



Court of Criminal Appeal

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

Appeal Nr: 348 / 2017

The Police

Inspector Elton Taliana

Vs

Polina Gutshabes

Today the 29th November 2018,

The Court,

Having seen the charges brought against Polina Gutshabes holder of passport bearing number P0573515, accused before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having:

On the 9th August 2015 at about 14:30hrs in Gorg Borg Olivier Street, St. Julian's, or in the vicinities:-

- 1. Assaulted or resisted by violence or active force not amounting to public violence, any person lawfully charged with a public duty when in execution of the law or of a lawful order issued by a competent authority;**
- 2. Reviled, or threatened, or caused a bodily harm to a 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 the intent to intimidate or unduly influence them in the discharge of such duty;**
- 3. Disobeyed the lawful orders of any authority or of any person entrusted with a public service, or hinders or obstructs such person in the**

exercise of his duties, or otherwise unduly interferes with the exercise of such duties;

4. In any manner wilfully disturbed the public good order or the public peace.

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 17th July, 2017 whereby the Court found defendant not guilty of the charges brought against her and acquitted her therefrom.

Having seen the appeal application filed by the Attorney General on the 1st August, 2017 whereby this Court was requested to revoke the above judgment in its entirety and instead to find the accused guilty of all the charges proffered against her and consequently to inflict the relative punishment according to law.

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

Having seen the grounds for appeal of the Attorney General brought forward on the basis of article 413 (1) (b) (iv) (i) of the Criminal Code, and this due to the fact, that in the opinion of the Attorney General, the Court erroneously interpreted the law and subsequently acquitted the accused of all the charges brought against her;

“A) Legitimate & Lawful Orders

That, the crux of this appeal revolves around the issue of whether or not the Police officers’ orders in this case were legitimate or otherwise according to law, and this with regards the scenario when they were asking the appellant to accompany them to the Police Station for further questioning on the incident that had taken place sometime before between herself and the bus driver Gordon Borda. The First Court in its judgement (fol. 16 of the same) stated as follows –

‘No one may be taken to a police station, against his will, in order to answer questions about any incident in which he or she may have been involved, unless legally under arrest. But the police officers involved wanted to get

defendant off the bus at all costs, so they 'asked' her to voluntarily do what they couldn't legitimately make her do.

At that stage defendant was not in a state of arrest because the circumstances and events up to that time did not warrant her arrest. Consequently the police officers, whilst free to ask her to go to the police station, could not order her to do so against her will because that would be tantamount to arresting her, in circumstances where her arrest was not justified. It follows, in terms of the above quoted judgment, that the order given was not prima facie legitimate, either in content or in form, and that defendant was justified in refusing to obey it. It consequently also follows that the police officers exceeded their jurisdiction when they decided to arrest the defendant because she refused to voluntarily go to the police station in those particular circumstances and it also follows, in line with the doctrine and jurisprudence further above quoted, that her arrest was unlawful and that the defendant was justified in resisting the police officers.'

That, the Attorney General humbly disagrees with this statement, and this due to the fact that the law itself provides for such a situation;

That, Article 355AD(3) and Article 355AD(5) of the Criminal Code are very clear in this regard and state as follows -

(3) The Police may, orally or by a notice in writing, require any person to attend at the police station or other place indicated by them to give such information and to produce such documents as the Police may require and if that person so attends at the police station or place indicated to him he shall be deemed to have attended that police station or other place voluntarily. The written notice referred to in this sub-article shall contain a warning of the consequences of failure to comply, as are mentioned in sub-article (5).

(5) A person who fails to comply with a notice in writing as is referred to in sub-article (3) or who fails, upon being so requested, even if only orally, to accompany voluntarily a police officer to a police station or other place indicated by the police officer for any purpose mentioned in the said sub-article (3) shall be guilty of a contravention punishable with detention and shall be liable to be arrested immediately under warrant.

