



COURT OF CRIMINAL APPEAL

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

Appeal Number 979/2024/1

The Police

vs.

Wane Curtis Tabone

Today 28th. of May 2024

The Court,

Having seen the charges¹ brought against the appellant **Wane Curtis Tabone**, holder of Identity Card Number 0499194(M), charged in front of the Court of Magistrates (Malta) as a Court of Criminal Judicature with having:

*“nhar il-15 ta’ Awwissu 2021 għall-ħabta tas-18:00hrs ġewwa
Triq il-Marfa, Mellieħa*

¹ In front of the Court of Magistrates (Malta) as a Court of Criminal Judicature, charges were only filed in the Maltese language.

1. *mingħajr il-ħsieb li joqtol jew li jqiegħed il-ħajja ta' Christian Calleja f'periklu ċar, ikkaġunалу ħsara fil-ġisem jew fis-saħħa liema ħsara hija ta' natura ħafifa hekk kif iċcertifikat minn Dr. Mario Joseph Blackman, detentur tan-numru tar-Registru Mediku 3948 miċ-Ċentru tas-Saħħa tal-Mosta;*
2. *volontarjament ħassar jew għamel ħsara jew għarraġ ħwejjeġ ħaddieħor, mobbli jew immobbli, liema ħsara tammonta għal €902.24 għad-dannu ta' Christian Calleja;*
3. *volontarjament, kiser il-bon-ordni jew il-paċi pubblika b'għajjat u storbju."*

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature dated 9th. of April 2024, wherein the Court whilst acquitting the accused from the second (2nd.) charge brought against him, after having seen Articles 222(1) and 338(dd) of Chapter 9 of the Laws of Malta, found him guilty of the first (1st.) and the third (3rd.) charge brought against him and condemned him to a fine (*multa*) of three hundred Euro (€300). In terms of Article 383 of Chapter 9 of the Laws of Malta, the Court bound the accused to hold peace with Christian Calleja, under the conditions listed in the decree which forms part of the judgment.

Having seen the appeal filed by the appellant on the 16th. of April 2024 by which he requested this Court: *"to vary the appealed judgment by overturning and thereby cancelling revoking and annulling the guilty verdict delivered in relation to the first and third charges therefore acquitting him by finding him not guilty of such charges, and cancelling the fine he was condemned to pay and the guarantee to hold the peace with the complainant as per Art. 383 of the Criminal Code and related conditions, whilst confirming the acquittal with regards to the second charge thereby giving rise to his acquittal from all charges, with expenses."*

Having seen all the acts and documents.

Having seen the Reply filed by the appellate Attorney General on the 15th. of May 2024, which reply was filed as regards the appeal filed by the appellant.

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

Having heard the final oral submissions.

Considers

That this is a judgment regarding an appeal filed by the accused Wane Curtis Tabone.

That from the acts of the case it results that on the 15th. of August 2021 the complainant Christian Calleja reported to the Police Station in Qawra that whilst driving his vehicle bearing registration number HLY 072 in Mellieħa in front of him there was a vehicle bearing registration number ACS 043 which was driven by the appellant. From the version given by the complainant it results that the appellant moved out of his lane. The complainant on his part tried to overtake the appellant. As a result of this manoeuvre, the appellant pressed the gas pedal and further along the road, according to the complainant, the appellant stopped the vehicle and exited to confront him. Allegedly the confrontation increased in tone. Sometime after, the wife of the appellant arrived on site and took the vehicle key of the complainant and threw it on the floor. According to Calleja, the appellant punched him on the face and hit the bonnet of the vehicle.

That on his part the appellant Tabone states that the complainant was driving dangerously and risked involving him in an accident. The appellant confirms that he confronted the complainant but denied that he damaged the vehicle or that he punched the complainant in the face. As a matter of fact, the appellant states that physically he could not punch the complainant or his vehicle since he was still recovering from a serious traffic accident with his bike. The appellant states that it was his wife who argued

with the complainant while he just returned the key of the vehicle to the complainant and indicated he could drive away.

