



COURT OF CRIMINAL APPEAL

**THE HON. MR. JUSTICE
DAVID SCICLUNA**

Sitting of the 9th December, 2010

Criminal Appeal Number. 377/2010

The Police

v.

Aarnoud De Hamer

The Court,

Having seen the charges preferred against Aarnoud De Hamer before the Court of Magistrates (Malta) as a Court of Criminal Judicature for having:

(1) on the night between the 14th and the 15th August 2010 sometime between 00.00hrs and 02.50hrs in Qawra, St Paul's Bay, Malta, assaulted or resisted by violence persons lawfully charged with a public duty, that is PS 914, PC 675 and PC 1485 when in the execution of the law or of a lawful order issued by a competent authority;

(2) on the same date, time, place and circumstances threatened or caused a bodily harm to PS 914, PC 675 and PC 1485 while in the act of discharging their duty or because of their having discharged such duty or with intent to intimidate or unduly influence them in the exercise of such duty;

(3) on the same date, time, place and circumstances refused to give or untruthfully gave to any public officer, that is PS 914, entrusted with a public service in the actual exercise of his duties, his name, surname, address and other particulars;

(4) on the same date, time, place and circumstance caused slight injuries on PC 675 David Sciberras and PC 1485 Gilbert Zammit as certified by Dr Raymond Grixti MD Reg no 2405 from the Mosta Health Centre;

(5) on the same date, time, place and circumstances even though in a state of intoxication, publicly uttered obscene or indecent words, or made obscene acts or gestures, or in any other manner not otherwise provided for in this Code, offended public morality, propriety or decency;

(6) on the same date, time, place and circumstances thrown, dropped or left or otherwise spilled or deposited any litter in any public place, street, sea, or open space to which the public has access, unless such depositing and leaving is lawfully authorized;

(7) on the same date, time, place and circumstances smoked a tobacco product in an enclosed area;

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 16th August 2010 whereby, after having seen sections 95, 96, 221, 338(g) and 338(dd) of Chapter 9 of the Laws of Malta and regulation 4 of Legal Notice 344 of the year 2005, on his admission, found the defendant guilty of all the charges brought against him and condemned him to five months imprisonment which by application of section

28A of Chapter 9 of the Laws of Malta were suspended for a period of two years and to a fine of €150 to be paid within a month. The first Court explained to the defendant in ordinary language the consequences should he commit another offence within the period of two years;

Having seen the application of appeal by the Attorney General presented on the 26th August 2010 wherein he requested this Court to:

(1) annul the judgment delivered by the first Court in the light of the fact that the first Court acted in breach of Article 382 of the Criminal Code and this when it failed to mention the charge and articles relating to Subsidiary Legislation 315.04 and Chapter 315 of the Laws of Malta and this without any valid reason whatsoever, and quash the judgment and transmit the record to the Court of Magistrates to proceed according to law; or

(2) in the event that this Court is of the opinion that the error above stipulated is simply the result of a '*lapsus calami*' of the first Court, and hence deems that the annulment of the judgment pronounced at issue is uncalled for, to reform the judgment in the sense that it confirms that part whereby the accused was found guilty of **all** charges brought against him, including and taking into adequate consideration the last charge preferred against the accused, whilst revoking the part concerning the punishment awarded to the accused, after considering also the provisions of subsidiary legislation 315.04 and Chapter 315 of the Laws of Malta, which was erroneously excluded in the judgment duly pronounced, and consequently proceed to inflict the adequate punishment against the accused Aarnoud De Hamer in accordance with law and in accordance with all the provisions applicable to these proceedings so as to better reflect the gravity of the case at hand as above requested by the appellant;

Having seen the acts of the proceedings;

Having heard the submissions;

Considers:

As appellant submits in his second grievance, it is clear that the absence of any indication of the seventh charge in the transcribed judgement is nothing but a *lapsus calami* on the part of whoever transcribed said judgement. Respondent indeed admitted to the charges brought against him (including therefore the seventh charge) and the first Court found him guilty of such charges. Consequently appellant's first grievance is being dismissed.

According to appellant's second grievance, however, the fine (multa) imposed was below that applicable at law. In this appellant is right and counsel for respondent agreed that the fine (multa) should be increased.

For these reasons:

The Court decides by reforming the appealed judgement, revokes it insofar as it condemned respondent to the payment of a fine (multa) of €150 and instead condemns him to the payment of a fine of €250 and confirms the rest of the appealed judgement.

< Final Judgement >

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