



The Court of Criminal Appeal
(Inferior Jurisdiction)

Hon. Judge Edwina Grima, LL.D

Appeal No: 44/2022

The Police

(Insp. Jonathan Ransley)

vs

Jianlin Shen

Today, the 10th. June, 2022

The Court,

Having seen the charges brought against appellant Jianlin Shen, holder of identity card number 244305A, wherein he was accused before the Court of Magistrates (Malta) of having on the 24th of January 2022 at around 3.30pm at Mater Dei Hospital:

1. 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 mainly PC 516 John Pizzuto;

2. Reviled or threatened or caused bodily harm to any person lawfully charged with a public duty, while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or duly influence him in the discharge of such duty, mainly PC 516 John Pizzuto;
3. Disobeyed the lawful orders of any authority or of any person entrusted with a public service (PC 516) or hindered or obstructed such persons in the exercise of their duties or otherwise unduly interfered with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any other manner whatsoever.

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature dated the 3rd of February 2022, wherein the same Court, after having seen sections 95, 96 and 338(e) of Chapter 9 of the Laws of Malta, on his admission, found the defendant guilty of the charges brought against him and condemned him to a period of six months imprisonment which term of imprisonment, by application of section 28A of Chapter 9 of the Laws of Malta, was suspended for a period of two years, and further condemned him to a fine of four thousand Euros which fine is to be paid in monthly installments of five hundred Euro with the first installment being due on the 15th February 2022.

Having seen the appeal application filed by appellant Jianlin Shen on the 21st of February 2022, wherein he requested this Court to:

1. "Revoke, cancel and annul the said judgment.
2. Declare the appellant's guilty plea as inadmissible and that it should consequently be disregarded.
3. Reinstate the appellant in the position *status quo ante* he was in prior to answering whether he was guilty or not of the charges brought against him, whilst the acts are sent back before the Court of Magistrates (Malta) sitting as a Court of Criminal Judicature for the continuation of the case.
4. Orders the continuation of the case from that moment onwards in order for the appellant to benefit from an eventual possible appeal."

Having seen all the records of the case.

Having seen the updated conduct sheet of appellant, exhibited by the Prosecution as requested by this Court.

Having heard submissions by the parties.

Considers:

That, first and foremost, the Court cannot but note that together with his appeal application, appellant filed a number of documents which had not been exhibited before the First Court. No formal request was made by appellant to exhibit this “new” evidence, such documentation, consisting of informal medical certificates, and discharge letters from Mater Dei Hospital, furthermore not confirmed under oath by its author or authors. The Court further notes that no request was put forward by the Attorney General to expunge these documents from the acts of this case. The Court, will therefore not take cognisance of the same since they lack probative value according to Law, no formal request having been made by appellant for the admission of the said documents in the acts of the proceedings and for the same to be duly authenticated.

Considers:

That, having thus premised, the only medical certificate found in the acts which the Court will take cognisance of, is that exhibited before the First Court by the Prosecuting Officer and marked as Document JR4, which certificate was issued by Dr. Beppe Micallef Trigona and dated 1st February 2022, two days prior to arraignment. Appellant was certified as being fit for interrogation and prosecution, although suffering from *“Bipolar Mood Disorder, with Current Episode Mania in remission”*. Furthermore it is advised in the said certificate that this medical condition *“should be kept in mind during above process”*.

Appellant, upon arraignment, pleads guilty and judgment is delivered against him upon said admission. However feeling aggrieved by the said judgment in view of his

state of mind, not only upon commission of the offences with which he was charged, but also upon arraignment, appellant laments that: –

1. His admission of guilt is null and void since during the proceedings he was not mentally fit to stand trial, he did not properly understand what was happening, he did not properly understand what an admission meant and he did not understand its implications.
2. The legal requirements contained in Article 392A(1) of the Criminal Code were not adhered to by the First Court.
3. The facts of the case were not properly presented before the First Court in order to enable it to assess whether it should apply Articles 392A(3) and 453(2) of the Criminal Code.
4. The appeal application filed is valid at law irrespective of the fact that no request for the suspension of the execution of the judgment was requested by appellant before the First Court.