That, in the present case, the Police Officers were on the scene in question because Gordon Borda had asked for their assistance when he had been involved in an altercation with the appellant. The Police Officers, as they are duty bound to do, repaired to the scene to investigate further and in order to do so, they had to obviously hear the version of the appellant. It was in this context that they asked the appellant to alight from the bus and to accompany them to the Police Station so that they could hear her version of events, as

they are duty bound to do. It is not contested that, at that moment in time, the appellant was not under arrest however the law is very clear in this regard - "The Police may, orally ... require any person to attend at the police station ... to give such information ... as the Police may require". Thus, a person does not have to be under arrest in order for the Police to request her/him to go to the Police Station to provide any information requested - by doing so, that person is deemed to have gone voluntarily and s/he would be free to leave at any time, unless and until s/he is informed that s/he is under arrest. However, a person requested by the Police to go to a Police Station has to attend;

That, in this context, the request of the Police to the appellant to accompany them to the Police Station in order to recount her version of events is deemed to be a lawful order in terms of law;

That, the Court of Criminal Appeal in the case "Il-Pulizija v Maria Victoria Gialanze' (25/06/1997) held that -

Ordni legittimu moghti mill-pulizija jew mill-awtorita' għandu dejjem jiġi obdut u bla dewmien, salv id-dritt li wieħed jirreklama wara dwar il-ġustizzja intrinsika ta' dak l-ordni.

Ordni jitqies legittimu għall-finijiet tal-kontravvenzjoni kontemplata fl-artikolu 338(ee) tal-Kodiċi Kriminali jekk ikun prima facie legittimu jiġifieri jekk ikun prima facie regolari fil-kontenut tiegħu u fil-forma li bih jingħata.

That, thus the request of the Police to the appellant clearly falls within the definition of a legitimate order and the appellant was obliged to obey such order immediately. In fact, the law also states that if a person fails to obey the request of the Police to go to the Police Station to transmit the information required (with the exception of information which can incriminate the said person, in which case the right to silence can be resorted to), there are consequences according to law - s/he "shall be guilty of a contravention punishable with detention and shall be liable to be arrested immediately under warrant";

That, thus it has been determined that the First Court erroneously interpreted the law in this regards and thus:

- (i) The order given by the Police to the appellant was a lawful one;
- (ii) The appellant was obliged to obey such order and to accompany the Police to the Police Station as requested;
- (iii) As a consequence of the appellant failing to do what she was legitimately ordered to do, she was clearly in breach of the law;

That, apart from failing to adhere to the Police's lawful orders, the appellant also resisted the same Police and even caused slight injuries to one officer. It was in the light of these offences committed by the appellant at that very moment that the Police proceeded to arrest her. Thus, they arrested her because she was detected in the very act of committing the offences with which she was ultimately charged and this clearly falls within the ambit of Articles 355X and 355Y of the Criminal Code – in fact this same arrest was also declared to be valid in the first sitting of these proceedings by the same Court of Magistrates, presided by a different Magistrate, contrary to what the First Court that delivered judgment declared (that is that the arrest was an unlawful one);

That, once it has been established that the order of the Police was a legitimate one, contrary to what was decided by the First Court in its judgment, then one can now look at the offences with which the appellant was charged with, in the light of such interpretation of the law as explained above. Consequently, one can reach the conclusion that all these offence in fact subsist and not as the First Court decided.

B) Assaulted or resisted by violence or active force not amounting to public violence, any person lawfully charged with a public duty when in execution of the law or of a lawful order issued by a competent authority

That, it has now been established that the orders meted out by the Police Officers were lawful ones, according to law;

That, from the Acts of Proceedings it has also been established that the appellant did not obey these same orders as meted out by the Police officers and in fact outrightly refused to accompany them to the Police Station as requested. It was also established that when the Police had to exercise force to ensure that she complied to these same orders, the appellant resisted and even became aggressive by punching, kicking and using foul language such as 'bitch', which language she herself admitted to have resorted to;

Thus, contrary to what the First Court decided, the first charge proffered against the appellant subsists and she had to be found guilty of it.

