



COURT OF CRIMINAL APPEAL

Hon. Mr. Justice Dr. Neville Camilleri
B.A., M.A. (Fin. Serv.), LL.D., Dip. Trib. Eccles. Melit.

Appeal Number 172/2021/1

The Police

vs.

Petronela Zarb Dimech

Today 27th. of March 2023

The Court,

Having seen the charges brought against the appellant **Petronela Zarb Dimech**, holder of Identity Card Number 482711(L), charged in front of the Court of Magistrates (Malta) as a Court of Criminal Judicature with having on the 26th. May 2020 between the time of 15:15hrs and 15:30hrs at Mater Dei, Tal-Qroqq, Msida:

1. reviled, threatened or caused a bodily harm to Dr. Malcolm Caruana and Dr. Jessika Chetcuti Saydon, lawfully charged with a public duty, while in the act of discharging her duty or because of her having discharged such duty, or with intent to

- intimidate or unduly influenced her in the discharge of such duty;
2. assaulted or resisted by violence or active force not amounting to public violence to Dr. Malcolm Caruana, persons lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority;
 3. also wilfully disturbed the public order or the public peace;
 4. caused slight injuries to Dr. Malcolm Caruana as certified by Dr. Francesca Spiteri Med. No. 4007 from Mater Dei Hospital;
 5. in any public place or a place open to the public was found drunk and incapable of taking care of herself or in a state of intoxication.

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 31st. of May 2021 wherein the Court, after having seen Articles 95, 96, 338(dd), 221 and 338(ff) of Chapter 9 of the Laws of Malta, found the accused guilty of all the five (5) charges brought against her and condemned her to a fine (*multa*) of nine thousand Euro (€9,000) payable within three (3) years.

Having seen the appeal filed by the appellant on the 15th. of June 2021 by which she requested this Court: *"1. To revoke the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 31st. of May 2021, in the names The Police vs. Petronela Zarb Dimech (482711L) and acquitting her from the said charges and consequently declare the accused not guilty of all the charges brought against her; 2. Alternatively should this Court not accept appellant's grounds of appeal, reform the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 31st. of May 2021, in the names The Police vs. Petronela Zarb Dimech (482711L) 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 all the acts and documents.

Having seen that this appeal had been assigned to this Court as currently presided by the Hon. Chief Justice Mark Chetcuti on the 9th. of January 2023.

Having seen the updated conviction sheet of the appellant exhibited by the Prosecution as ordered by the Court.

Having seen the transcript of the oral submissions heard by this Court as diversely presided.

Having heard, during the sitting of the 27th. of February 2023, legal counsels declare that they had no further submissions to add to the submissions which were heard by this Court as diversely presided.

Considers

That in her appeal application the appellant requests this Court to acquit her from the charges brought against her or alternatively apply a more equitable punishment.

That the facts of the case are relatively simple in that on the 26th. of May 2020 the appellant was said to be found intoxicated whilst being on leave from Mount Carmel Hospital. She was taken to Mater Dei Hospital and whilst being examined she became aggressive and attacked the staff at Mater Dei Hospital. Later on the appellant was transferred to Mount Carmel Hospital.

By means of her appeal application, the appellant complains that the First Court carried out a wrong interpretation of the law whilst the Prosecution failed to reach the quality of proof requested by law and she also complains that has been given a harsh and disproportionate punishment.

That the Court will now move forward to delve into the analysis of the grievances raised in the appeal application.

Considers

That in her first grievance the appellant submits that the First Court carried out a wrong interpretation of the law whilst the Prosecution failed to reach the quality of proof requested by law.

That this Court has taken cognizance of the testimonies tendered by the persons who testified in front of the Court of Magistrates and particular reference ought to be made to the testimony given by Dr. Jessika Chetcuti Saydon (*a fol. 12 et seq.*) wherein she confirmed that she was attacked by the appellant. Furthermore, nurse Maria Aquilina (*a fol. 15 et seq.*) who was present in the room confirmed the version of Dr. Chetcuti Saydon. Aquilina also explained that Dr. Malcolm Caruana and herself were attacked by the appellant. This Court notes further that the appellant admitted that she attacked the doctors and the nurses (*a fol. 21*).

That taking into consideration the evidence mentioned above, it is clear to this Court that the Prosecution managed to prove beyond reasonable doubt that the appellant was in fact guilty of the first three (3) charges brought against her and consequently the first grievance is being dismissed in respect to the first three (3) charges.

As regards the fourth charge, this refers to injuries caused by the appellant to Dr. Malcolm Caruana. This Court notes that even though Dr. Caruana failed to testify, yet the Prosecution exhibited not only a medical certificate (*a fol. 9*) released by Dr. Francesca Spiteri on the 1st. of June 2020 but exhibited also Dr. Spiteri's affidavit (*a fol. 10*). In both instances it is confirmed that Dr. Caruana had no external injuries and that save for complications the injuries suffered by Dr. Caruana were slight in nature. Dr. Spiteri was not cross-examined by the defence. Given the above, this Court deems that even in respect to the fourth charge, the Prosecution managed to prove beyond reasonable doubt that Dr. Caruana had in effect suffered from slight injuries. Consequently, the First Court was correct in finding the appellant guilty of the fourth charge brought against her. Hence the first grievance of the

appellant is also being dismissed even in respect of the fourth charge.

