



Court of Criminal Appeal

Hon. Mrs. Justice Dr. Edwina Grima LL.D.

Appeal Nr: 331/2014

The Police

[Inspector Maurice Curmi]

Vs

Andrew John Lindsey

Today the, 30th March, 2017

The Court,

Having seen the charges brought against Andrew John Lindsey holder of British passport number 518197337 before the Court of Magistrates (Malta) as a Court of Criminal Judicature of:

Having seen the charges brought against the accused Andrew John Lindsay who is being charged:

- 1) with having on the 19th December, 2014 at about 01:00 hrs in St Paul' s Bay reviled or threatened, or caused bodily harm to a person lawfully charged with a public duty, that is, PS 419 Anton Buttigieg while in the act of discharging his duty or because of his having discharged such duty, or with

intent to intimidate or unduly influence him in the discharge of such duty, according to article 95 of Chapter 9 of the Laws of Malta;

- 2) with having on the same date, time and circumstances with having assaulted or resisted by violence or active force not amounting to public violence, a person lawfully charged with public duty, that is, PS 419 Anton Buttigieg when he was in the execution of the law or of a lawful order issued by a competent authority, according to article 96 of Chapter 9 of the Laws of Malta;
- 3) with having on the same date, time and circumstances, refused to give, or untruthfully gave PS 419 Anton Buttigieg in his capacity as a person entrusted with a public service in the actual exercise of his duties, his name, and other particulars, according to article 338 (g) of Chapter 9 of the Laws of Malta;
- 4) with having on the same date, time and circumstances, wilfully disturbed the public good order and or peace, according to article 338 (dd) of Chapter 9 of the Laws of Malta;

Furthermore, the Court was requested that should the accused be found guilty, apart from the punishment prescribed by law, it orders the person convicted to the payment of the cost incurred in connection with the employment in the proceedings of any expert or referee, according to articles 532 A, 532 B and 533 Chapter 9 of the Laws of Malta.

Having seen the judgment meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 4th July, 2016 whereby the Court whilst not finding the accused guilty of the first and third charges brought against him and acquitting him from the said charges, after having seen article 96 and 338 (dd) of Chapter 9 of the Laws of Malta found him guilty of the second and fourth charges and condemns him to imprisonment for a term of 10 months which by virtue of Article 28 A of Chapter 9 of the Laws of Malta are being suspended for 18 months, and to a fine, multa, of four thousand Euros.

The said fine shall be payable within 2 years and in default of payment or of any part thereof, shall be converted to an additional term of imprisonment in terms of law. Since no experts were appointed in the acts of these proceedings, the Court is not taking further cognisance of the request for payment of experts' fees in terms of Article 533 of the Criminal Code.

Having seen the appeal application presented by the Attorney General in the registry of this Court on the 24th July, 2014 whereby this Court was requested to:

1. To confirm the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the of July 2016, in the names The Police vs Andrew John Lindsey in so far as the court not finding the accused guilty of the first and third charges brought against him and acquitting him from the said charges and to revoke the remaining part of the judgement in its entirety and consequently declare the accused not guilty of all the charges brought against him.
2. Alternatively should this court not accept appellant' s ground of appeal, reform the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 4th of July 2016, in the names The Police vs Andrew John Lindsay in that part relative to the penalty imposed on the accused and instead of the penalty applied, apply a penalty which is more equitable and just in the circumstances of the case.

Having seen the acts of the proceedings;

Having seen the updated conduct sheet of the appealed, presented by the prosecution as requested by this Court.

That appellant feels aggrieved by such a judgement and is thus putting forth this humble appeal.

1. That the appellant' s first ground of appeal is clear and manifest in the sense that in finding appellant guilty of the second and fourth charges brought against him the Court of First Instance made an erroneous application of the law which renders the judgement delivered against the appellant unsafe and unsatisfactory.

