MALTA

COURT OF CRIMINAL APPEAL

THE HON. MR. JUSTICE
MICHAEL MALLIA

Sitting of the 30 th July, 2010

Criminal Appeal Number. 48/2010

The Police
(Insp. Kevin Farrugia)
(Insp. Simon Galea)

Vs

Tristan Scott Haynes

The Court,

Having seen the charge brought against the appellant Tristan Scott Haynes before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having on the 10th May 2003 at St. Andrews Road Swieqi limits of Bahar ic-Caghaq at about 22.00 hours;

1. Without the intent to kill or to put the life of any person in manifest jeopardy, caused harm of a grievous nature on the persons of David Shephard having ID Card

No 216446M as certified by Dr. Nicola Camilleri at St. Lukes Hospital and Reuben Briffa having ID Card No 259373M as certified by Dr. T. Mizzi of Griza Health Centre in breach of articles 214 and 218 of Chapter 9 of the Laws of Malta;

2. Without the intent to kill or put the life of any person in manifest jeopardy caused harm of a grievous nature on the persons of Joseph Attard having ID Card No 188447M and of a slight nature on Marianne Attard having ID Card No 216247M both certified by Dr. W. Sawicki in breach of articles 214, 216 and 221 of Chapter 9 of the Laws of Malta;

3. Through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations, caused damages on motor vehicle make Ford Sierra with registration number CAD 914 belonging to Joseph Attard ID Card No 188447M;

4. Wilfully disturbed the public good order or the public peace by shouting and fighting.

5. Obstructing the flow of traffic.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 28th January, 2010, by which, after that Court had seen articles 214, 216(1)(a)(i), 216(1)(d), 216(1)(b) of the Criminal Code, Chapter 9 of the Laws condemned the accused to a period of imprisonment of four (4) years from which period of imprisonment shall be deducted the time the accused spent in preventive custody.

The nature of the injuries and the ferocity of the assault precluded the Court from considering any other form of punishment save that of actual imprisonment.

The Court reserved judgement relating to the other changes brought against the accused until such time that he voluntarily submits to the jurisdiction of this Court and therefore adjourned the case sine die.

Having seen the application of appeal filed by appellant on the 9th February, 2010, wherein he requested this Court to revoke the appealed judgement by not finding the appellant guilty of the charges proffered against him, that is the charge of grievous bodily harm inflicted on the

person of David Shephard and the charge of grievous bodily harm inflicted on the person of Joseph Attard under Articles 214, 216(1)(a)(i), 216(1)(d), 216(1)(b) of the Criminal Code, Chapter 9 of the Laws of Malta, and instead acquitting and freeing him from the said charges and from the punishment inflicted and, alternatively and subordinately by varying the same judgement by providing a lesser and more suitable punishment.

Having seen the records of the case.

Now therefore duly considers.

That the grounds of appeal can be summarised as follows:-
That in the first instance, the appellant humbly submits that according to its judgement the First Court had to rest on the evidence presented in the present case and, “the evaluation of the credibility or otherwise of the witnesses are crucial, since the complainants are alleging a case of uncontrolled road rage practiced on two elderly men, whilst the appellant cites that he was acting purely in self defence”.
That the appellant however with all the due respect does not agree with the evaluation of the evidence made by the First Court wherein the testimonies of the injured parties, and of the “independent witnesses” could not in any way establish the moral certainty and that is that which is beyond reasonable doubt, which can lead the First Court to find the appellant guilty of the abovementioned charges of grievous bodily harm.
That after declaring Joseph Attard’s testimony as incisive, the First Court states that this version does not equate with the six versions that the appellant alleged Joseph Attard and that these six versions are not “necessarily different” versions. It states that all these versions are a repetition in different words of Joseph Attard’s version of events that the appellant assaulted him, he fled behind his car, he did not see the assault on David Shephard and then the appellant caught up with him and assaulted again.

