



COURT OF CRIMINAL APPEAL

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

Appeal Number 273/2018

The Police

vs.

Joseph Troisi

Today 9th. of November 2023

The Court,

Having seen the charge brought against the appellant **Joseph Troisi**, holder of Identity Card Number 204556(M), charged in front of the Court of Magistrates (Malta) with having on the 4th. of June 2018, between twenty past ten and quarter to eleven in the morning in the alley way leading from The Strand, Gżira into the Housing Estate of Gżira:

1. committed the theft of eight hundred and fifty Euro (€850) from the person of Giuseppe Borg of 85 years which theft is aggravated by amount.

In case of a guilty verdict, the Court was requested to condemn the accused to pay the expenses in relation to the appointment of experts or architects in these procedures as contemplated in Article 533 of Chapter 9 of the Laws of Malta.

The Court was also requested to apply Articles 383, 384 and 385 of Chapter 9 of the Laws of Malta for the security of the person above-indicated.

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 12th. of June 2018 wherein the Court, after having seen Articles 31, 216(c), 267, 279(a) and 337(2) of Chapter 9 of the Laws of Malta, found the accused guilty of the charge brought against him and condemned him to six months imprisonment.

Having seen the appeal filed by the appellant on the 19th. of June 2018 by which he requested this Court: *“to declare that the judgment meted out on the 12th. of June 2018 by the Honourable Court of Magistrate as a Court of Criminal Judicature in the aforementioned names is null and without effect. That therefore, the appellant respectfully asks this Honourable Court of Criminal Appeal to hear anew the merits of this cause in accordance with Article 428(3) of Chapter 9 of the Laws of Malta. Therefore also, in view of the above, the appellant respectfully asks this Honourable Court of Criminal Appeal to provide for a penalty that does not entail effective incarceration and that is more appropriate in the circumstances.”*

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 17th. of October 2023, legal counsels declare that they had no further submissions to add to the submissions which were heard by this Court as diversely presided yet legal counsel of the appellant made further oral submissions.

Considers

That in his first grievance the appellant submits that he was neither accused nor found guilty of any wilful offence against the person. He says that in its judgment the First Court made reference to Article 216(c) of Chapter 9 of the Laws of Malta. He states further that the crime of wilful bodily harm is a more serious offence when compared to the offence to which he pleaded guilty and that this mistake referred to cannot be ignored. He makes reference to jurisprudence regarding this matter which states that the appealed judgment should be declared null and that this Court should apply Article 428(3) of Chapter 9 of the Laws of Malta.

That this Court has examined the appealed judgment and notes that in its *decide* the First Court makes reference to: "*Sections 216(c) [sic!] and 267 as well as Sections 31, 279(a) and 337(2) of Chapter 9 of the Laws of Malta*". This Court notes that there is a discrepancy between Article 261(c) of Chapter 9 of the Laws of Malta which is the portal article about the provisions regarding theft and Article 216 of the said Chapter of Laws which deals with grievous bodily harm. This Court also notes that the First Court nowhere referred to grievous bodily harm in the judgment and could not have considered this particular article when deciding on the punishment to be inflicted on the appellant.

That it ought to be noted that reference to the wrong article as in this case leads to the nullity of the judgment and hence this Court

will uphold the grievance under examination and declares that the appealed judgment should be considered null.

That this Court will apply Article 428(3) of Chapter 9 of Laws of Malta.

Considers

That the second grievance regards the punishment inflicted by the First Court. The appellant says that he feels great regret for what he has done and says also that he cooperated with the authorities and filed a guilty plea as soon as he was arraigned in Court. He says that he returned the money he stole to the rightful owner and that he has a clean conviction sheet.

