



COURT OF CRIMINAL APPEAL

JUDGE

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

Appeal no. 356/2016

**The Police
Vs**

Nicola Maurizio Gatti

Son of Evaristo, born in Italy on the 13th April, 1963, holder of Maltese Id card number 114075A.

This, fourteenth day of March, 2017

The Court,

Having seen the charges brought against the appellant **Nicola Maurizio Gatti** before the Court of Magistrates (Malta), namely that on the 28th of June 2016, at around 2355hours, at National Road Blata l-Bajda: -

1. Whilst driving a motor vehicle of the make Chevrolet Captiva, registration number CAT 544, assaulted or resisted by violence or active force not amounting to public violence, PC 1276 Frankie Zerafa, a person lawfully charged with a public duty when in the execution of the law or a lawful order issued by a competent authority, in

contravention of article 96 of Chapter 9 of the Laws of Malta.

2. On the same date, time, place and circumstances with the intent to commit a crime, manifested such intent to commit a crime with overt acts which were followed by a commencement of execution of the crime of grievous bodily harm, on the person of PC1276 Frankie Zerafa, in contravention of articles 41 and 216 of Chapter 9 of the Laws of Malta.

3. On the same date, time, place and circumstances he drove a motor vehicle of the make above-mentioned in a dangerous manner, in contravention of article 15(1)(a) of Chapter 65 of the Laws of Malta.

4. On the same date, time, place and circumstances he disobeyed the lawful orders of PC1276 Frankie Zerafa, a person entrusted with a public service or hindered or obstructed such person in the exercise of his duties, or otherwise unduly interfered with the exercise of such duties, in contravention of article 338(ee) of Chapter 9 of the Laws of Malta.

5. On the same date, time, place and circumstances he failed to have the driving licence issued by the competent authority of another Member State renewed by the Local Authority within a period not exceeding twelve months in Malta in contravention of Regulation 3(6) and 5 of Subsidiary Legislation 65.18 of the Laws of Malta.

The court was also requested to disqualify the appellant from acquiring a driving licence for a period the court deems appropriate in terms of article 15(3) of Chapter 65 of the Laws of Malta.

The court was also requested to order the forfeiture of the corpus delicti in favour of the Government of Malta, as a consequence of the punishment for the crime as established by law, even though such forfeiture be not expressly stated in the law as per article 23 of the Criminal Code.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of

Criminal Judicature on the 29th June, 2016, by which, the Court, after having seen articles 41, 96, 216, and 338(ee) of Chapter 9 of the laws of Malta, article 15(1a) of Chapter 65 of the Laws of Malta, Regulation 3(6) and 5 of Subsidiary Legislation 65.18 of the Laws of Malta, and having heard the circumstances that gave rise to this offence through submission of the parties;

Condemns the accused to a term of imprisonment of twelve months from today which term shall not elapse unless the accused commits any other offence punishable with imprisonment within a term of two (2) years from today in terms of article 28A of Chapter 9 of the laws of Malta and to a fine multa of six thousand Euro (€6,000) and in terms of Article 15 (3) of Chapter 65 of the Laws of Malta orders that his driving license be suspended for a period of six (6) months from today.

In consideration of the gravity of the case taking into account the particular circumstances of the commission of the said offences, the court orders the forfeiture of the corpus delicti, in favour of the Government of Malta, in this case the motor vehicle Chevrolet Captiva with registration number CAT 544 as a consequence of the punishment for the crime as established by law, even though such forfeiture is not expressly stated in the law as per article 23 of Chapter 9 of the Laws of Malta.

The Court explained to the accused his obligations arising out of this judgement.

Having seen the application of appeal of the accused filed on the 5th July, 2016, wherein he petitioned this Court to vary the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature, given in the 29th of June, 2016, and this by confirming that part of the judgment where the First Court condemned the accused to twelve (12) months imprisonment suspended for a period of two (2) years. Confirms that part where the Court suspended the appellant's driving license for a period of six (6) months, and reverses that part of the judgment where the First Court imposed a fine (multa) of Euros 6,000, as well as reverse the consequence of the penalty and consequently orders that the *corpus delicti* will not be forfeited, and imposes a punishment which is more fit and appropriate in the circumstances.

That the grounds of appeal of the accused Nicola Maurizio Gatti consist of the following:

1. THE FORFEITURE OF THE *CORPUS DELICTI*.

That first and foremost, it is the humble opinion of the appellant that the First Court could have never forfeited the *corpus delicti* and this for the reason that the *corpus delicti* in this case, the vehicle of the appellant, was never formally exhibited in the acts of the case.

That the Court can only forfeit that which is formally or materially exhibited in the acts of the case, however, this was not the case here. The prosecution never formally exhibited the said vehicle.

That therefore, the First Court could have never confiscated that which was not in the acts before it.

2. THE PUNISHMENT.

That the punishment in the case examined here was exaggerated, taking into account the circumstances of this case.

That the appellant was convinced from what the police inspector told him, that if he cooperated, a compromise would be reached. He also reasoned out that whatever his version will be, a number of police officers will testify against him and therefore, the appellant believed that the best option would be to admit to all the charges brought against him.

That the appellant decided on an admission also in the hope that the Court will take this into consideration when it comes to determine what punishment should be given to him.

That it is normally accepted that when an accused fully cooperates and admits on the first hearing, this is favourably taken into consideration in order for the punishment to be less severe.

That with regards to the fine (multa) imposed by the first Court, the appellant was expecting to be condemned to pay a fine however, Euros 6,000 was far more too much and far more than the minimum imposed by law. Therefore, since, in the appellant's opinion, the fine imposed was more than sufficient, the consequence of the penalty was exaggerated, and unexpected.

Having seen the updated conviction sheet of the accused.

Now therefore duly considers.

From the evidence produced it results that the Prosecution never exhibited in Court the motor vehicle above-mentioned. Consequently, it is clear that the appellant's ground of appeal must succeed. This is being said because the Prosecution must exhibit in Court, materially or formally, what it desires that a Court confiscate according to law. In this case this has not been done.

With regards to the second ground of appeal, this Court is of the opinion that the appellant is to be made to pay a lesser amount always within the parameters set by law.

Consequently, for the above reasons this Court confirms the judgement of the first Court with the following modifications, namely, that the motor vehicle in question be not forfeited and the motor vehicle be returned to the appellant. The fine of six thousand euros (€6,000) is being hereby reduced to four thousand euros (€4,000).