That, as already has been stated above, Wane Curtis Tabone filed an appeal which appeal will be addressed in this judgment. However before entering into the merits of this case, this Court reminds that it is a Court of revision and it does not replace the discretion of the First Court where it transpires that from the evidence presented the First Court could reach the conclusion it reached. In this respect, reference is made to the judgment delivered on the 2nd. of March 2021 in the names **The Police vs. Ahmed Ahmar Mohammed** (Number 283/2020), where the Court of Criminal Appeal stated that:

“Even if this court carries out an examination of what was said by each witness before the Courts of Magistrates the role of this court remains that of revision. In its ordinary function this court does not become one of retrial and thus does not hear the evidence brought forward again and decides the case afresh. The decision as to the guilt of the accused is taken by the Courts of Magistrates (Malta) as a Court of Criminal Judicature which is duty bound to analyse all the evidence and legal arguments brought forward so that it may reach its own conclusion.

This court, thus revises the judgment of the Courts of Magistrates by seeing if according to the evidence brought forward by the parties and the legal arguments debated before the first court are enough for the court to establish guilt as pronounced in its judgment. In order for this court to be able to carry out this exercise of revision this court has to examine thoroughly the evidence brought forward and analyse all the legal arguments brought forward and then move on to see as to whether on the basis of the evidence provided the first court could reach the conclusion it did in the given judgment and ascertain that it is according to law.”

That having established the above, this Court will proceed to examine the grievances raised by the appellant.

Considers

That in his first grievance the appellant complains that the First Court failed to give sufficient weight to the various statements and testimony some of which were even made reference to in the appealed judgment. The appellant states this in the light of the fact that the other witness who testified said that she did not recall that he (the appellant) had punched the complainant.

That the appellant refers to the testimony given by Rebecca Louise Tabone on the 23rd. of February 2023 where she indicated that she did not recall that he (the appellant) had punched the complainant. The appellant refers also to the testimony given by the complainant wherein he says he (the appellant) could not punch him in the face since the window was only partially down. After this the complainant in his statement stated that a female person took his key which the appellant gave back and subsequently, he returned and punched the complainant on the face. This version changes when the complainant testified in front of the First Court where he says that he got out of the vehicle to pick up the key.

That thereafter during the same testimony the complainant changes his version once again and states that the key had been given to him but could not remember who gave him the key whilst indicating that he was locked in the vehicle. With regards to the issue of the blood on the hands of the appellant it was confirmed by Rebecca Louise Tabone that there was no blood on the appellant's hands.

That regarding the photo of his hands, the appellant claims that the initial contact by the Police occurred before the 18th. of August 2021 and not the 22nd. of August 2021. Furthermore, he states that he could not have caused the damages in question since he was still recovering from an injury. The appellant refers to his

testimony and repeats that he turned back only to give back the car key he collected from the floor and left. He says that he was surprised when the First Court concluded that he was responsible for punching the complainant. He argues that the First Court considered him guilty of breaching the public peace whilst in reality the argument arose because of the fact that the complainant was driving recklessly. He repeats that he approached the complainant's vehicle only to pick up the key and he tapped on the bonnet only to indicate to the complainant to drive away. The appellant denies punching the vehicle. He indicates that it does not make sense to first pick up the key and then punch the complainant.

That the appellant refers to the fact that despite reporting the incident on the same day, the Police did not report that the complainant was injured. Furthermore, the medical certificate was drafted three days later. He states that anything could have happened during these three days. He also indicates that the complainant presented another certificate bearing a much later date, i.e. a year later. The appellant also complains about the certificate drafted three days after the incident indicating the time of the said certificate. He also states that if he had punched the complainant there would have been a bruise and not only a swell.

That with respect to the comment by the First Court that he had no reason to return to the car of the complainant, the appellant specifies that he turned back to return the vehicle key he had picked up. He indicates that when confronted with the version of events as given by him (the appellant), the complainant did not deny them.

That this Court notes that under the grievance under examination the appellant points out numerous discrepancies in the version given by the complainant primarily relating to the differences as to whether he went out of the vehicle to collect the key to his vehicle or whether the key was given back to the complainant by him (the appellant).

