



Court of Magistrates (Gozo)
AS A COURT OF CRIMINAL JUDICATURE
Magistrate Dr. Jean Paul Grech B.A., LL.D
M.Juris (Int. Law), Adv. Trib. Eccl. Melit

JUDGEMENT

Today, Tuesday the fourth (4th) of June 2024

Case Number 410/2023

The Police
(Inspector Josef Gauci)

VS

Peter Bossea Enchi

The Court,

Having seen the charges brought against **Peter Bossea Enchi**, born in Ghana, Africa on the fifteenth (15th) June 1986 and residing at Flat 15, Xambekk, Triq ir-Ranciz, Munxar holder of Maltese identity card number 61439(A) for having on the twenty-ninth (29th) May 2023 at 06.30am:

(1) denounced to the Executive Police at the Rabat Police Station in Gozo, a crime he knew that it had not been committed, or otherwise fraudulently created traces of a crime in such a way

that criminal procedures could be initiated to ensure that this crime had been committed;¹

(2) also for having on the same date, time, place and circumstances presented to the Executive Police information regarding an offence knowing that such offence had not been committed, or falsely devised the traces of an offence in such a manner that criminal proceedings could be instituted for the ascertainment of such offence.²

In the event of a finding of guilt, the Court was also requested to expressly award the punishment of general interdiction, as well as interdiction from acting as a witness, except in a court of law, or from acting as a referee in any case as per article 109(1)(c) of Chapter 9 of the Laws of Malta.

Having seen that the case was assigned to this Court as presided following an order dated nineteenth (19th) day of February 2024 issued by the Chief Justice in terms of Article 11(3) of Chapter 12 of the Laws of Malta and Article 520 of Chapter 9 of the Laws of Malta;

Having seen the minutes of the sitting of the seventh (7th) March 2024, wherein the Prosecution and the Defence exempted the Court from the need of hearing again the evidence already tendered and from resubmitting the documents filed till that date;

Having seen the evidence compiled, the documents exhibited and all acts of the proceedings;

Having heard the evidence and final submissions;

¹ Article 110(1) of Chapter 9

² Article 110(2) of Chapter 9

Considers;

The facts of the case are as follows: that on the twenty-ninth (29th) May 2023 the Police received a report concerning an argument involving two (2) foreign nationals in Triq ir-Rancis, Munxar. The Police claimed that the accused reported that he had had an argument with a certain Oscar and that allegedly Oscar had hit him with a knife and caused injuries to his hand. The Police spoke to Oscar who stated that he had not seen the accused on that day. On further investigation, the Police discovered that the accused went knocking on the door, he broke a glass pane and as a result he injured his hand.

The Police further stated that when Peter Bossea Enchi was again contacted by the Police, he admitted that he had broken the glass pane and injured his hand as a result. He further told them that it was not true that he had been hit with a knife. The Police consequently informed him that legal proceedings were going to be taken against him for lodging a false report.

Considers

- **The First Charge – Article 110(1) of Chapter 9**

Article 110(1) specifies that: *“Whosoever shall fraudulently cause any fact or circumstance to exist, or to appear to exist, in order that such factor circumstance may afterwards be proved in evidence against another person, with intent to procure such other person to be unjustly charged with, or convicted of, any offence, shall, on conviction, be liable to the punishment established for a false witness, in terms of the preceding articles of this Sub-title.”*

With reference to this first sub-article of article 110 of Chapter 9, the Court of Criminal Appeal in the case **Il-Pulizija vs David Mizzi**³ had noted the following:

“ir-reat ikkontemplat fis-sub-artikolu (1) tal-artikolu 110 tal-Kodici Kriminali hu dak tal-kalunja reali jew indiretta u jiddistingwi ruhu mill-kalunja verbali jew diretta ikkontemplata fl-artikolu 101 billi jirrikjedi li l-agent, ikun, b’qerq, materjalment holoq, jew materjalment gieghel li jidher li hemm bhala prova kontra persuna ohra. Kemm fil-kalunja diretta kif wkoll f’dik indiretta, l-element formali tar-reat jikkonsisti filli wiehed ikollu l-hsieb li jaghmel hsara lil persuna ohra, billi jaghmel mill-gustizzja strument ta’ ingustizzja kontra dik il-persuna l-ohra. Fi kliem iehor ghar-reat ikkontemplat fl-artikolu 110(1) mhux bizzatejjed is-semplici kliem, migjuba bil-fomm jew bil-miktub, li permezz taghhom wiehed dolozament jakkuza persuna quddiem awtorita` kompetenti b’fatti ammontanti ghal reat meta jkun jaf li dik il-persuna hi innocenti, izda hu mehtieg li jinholqu tracci jew indizji materjali bil-hsieb li dawn ikunu jistghu jintuzaw kontra dik il-persuna.”

With reference to this same sub-article Professor Anthony Mamo notes that:

“The constituent elements of this crime emerge clear from its definition. The material element consists in fabricating that is, as the law says, falsely

³ Decided on the 16th February 1998 per Mr Justice Vincent De Gaetano.

causing any fact to exist or appear to exist which may be used as evidence of a criminal offence against an innocent person. The intentional element consists in the intent on the part of the agent to procure that the person be unjustly convicted of or charged with the offence Whereas, however, in the case of the calumnious accusation properly so called i.e the crime under Section 99 [now section 101] such crime is completed by the mere presentation of the information, report or complaint to the competent authority, in the case of this indirect form of calumnious accusation the crime cannot be said to be completed until the fact or circumstance of fact falsely caused to exist or to appear to exist as aforesaid, becomes known to the competent authority.”⁴

