



COURT OF CRIMINAL APPEAL

JUDGE

The Hon. Dr. Antonio Mizzi LL.D., Mag. Juris (Eu Law)

Appeal no. 163/2012

**The Police
(Inspector Luke Bonello)
Vs**

Henri Gerald Giovanni Pio Xmun Sant Cassia

son of Louis Joseph, born on 24th February, 1977, holder of identity card number 359905(L)

This, eighteenth day of October, 2016

The Court,

Having seen the charges brought against the appellant Henri Gerald Giovanni Pio Xmun Sant Cassia before the Court of Magistrates (Malta) :

On the 25th of August, 2013 at about 7:00a.m. and during the following hours, whilst being in St. Julian's:

- 1) Reviled, or threatened, or caused bodily harm to any person lawfully charged with a public duty, while in the act of discharging their duty or because of them having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty.

2) Furthermore, with having on the same date, time, place and circumstances, assaulted or resisted by violence or active force not amounting to public violence, any person lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority.

3) Furthermore, with having on the same date, time, place and circumstances wilfully committed any spoil, damage or injury to or upon any movable or immovable property, which the amount of damage does not exceed one thousand one hundred sixty four Euros and sixty nine cents (€1,164.69) but exceeds one hundred sixteen Euros and sixty seven cents (€116.67) to the detriment of Ryan Grech.

4) Furthermore, with having on the same date, time, place and circumstances wilfully disturbed the public good order or the public peace.

5) Furthermore, with having on the same date, time, place and circumstances, disobeyed the lawful orders of any authority or of any person entrusted with a public service.

6) Furthermore, with having on the same date, time, place and circumstances was found drunk and incapable of taking care of himself.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 14th April, 2014, by which, the Court, found the defendant not guilty of the third (3), fourth (4) and sixth (6) charges, and consequently acquits him of these charges.

After having seen articles 95, 96, 325, 338(dd), 338(ee) and 338(ff) of Chapter 9 of the Laws of Malta found the accused guilty of the first (1), second (2) and fifth (5) charges, and instead of punishment, discharges him from punishment unless he does not commit another offence within the period of one (1) year from today, under article 22 of Chapter 446 of the Laws of Malta.

Having seen the application of defendant Henri Gerald Giovanni Pio Xmun Sant Cassia filed on the 14th April, 2014, wherein he humbly prayed this Court to reform the decision being appealed by reforming the judgement in that it confirms it where the accused was acquitted of the charges brought against him, and revokes and annuls it where the accused was found guilty of the first [1] second [2] and fifth [5] charges.

That the grounds of appeal of defendant Henri Gerald Giovanni Pio Xmun Sant Cassia consist of the following:

1] In this case, the First Court unfortunately came to the wrong conclusion and found guilt against the accused on three of the charges brought against him, when in actual fact, the First Court, with all due respect ought to have acquitted the accused from all accusations, and not only, because the Court had to order the Commissioner of Police to investigate what actually happened on the night of the incident. In this case it was the accused who had been severely beaten up by a number of Taxi drivers for no apparent reason. The police officers who came on the spot refused to investigate and apprehend the aggressors, and instead arrested the accused with his girl friend. Not only but to add insult to injury, none of the bystanders were approached by the police in order to be questioned during investigations and at least have some independent witnesses to recall what actually took place.

The First Court in its findings said that its judgement was based mainly on the report submitted by Dr. Scerri and the CCTV footage. The Court was correct in stating that according to the forensic report the accused had sustained a number of injuries indicating that he was beaten up as stated by himself. One questions the line of events here, in that if the accused was actually beaten up, why did the police who effected the arrest insist on arresting him and not the aggressors? Over here the Court has a pitiful case where the victim was arrested and the aggressor let free. Moreover, what the First Court said about the CCTV footage is totally, with all due respect, incorrect. The stills, not the footage as indicated, do not portray the whole incident as stated by the Court. The photos exhibited by Court expert Dr. Bajada only show a few minutes of what actually happened and if anything the photos clearly show that the accused did not resist violently the police as indicated in the second [2] charge. Thus if anything, the accused according to the footage

could have never been found guilty of the second [2] accusation. Now apart from the fact that the aggressors, have to date not been brought to justice, the manner in which the prosecution was 'forced' to bring forward the CCTV footage is also with all due respect indicative as to how this case was handled. Initially the investigators declared to the Court verbally that there was no footage. The Court then, on submissions made by the defence about the CCTV recording, ordered that the prosecution on that very same sitting, bring forward the recording to have it seen by a Court expert as in fact happened.