That, this Court will first and foremost take into account this last grievance put forward in the appeal application since this impinges directly on the validity or otherwise of the proceedings. Appellant laments that the appeal filed by him is valid at law irrespective of the fact that no declaration of appeal was made by him before the First Court, thus obtaining from the said Court a stay in the execution of the judgment. The Court notes that no objection to the same appeal application was raised by the Attorney General and thus the Court fails to see why such a grievance was put forward, and this also because the law is clear in this regard. Article 416(3A) of the Criminal Code provides that:

“The failure to make a declaration of appeal as provided in sub-article (3)¹ shall not preclude the party convicted from appealing the judgement provided that such appeal is filed within the time allowed for entering such appeal”.

¹(3) A declaration of appeal shall stay the execution of the judgment in regard to the party convicted who is in custody, and such party may obtain, during the time allowed for entering the appeal and during the hearing of the appeal, his temporary release in cases where bail may be granted under the provisions contained in Title IV of Part II of Book Second of this Code

The Court notes that the appeal was filed by appellant within the time limit allowed by law for the filing on an appeal and consequently the nullity envisaged, strangely enough, by appellant in his last grievance is completely unfounded.

Considers:

That, after having dispensed with the fourth grievance, the Court will now consider the remaining grievances raised by the appellant wherein he requests that his admission of guilt be declared null and void and that the criminal proceedings filed against him start afresh. Appellant is of the opinion that upon arraignment he was not fit to stand trial. In fact he states that he did not have the sufficient mental capacity to understand the legal consequences of his admission of guilt. This in view of the fact that he had just been released from Mount Carmel Hospital and that his arrest, interrogation, detention and arraignment all led to a deterioration of his already fragile mental health leading to a relapse of his psychosis.

As already pointed out, Document JR 4 exhibited by the Prosecution, being a medical certificate drawn up by Psychiatrist Dr Beppe Micallef Trigona on the 1st February 2022, certifies as follows -

Above mentioned is fit for interrogation and prosecution. His mental state (Bipolar Mood Disorder, Current Episode Mania, in remission) should be kept in mind during above process.

The following day, that is on the 2nd February 2022, appellant was interrogated by the Police after having consulted with a lawyer by telephone. Appellant's statement is exhibited as Document JR5. From the said statement it is evident that appellant's replies during interrogation were coherent and there is nothing to indicate that he was not understanding the questions that were being put to him. In fact he repeatedly answers that he assaulted the police officer who was trying to restrain him, and bit him, because he felt threatened and was afraid. He therefore retaliated to what he perceived as an assault in his regard. During his arrest appellant was even allowed to make contact with his country's embassy and also with his wife.

Appellant was then arraigned in court the following day, that is on the 3rd February 2022. During his arraignment he was once again assisted by a lawyer throughout the proceedings, even when he admitted to the charges brought against him and even when he reconfirmed his admission after he was given sufficient time by the First Court to reconsider the same. This Court also notes that appellant was assisted by an interpreter all throughout the hearing, so there was no language-barrier present which could present an obstacle to his understanding the nature of the charges and the questions being put to him. Furthermore, at no point did appellant or his lawyer point out to the Inferior Court that he was not fit to stand trial, as is evidenced in the minutes of the sitting of the 3rd of February 2022.

That, therefore in the light of the above, the Court does not agree with appellant that he did not possess the necessary mental capacity to understand what was happening during his arraignment.

For the above reasons, the Court is rejecting the first grievance brought forward by appellant.