That the appellant humbly disagrees with the evaluation of the First Court due to the fact that the six versions elicited by the appellant in his note of submissions at page 1143 of the process explain in detail how Joseph Attard has changed his version of events everytime he was called to give testimony during these procedures.
That the appellant humbly reiterates the position elicited in his final note of submissions that the fact that Joseph Attard opens up to the possibility of biting the appellant's finger proves that the same Joseph Attard was in a position that made it possible for him to really bite the appellant's finger. This implies that the appellant's fist was not closed at all times, since the bite in question occurred on the left little finger of the appellant, and this also implies that Joseph Attard did not limit to wave his hand about to defend himself, but that he really engaged in a physical fight with the appellant.
That the defence respectfully submits that he feels aggrieved that in certain instances the First Court has declared the need for expert evidence in order to pronounce itself whereas in other instances arbitrarily decided to put away with the need for expert evidence and pronounced itself on technical aspects.
That the appellant submits that in its judgement the First Court refers to two fights between Joseph Attard and the appellant, with a period in between in which Joseph Attard lost consciousness for two seconds and during which time the appellant allegedly attacked David Shephard and Maryanne Attard.
That the appellant humbly submits that in his final note of submissions he makes a deep analysis on the alleged two second loss of consciousness of Joseph Attard and the alleged second fight which the appellant has always stated have never occurred.
The appellant humbly submits that a thorough analysis of the evidence tendered show unequivocally that Joseph Attard is contradicted by all parties concerned and in no moment was he found to rest on the bonnet of his car.
The appellant respectfully submits that he does not agree with the interpretation provided by the Court in page 33 of the judgement due to the fact that there is also no medical

evidence to support Joseph Attard's claim that he might have lost consciousness.

That the appellant respectfully submits that during the analysis of all evidence presented in the case the First Court has omitted to address certain important factors which highlight the frame of mind in which Joseph Attard confronted the appellant during the incident. In fact the First Court does not pronounce itself on Joseph Attard's statement in the car following the collision between the cars driven by Attard and the appellant, in which Joseph Attard tells his wife Maryanne Attard "hallieh f'idi". Joseph Attard has stated that he said these words in his testimony during the Magisterial Inquiry.

That the appellant humbly submits that in its judgement the First Court has failed to note the aggressive behaviour of Joseph Attard in this situation.

That the appellant humbly submits that the arguments brought forward in his final note of submissions relating to the various contradictory testimonies provided by Joseph Attard is not an exercise in which the appellant has "conveniently" selected instances in order to exhonerate the appellant from responsibility and place the blame on Joseph Attard. The arguments brought forward by the appellant show unequivocally that the contradictions provided by Joseph Attard and the version of events as testified by all the other witnesses do not amount to a corroboration of evidence that may lead to a declaration of guilt of the appellant beyond reasonable doubt.

That the appellant humbly submits that such a contradiction does not amount to a "minor inconsistency" as stated by the First Court in its judgement but that David Shephard's testimony are unreliable due to the serious contradictions that characterise all the testimonies tendered by David Shephard during the present proceedings.

That the appellant humbly submits that the Court of First Instance was also incorrect when it deemed that testimonies delivered by Ruben Briffa, Saviour Briffa, Tania Briffa and Mariella Briffa were testimonies of "independent witnesses".

That in fact the abovementioned witnesses could have never been declared as independent by the Court, for the