As to the first and fifth accusations, the accused always contested having ever threatened the police officers. He explained that he was surprised and angry at the change of events from himself being the actual victim and then all of sudden ending up literally arrested and locked up. The First Court with all due respect refrained from making this consideration in passing judgement. Moreover, in this case, after having seen Dr. Scerri's report it is obvious, on a level higher than the level of probability, that the police officers who effected the arrest made a huge misjudgement in not arresting the taxi drivers who beat up the accused. Consequently, the accused could not be found guilty of the fifth charge, because one of the elements to subsist in order to find guilt is the element of 'lawfulness'. Now certainly one cannot remotely state that through their discriminating actions the officers where acting within the realm of 'lawfulness'. With this element being very doubtful, to say the least, the accused had to be acquitted of the fifth accusation as well;

Having seen the records of the case.

Having seen the updated conviction sheet of the defendant.

Now therefore duly considers,

Considers

This Court has analysed with care the judgement of the first Court and is in agreement with its reasoning of how the incident developed. In its conclusions its states that the two versions which were presented for its attention were diametrically opposite to one another. This Court is of the same opinion. However, notwithstanding this assertion the

first Court thought fit to condemn the appellant with regard to the first, second and fifth charge brought against the appellant.

According to the expert who effected the analysis of the CCTV footage the incident took place at around 06.41 a.m. of the 25th August, 2013. A police car appeared on the scene at 06.43 a.m. A second police car appears on the scene at 06.48 a.m. The policemen on the scene numbered four in total. From the evidence produced, it transpires that the taxi drivers on the scene of the incident inform the police that the appellant had caused some damage to one of the taxis. The police men under oath all stated that the appellant appeared to have suffered injuries. Three issues arise in this situation. Why did the police, first of all, ask the appellant how he was injured. Secondly, why was the damage to the taxi not investigated. Thirdly, why did the police not take down the names of the persons who were milling around them and who could have shed a light on the incident. Instead what do they do! They want at all costs the particulars of the appellant and the person who was accompanying him. The police do not realize or they had a different agenda that the appellant was in a state, that any ordinary person would realize, that he required medical assistance. At 06.52 a.m. the police handcuff the appellant at the taxi stand and take him to the district police car. Presumably, he arrived at the St. Julian's Police Station a few minutes afterwards.

From the evidence produced it results that the district police inspector interviewed him on the 26th August, 2013 at 09.07 a.m. - a full twenty-four hours after the incident, which in the opinion of this Court is not correct police practice, especially when we are talking of something so trivial. Not only that, but the appellant was hauled to Court under arrest that same day. It is very obvious to this Court that the police did not undertake any sort of proper investigation of the incident but relied solely on what the police did in those few minutes.

From the evidence produced the Court finds that the version of the appellant and the police differ substantially when it comes to take into account the first, second and fifth charge proffered against the appellant. It is quite clear that the appellant realized that he was not being considered the victim of an unlawful aggression but that his aggressors were being given protection by the police. Hence, the fact that he was refusing at that moment to give his particulars cannot be considered as he was disobeying police orders.

In the circumstances, this Court does not need to delve deeper in this case as it is obvious that the appellant cannot be found guilty of the three charges under review.

Consequently, for these reasons this Court upholds the appeal filed by Henri Gerald Giovanni Pio Xmun Sant Cassia. It revokes and cancels the judgement pronounced by the first Court relative to the first, second and fifth charge proffered and sets him free of these charges and of any guilt and punishment. It confirms the rest of the judgement pronounced by the first Court.