That this Court notes that the guilty plea registered by the appellant in front of the First Court still stands. There are no further testimonies to be taken into consideration apart from that of the Probation Officer Charisse Boffa (*a fol. 47 et seq.*) who exhibited a Pre-Sentencing Report (Doc. "CB 1" - *a fol. 40 et seq.*) about the appellant. The report reveals that the appellant pushed an elderly victim, took the envelope full of money, and ran away. The victim was over eighty years old and had a walking impairment. It results that the stolen money was returned to the victim from a coin collection which the appellant had at home. It also results that the victim became fragile and passed away soon afterwards and that the appellant was sorry about his selfishness and that he returned all the money when the police caught up with him. It results that the appellant is now a pensioner and appears to be leading a stable life. The Probation Officer suggested that the appellant should be given a Community Service Order.

That, for all intents and purposes, it ought to be noted that during the sitting of the 2nd. of March 2020 (*a fol. 38*), the appellant declared in front of this Court as diversely presided that he was willing to do a community service. In the final oral submissions

heard by this Court as diversely presided, the Prosecution insisted on imprisonment.

That this Court has taken cognizance, amongst others, of the submissions heard during the sitting of the 17th. of October 2023. At the same time, this Court notes that this was a heinous crime carried out on a vulnerable man who suffered greatly because of the trauma. This Court also considers that the appellant was born in 1956 and that he is now 67 years old. Like the First Court, this Court has considered the seriousness of the crime and the fact that the victim was a vulnerable man. On the other hand, the appellant has returned the money stolen and seems to be leading a stable life. He also has a clean criminal record and his conviction sheet has remained clean – this results from the updated conviction sheet of the appellant exhibited by the Prosecution during the sitting of the 17th. of October 2023. Keeping in mind all these considerations together with the fact that the appellant had admitted to the charge brought against him at a very early stage of the proceedings in front of the First Court, hence the second grievance contained in the appeal application is being acceded to in the sense that an effective prison sentence will not be applied.

That this Court makes reference to the judgment delivered on the 19th. of December 2012 in the names **Il-Pulizija vs. Adrian Montanaro** (Number 453/2011) where this Court held that:

*“Naturalment din il-Qorti ma tistax timminimizza r-reat in kwistjoni. Huwa veru li s-sentenza ta’ prigunerija giet sospiza izda, bhalma ntqal fis-sentenza ta’ din il-Qorti diversament presjeduta fl-ismijiet **Il-Pulizija v. Maurice Agius** mogħtija fit-13 ta’ Novembru 2009, “is-sentenza ta’ prigunerija sospiza mhix, kif jaħsbu xi wħud, a let off jew semplicement a slap on the hand. Min ikun gie kkundannat għal piena ta’ prigunerija sospiza jrid ikun, matul il-perijodu operattiv tagħha, kif jgħid il-Malti, ‘imqarar u mqarben’, għax appena huwa, matul dak il-perijodu, jikkommetti xi reat ieħor li għalih hemm stabbilita piena ta’ prigunerija, meta jinstab hati*

ta' dak ir-reat l-ieħor tiġi attivata l-piena ta' prigunerija li tkun ġiet hekk sospiża, u dak li jkun ikollu allura jibda jiskontaha."

That considering what has been noted above, this Court notes that instead of an effective term of imprisonment, this Court will condemn the appellant to a term of imprisonment which will be suspended in terms of Article 28A of Chapter 9 of the Laws of Malta.

Decide

Consequently, for the above-mentioned reasons, this Court accedes to the appellant's appeal and hence, after having seen and considered Articles 31, 261(c), 267, 279(a) and 337(2) of Chapter 9 of the Laws of Malta, finds the appellant guilty of the charge brought against him and condemns him to a period of six (6) months imprisonment however, since the Court is of the opinion that there are sufficient reasons which warrant that the said term of imprisonment be suspended, in terms of Article 28A of Chapter 9 of the Laws of Malta, suspends the said term of six (6) months imprisonment for a period of three (3) years from date of this judgment.

In terms of Article 28A(4) of Chapter 9 of the Laws of Malta this Court has explained to the appellant in plain language his liability under Article 28B of Chapter 9 of the Laws of Malta if during the operational period he commits an offence punishable with imprisonment.

Dr. Neville Camilleri
Hon. Mr. Justice

Alexia Attard
Deputy Registrar