reason that Ruben Briffa was also involved in a physical confrontation with the appellant.
That the appellant humbly submits that in judging the facts of the case the First Court had to have regard to the demeanour, conduct and character of all the witnesses, and by classifying the Briffa's as independent witnesses shows that the approach adopted by the First Court in analysing the evidence tendered by these witnesses was incorrect since it did not take into consideration the emotional frame of mind with which these witnesses gave evidence in the present case.
That the appellant humbly submits that even if the versions of the Briffas had to be believed, they would not corroborate the evidence tendered by the parte civile witnesses but they corroborate the testimonies of the appellant and of Ramona Rodenas.
That the appellant made reference to his testimony in these proceedings and refers also to pages 34 to 37 of the judgement. The appellant has always admitted punching Joseph Attard and Ruben Briffa in his testimonies but has always denied punching or kicking David Shephard.
That the appellant makes reference to the phrase :
"the three of them were all on me. I was defending myself and I hit them in the process of doing so".
Which phrase is transcribed in page 34 of the judgement and which is part of the testimony the appellant had given during the Magisterial Inquiry.
The appellant humbly submits that with all the due respect the First Court gave a wrong interpretation of the appellant's words. In fact from the testimonies of all witnesses, and in particular to the testimony of the same appellant in front of the First Court, it is very clear that the three persons referred to by the appellant are in fact Joseph Attard, David Shephard and Maryanne Attard.
That the appellant humbly submits that Ramona Rodenas corroborates the appellant's version of events, and moreover a thorough analysis of all the evidence shows that all other versions provided by the other witnesses and the medical reports found in the record of the proceedings show that the most credible of versions is that of the appellant.

That the appellant submits that when taking into consideration the evidence tendered by the appellant as corroborated by the witnesses and expert evidence does prove that the appellant acted in lawful self defence and that it was not easy for the appellant to disengage from the aggression suffered at the hands of Joseph Attard.

That in its judgement the First Court has decided that the most credible versions of events relating to the manner in which David Shephard was injured are those of the parte civile witnesses, who stated that David Shephard was punched and kicked by the appellant and that these punches and kicks ultimately led to David Shephard losing consciousness and risking his life.

That the appellant humbly submits as explained in his final note of submissions, that medical evidence shows that the number of punches and kicks alleged to have been suffered by David Shephard do not tally with the official medical report presented as evidence which states that the injuries sustained by Daivd Shephard were a slight knock at the back of his head, and the fracture of the eighth rib in his left flank. Moreover, after ultrasound David Shephard was found to have bleeding around the spleen, however the spleen itself was not raptured.

That the appellant humbly submits that there can never be a moral certainty as to what really happened to David Shephard on the night, and definitely with all the possibilities of what might have happened to him, the First Court could not have reached its conclusions beyond reasonable doubt.

That the appellant however humbly submits that during proceedings in front of the Court of First Instance it was impossible for him to prove the nature of the injuries he sustained during the night of the incident, due to the fact that while he was held under arrest by the Police following the incident, he was allowed by the police to visit a doctor nearly two days after the incident. In fact, Dr. Brian Flores Martin, of the Gzira Health Centre examined the appellant on the 12th May 2003, by which time the injuries suffered by the appellant were already healing.

That in the light of the facts as exposed above, the appellant humbly submits that there exists no moral certainty, that is that which is beyond reasonable doubt,

that can lead the Court to find the appellant guilty of the charges mentioned above.
That in the worst of hypotheses the evidence produced may lead to a moral conviction in the level of the possible and maybe the probable but certainly not beyond reasonable doubt, which doubt should then militate in favour of the appellant.
Grounds of appeal relating to the punishment :-
That the First Court has ruled that David Shephard was indeed in danger of losing his life due to the incident.
That the appellant respectfully does not agree with the First Court's declaration that Dr. Nicole Camilleri in her testimony stated that David Shephard "was in danger of losing his life for one or two hours". Dr. Nicole Camilleri in actual fact stated that when David Shephard was admitted in hospital he was declared in danger of losing his life, but after an hour or two hours later he was fully conscious. Therefore what Dr. Camilleri said was not that David Shephard was on the danger list for one or two hours but that after one or two hours he was conscious.
That the same Professor Godfrey Laferla has stated that there was no rapture of the spleen. Professor Laferla stated that had the spleen raptured David Shephard would have been on the danger list, something which did not happen.
That moreover, the appellant since the occurance of the incident, which incident happened in 2003, has moved with his partner Ramona Rodenas to the United Kingdom where now they have a daughter and have their own business running in the United Kingdom.
That without prejudice, even if the appellant might have committed such mistakes, he is not a hardened criminal that may repeat his actions vis-à-vis other persons.
That considering that a considerable amount of time has passed since the incident, the fact that the appellant has started a new life in the United Kingdom with his family, the fact that today the injured parties have all recovered from the injuries sustained and went on with their lives, it is clear that even in the case of guilt, the appellant does not deserve an effective prison sentence but should be given a suspended sentence, and this for the reasons elicited above.