Considers further:

Finally appellant requests that the proceedings before the inferior court be declared null and void due to the fact that the said Court did not adhere to the the requirements laid out in Article 392A(1) of the Criminal Code and this when it did not impart the solemn warning dictated by law as to the repercussions of his guilty plea. Now Article 392A of the Criminal Code is rendered applicable to proceedings before the Court of Magistrates in its original competence by means of article 370(6) of the Criminal Code, and this *mutatis mutandis*².

That, Article 392A(1) of the Criminal Code reads as follows -

If the accused, in answer to the question in article 392(1)(b) or in any stage of the proceedings, states that he is guilty of the offence charged and the said offence is liable to a punishment not exceeding twelve years imprisonment,

² Introduced by Act IV of 2014

the court shall warn him in the most solemn manner about the legal consequences of that reply, and shall allow him a period of time for him to reply.

Applying the said article of law to proceedings before the Court of Magistrates in its original competence, it was thus incumbent on the Court to warn the accused **in the most solemn manner** about the legal consequences of his reply, and moreover after having thus imparted the said warning, allow him sufficient time to reconsider his guilty plea, asking him once again if he still wished to persist in his admission of guilt. That, from the minutes of the sitting held on the 3rd February 2022, it is evident that the First Court did not adhere strictly to the word of the law. In the said sitting it was thus minuted:

The defendant admitted the charges brought against him and confirmed his admission of guilt even after he was given time to reconsider the plea.

It therefore transpires from the said minute of the hearing of the 3rd February 2022, that accused was not formally and solemnly warned of the legal consequences of his admission of guilt. The fact that appellant was duly assisted by a lawyer does not erase his rights at law. In fact, Article 392A of the Criminal Code, places an onus on the Court to warn accused person of the consequences at law should he wish to admit to the charges preferred against him and this in order ascertain that the accused has clearly understood the parameters of punishment attached to the charges. In the present proceedings this warning assumes even more importance in the light of the medical certificate exhibited by the Prosecution which clearly states that the mental health of accused (although not amounting to insanity according to law³) has to be kept in mind during all stages of interrogation and prosecution.

That, as mentioned previously, there is no mention of this solemn warning in the minutes of the sitting in question, and thus even though the First Court could have verbally warned accused upon his admission to the charges brought against him, however this is not reflected in the acts of the proceedings.

L-osservanza ta' dan ir-rit, li l-legislatur iqis li hu importanti biex jigu salvagwardati d-drittijiet ta' l-akkuzati, ghandu jirrizulta mill-atti u

³ Accused was certified as fit for interrogation and prosecution

*senjatament mill-verbal ta' l-udjenza li fiha jkun sar l-ezami ta' l-imputat (ara, f'dan is-sens ukoll, Il-Pulizija v. Emmanuel Testa App. Krim. 17/7/2002).*⁴

This omission by the Court of Magistrates during the proceedings leads to a nullity not only of its judgment but of the proceedings as a whole subsequent to arraignment of accused. Therefore, in the light of the above the Court has no other option but to uphold the second grievance brought forward by appellant, and declare the proceedings before the First Court null.

For the above-mentioned reasons, the Court is therefore upholding the appeal put forward by appellant and is thus declaring the proceedings before the Court of Magistrates as a Court of Criminal Judicature from the moment of arraignment onwards to be null and void, revoking consequently the judgment delivered by the Court of Magistrates on the same date. Transmits the records of the proceedings before the Court of Magistrates as a Court of Criminal Judicature for proceedings against appellant Jianlin Shen to proceed from the moment the charges were read out and confirmed on oath by the Prosecuting Officer. The Court makes it clear that accused is to be summoned to appear before the Court of Magistrates and not arraigned once again under arrest.

Edwina Grima

Judge

⁴ *Il-Pulizija vs Gary Grech et* decided by the Court of Criminal Appeal on the 10/01/2003, wherein the importance of a strict adherence to the dictates of article 392A was emphasised in the said judgment although the law has since been amended – the spirit of the wording of the law however remains to this day unchanged.