The Court notes that from the evidence submitted it is clear that the Police proceeded to press these charges against the accused on the basis of what the accused allegedly told the Police on two separate occasions. This as reported in the sworn declaration of PS 428 Carmelo De Battista.⁵ The statements which the accused gave to the Police at investigation stage however will be discarded completely by this Court for the simple reason that it is definitely not clear whether the accused was given his legal rights prior to him giving his statements to the Police. During his cross-examination, PS 428 Carmelo De Battista specifies that as per normal procedure the accused was given his legal rights and he renounced to his right of being assisted by a lawyer. However, no signed document indicating this specific renunciation of rights was filed as is normally done. Moreover on examination of the English version of

⁴ Mamo. A., Notes on Criminal Law, Vol. II, pagina 58

⁵ Fol. 7 of the acts.

the sworn declaration of PS 428 Carmelo De Battista there is a declaration to the effect that the accused **was not** given his legal rights. This is in contrast with the Maltese version of the same affidavit which is saying that the accused was given his legal rights. In view of this confusion, the Court cannot possibly conclude that the accused's rights were adequately safeguarded at investigation stage. Hence the Court will be ignoring completely what the accused told to the Police at investigation stage.

Notwithstanding the above, the Court is also not convinced that there was an attempt by the person charged to lead others to believe that he had suffered an injury at the hand of Oskar. The accused did not go to the Police Station to file a report that he had been hit by a knife. When he got injured, he ended up in hospital. When in hospital, the Police got in touch with him and ordered him to report to the Police Station, something which he did. The Police most probably got involved because they were informed directly from the hospital as per normal procedure; it seems that the version that the accused was involved in a fight was provided to the Police by the hospital and not by the accused. This is evident from the medical certificate which was issued and which was addressed to the Police.⁶

Besides, from the evidence given by the accused during the hearing of the case, the Court understood that the accused forgot his house keys and he broke a glass pane to be able to get back to his house. The accused insisted that at no point in time did he inform the Police that he had been hit with a knife by another person. The material element of this offence is therefore lacking. Furthermore, from all this the Court cannot even decipher the required intentional element that the accused wanted effectively to cause harm to this Oscar by having him

⁶ Fol. 12 of the acts.

wrongfully charged for the injuries the accused sustained. Hence the Court considers that this first charge has not been proven.

- **The Second Charge - Section 110(2)**

With reference to this specific offence, Professor Anthony Mamo points out that:

“The simulation of an offence is considered as a crime for the injury it does to the administration of justice by misleading it; for the alarm which the news of an offence causes in the public; for the inconvenience and expense to which the officers of justice may be put; for the danger of suspicions and molestations to which law-abiding citizens may be exposed in the attempt to ascertain an imaginary fact.”⁷

Professor Mamo goes on to add that in this crime:

*“**there is no specific accusation against any determinate person** and there is no intent to cause an innocent person to be unjustly convicted or charged. The simulation may be either verbal or direct or real or indirect. The former must consist in a denunciation, that is in an information or report or complaint to the Executive Police: and the crime is completed by the presentation of such information report or complaint, so that the subsequent confession of the untruth would not avail to exclude it. ... **Finally the denunciation**”*

⁷ Mamo A., Notices. On Criminal Law – Part II (1954-1955 edition), fol. 60

must be made without specifying the supposed offender; otherwise this crime degenerates into that of calumnious accusation.

A real or indirect simulation would be the case of a person who, in order to make believe that he is a victim of a crime, creates traces of the offence in order to give an appearance of reality to the simulated crime, in such a manner as to cause the Police to proceed to further investigations and the enquiry of the in genere leading to the discovery of the author of the supposed crime.⁸

In a judgment delivered by the Court of Criminal Appeal (Inferior Jurisdiction) in the names **The Police vs David Mizzi**⁹ the Court highlighted that:

“Kwantu ghar-reat ikkontemplat fl-artikolu 110(2) – is-simulazzjoni ta’ reat – dan, bhal tal-kalunja, jinqasam f’ simulazzjoni reali jew indiretta u f’ simulazzjoni verbali u diretta. Is-simulazzjoni reali jew indiretta tavvera ruhha meta wiehed bil-qerq johloq tracci ta’ reat b’ mod li jistghu jinbdew proceduri kriminali sabiex jizguraw li dak ir-reat kien sar. Is-simulazzjoni verbali jew diretta tirrikjedi semplicement li l-agent jiddenunja lill-Pulizija Ezekuttiva reat li hu jkun jaf li ma sarx. Ghalhekk element kostituttiv ta’ dan ir-reat hu l-konsapevolezza tal-agent li r-reat li hu qed jiddenunja fil-fatt ma sehhe.”

⁸ Ibid.

⁹ Decided on the 16th February 1998.

On examination of the sworn declaration of PS 428 Carmelo Debattista, it transpires that the Police is contending that the accused filed the report against a certain Oscar. Infact the same Police Officer specifies that the accused indicated that a certain Oskar had hit him with a knife. Hence allegedly the report was filed by the accused against a specific person. Since a specific person was identified in this report, the facts of the case cannot fall under the parameters of the offence contemplated under article 110(2) of Chapter 9 and there can be no finding of guilt in terms of this article of law. This because for a finding of guilt under this article the denunciation must be made without specifying or identifying the supposed offender. Therefore, in this specific case the Prosecution should have charged the accused with the offence under article 101(1) of Chapter 9 which refers to calumnious accusation. Since the Prosecution did not press this charge against the accused, the Court is legally precluded from taking cognisance of this charge and from considering whether there could be a finding of guilt under article 101(1) of Chapter 9. Consequently, the Court will also be acquitting the accused of this second charge.

- **Decide**

Consequently for the reasons outlined above the Court **is acquitting the accused** from all the charges brought against him.

(sgd) Dr. Jean Paul Grech
Magistrate

(sgd) Diane Farrugia
Deputy Registrar

True Copy

For The Registrar