Considers :

That learned defence counsel invited this Court to consider the evidence tendered during the first trial suggesting that the judgement should not be confirmed if this Court has a lurking doubt about the guilt of the accused. If the presiding judge finds that arguments do not hold water, than the judgement should and must be changed.

The learned defence counsel suggested that the First Court used language and attitude that were prejudicial to appellant and that it was appellant who was the victim of an aggression and not vice versa.

That the injuries sustained by the aggressors were the result of appellant taking defensive measures which perhaps may have been exagerated but did not at any rate inflict the grievous bodily harm that the injured parties claim to have received.

Defence counsel referred to the evidence tendered by Dr. Nicole Camilleri and Prof. Jeffrey Laferla, suggesting that the latter testified that Shepard may have had a possible fracture of his chest and was dripped as normal practice.

The defence argued that possible fracture does not mean actual fracture and there was no renal injury as suggested.

Although it was established that the spleen was injured, the blood clot did not involve any other organ and remained contained in the spleen itself.

What is more, appellant also sustained injuries as he had bruises at the back of his head and what looked like a bite mark on his finger. It was suggested that he was given a tetanus injection as a precaution for the transfer of bacteria from one person to the other as a consequence of the bite.

Defence pointed out that one of the injured parties, Mr. Attard, said that he might have bitten accused but did not remember doing so. The injuries suffered by appellant could not have come from one blow, which goes to show that appellant was the victim of an aggression by the injured parties who took offence after a very slight traffic accident which hardly left any damages on the cars concerned.

Considers :

That the facts of this case are very ably set out by the First Court in its judgement and there is no point of this Court in repeating them here.

Suffices to say that on the 10th of May 2003, at St. Andrews Road, Swieqi limits of Bahar ic-Caghaq, at about 22.00 hours, Tristan Scott Haynes was driving a car followed by another driven by the injured parties. Neither of the parties knew each other. At one point the injured party tried to overtake the car driven by Tristan Haynes. The maneuver did not succeed. The injured parties tried again and this time the cars may have come too close to each other and may have brushed. Both cars stopped. Both drivers came out of their respective vehicles and a fight ensued, whereby the injured parties Attard and Shepard had to be conveyed to hospital as a result of injuries sustained.

The Prosecution is claiming that Haynes was very aggressive in this encounter and it was he who caused the grievous bodily harm, as confirmed by the medical experts, on the persons of Shepard and Attard.

The Defence on the other hand stated that it was Attard who was the principal instigator of this incident when he came out of the car and approached Mr. Haynes in an aggressive manner and Haynes only reacted after he was subject to physical aggression by Attard.

Considers :

That this Court would like to make it clear from the outset that the Court of Criminal Appeal will not disturb the First Courts' considerations of the evidence if it comes to the conclusion that the final decision was reasonable and legally correct. In other words, the Court of Appeal will not challenge the discretion enjoyed by the First Court but will make a detailed appraisal of the same to find out whether the First Court was in fact reasonable in it's conclusions.

This Court did make a detailed appraisal of the evidence tendered before the First Court and did consider the defence's suggestion that such evidence should have left a lurking doubt as to the guilt of the appellant.

This Court however is left with no doubt as regards the guilt of the accused and finds that no traversity of justice was made by the First Court in it's judgement.

Neither did this Court find that the First Court used language or had an attitude that was prejudicial to appellant.