C) Reviled, or threatened, or caused a bodily harm to a 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 the intent to intimidate or unduly influence them in the discharge of such duty

That, it has now been established that the orders meted out by the Police Officers were lawful ones, according to law;

That, as explained above, the appellant became aggressive when she was resisting the Police officers and in fact WPS 304 suffered slight injuries because of this, which included multiple scratches with skin loss and left finger trauma, lacerations and swelling;

That, the First Court concluded that WPS 304 had been exceeding her authority and that the appellant was merely resisting an unlawful arrest. With all due respect, it has already been established that the Police officers were merely doing their duty and they were acting according to law. Their orders were lawful ones and the appellant was obliged to obey them. Instead she turned violent and attacked the Police who were in the act of discharging their duty, which attack is evidenced by the medical findings on WPS 304;

Thus, contrary to what the First Court decided, the second charge proffered against the appellant also subsists and she had to be found guilty of it too.

D) Disobeyed the lawful orders of any authority or of any person entrusted with a public service, or hinders or obstructs such person in the exercise of his duties, or otherwise unduly interferes with the exercise of such duties

That, once it has been established that the Police's request to the appellant to accompany them to the Police Station was a legitimate order, then the fact that the same appellant refused to adhere to it, she was consequently disobeying a lawful order, as explained above. Thus, this offence proffered against the appellant subsists and the First Court was incorrect to acquit her from it. Any more said about this would be superfluous.

E) In any manner wilfully disturbed the public good order or the public peace

That, it is a proven fact that this case involved an altercation of the appellant with the Police officers after she failed to follow the lawful orders meted out to her;

That, it is also a proven fact that this altercation which involved physical aggressiveness and foul language. Moreover, this same altercation took place on a public bus in the early afternoon so the commotion that resulted most definitely was viewed by the general public;

Thus, the fourth charge brought against the appellant, contrary to what the First Court decided, also subsisted."

Having heard submissions by the parties;

Having seen all the acts of the proceedings;

Considers

That according to the facts of the case, it transpires that on the 9th of August 2015 appellee, Polina Gutshabes, was waiting at a bus-stop for a bus to arrive near the Police station in St. Julians, together with her husband and two young children aged two and four, the youngest of whom was in a pushchair. They also had a scooter belonging to the older child. Approximately fifteen minutes later a bus arrived which was driven by Gordon Borda, who informed them that the bus was full and that they had to close the pushchair in order to get onto the bus. According to Borda who testified in the proceedings before the First Court¹, respondent and her family got on the bus irrespectively and ignored his requests to close the pushchair. The witness then claimed that he had called Gutshabes to pay the fare for her family to which she responded that she had already paid and concluded by calling him an 'asshole'. It was at this point that Borda got off the bus and went to St. Julians Police station and requested the assistance of police officers insisting that he wanted to press charges against her and wanted her to be removed from the bus too.

According to the prosecution when the police went on the bus and spoke to Polina Gutshabes, they proceeded to request her to get off the bus which request however she adamantly did not adhere to. The witnesses for the prosecution comprising amongst others PC730 Shaun Piscopo² and PC446 Joseph Mifsud³, claimed that respondent was being very obstinate and arrogant in her demeanour with the police whilst refusing to follow orders. Eventually after the attempts of the said police to get her off the bus failed, WPS 304 Lorna Pulis⁴ was called on the scene and also requested that appellee get off the bus which request she still refused to accede to, at which point WPS304 grabbed hold of respondent's hand so as to escort her

¹ Evidence tendered on the 8th November 2015 at folio 87 et seq of the acts of the proceedings.

² Evidence tendered on the 3rd September 2015 at folio 63 et seq of the acts of the proceedings.

³ Evidence tendered on the 18th November 2015 at folio 90 et seq of the acts of the proceedings.

⁴ Evidence tendered on the 3rd September 2015 and the 4th July 2016 at folios 39 et seq and 126 et seq respectively of the acts of the proceedings.

forcefully off the bus. As a result respondent's demeanour became aggressive so much so that a scuffle ensued between her and WPS304 whilst still on the bus. The prosecution also alleged that respondent started waving the scooter around and caused injuries to WPS304, which were duly certified⁵. Moreover according to WPS304 the accused also insulted her by calling her a 'bitch' and threatened to kill her too. Gutshabes resisted the arrest both physically as well as vocally so much so that she had to be handcuffed with considerable difficulty by the police officers present. She was then escorted to the police station where she was arrested, questioned and subsequently arraigned in Court with the charges proffered against her. On the other hand, Borda was instructed by the police to proceed on his way and asked to repair to police station for his version of facts later on that same day.

