



COURT OF CRIMINAL APPEAL

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

Sitting of the 7th March, 2012

Criminal Appeal Number. 352/2011

The Police

v.

Francesco Nanni

The Court:

1. Having seen the charges brought against Francesco Nanni before the Court of Magistrates (Malta) as a Court of Criminal Judicature for having on the 24th July 2011 at around 04:50 at the Industrial Estate San Gwann:

(1) assaulted or resisted by violence or active force not amounting to public violence, Inspector Edmond Cuschieri, P.S. 419 Anton buttigeig and W.OP.C. Gabria Gatt, persons lawfully charged with a public duty when in

the execution of the law or of a lawful order issued by a competent authority;

(2) reviled or threatened Inspector Edmond Cuschieri, P.S. 41 Anton Buttigieg, W.P.C. Gabria Gatt and P.C. 97 Salvu Bonello, persons lawfully charged with a public duty 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 discharge of such duty;

(3) caused slight bodily harm on the persons of Inspector Edmond Cuschieri and W.P.C. 264 Gabria Gatt, persons lawfully charged with a public duty 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 discharge of such duty, as certified by Dr. Mario Scerri M.D. and Dr. Joe Scicluna M.D. respectively;

(4) wilfully committed any spoil, damage or injury (*sic!*) to or upon any movable or immovable property belonging to Anthony Mifsud which damage does not exceed twenty-three euros and twenty-nine cents (€23.29);

(5) caused slight bodily harm on the person of Anthony Mifsud as certified by Dr. Keith Cardona M.D.;

(6) disobeyed lawful police orders;

(7) wilfully disturbed the public good order and the public peace;

2. Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 25th July 2011 whereby the said Francesco Nanni, following his admission, was declared guilty of the charges brought against him and that Court, after having seen articles 96, 95(1), 325(d), 221(1) and 338(dd) of Chapter 9 of the Laws of Malta, conditionally discharged the said Francesco Nanni in terms of article 22 of Chapter

446 of the Laws of Malta for a period of one year from the date of the appealed judgement;

3. Having seen the application of appeal filed by the Attorney General on the 9th August 2011 January 2008 wherein he requested this Court to reform and vary the appealed judgement by confirming the said Francesco Nanni's guilt in relation to all the offences as mentioned in the charge sheet and by cancelling and revoking that part of the judgement in which the Court conditionally discharged respondent and consequently condemning him to a period of imprisonment according to law;

4. Having seen the record of the proceedings; having seen respondent's updated conduct sheet; having heard the evidence tendered by Inspector Edmond Cuschieri and Anthony Mifsud; having heard oral submissions; having considered:

5. The Attorney General has appealed against the first Court's decision to award respondent a conditional discharge. According to the Attorney General, this goes against a string of judgements which state that in case of violence an imprisonment sentence should be awarded. The Attorney General believes that being a first-time offender is not a valid reason to deviate from such principle. In this case, three persons were injured, two of them being police officers. A clean conduct record should not be a bar to a sentence of imprisonment. The Attorney General refers in this respect to **Il-Pulizija v. Stephen Mamo**¹ and **Il-Pulizija v. Ivan (John) Felice**². The Court not only has to protect civilians but should also afford special protection to police officers who have their life threatened by violent persons. Such sentences should serve as a deterrent. Being in a state of intoxication is not an excuse or a legal defence to use violence.

6. From the evidence tendered it would appear that respondent was being accompanied home by taxi from a

¹ Court of criminal Appeal, 23rd July 2010.

² Court of Criminal Appeal, 4th June 2002.

wedding reception he had attended, and he asked the taxi driver, Anthony Mifsud, to stop him at an ATM. The one in Birkirkara did not accept his card so the driver stopped him at an ATM in the San Gwann industrial estate. Anthony Mifsud stated that respondent started to walk away, he asked him for the fare and the two ended up in a scuffle. Police who had just left Mater Dei Hospital were passing by and they stopped to separate the two. Respondent, who appeared drunk, threw some kicks at the Police but according to Inspector Edmond Cuschieri no one was injured by such kicks. It would appear that at some time Inspector Cuschieri suffered an abrasion on the anterior aspect of his left shin which, in the words of Inspector Cuschieri himself, "was nothing out of this world". There is no evidence to show that W.P.C. 264 Gabria Gatt was in any way injured. Anthony Mifsud also suffered some slight injuries during the scuffle, as did respondent.

7. Inspector Cuschieri stated that respondent apologised and "as a person I accepted, but I appreciate the fact that it's an *ex officio* case." Anthony Mifsud was refunded the cost of the shirt that was torn during the scuffle and he stated that on his part he is bound to forgive but that respondent should be reprimanded.

8. It is true that there is a line of judgements which states that violence should lead to an effective prison sentence. However it is also true that the Court must reach its decision on the basis of the circumstances in each and every particular case. In this case, the injuries suffered were slight and apparently of little consequence. Respondent refunded the damage caused to Anthony Mifsud. The witnesses played down the incident considerably, Anthony Mifsud only saying that respondent should be reprimanded. There is not the slightest shred of evidence that respondent is a dangerous person or that the taxi-driver and the police were at any moment in a life-threatening situation. The first Court clearly understood all this and thus reached the conclusion that a conditional discharge would in the circumstances be a sufficient

Informal Copy of Judgement

deterrent. Consequently, this Court finds that there is no valid reason to vary the first Court's decision.

9. For these reasons the appeal is dismissed and the appealed judgement confirmed. For all intents and purposes at law, this Court explained to respondent in ordinary language that if he commits another offence during the period of conditional discharge, he will be liable to be sentenced for the original offences in respect of which he was found guilty.

< Final Judgement >

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