In its judgement, the Court of First Instance made a correct exposition of the probative elements pertaining to the charges under Articles 95, 96 and 338 (dd) of Chapter 9 of the Laws of Malta and made extensive reference to case-law of the Maltese Courts. However in applying, the said provisions to the facts and circumstances of the case, the Court of First Instance made an erroneous application of the same, given that the constitutive elements of each of the said offences were not proven by the prosecution to the degree required at law. To the contrary, appellant brought evidence showing that to a balance of probability, the charges levied against him were unfounded in fact and at law.

2. That the appellant' s second ground of appeal is clear and manifest in the sense that the facts of the case as proven could not in any case lead to a finding of guilt on any of the charges levied against the appellant.

In particular, it did not result that the appellant in any way exercised any violence against PS 419 and although the accused may have *dato ma non concesso* resisted his arrest this does not of itself result in a finding of guilt under either Article 95 or 96 of the Criminal Code. Neither did the prosecution manage to prove the elements of the offence under Article 338 (dd) of Chapter 9 of the laws of Malta as per the Maria Concetta Green judgement quoted by the Court of First Instance.

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The first two grievances which appellant puts forward essentially raise the same arguments attacking the judgment of the First Court in that although that Court made a correct exposition of the legal elements pertaining to the offences contemplated in articles 95 and 96 and also article 338(dd) of the Criminal Code, however the said elements do not find application to the facts and circumstances of this case as results from the acts.

In this regard it results, even from an exposition of the facts made by appellant in his appeal application that the basic facts of this case are uncontested in the sense that there is no doubt that appellant who was approached by three police officers following a report made against him regarding violence directed by him against his girlfriend, resisted arrest and also turned aggressive pushing PS 419 who was trying to hand cuff him. This confrontation took place following a misunderstanding between appellant and the police officers who were requesting his particulars, however appellant being slightly drunk, was slurry in his speech consequently leading the police officers to believe that he was being uncooperative. Thus they decide to proceed to his arrest, when appellant turns aggressive and violent to the extent that three police officers have to try to restrain him.

In the light of these probative facts the Court cannot decipher why appellant has set out a grievance lamenting that the offence laid out in article 96 does not result. As rightly pointed out by the First Court in its exposition of the legal elements founding this offence that:

1. In the first place there must arise an attack or resistance and not simply a disobedience of the law or of an order emanating from a public authority. The attack or resistance must be accompanied by an act of force or violence.
2. In the second place the offence must be committed against a public officer charged with carrying out a public service.

3. Thirdly, it is necessary that the attack or resistance against the public officer occurs at the moment of the execution of the law or of a lawful order. *“Therefore, any violence committed after the law or the order has already been executed, even though it may be on account of such execution, would not give rise to this crime.”*¹

Appellant clearly used force against PS419 at the moment of the execution of the law, being at the same moment when PS419 was proceeding to his arrest and this when he started waving his arms and pushed the police sergeant to the extent that the intervention of the other police officers was called for in order to restrain appellant from continuing with his aggressive behaviour.

The Court therefore finds that this grievance is completely unfounded as is the other grievance relating to the application of the contravention under article 338(dd) to the facts of this case, appellant clearly creating a public scene in the early hours of the morning (1:00a.m), attempting to use force and violence against a police officer in a public place. This was not the case of a simple exchange of words but was accompanied by the use of aggressive behaviour which had to be restrained.

Finally with regard to the punishment inflicted by the First Court, it is clear that appellant has not put forward a formal grievance in this regard simply adding a subordinate request at the end of his application. Now it is not up to the Court to decipher the motive behind such a request and consequently to try and elicit a reason why the punishment meted by the First Court is not in appellant’s opinion “equitable and just to the circumstances of the case”. It is for appellant to give a reason behind this grievance something which he fails to do and therefore this Court finds no valid reason why it should try to elicit the motive itself. In any case this Court deems that the punishment meted out of a 10 month prison term suspended for eighteen months together with a fine of €4000 is in fact a just punishment in this

¹ Professor Mamo : Notes on Criminal Law

case considering that this is close to the minimum laid out in article 96 of the Criminal Code.

Consequently for the above reasons the appeal is being rejected and the judgment of the First Court confirmed in its entirety.

(ft) Edwina Grima

Judge

TRUE COPY

Franklin Calleja

Deputy Registrar