



**COURT OF MAGISTRATES (GOZO)
AS A COURT OF CRIMINAL JUDICATURE**

**Magistrate Dr. Joseph Mifsud B.A. (Legal & Int. Rel.),
B.A. (Hons), M.A. (European), LL.D.**

**The Police
(Inspector Edel Mary Camilleri)**

vs.

Christopher Peckham

Case Number: 233/2017

Today 20th April 2017

The Court,

Having seen the charges brought against the accused **Christopher Peckham** of fifty six (56) years, son of Colin Harold Peckham and Marion Rita nee' Smith, born in Southampton UK, on the 4th May 1961, holder of British passport with number 801307781, residing temporarily at Palazzin Hotel Room number 105, Ruggiero Lauria Street, San Pawl il-Bahar, Malta, charged with having on the 18th April 2017, at about 14:00hrs at Brieghren Street, Ghajnsielem, Gozo;

Attempted to use force against any person, with intent to insult, annoy or hurt such person namely Charlton Paul Attard, and this in violation of Article 339(1)(d) of Chapter 9 of the Laws of Malta;

And also for having at the same date, time, place and circumstances pushed against any person, namely Charlton Paul Attard in the street with the object of hurting or insulting such person, and this in violation of Article 339(1)(I) of Chapter 9 of the Laws of Malta;

Having heard the witnesses produced;

Having seen the documents submitted;

Having heard final submissions by the prosecution and the defence;

The accused has been charged with using force against Charlton Paul Attard with the intention to insult or hurt him in violation of article 339(1)(d) and pushing him in violation of article 339(1)(I) of Chapter 9 of the Laws of Malta.

Having considered:

Considerations Regarding Protection of Journalists

The Court reiterates that Journalists play an essential role in any functioning democracy. They must be allowed to scrutinise those committing illegalities and expose crime. It is our duty to defend freedom of expression and to protect journalists.

Journalists and members of the media are exposed to intense pressures, and to the risk of suffering intimidation or violence, because their work of scrutinizing public life and investigating crime is resisted or opposed by powerful forces in society.

Journalists should at all times strive to maintain high professional standards and should not photograph citizens in a private environment without their consent.

The law recognises that the right to freedom of expression includes expressions of views and opinions that offend, shock and disturb.

Having considered:

Legal Considerations Regarding the Level of Proof Required

The Maltese Constitution states that "*every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty...*"

That the Prosecution is bound to bring forward evidence so that the Court can find the accused guilty as charged. Manzini notes the following:

"Il così detto onero della prova, cioè ' il carico di fornire, spetta a chi accusa – onus probandi incumbit qui osservit".

In the Criminal field the burden of the Prosecution is to prove the charges beyond reasonable doubt. With regards to the defence, enhanced by the presumption of innocence, the defence can base or prove its case even on a balance of probabilities meaning that one has to take into consideration the probability of that version accounted by the accused as corroborated by any circumstances. This means that the Prosecution has the duty to prove the tort attributable to the accused beyond every reasonable doubt and in the case that the Prosecution being considered as not proving the element of tort the Court has a duty to acquit the accused.

That the following principles, as clearly outlined by the Constitutional Court in its judgement of the 1st. of April 2005 in the case **The Republic of Malta vs. Gregory Robert Eyre et**, must be applied:

"(i) it is for the Prosecution to prove the guilt of the accused beyond reasonable doubt; (ii) if the accused is called upon, either by law or by the need to rebut the evidence adduced against him by the Prosecution, to prove or disprove certain facts, he need

only prove or disprove that fact or those facts on a balance of probabilities; (iii) if the accused proves on a balance of probabilities a fact that he has been called upon to prove, and if that fact is decisive as to the question of guilt, then he is entitled to be acquitted; (iv) to determine whether the Prosecution has proved a fact beyond reasonable doubt or whether the accused has proved a fact on a balance of probabilities, account must be taken of all the evidence and of all the circumstances of the case; (v) before the accused can be found guilty, whoever has to judge must be satisfied beyond reasonable doubt, after weighing all the evidence, of the existence of both the material and the formal element of the offence."

That Lord Denning in the case **Miller vs. Minister of Pensions** explained what constitutes "*proof beyond a reasonable doubt*". He stated:

"Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt, but nothing shall of that will suffice".

Having considered that :-

In terms of Section 638(2) of Chapter 9 of the Laws of Malta, "*... in all cases, the testimony of one witness if believed by those who have to judge of the fact shall be sufficient to constitute proof thereof, in as full and ample a manner as if the fact had been proved by two or more witnesses*".

Section 637 then states that in considering the credibility or otherwise of a witness, regard shall be had to the demeanour, conduct and character of the witness, to the probability, consistency and other features of his statement, to the corroboration that may be forthcoming from other testimony, and to all the circumstances of the

case. It has then been held that conflicting evidence does not necessarily lead to the acquittal of the person accused, but the Court must determine whom to believe and which parts of his testimony to believe or otherwise, taking into account the criteria contained in the above mentioned Section 637¹.

That, as regards the charges brought against the accused it has not been proven that the accused had committed these offences.

Decide:

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

Dr. Joseph Mifsud
Magistrate

¹ vide judgement delivered by the Court of Criminal Appeal on 9th July 2003, **II-Pulizija vs Joseph Thorne**