



Court of Criminal Appeal

**Hon. Madame Justice Dr. Consuelo Scerri Herrera, LL.D., Dip Matr.,
(Can), Ph.D.**

Appeal Nr: 15 / 2023 / 1

The Police

Inspector Bernard Charles Spiteri

-Vs-

Mihaela Dulacioiu

Today the, 6th December 2023

The Court;

Having seen the charges brought against the accused Mihaela Dulacioiu wherein she is being charged that on the 18th June 2023 at some time between 6.15a.m. and 9:00a.m. at Zebbug Gozo and at Victoria Police Station in Republic Street, Victoria Gozo she:

1. Assaulted or resisted by violence or active force, Ps 428 Carmelo Debattista, person lawfully charged with a public duty when in the execution of the law or of lawful order, issued by a competent authority in breach of article 96 of Chapter 9 of the Laws of Malta.

2. **And also with having on the same date, time, place and circumstances,** voluntary caused slight injuries on the person of PS 428 Carmelo Debattista as certified by Dr. Andrea Fenech M.D. Reg. No. 3685 and this in breach of article 221 of Chapter 9.
3. **And also with having on the same date, time, place and circumstances** wilfully disturbed the public good order or the public peace and this in breach of article 338(dd) of chapter 9.
4. **And also with having on the same date, time, place and circumstances** disobeyed the lawful order of any authority or of any person entrusted with a public service, or hindered or obstructed such person in the exercise of their duties, or duly 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, in breach of article 338(ee) of Chapter 9 of the Laws of Malta.
5. **And also with having** become a recidivist after being sentenced by the Courts of Malta/Goza for an offence by a judgment which has become absolute and this in breach of articles 49 and 50 of Chapter 9.

The Court was requested to provide for the safety of PS 428 Carmelo Debattista in accordance with Article 383 of Chapter 9 of the Laws of Malta.

The Court was also requested that, in passing judgment against the accused, together with any punishment to which it may sentence the offender, make a Restraining Order in terms of Article 382A of Chapter 9 of the Laws of Malta for the protection of PS 428 Carmelo Debattista.

Having seen the judgement delivered by the Court of Magistrates (Goza) As a Court of Criminal Judicature on the 19th June 2023 wherein:

The first court took note of the fact that the accused admitted to all the charges brought forward against her and this during the sitting of the 19th June 2023 and this on the same day as her arraignment;

The Court after explaining the significance of a plea of guilt gave the accused enough time to reconsider her plea though the same accused insisted to register her plea of guilt and the Court proceeded to find the accused guilty of all charges and condemned her to a punishment of 6 months imprisonment and to a multa of €4000.

The accused felt aggrieved by this judgment and filed an appeal in the registry of the Court on the 28 June 2023.

Accused feels aggrieved by the said judgment and is humbly filing an appeal before this Honorable Court.

The aggravation of the accused is a manifest one and consists of the following:-

This appeal is solely from the punishment awarded. Accused contends that the punishment awarded albeit being in the ambit of the law and at its minimum could have been of a different nature which suits more the circumstances of the case. Accused regrets her actions and feels sorry for them. That was the sole reason why she immediately pleaded guilty to the charges. However weighing the circumstances of the case the first Court could have been more lenient in its punishment as to its nature.

In fact, she states that she took the witness stand to explain the circumstances of the case. It clearly emerged that:-

- There was no premeditation.
- The accused was panicking all the time and was confused as to why the police were arresting her instead of the culprits.

- The accused had just been severely beaten up including blows to her head. To prove this the accused produced a medical certificate outlining her injuries;
- The accused was in no way resisting an arrest or engaging in a fight with a police officer.

All these facts without justifying the accused's actions surely point towards a more considerable punishment.

One also has to consider the early plea of guilt by the accused which should have served as a further abatement to the punishment.

Even the prosecution had in this case suggested a probation order coupled with a fine as a sufficient punishment.