That this Court starts its considerations by noting that there can be some differences between the versions that are given by a witness over a span of time. The memories of the witness can become blurred and there can be instances where a witness is not precise in the way he recounts the facts whether this being on purpose or whether it is by accident. It is then up to the person judging to determine what to believe. However, this does not mean that if the Court decides to discard part of the testimony given by a witness, whatever is testified by such a witness is to be discarded completely. As a matter of fact, a Court can rightfully decide to believe part of the testimony given by a witness whilst discarding another part given by the same witness.

That in this respect this Court refers to the judgment delivered on the 31st. of October 2022 in the names **Il-Pulizija vs. Clive Caruana** (Number 360/2018) where this Court stated the following:

“5. [...] Inoltre kif ritenut mill-ġurisprudenza abbracjata minn din il-Qorti, min ser jiġġudika jista’ jemmen li-xhud f’kollox jew f’parti u jekk ma jemminx li-xhud f’parti mix-xiehda tiegħu ma jfissirx li ma jistax ikun emmnut f’parti oħra. Issa, l-ewwel Qorti, kienet fil-piena liberta’ li tagħmel dan l-eżercizzju u minkejja li sabet inkonsistenzi fil-fatti kif rakkontati mill-*parte civile*, xorta waħda emmnitha fil-parti li biha nkriminat lill-imputat.”

That the main point of contention relates as to whether the appellant has in effect punched the complainant. One of the reasons brought forward by the appellant that he could not punch the complainant was that his medical condition precluded him from carrying out any such actions. In particular, the appellant presented numerous documents attesting that he had suffered an injury in his right shoulder.

That from these documents it transpires that the appellant had undergone a medical intervention on the 25th. of March 2021 whilst this quarrel occurred on the 15th. of August 2021. Thus nearly five months had elapsed from the intervention. Apart from

this, this Court gave ample weight to what has been stated by the wife of the appellant relating to the punching of the vehicle where, during her testimony given on the 23rd. of February 2023 (*a fol. 57 et seq.*) she says that the appellant hit the vehicle of the complainant and that there was no blood. From the transcript of her testimony, the following results (*a fol. 60*):

- “Dr. Jonathan Spiteri: Verbally. Yes. That is all.
- Witness: He hit the car.
- Dr. Jonathan Spiteri: When you say he hit the car...
- Witness: He punched the car. There was no blood or anything but he punched the car.
- Dr. Jonathan Spiteri: You remember why at that point he touched the car? Was it...
- Witness: When he came to move his car, he came back and he punched the car and then he carried on arguing with the taxi driver. I don't even know why he was so angry because the taxi driver just went to overtake, there was no accident or anything, there was no need for him to be so angry like he was so red.
- Dr. Jonathan Spiteri: At that point, you remember where exactly was your position besides the taxi? Was it still...

Witness: He came to back to my car.
Wane came back and he
punched the car.”

That in view of this testimony it is amply clear that the appellant was in fact capable of punching at the day of this accident. Consequently, whilst weighing the truthfulness of the versions given, the statements made by the appellant lose their credibility.

That the appellant complains that the First Court decided to believe his ex-wife when it came to the punching of the vehicle, but she put it aside in respect to the facial punch. Whilst it is true that the wife of the appellant stated that she did not recall her ex-husband hitting the complainant, it is also true that she was not on site at the same moment when the quarrel began. In fact, in her testimony, she says the following (*a fol.* 58):

“My car is a lot slower than Wane’s so it took me a while to catch up. But all I saw was Wane out of the car, he stopped his car in the middle of the road, the taxi driver was in the car and Wane was out of his car having an argument.”

That hence it is clear that when she arrived on site the quarrel had already started. Consequently, the fact that she did not see the appellant hit the complainant when she was present does not mean that the appellant did not hit the complainant before she arrived on site.