That apart from the evidence tendered by the police and the bus driver Borda the prosecution did not bring any further witnesses to the stand and in fact the prosecution rested its case on the 2nd May 2016⁶. Moreover the first Court was informed during the same sitting that the camera on board the bus was not working at the time of the incident so no footage of the occurrence could be retrieved or presented as evidence.

Appellee Gutshabes⁷, on the other hand alleges that she was mistreated and manhandled by the police officers involved in this incident apart from being treated unjustly by the busdriver Borda. In fact she states that the bus driver did not let them get on the bus because of the pushchair despite the fact that bus was half empty. Respondent states that her husband persisted in getting on the bus and found enough space for them and the pushchair. Respondent queued up to pay for the fare whereby she paid for two tickets by card and she tried to pay the third ticket in cash but the driver refused to take the money and kept insisting that she should get off the bus. She went to take her seat but the driver insisted that she should pay all three tickets, after which an argument ensued, at which point appellee admits

⁵ Folio 14 of the acts of the proceedings.

⁶ Folio 122 of the acts of the proceedings.

⁷ Folio 173 of the acts of the proceedings dated the 10th October 2016.

calling him an 'asshole'. Upon hearing this word the driver starting shouting and claimed that he would get the police so they would get her off the bus. She claimed that the police officers who arrived on site were speaking in Maltese to the driver in her presence, which words she could not understand and then they proceeded to ask her to get off the bus. Gutshabes refused to do so since this would have involved another long wait for another bus outside in the heat with her family including her young children. She claimed that she kept enquiring why she should get off the bus but to no avail. The police officers left and returned with a female sargeant who was far more aggressive than the other police officers. Her husband tried to explain the situation to her at which point the police sargeant replied that she was not speaking to him. At one point the argument got out of hand since the sargeant grabbed the scooter and defendant tugged back at her bag which was hanging on it with a push and pull ensuing. At that point defendant's husband also grabbed hold of scooter at which point the sargeant let go of it, after which she she grabbed hold of defendant's arm whilst constable PC446 grabbed her husband. Respondent starting screaming hysterically for her children since she realised that if she and her husband would both be taken away by the police, her children would be left alone on the bus. She recalls being rather hysterical for this reason, being dragged out and ultimately ending up on the pavement. She kept screaming for someone to get her children but to no avail, and claimed that the sargeant was very aggressive with her where she also pulled at and tore her necklace. She recalled that during struggle on the pavement she called the sargeant a 'bitch' and when they locked her up in a police cell, the sargeant taunted her by saying 'who's the bitch now?'

Respondent's husband⁸ corroborates his wife's testimony. He added that his wife did not threaten the police but only resisted the arrest owing to the fact that she desperately didn't want to be separated from her children and neither did he. He stated in fact that he was the first to be taken off the bus by a male police constable and he was followed by his wife. He was also concerned about the fact that his children were going to be left alone and the police reassured him that they would

⁸ Evidence of Levin Mykhaylo at folio 201 et seq dated the 14th November 2016.

take care of them which is when he conceded to his removal from the bus. He also added that although the bus was quite full, the priority seats were vacated for his wife and pushchair so as not to block the passage and in fact Gutshabes was already seated when the police came onto the bus to ask her to get off. Moreover he stated that it was upon his insistence that his children were brought off the bus and in fact he was personally accompanied on the bus by a police officer and brought both his children off the bus himself. He then waited a long time with his children for his wife who had been arrested. Dr. Jonathan Joslin also examined appellee and certified that she was suffering from slight bodily harm including scratches and abrasions to her neck area (including skin loss) and other parts of her body, which he described as compatible with a tussle or a scuffle of sorts as defendant had in fact described to him during examination⁹.

