of body or mind, and, on the other hand, a generic *dolus*, which is – following the majority of the jurisprudence of the Supreme Court of Cassation – the conscious will of the fact.

The *dolus* is limpid for the defendant John, but even for the defendant Mary.

Pursuant to Article 110 cc and the jurisprudential elaboration on the complicity in the crime, it is enough to demonstrate a causal contribution to the commission of the crime.

Indeed, without Mary's contribution, John would not have hit Bill, with any logical probability. So, Mary's complicity is certain.

The responsibility of both defendants has been proved beyond a reasonable doubt.

Doubtless, the aggravating circumstance under Article 583 para. 1 n. 1 cc is to be recognized, since the bodily harm was grievous, and the victim's life was surely in danger.

Likewise, the aggravating circumstance under Article 585 para. 2 n. 2 cc, as a screwdriver can be assimilated into a weapon.

Furthermore, Article 61 n. 1 cc is to be applied for both defendants, since the criminal act was committed due to futile and vile reasons, which are absolutely disproportionate to the seriousness of the fact futile and vile reasons, which are absolutely disproportionate to the seriousness of the fact.

Moreover, the recidivism under Article 99 para. 4 cc for John D., since he had already been convicted five and three years ago, and nonetheless committed another crime during the last five years.

Without a shadow of a doubt, it is to be acknowledged for both the defendants the mitigating circumstance under Article 62 n. 2 cc, because they committed the crime in a state of anger due to the victim's provocation.

However, in the opinion of this Judge, the generic mitigating circumstance under Article 62-bis cc must be granted, but only for the defendant Mary: she is younger, she has no prior criminal record, and she is a volunteer in a care home for elderly people. She was not used to this kind of brawl, thus she did not know how to manage. Hence, she deserves better treatment, compared to John, who is a recidivist and whose acts were surely graver.

As a result of the balancing judgment envisaged by article 69 cc, these mitigating circumstances are considered as equivalent to the above said aggravating circumstances for both defendants.

Following the criteria for the quantification provided for by Article 133 cc, the sentence is calculated as follows:

- for the defendant John: three years of imprisonment, taking into account the seriousness of his conduct and his negative personality, inferred from his criminal record;
- for the defendant Mary: two years and six months of imprisonment, taking into account her younger age and the isolated nature of her criminal behavior.

Both the defendants are obliged to pay the costs of the proceedings under Article 535 ccp.

FOR THE REASONS ABOVE

Having seen the Articles 533 and 535 ccp,

Declares John D. and Mary J. guilty of the crime charged, and, granted to both of them the mitigating circumstance under Article 62 n. 2 cc and to Mary J. the generic mitigating circumstance, considered as equivalent to the aggravating circumstances, sentences John D. to three years of imprisonment and Mary J. two years and six months of imprisonment.

Orders both defendants to pay the costs of the proceedings

Sets a deadline of thirty days for the deposit of the reasoning.

It has been decided in Rome on 26 January 2022.

(Judge Signature and stamp)