That regarding the injury sustained by the complainant, it has been certified that on the 18th. of August 2021 at 9.00pm the complainant had a slightly swollen face under the right eye. The position of the swell fits in with the version given by the complainant. Furthermore, this Court notes that in his affidavit (*a fol.* 4 *et seq.*) PC 2425 G. Xuereb clearly states that the complainant was asked to bring a medical certificate and a quote of the damages. What reason would the Police Officer have to ask for a medical certificate if he did not see any facial injury? This Court is

of the opinion that such a request was made because the complainant had some form of visible injury. Hence with the lapse of the three days between the quarrel and the medical certificate it is likely that the punch received by the complainant was somewhat absorbed. This Court is saying this also in the light of the fact that as repeatedly stated by the appellant he was still recovering from his previous injury hence, possibly the punch was not of such a strength. Apart from this the complainant mentions the fact that he was wearing sunglasses and hence it might also be the case that these sunglasses have, to a certain degree, absorbed the impact of the punch.

That this Court refers also to the testimony of the appellant's ex-wife when she confirms that he was very angry at the complainant. This testimony disproves also the image portrayed by the appellant that he was calm and that he just turned back to give the key. In the state he was as described by his ex-wife, it is highly unlikely that all the appellant did was to give back the key.

That furthermore the First Court is also correct in stating that from the photos of the hands, that allegedly are the hands of the appellant, one cannot arrive to the conclusion that in effect the photo is of the hand of the appellant. With regards to the date of the photo, the appellant states that he had been contacted previously by the Police. However, in the acts of the case there is no evidence of this. Nor is anything included in the police report (*a fol. 9 et seq.*). However irrespective of this point, there is other evidence which conclusively point towards the fact that the appellant is guilty of the first (1^{st.}) and the third (3^{rd.}) charge proffered against him.

That neither the complaint raised by the appellant regarding the third (3^{rd.}) charge is justified. It is amply clear that it was the appellant who stopped the vehicle and confronted the complainant, and it is also clear that it was the appellant who disturbed the public order whilst the complainant was in his vehicle.

That taking all into consideration the version given by the appellant loses most, if not all, its credibility and consequently the First Court could reasonably arrive to the conclusion it reached with the consequence that the grievance under examination is being rejected.

Considers

That by means of the second grievance the appellant complains that the judgment delivered by the First Court is contradictory given that whilst it chose to believe the version given by the complainant in respect of the first (1st.) and the third (3rd.) charge, it acknowledges the fact that the complainant was not reliable in the description of certain events so much so that the First Court acquitted him from the second (2nd.) charge. He refers to what has been stated by the First Court where it said that it was not finding him guilty of the second (2nd.) charge because it was not convinced that the alleged punch to the vehicle cause the extent of damages claimed. He says that this means that the First Court was not convinced by the complainant's version. He raises the question of how could the First Court believe the complainant when he said he had been punched but could not believe him when saying that his car was punched too. The appellant refers to the contradiction in the testimony of the complainant indicated in the previous grievance. He states that his complaints should have more bearing when one considers that the other witness said she did not recall him (the appellant) punching the complainant.

That as regards the grievance under examination this Court starts by referring to what was stated above under the previous grievance and, to avoid any repetitions, applies same to this grievance. Having cleared such point, this Court states that it does not agree with what is stated by the appellant namely that the First Court was contradictory in its judgment. The First Court arrived at its conclusion by weighing the evidence in front of it and through the level of corroboration it reached the conclusion that the version of the complainant holds more truth than the version of the appellant. The mere fact that the First Court stated

that it is not convinced that the punch to the vehicle caused the amount of damage stated by the complainant does not affect the fact that there was in effect a punch (something that is refuted categorically by the appellant and which evidently is a lie). In addition, this is not the only reason in terms of which the First Court rejected the second (2nd.) charge proffered against the appellant.

That taking into consideration the above, this Court finds no reason to disturb the discretion exercised by the First Court and hence even the second grievance is also being rejected.

Decide

Consequently, for all the above-mentioned reasons, this Court rejects the appeal filed by the appellant and confirms the judgment delivered by the First Court in its entirety.

Dr. Neville Camilleri
Hon. Mr. Justice

Alexia Attard
Deputy Registrar