Considers:

During oral submissions before the Court, a preliminary plea was put forward by the defence regarding the nullity of the appeal application filed by the Attorney General. This on the grounds that the punishment for the offences with which appellee was charged at the time of the incident did not exceed a period of imprisonment of two years hence rendering the proceedings of a summary nature *ab initio*, and thus granting a right of appeal to Attorney General only by virtue of the grounds laid out in article 413(1)(b) of the Criminal Code.

In fact the Attorney General is claiming a right to appeal in terms of the ground mentioned in article 413(1)(b)(iv)(i) of the Criminal Code which reads as follows:

(b) in the cases relating to summary proceedings for offences within the jurisdiction of the Court of Magistrates as a Court of Criminal Judicature under article 370(1) by the Attorney General, and, in the cases mentioned in article 373, by the complainant where:

⁹ Dok JJ1 at folio 152 of the acts of the case. Evidence of Dr. Jonathan Joslin is at folio 148 and dated the 10th October 2016.

(iv)(i) the accused or defendant is acquitted on the ground that the fact does not contain the ingredients of an offence.

In a judgment delivered by this Court, as otherwise presided, in the names of The Police vs A. Caruana this ground of appeal was interpreted as follows:

“Wiehed mill-kazijiet li fihom l-Attorney General jista' jappella minn sentenza tal-Qorti Kriminali tal-Magistrati huwa dak li fih il-Magistrat ikun illibera lill-imputat ghaliex ikun irritjena li ma kienux jirrikorru fil-fatt il-kostitutivi tar-reat. Dan il-kaz gie dejjem limitat ghal meta l-Magistrat, bla ma jkun dahal fl-ezami tal-fatti tal-kawza, ikun iddikjara li l-fatt "kif dedott" ma jikkostitwix reat. Sussegwentement l-interpretazzjoni ta' dan il-kaz giet estiza fis-sens li l-Attorney General jista' jappella meta l-Magistrat ikun applika ghal-fatt enuncjazzjoni zbaljata jew inkompleta tar-rekwiziti tar-reat: ghax intqal li l-appell ikun allura fuq punt ta' dritt. Biex il-Qorti tara jekk f'kaz simili huwiex ammissibili l-appell mill-parti tal-Prosekuzzjoni, ghandha tezamina s-"sustanza" tad-decizjoni appellata fil-kumpless taghha.¹⁰

This Court having examined the appellate judgment considers that the First Court, prior to embarking on an interpretation of the facts of the case, and consequently the motivations leading to appellee's acquittal, conducted an in depth analysis of the legal interpretation of the provisions of the law and consequently of the legal elements at the basis of the offences contained in the writ of summons. After this the First Court proceeded to analyse the facts of the case so as to establish primarily at which point the arrest was affected, being the act of execution of a lawful order mentioned in article 96 of the Criminal Code. In so doing it reached the conclusion, on the basis of the facts brought before it, that the arrest which the police executed in this case, was not in accordance with the law, since the executive police have no powers of arrest when a person is committing a contravention, other than the instances mentioned in article 355Z of the Criminal Code. For this reason the First Court held that one of the fundamental elements of the first and third offences was

¹⁰ Decided by Mr. Justice William Harding on the 31st October 1953. See also Police vs Gaetano Cuschieri decided by Mr. Justice Carmel Agius on the 15th October 1984, Police vs Georgia Zammit decided by Mr. Justice Carmel Agius on the 20th February 1986 and Police vs Mario Casha decided by Mr. Justice Silvio Camilleri on the 17th March 2017.

clearly lacking, in that the orders must be legitimate, and subsequently defendant was acquitted therefrom.

With regards to the second charge relating to the offence contemplated in article 95 of the Criminal Code, the First Court opined that whilst the evidence showed that the scuffle, injuries and insults resulted after the arrest took place, on the basis of the Court's original legal interpretation and conclusions which included the analysis of local case law, since Gutshabes was resisting an unlawful arrest, which was her right to in the circumstances, and hence owing to the illegal actions of WPS304's, appellee could not be held responsible for the injuries she caused to the said police sergeant.