That in respect to the fifth charge, this Court notes that the Police who have taken the appellant to Mater Dei Hospital did not testify in front of the First Court. This means that the best evidence has not been produced by the Prosecution. In his affidavit PC 758 Andy Borg said: *“Il-pazjenta b’isem Petronela Zarb Dimech kienet instabet f’stat xurban quddiem il-Millennium Kebab waqt li kienet bil-leave minn Mount Carmel Hospital u minn hemm giet l-iSptar Mater Dei b’ambulanza”* (a fol. 5). This is not enough to prove that the appellant was found drunk because it is not tantamount to prove the state the appellant was in. In view of this, the appellant is correct in stating that the Prosecution failed to prove its case as regards the fifth charge brought against her.

Hence this Court will uphold the first grievance of the appellant only as regards the fifth charge brought against her.

Considers

That as regards the second grievance the appellant submits that she was given a harsh and disproportionate punishment by the First Court. This Court notes that the First Court has amongst others established the guilt of the appellant in terms of Articles 95 and 96 of Chapter 9 of the Laws of Malta. In particular Article 96(a) establishes the following:

“where the assault or resistance is committed by one or two persons, to imprisonment for a term from six months to two years **and** to a fine (*multa*) of not less than four thousand euro (€4,000) and not more than ten thousand euro (€10,000).” [emphasis added]

That paragraph (a) of Article 96 of Chapter 9 of the Laws of Malta establishes that the appellant should have been given a term of imprisonment, apart from the fine. However, given that the Attorney General did not file an appeal, this Court shall not enter

into the merits of this point. Nonetheless as a matter of fact this crime was punishable with a term of imprisonment

That the Court has taken cognizance of all the acts of the proceedings, including the Social Inquiry Report (Dok. "MFS" - *a fol. 58 et seq.*) drawn up by Probation Officer Matthew Fleri Soler and has also taken cognizance of his testimony given in front of this Court as diversely presided and after due consideration was given to the facts and to the particular circumstances of this case, this Court notes that a fine (*multa*) of €9,000 shall do very little to improve the security of society. Given this particular case, considering that there were no particular serious consequences to the behaviour of the appellant and having considered that the appellant has tried to reform herself since the incident with limited positive results, this Court deems that the fine (*multa*) of €9,000 is not appropriate to this case and will only impose useless hardship on the family.

That after reviewing the Social Inquiry Report (Dok. "MFS" - *a fol. 58 et seq.*) drawn up by Probation Officer Matthew Fleri Soler and after considering the particular facts of this case, this Court shall accede to the second grievance of the appellant and shall order that the fine (*multa*) imposed by the First Court be replaced by a Probation Order under the conditions established in the decree given together with this judgment.

Decide

Consequently, for the above-mentioned reasons, this Court is acceding to the appellant's appeal limitedly and hence varies the appealed judgment by:

confirming that part in which the Court of Magistrates found the appellant guilty of the first four charges brought against her but

revokes that part in which the said Court found the appellant guilty of the fifth charge and acquits the appellant from the said charge

and

revokes also that part of the judgment where the appellant was condemned to pay a fine (*multa*) of €9,000 and instead this Court orders that the appellant be placed under a Probation Order in terms of Article 7 of Chapter 446 of the Laws of Malta for a period of two years under the conditions established in the decree given together with this judgment.

The Court has explained to the appellant the implications of the Probation Order and should she fail to comply therewith or commits another offence, she will be liable to be sentenced for the original charges she was found guilty of.

Finally, this Court orders that a copy of this judgment be notified to the Director of Probation Services.

Dr. Neville Camilleri
Hon. Mr. Justice

Alexia Attard
Deputy Registrar



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PROBATION ORDER
(Article 7 of Chapter 446 of the Laws of Malta)

The Court,

Having seen that by means of a judgment delivered today, Petronela Zarb Dimech has been placed on an Order of Probation after that this Court considered it necessary to issue such an order in terms of Article 7 of the Probation Act;

Now therefore the Court orders that Petronela Zarb Dimech (holder of Identity Card Number 482711(L)) be subject to a

Probation Order for a period of two years from today subject to the following terms and conditions:

1. That during this probationary period, Petronela Zarb Dimech behaves well and adheres to all the orders and directions given to her by the Probation Officer, including any counselling requirements as the Probation Officer may deem fit from time to time;
2. That the Probation Officer must file a written report every three months whereby he/she submits a report to the Court in relation to the progress and behaviour of Petronela Zarb Dimech;
3. That Petronela Zarb Dimech retains regular contact with the Probation Officer as the said Officer deems fit and proper;
4. That Petronela Zarb Dimech receives all the visits that the Probation Officer deems necessary, both at Petronela Zarb Dimech's place of residence or wherever the Probation Officer deems fit;
5. Petronela Zarb Dimech is obliged to submit and perform any test or analysis that the Probation Officer deems necessary from time to time, including any urine or other tests;
6. Petronela Zarb Dimech is to follow any such training, educational, work or other programmes as the Probation Officer deems fit for her from time to time.

Orders that a copy of this Probation Order is handed over to the Petronela Zarb Dimech and that another copy is notified to the

Director of Probation Services and this in terms of Article 7(8) of Chapter 446 of the Laws of Malta.

Dr. Neville Camilleri
Hon. Mr. Justice

Alexia Attard
Deputy Registrar