



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.
EDWINA GRIMA**

Sitting of the 25th March, 2009

Number. 749/2008

**The Police
(Inspector Nikolai Sant)**

VS

**Venelin Dinitrov Georgiev having 47 years of age,
born in Bulgaria on the 26th August 1961 and residing
at "Shaun", no.10, Flat 1, St. Publius Street, Naxxar
holder of identity card number 0343700(L)**

The Court,

Having seen the charges brought against the accused,
being charged with:

Informal Copy of Judgement

1. having on the 24th June 2008 and 25th June 2008 fraudulently caused any fact or circumstance to exist, or to appear to exist, in order that such fact or circumstance may afterwards be proved in evidence against another person, with intent to procure such other person to be unjustly charged with, or convicted.

2. also, that during the same day, time and under the same circumstances laid before the Executive Police an information regarding an offence knowing that such offence has not been committed, or shall falsely devise the traces of an offence in such manner that criminal proceedings may be instituted for the ascertainment of such offence.

Having seen the documents exhibited and all the acts of the proceedings

Having heard the evidence;

Having seen the consent of the Attorney General for the case to be dealt with summarily in terms of Article 370(4) of the Criminal Code;

Consider;

That the accused is being charged by the prosecution in terms of Section 110(1) and (2) of the Criminal Code, being the crimes of fabrication of false evidence and the simulation of an offence.

Section 110(1) – Fabrication of false evidence.

The crime created by this section is in some continental codes and text books dealt with as a form of calumnious accusation. Whereas the false accusation as outlined in Section 101 of the Criminal Code dealing with any information, report or complaint whether filed verbally or in writing constitutes the calumnious accusation which is defined as being verbal and direct, this form constitutes the calumnious accusation known as real or indirect. As Professor Mamo states in his Notes on Criminal Law:

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

On the other hand, the crime under Section 101 of calumnious accusation known as verbal or direct ***“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.”***

Finally it is clear from the wording of the law that this type of calumnious accusation must be such as to lead to the conviction of the person being unjustly charged or to the person being unjustly charged of a crime due to the fabrication of this false evidence.

Section 110(2) – the simulation of an offence

This provision was added to our code by Ordinance IX of 1911 and was modeled in its substantive part on Section 211 of the Italian Code of 1889.

Professor Mamo in his Notes on Criminal Law states:

“The simulation of an offence is considered as a crime for the injury which 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. ... This crime differs from that of calumnious accusation in as much as in the simulation of offence there is no specific accusation against any determinate person and there is not, therefore, the 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 must be made without specifying the supposed offender; otherwise this crime degenerates into that of calumnious accusation.

A real or indirect simulation would be had in 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.

The facts of the case

It results from the acts of the case that the accused together with his wife had filed a report at the Naxxar Police station in connection with noise emanating from a garage underlying their residence wherein it was alleged by them that carpentry works were being carried out by a certain Raymond Pirotta. It transpires that this was an ongoing problem between the Georgievs and Mr. Raymond Pirotta who had been carrying out these works in his garage for a considerable number of years. In fact a written agreement had been signed between the said parties wherein Mr. Pirotta bound himself not to carry out such works thus causing a disturbance during the morning and afternoon hours. (vide Document VG1 at folio 15).

On the day of the 25 of June 2008, the accused together with his wife and son called at the Naxxar police station reporting that works were being carried out by Mr. Pirotta thus causing them a disturbance. The report was filed by the Police (vide Document DG3 at folio.21, 22, 23) and Mr. Pirotta was sent for by the Police for interrogation. Whilst at the Police station it results that the accused or his wife phoned in order to ask the police not to proceed further with their report and that they did not wish to take further criminal action against Raymond Pirotta. There is a conflict in the evidence brought before this Court as to what happened after this. It is not clear whether WPC50 Oriana Spiteri asked the accused over the phone at that point in time whether Raymond Pirotta was still at the garage carrying out the said works or whether it was the policewoman who phoned the Georgievs once again asking for this information. At this point in time the accused informed the policewoman that Raymond Pirotta was at the garage and that he was still working there and making noise. Being asked further by the policewoman whether he was seeing Raymond Pirotta, accused replied that he was leaving in his car. The accused was, therefore, not filing a report against Raymond Pirotta but was answering questions being put to him by the policewoman. In fact it results that the Georgievs had no intention to proceed with their complaint as later on they actually went in person to the police station to present a waiver (vide Document VG2 at folio16). On the basis of all this the police decided not to further their investigations with regard to the complaint put forward by the accused and instead chose to proceed against the accused accusing him of the charges brought against him in these proceedings.

This is being pointed out due to the fact that upon the accused filing a waiver of the report filed earlier by him and his wife, the police decided not to take criminal action against Raymond Pirotta. Also when the accused supplied information to the policewoman with regards to the whereabouts of Raymond Pirotta, this was done upon the request of the said police officer and not with any intention from the part of accused to wrongly accuse Raymond

Pirotta of a crime or contravention. The said information consequently was not such as to lead the police to proceed before the Criminal Courts against Raymond Pirotta for the disturbance of the public peace and good order.

With regards to the first charge brought against the accused, being that contemplated in Section 110(1) of the Criminal Code, it does not result therefore from the acts of the case that the accused was trying to fabricate evidence, which evidence was to lead to the prosecution or conviction of Raymond Pirotta for any crime or contravention, once the police has already decided not to proceed further with the report filed by the accused and his wife. Nor does it result that he had any intention to falsely accuse Mr. Pirotta of a crime or contravention once he had clearly indicated his intention to the police that he did not wish Mr. Pirotta to be charged with this contravention!

Neither can the accused be found guilty of the crime contemplated under Section 101 of Chapter 9, being the crime of calumnious accusation, as the law indicates clearly that the intention of the perpetrator must be such as to lead to a person being unjustly charged or convicted for a crime that he did not commit. This was clearly pointed out in a judgment delivered by the Court of Criminal Appeal (Mr. Justice Harding) on the 7 November 1949 in the case *The Police vs Vincenzo Attard* wherein it was stated: ***“Biex ikun hemm ir-reat ta’ falza denunzja hemm bzonn li d-denunzja falza tkun dwar delitt jew kontravenzjoni li jaghtu lok ghal azzjoni kriminali persegwibbli quddiem il-Qorti ta’ Gustizzja Kriminali.”***

As to the second charge brought against accused as contemplated in Section 110(2), although it results that the accused tendered some information to the policewoman with regard to the whereabouts of Raymond Pirotta and to the fact that works were still being carried out in the underlying garage, such information was not intended to lead to the false accusation of Pirotta before the courts. It is clear from the evidence tendered by the

accused and his wife that they sincerely believed Mr. Pirotta was still in his garage carrying out the works as they were still hearing noises. Furthermore when it was indicated to the policewoman that Mr. Pirotta was leaving in his car, this was done unintentionally by the accused who heard a car being driven off and assumed that this was Mr. Pirotta's car. The intention required under this section of the law is thus completely lacking. Furthermore as pointed out above in the legal exposition of this article of law, the report must be made without specifying the supposed offender. Consequently the Court cannot even in this case find the accused guilty.

Consequently, in view of the above considerations, the Court finds the accused not guilty of the charges brought against him and acquits him from the same.

< Final Judgement >

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