With regards to the insult which Gutshabes uttered, the First Court referred to the judgment in the names **The Police vs. Amante Camilleri** which delved into the *mens rea* required when uttering the insult, according to which judgment, if the words/phrases used were said as a joke or to legitimately protest against a particular behaviour as was the case in point (*animus reclamandi*) then the *mens rea* required at law would not result. Thus appellee was also acquitted from the offence under article 95 of the Criminal Code.

Finally the First Court also acquitted Gutshabes of the offence of breach of the public peace since the incident was provoked by the manner in which the police mishandled the situation and hence it was of the opinion that appellee should not be held liable for this offence either.

Considers:

That by virtue of Act VIII of 2015¹¹, the original competence of the Court of Magistrates as a Court of Criminal Judicature was extended so as to cover all offences carrying a punishment not exceeding two years imprisonment. This

¹¹ Criminal Code (Amendment) Act, 2015, 17th March 2015.

disposition of the law came into force in March of the same year, hence being applicable to the case at issue which occurred on the 9th of August 2015.

Also, after having analysed the offences with which Polina Gutshabes was charged and the punishments applicable thereto when they were committed, it results that these do not exceed a term of imprisonment of two years, hence making this case triable *ab initio* as summary proceedings before the Court of Magistrates as a Court of Criminal Judicature. Consequently the Attorney General's right of appeal in such cases is limited to those instances laid down in article 413(1)(b) of the Criminal Code, hence including the basis of appeal which the Attorney General has put forward in his application.

From the appeal application it transpires that the Attorney General is arguing that the First Court reached an erroneous conclusion in deciding that the acts carried out by the police were unlawful, and this due to the fact that a wrong interpretation was made of the phrase "lawful order" contained in articles 96 and 338(ee) of the Criminal Code. The Attorney General substantiates this argument by referring to article 355AD(3) of the Criminal Code granting powers to the executive police to summon a person to attend a police station wherein it is stated:

'The police may, orally or by a notice in writing, require any person to attend at the police station or other place indicated by them to give such information and to produce such documents as the Police may require and if that person so attends at the police station or place indicated to him he shall be deemed to have attended the police station or other place voluntarily. The written notice referred to in this sub-article shall contain a warning of the consequences of failure to comply, as are mentioned in sub-article (5).'

Now according to subarticle (5):

'A person who fails to comply with a notice in writing as is referred to in sub-article (3) or who fails, upon being so requested, even if only orally, to accompany voluntarily a police officer to a police station or other place indicated by the police officer for any purpose mentioned in the said sub-article (3) shall be guilty of a contravention punishable with detention and shall be liable to be arrested immediately under warrant'.

In terms of this disposition of the law, it is the opinion of the Attorney General that the request by the police officers made to appellee to alight from the bus and accompany them to the police station was a lawful order, which falls within the precincts of the legal elements necessary for the offence in article 96 of the Criminal Code to result. He is of the opinion, therefore, that the police conduct was not illegal, as decided by the First Court, but was made in terms of article 355 AD as quoted. Consequently since the legality of the actions carried out by the police did in fact subsist, the accused had to be found guilty of all the charges proffered against her.

This being premised, the Court cannot uphold the preliminary plea put forward by the defence, since although the First Court carried out a detailed legal exposition of the elements of all the offences brought against respondent, it is on the basis of that interpretation that the Attorney General is basing his appeal, since he is of the opinion that the demand made to appellee to accompany the officers to the police station falls within the definition of the phrase "a lawful order" mentioned in the law, as already stated. Consequently the preliminary plea is being rejected.

Considers:

That first of all, the Court observes that appellee was not charged with the breach of article 355AD(3) and (5) of the Criminal Code, which offence is contraventional in nature, and hence the First Court was not required to delve into the legal aspects of this provision of the law, despite the fact that according to the Attorney General, the matter at hand was a clear reflection of this offence.