In fact the accused contends that an effective jail term was too harsh in the circumstances and that she should have been spared jail towards a punishment which without detracting from the fact that a person is being punished for her wrongful actions and her duties towards society would also assist the accused in being a rightful citizen in the future. The submission of the prosecution itself in this case of a probation for the maximum period allowed by law made sense and would also serve as a deterrent for the accused not to commit similar offences in the future.

The first court albeit seeing the accused in blood-stained clothes and with visible injuries such as a black eye and head lacerations, and being presented with a certificate of the injuries, made no mention of the accused's situation at the time when the offence was committed and surely did not give them any consideration in its deliberations.

Having seen the Reply by the Attorney General presented in the Registry of this Court on the 30 August 2023:

In relation to the only aggravation regarding the punishment given to the appellant the Attorney General is of the belief that there was no proof of any determinate individual causing any injuries to the accused and the only evidence (which in the prosecution's opinion is not even admissible evidence) was an alleged PHOTOCOPY of a medical certificate.

The best evidence rule is clear, when an original exists it must be produced, photocopies are otherwise not given any probative value, so the reasoning behind her alleged reaction (which regardless does not justify whatsoever her actions of biting the hands and kicking a police officer in his genitalia) does not emerge from the acts of the proceedings and what does not emerge from the acts of the proceedings does not exist. The appellant never mentioned any individual by name who assaulted her and was very vague in her testimony, so the prosecution does not even believe that on a balance of probabilities any crime was even committed in relation to her.

Here we have a situation where we have an appellant who pled guilty unconditionally to all the charges issued against her, including that of recidivism (with all the consequences this brings i.e. that a suspended sentence cannot be granted anymore).

When there is a guilty plea, in the case of **Ir-Repubblika ta' Malta vs. Serag F. H. Ben Abid** deciza nhar 1-4 ta' Dicembru 2003, the following was held:

“Issa fit-termini tal-gurisprudenza ormai kostanti tal-Qrati taghna, meta jkun hemm ammissjoni huwa xi ftit jew wisq odjuz appell minn piena sakemm din tirrientra fil-limiti li tipprefiggi l-ligi. Dan huwa hekk peress illi min jammetti jkun qieghed jassumi r-responsabilita` tad-decizjoni li jkun ha u jirrimetti ruhu ghal kull decizjoni dwar piena li l-Qorti tkun tista' tasal ghalha. Naturalment dan ma jfissirx li din il-Qorti u Qrati ohra ta' appell ma jidhlux fezami akkurat ta-cirkostanzi kollha biex jaraw jekk il-piena nflitta kenitx eccessiva jew le. Mhuwiex normali pero`, li tigi disturbata d-diskrezzjoni ta' l-ewwel Qorti jekk il-piena nflitta tkun tidhol fil-parametri tal-ligi u ma jkun hemm xejn x'jindika li kellha tkun inqas minn dik li tkun inghatat.”

Here the court condemned the appellant to the payment of a fine in the sum of €4,000 and was sentenced to 6 months imprisonment.

From an examination of article 96 of Chapter 9 of the Laws of Malta alone (whereby there was a guilty plea in relation to this article of the law) it can observe under sub-article **(a)** that the punishment given in the case of such a judgment is a term of imprisonment from six months to two years and a mandatory fine of a minimum of **4,000** euro and not more than **10,000** euro.

Therefore, just from this above-mentioned article it can be seen that the fine was the absolute minimum that could be given and also the sentence of imprisonment was the absolute minimum also since due to admitting to the charge of recidivism, the consequence behind this would be that a suspended sentence would be out of the question according to *article 28A (7) of Chapter 9 of the Laws of Malta*. Therefore, if a sentence of imprisonment of less than 6 months was given than the court would be going against the prescribed minimum provided for in the law, same naturally goes with regards to the fine. It must be said that a

probation would serve no scope as this crime was not attributable to any drug problem or any alternative problems which one can be rehabilitated from, but rather it was performed out of malice since the appellant did not get her way.

It must be stated that assaulting police officers who are performing their legal duties is a very serious crime and must be punished accordingly to reflect the interests of society.

Thus the Attorney General was of the opinion that for the above reasons, the appeal must be rejected.