The First Court considered all the evidence including the evidence tendered by the defence especially that of appellant himself and came to the conclusion that such evidence was not to be believed and gave good reasons to do so.

Appellant claimed that when appellant's girlfriend cried "stop it, stop it !" this was interpreted by the First Court as to be directed to appellant because it was said in English, whilst in actual fact this might not have been so and the cry should have been taken to be directed to all litigants.

The exact words of the Court were "the Court notes that Ramona Rodenas, who was proficient both in the English and the Maltese language, and who immediately realised that the complainants were not English speaking had cried out "stop it" repeatedly. The Court believes that these words were addressed to the accused".

Under the circumstances the First Court was justified to come to that conclusion, however it must be clearly stated that this was not the only reason why the First Court decided not to believe the version tendered by the appellant. Also, this small paragraph should not be taken in isolation as an example of a prejudicial attitude towards appellant who was very selective in his arguments quoting only those excerpts that were beneficial to his case.

The Court however, could not afford such luxuries and delved deeply into the evidence tendered by appellant and his girlfriend Ramona Rodenas. It gave its considered opinion why this version of events lacks credibility and were highly improbable under the circumstances.

The Court, justifiable so, gave a lot of importance to the evidence tendered by Ruben Briffa who was an independent witness to this aggression. It is true that Briffa arrived on the spot whilst the fight was still going on or just about over and tried to intervene to help Shepard who was on the ground unconscious. There is no evidence to suggest that Briffa at that early stage showed any aggression towards the appellant who, on the other hand was aggressive towards Briffa and punched him in the face to the extent that he damaged some teeth. Briffa then and only then, tried to defend himself by throwing a stone in appellant's direction but did not hit him or anyone else for that matter. Briffa could not have provoked appellant, he was just a bystander who came over to help somebody who seemed to be injured. Briffa had no aggressive intentions whatsoever and it was only as a result of appellant's aggression that Briffa reacted accordingly and that is why the First Court considered the evidence tendered by Briffa as of vital importance and came to the conclusion that the versions given by David Shepard and Joseph Attard with a few exceptions on matters of mere detail are credible and dependable.

The Court than went on to consider the plea of self defence entered by appellant quoting the law and

jurisprudence from local sources and the United Kingdom coming to the conclusion that this plea should not be upheld.

This Court does not find anything to censure in the arguments, suffices to say that for the plea of self defence to be upheld the criteria to be considered are that the aggression must be unjust, grave and inevitable.

If one of these elements is missing, the plea cannot stand.

Considers :

That the First Court came to the conclusion that there was no aggression on the part of the injured parties and even if there were, it was not grave and neither was it inevitable. There was nothing sentimental in the arguments of the Court when it considered the age difference and stature between appellant on one side and the injured parties on the other. Given appellants knowledge of martial arts, he could have easily parried any aggression coming his way without having to inflict injury. The Court just took this aspect as part of all the circumstantial evidence it was considering in giving its judgement.

As regards punishment, the Court notes that four years imprisonment is not the maximum that the First Court could have awarded. It is nevertheless within the parameters dictated by law and the Court used its discretion to afford the punishment which it considered justified under these circumstances.

As stated beforehand, the Court of Appeal will not challenge the discretion enjoyed by the First Court if it finds that the First Court was reasonable and legal in its conclusions.

This Court however feels that, considering the time factor and the fact that all parties made a full recovery and have got on with their lives, there should be a reconsideration of the punishment awarded. Again it is being stressed

that the First Court was correct in all its assessments but perhaps the factors above mentioned warrant a mitigation of the punishment awarded to better reflect the actual situation governing the appellant in relation to the harm caused.

For these reasons, this Court therefore upholds the appeal in part in the sense that whilst confirming the first judgement wherein it found appellant guilty of the charges listed in that judgement, varies the punishment awarded and instead condemns appellant to a period of imprisonment of three (3) years from which period of imprisonment shall be deducted the time appellant spent in preventive custody.

< Final Judgement >

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