



COURT OF CRIMINAL APPEAL

**HON. MR. JUSTICE
JOSEPH GALEA DEBONO**

Sitting of the 12th July, 2007

Criminal Appeal Number. 247/2007

The Police
(Insp. Carlo Ellul)

vs.

Olori Lucky

The Court,

Having seen the charges, brought against the appellant Olori Lucky before the Court of Magistrates (Malta) as a Court of Criminal Judicature for having, on the 24th June, 2007 at about 1.30 a.m. at Paceville, St. Julians, without the intent to kill or to put the life of any person in manifest jeopardy,

1. caused slight bodily harm save complications on the person of Mr. Roderick Attard (ID Card no. 440484M) as certified by Dr. Elaine Borg, M.D of St. Luke's Hospital;

2. pushed against any person in the street with the object of hurting or insulting such person, i.e. Mr. Roderick Attard mentioned above;
3. in any manner not otherwise provided for in this Code, wilfully disturbed the public good order or the public peace.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 26th June, 2007, whereby, after the Court saw article 221 (3)(a), 339 (1)(l), 338 (dd) and 17 (b) of Chapter 9 condemned the appellant to the punishment of imprisonment for a period of one month.

Having seen the application of appeal filed by appellant on the 27th June, 2007, wherein he requested this Court, whilst confirming that part of the judgement where it found the appellant guilty, to reform that part of the judgement concerning the punishment awarded and to award that punishment which it deems appropriate in the circumstances of the case.

Having seen the records of the case;

Having seen appellant's application for the appeal to be heard with urgency in view of the fact that he was on the Island on holiday and he had to go back to his country as soon as possible;

Having seen its decree wherein it upheld appellant's request and appointed the appeal for hearing in the course of today's sitting;

Having seen appellant's clean criminal conduct record as evidenced from the document filed by the Prosecution in today's sitting;

Having seen that the ground on which the appeal was based was that the punishment meted out by the First Court was excessive and disproportionate in the circumstances of the case. That appellant had admitted his guilt and counsel for the injured party had declared

before the First Court that his client had no interest in pursuing the criminal action and that he was renouncing to all charges that could be waived and that the matter, which was a result of a misunderstanding, was resolved between them. Nevertheless the Magistrate's Court had failed to take all this into consideration and that he was a first time offender with a clean criminal record.

Having heard submissions by Counsel for the Prosecution and Defence Counsel;

Having seen the minute entered in the records of today's sitting whereby counsel for the prosecution declared that the prosecution adhered to the grounds of appeal raised by appellant.

Having seen the written declaration dated the 27th. June, 2007 and signed by Dr. Joseph Giglio renouncing to any proceedings against appellant, in which Roderick Attard may have an interest as the injured party.

Now therefore , in view of the waiver of the injured party Roderick Attard and of appellant's previous clean criminal conduct sheet, as well as the way the incident in question developed as a result of a misunderstanding , and also in view of appellant's early plea of guilt before the First Court, and the particular circumstances of the case, this Court deems that there are strong grounds for the punishment restrictive of personal liberty meted out by the First Court to be converted to one of a pecuniary nature;

Accordingly this Court is disposing of the appeal by first of all declaring the first charge as waived and that all proceedings in respect of same be stayed in view of the waiver of the injured party and further decides to uphold the appeal and vary the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature by confirming it in so far as it found appellant guilty of the second and third charges proffered against him and by revoking it in so far as it condemned appellant to one month's imprisonment and instead condemns him to a fine (ammenda) of twenty-five Malta Pounds (LM25) on the

second charge and a further fine (ammenda) of twenty five Malta Pounds (LM25) on the third charge, which, if not paid forthwith, will be converted into ten (10) days detention according to Law (art. 13 (2) Chap.9 of the Laws of Malta).

< Final Judgement >

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