This Court heard evidence given by Nancy Portelli on the 30th October 2023 fol. 74) produced by the defence. She stated that she started working with the accused ever since she was given bail at the beginning of August 2023. She stated that the accused attends her sessions regularly and wilfully. They have been discussing the accused's issues and it appears to her that the accused is taking these sessions seriously. She has a positive attitude towards work and is working on her personal growth particularly not to repeat what has happened. She confirmed that the accused today has a full-time job at Kozmo Restaurant and has a contract of work regulating her relationship with her employer. She also rented out a place where to live in, on her own. She is not aware if there are any other criminal cases regarding the accused.

She explained that the accused had a problem of alcohol abuse and currently she is attending the services provided by the Oasi Foundation. She was also given a hand over about her care plan. Whilst in prison she attended sessions with social workers and psychologists and these care workers explained to her that the

accused had gone through several traumas, and she is helping her to deal with them. She confirmed that her alcohol problem started prior to the initiation of this case and is currently addressing it in a serious manner.

The Court took note of the conviction sheet of the accused presented in the acts of these proceedings at fol. 11 marked as dok MD1 and from an examination of this document it results that she was found guilty of the offence of voluntary damage on the 12th March 2019 and was given an unconditional discharge for a year and ordered to make good for the damages caused within one week.

The Court took note of her evidence given before the first Court on the 19th June 2023 (fol. 18). She explained that she was in M'Forn and was going to eat. She then ended up in an argument and was put to the ground and punched. In fact she sustained a number of injuries as evidenced in the medical certificate exhibited in the acts of these proceedings. She then called the police to go and check the situation. She was then taken to hospital and to the police station despite being the victim. The police put hand cuffs on her and wanted her mobile phone and at that stage she started to panic. She started losing a lot of hair and was covered in blood. She insisted it was she who asked for the police to intervene so she could not understand why she was being treated like that. She had bruises on her head and all over her right hand, both knees and legs and eye. In court her trousers were still with blood. She admits she was not calm and was handcuffed. She said that she was held by one hand by a police officer and then the other hand was held by another, and she saw a third police officer approach her and she panicked. She regretted what she had done namely that she bit him. In cross examination she states that she is not aware that she ran away from the police.

The Court saw the medical certificate presented in the acts of these proceedings at fol. 23 wherein Dr. Josef Mifsud outlined all the injuries the accused had on the 19th June, 2023 as he examined her. The injuries were all slight save complications.

The Court heard the parties make their oral submissions during the sitting of the 30th October 2023 and in particular the defence ask for clemency and the Attorney General remit herself to the acts of the proceedings.

There is no doubt that the punishment given falls within the parameters of the law though the defence is claiming that in the particular circumstances the punishment of imprisonment is severe.

Now it has been firmly established in local and foreign case law that both in cases of appeals from judgements of the Magistrates' Courts as well as from judgements of the Criminal Court, with or without a jury, that the Court of Criminal Appeal does not disturb the evaluation of the evidence made by the Court of first instance, if it concludes that that Court could have reached that conclusion reasonably and legally. In other words this Court does not replace the discretion exercised by the Court of first instance in the evaluation of the evidence, but makes a thorough examination of the evidence to determine whether the Court of first instance was reasonable in reaching its conclusions.

However, if this Court concludes that the Court of first instance could not have reached the conclusion it reached on the basis of the evidence produced before it, than that would be a valid - if not indeed a cogent reason - for this Court to disturb the discretion and conclusions of the Court of first Instance (confer: "inter alia" judgements of the Court of Criminal Appeal in the cases: **Ir-Republika ta' Malta vs. George Azzopardi**¹, **Il-Pulizija vs. Carmel sive Chalmer Pace**², **Il-Pulizija vs. Anthony Zammit**³ and others.)