The Attorney General objects to the conclusions reached by the First Court regarding the illegality of the acts of the police officers and the subsequent arrest since he is of the opinion that on the basis of article 355AD(3), the police officers could proceed to the arrest of Gutshabes on the grounds that she was violating the lawful orders given to her. What this article of law however necessitates is that when refusing to

comply with the order to attend a police station, the subsequent arrest has to take place “under warrant.” This clearly means that in spite of the fact that the police officers considered appellee’s refusal in complying with their orders to alight from the bus and proceed to the police station as a contravention at law, they were however not legally justified in proceeding immediately with the arrest of respondent by using force, since according to law this necessitated an arrest warrant. At that point in time respondent had not as yet committed an offence justifying the sargeant to proceed to arrest without the necessity of a warrant as indicated in article 355X such warrant having to be executed in terms of article 355V which states:

“ Where there are lawful grounds for the arrest of a person, the Police may request a warrant of arrest from a Magistrate, unless in accordance with any provision of law the arrest in question may be made without a warrant.”

As already stated in terms of article 355AD(5) cited by the Attorney General the arrest taking place after a violation of this disposition of the law has to be carried “**under warrant**”, such warrant in this case was not present, making the subsequent use of force and arrest unlawful.

Consequently the interpretaion made by the First Court regarding the powers of arrest of a police officer were legally correct thus rendering the Attorney General’s appeal unfounded. The judgment does not in any manner state that the authority vested in a police officer to demand that a person attend a police station or to arrest a person who is in violation of the law is in any way unlawful. It is the abuse of that authority when proceeding to the use of force and arrest which rendered their actions in violation of the law as rightly concluded in the appellate judgment, such arrest in the circumstances necessitating a warrant as laid out in article 355AD(5) of the Criminal Code, as stated.

Not only but the First Court gave a correct interpretation of the meaning of the phrase “when in the execution of the law or of a lawful order” found in article 96, thus bringing out a distinction between the situation where the assault and

resistance takes place when the Police Officer is proceeding with the arrest of the person wherein the legal elements of the offence under article 96 results, and the assault and resistance carried out by a person when a police officer is simply discharging his public duty. The First Court concludes in fact that the actions of appellee could have resulted in a violation of both article 95 and 96, had the arrest of Gutshabes been one carried out in terms of article 355X of the Criminal Code.

The offence envisaged in article 96 clearly necessitates that *actus reus* take place when in opposition to the execution of the duties or lawful orders made by a public officer, one of the instances being when the police are in the process of arresting a person and not simply when requesting a person to attend a police station as envisaged in article 355AD cited by the Attorney General, violation of which order would simply be contraventional in nature, and requiring an warrant before proceeding to arrest. The subsequent arrest, being therefore, against the law, cannot lie at the basis of offence embodied in article 96 of the Criminal Code.

This is being stated in the light of the fact that all this incident was triggered off by the fact that Gutshabes refused to alight from the bus as the police officers were asking her to do and accompany them to the police station and this only because she had allegedly committed another offence of a contraventional nature when insulting the bus driver. When the police officers saw appellee's lack of cooperation in their request, they decided to use force in order to make her do what she had been ordered without a warrant at law, rendering the subsequent resistance and assault justifiable, as concluded by the First Court.

Thus this Court cannot agree with the argument expounded by the Attorney General that the First Court carried out a wrong interpretation of the law, and this when the judgment contains a detailed analysis of every disposition of the law at the basis of each and every offence substantiated by ample references to case law and jurisprudence, and cannot but agree with the conclusions reached by the First Court that the forceful arrest of appellee by the police was unjustified in terms of the law.

The interpretation expounded in the judgment was then correctly applied to all the facts in issue.

Finally since the other grounds of appeal referring to the other offences with which appellee was charged are linked to the main ground of appeal regarding the wrong interpretation of the law as laid out in articles 96 and 338(ee) of the Criminal Code, and having established that the First Court carried out a correct analysis of all the elements required at law for the subsistence of the offence contained in the writ of summons, these grounds for appeal are also being rejected as unfounded.

Consequently for the above mentioned reasons, the Court rejects the appeal filed by the Attorney General and confirms the judgment delivered by the First Court in its entirety.

(ft) Judge

True Copy

Joyce Agius

Deputy Registrar