¹ Decided by the Court of Criminal Appeal on the 14th February 1989

² Decided by the Court of Criminal Appeal on the 31st May 1991

³ Decided by the Court of Criminal Appeal on the 31st May 1991

This Court also refers to what was held by LORD CHIEF JUSTICE WIDGERY in **“R. v. Cooper⁴ :-**

“assuming that there was no specific error in the conduct of the trial, an appeal court will be very reluctant to interfere with the jury’s verdict (in this case with the conclusions of the learned Magistrate), because the jury will have had the advantage of seeing and hearing the witnesses, whereas the appeal court normally determines the appeal on the basis of papers alone. However, should the overall feel of the case – including the apparent weakness of the prosecution’s evidence as revealed from the transcript of the proceedings – leave the court with a lurking doubt as to whether an injustice may have been done, then, very exceptionally, a conviction will be quashed.⁵”

In Criminal Appeal: **Ir-Republika ta’ Malta vs. Ivan Gatt⁶**, it was held that the exercise to be carried out by this Court in cases where the appeal is based on the evaluation of the evidence, is to examine the evidence, to see, even if there are contradictory versions – as in most cases there would be – whether any one of these versions could be freely and objectively believed without going against the principle that any doubt should always go in the accused’s favour and, if said version could have been believed and was evidently believed by the jury, the function, in fact the duty of this court is to respect that discretion and that evaluation of the evidence.

This Court also makes reference to the case in the names **Ir-Repubblika ta’ Malta vs Carmen Butler et⁷** wherein the following was stated:

“Fil-verita`, dawn il-principji huma rifless tal-principju l-iehor li meta jkun hemm sentenza li tigi appellata mill-hati, il-Qorti tal-Appell Kriminali, bhala regola, ma tid-disturbax il-piena erogata mill-ewwel qorti sakemm dik il-piena ma tkunx manifestament

⁴ ([1969] 1 QB 276) (in connection with section 2 (1) (a) of the Criminal Appeal Act, 1968

⁵ Confer also: BLACKSTONE’S CRIMINAL PRACTICE (1991), p. 1392

⁶ Decided by the Court of Criminal Appeal on the 1st December, 1994

⁷ Decided by the Court of Criminal Appeal on the 26th February 2009 e

sproporzjonata jew sakemm ma jirrizultax li l-ewwel qorti tkun naqset milli taghti importanza lil xi aspekt partikolari tal-kaz (u anke, possibilment, lil xi cirkostanza sussegwenti ghas-sentenza ta' l-ewwel qorti) li kien jincidi b'mod partikolari fuq il-piena. S'intendi, kif diga` nghad, "sentencing is an art rather than a science" u wiehed ma jistax jippretendi xi precizjoni matematika jew identita` perfetta fit-tqabbil tal-fatti ta' kaz ma' iehor jew tal-piena erogata f'kaz ma' dik erogata f'kaz iehor.

The Court however in this case took note of what was stated by Nancy Portelli in that the accused was hit by a number of traumas in her life and that she also has an addiction to alcohol which she is addressing. The Court took note of the efforts that the accused is making particularly that she has rented out a place to live in, that she found a job and that she is attending sessions to address her problems which she seems to be taking seriously. Thus in the light of this picture the Court feels that it can vary the punishment given by the first court and give the accused another chance before ending up in jail.

Thus this Court is declaring the accused guilty of the charges brought forward against her and thus confirms the judgment given by the first court in regards to merits though is revoking the punishment awarded in that instead of the 6 months imprisonment it is discharging the accused under the condition that she does not commit another offence for a period of two years and is appointing a Probation Officer to ensure that the appellant is kept on the right road away from committing criminal acts and this in terms of section 7 of Chapter 446 of the Laws of Malta. It is however confirming the imposition of the multa in the sum of four thousand euros (€4,000) however in terms of section 14 (2) of the Criminal Code is authorising the accused to pay this fine in monthly consecutive instalments of one hundred and eleven euros (€111). In the eventuality that the appellant fails

to make one solitary payment the balance will be converted to a term of imprisonment according to law.

The Court orders that a copy of this judgment is sent to the Director of Probation and Parole Services so that the ideal candidate may be nominated to supervise the appellant.

The Court also orders that a copy of this judgement is sent to the Director of the Criminal Courts so that the fine imposed by this Court will be collected.

**(sgd) Consuelo Scerri Herrera
Judge**

**(sgd) Mary Jane Attard
Deputy Registrar**

True Copy

For the Registrar