



COURT OF CRIMINAL APPEAL

JUDGE

THE HON. DR. DAVID SCICLUNA LL.D.

Sitting of Wednesday 7th October 2015

Appeal No. 368/13
Appeal No. 369/13

The Police

v.

Sunday Johnson
Blessing Johnson Zale

The Court:

1. Having seen the charges brought by the Executive Police against Sunday Johnson, holder of Maltese Identity Card No. 65418A, and Blessing Johnson Zale, holder of Maltese Identity Card No. 65420A, before the Court of Magistrates (Malta) as a Court of Criminal Judicature, with having:

(1) on the 25th July 2013 at around 23.00hrs in Birzebbugia assaulted or resisted by violence or active force not amounting to public violence, persons lawfully charged with a public duty and hence PS 1434 Mario Mercieca and PC 583 Evan Grech, when in the execution of the law or of a lawful order issued by a competent authority;

(2) on the same date, time and circumstances, caused slight injuries on members of the Police Force and hence, PS 1434 Mario Mercieca and PC 583 Evan Grech as certified by Dr. Jennifer Sultana MD Reg 3500 from Paola Health Centre and Dr. Jean-Paul Camilleri MD Reg 3471 from Paola Health Centre respectively;

(3) on the same date, time and circumstances disobeyed the lawful orders of any authority or of any person entrusted with a public service, or hindered or obstructed such person in the exercise of his duties, or otherwise unduly interfered with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons,

(4) on the same date, time and circumstances, disturbed the public good order or the public peace;

2. Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 27th July 2013 whereby the Court, following both accused's admission, and after having seen articles 96, 221, 338(ee) and 338(dd) of Chapter 9 of the Laws of Malta found the said Sunday Johnson and Blessing Johnson Zale guilty as charged, and condemned them to six (6) months imprisonment;

3. Having seen the appeal applications presented by the said Sunday Johnson and Blessing Johnson Zale on the 7th August 2013 whereby they requested the Court to reform the appealed judgement in the part of the punishment inflicted, and impose a more just punishment;

4. Having seen the records of the case; having seen appellants' updated conviction sheets presented by the prosecution as requested by this Court; having heard submissions; having considered:

5. Appellant Sunday Johnson's grounds of appeal are as follows:

“That primarily, the Court of Magistrates (Malta) as a Court of Criminal Judicature, did not take into account the early admission of the applicant, thereby saving precious time and money of the Court, and hence applicant did not benefit from a mitigation of punishment. Applicant has a clean conduct sheet, co-operated unconditionally with the police whilst investigating this incident, and in actual fact, in less than two days, applicant was arraigned in Court, brought to justice and sentenced.

“One is to take into account the fact that the incident in question lasted a matter of minutes, at the private residence of applicant and his wife. Applicant Sunday

Johnson was in a state of drunkenness and he was not in complete control of his actions, as stated by himself *a tempo vergine* in his statement. Moreover, applicant apologised with the police in his statement showing a sense of remorse to the whole incident.

“That secondly, and without prejudice to the above with reference to the punishment inflicted on the applicant and his wife, without any doubt such punishment, taking into consideration the circumstances of the case, is a punishment which shifts very much on the high side. Applicant humbly submits that one has to take into consideration the injuries suffered by the policemen, which injuries were of a slight nature, as evidenced by the medical certificates exhibited in the acts of the case, marked as documents ‘Dok KP5’ and ‘Dok KP6’.

“Applicant humbly makes reference to a judgement *Il-Pulizija vs Stephen Spiteri (Court of Criminal Appeal 22.09.1993)*, whereby the concept ‘crime does not pay’ is nowadays outdated. The objective of punishment should not be to serve as a deterrent, but to act as a rehabilitation tool. In the case in question the Court of Magistrates (Malta) as a Court of Criminal Judicature completely ignored this principle and the punishment inflicted on the applicant is excessive for the particular circumstances of the case. Applicant did not benefit from a mitigation in punishment, although he registered an admission plea at a very early stage in the proceedings. Moreover, applicant is a person of good character, and does not have any pending proceedings with the police.”

6. Applicant Blessing Johnson Zale’s grounds of appeal are as follows:

“That primarily, the Court of Magistrates (Malta) as a Court of Criminal Judicature, did not take into account the early admission of the applicant, thereby saving precious time and money of the Court, and hence applicant did not benefit from a mitigation of punishment. Applicant has a clean conduct sheet, co-operated unconditionally with the police whilst investigating this incident, and in actual fact, in less than two days, applicant was arraigned in Court, brought to justice and sentenced.

“One is to take into account the fact that the incident in question lasted a matter of minutes, at the private residence of applicant and her husband. Sunday Johnson was in a state of drunkenness and he was not in complete control of his actions, as stated by himself *a tempo vergine* in his statement. Moreover, Sunday apologised with the police in his statement showing a sense of remorse to the whole incident. Applicant Blessing was in a state of panic when the whole incident happened in front of her eyes.

“That secondly, and without prejudice to the above with reference to the punishment inflicted on the applicant and his wife, without any doubt such punishment, taking into consideration of the circumstances of the case, is a punishment which shifts very much on the high side. Applicant humbly submits that one has to take into consideration the injuries suffered by the policemen, which injuries were of a slight nature, as evidenced by the medical certificates

exhibited in the acts of the case, marked as documents ‘Dok KP5’ and ‘Dok KP6’.

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7. This Court has had occasion to remark several times that appeals against punishment following the entering of a guilty plea will only be considered favourably in exceptional cases. It is not the function of this Court as a Court of appellate jurisdiction to disturb the discretion of the First Court as regards the quantum of punishment unless such discretion has been exercised outside the limits laid down by the law or in special circumstances where a revision of the punishment meted out is manifestly warranted.

8. Now, in its judgement the first Court stated that it was taking into consideration “the fact that the accused admitted to the charges at a very early stage of the proceedings, the fact that they co-operated with the police, and apologised for the incident, and that although they have been living in Malta since 2011, they have a clean criminal record”. In other words, most of the factors that appellants mention as not having been taken into consideration by the first Court were in fact taken into consideration.

9. The first Court, however, deemed fit to impose an effective term of imprisonment because it deemed that this was a case where two police officers who were carrying out their lawful duties were slightly injured. This Court has examined the evidence available, namely the medical certificates and the statements which appellants made to the Police.

10. As to the medical certificates, that relating to P.C. Evan Grech states that this police constable was found to have suffered “superficial chemical (pepper spray) burns over right and left forearms”. There is no evidence to suggest that pepper spray was used by any one of appellants. The only conclusion that can be reached is, therefore, that P.C. Grech was accidentally sprayed by one of his colleagues. As regards P.S. Mario Mercieca, the medical certificate states that he suffered “brix superficjali fuq id-driegħ tal-lemin” and “brix superficjali fuq is-sider”; these are injuries of a slight nature. Reference has necessarily to be

made to the only evidence available as to the incidents which took place on the night in question, i.e. appellants' statements.

11. It would appear that appellants, who live in Birzebbugia, were being rowdy in their flat and neighbours informed the Police who went to appellants' residence and took appellant Sunday Johnson to the Birzebbugia police station. He was accompanied by his wife. Appellant Sunday Johnson, who admits to having been drunk – he says that he wanted to drink to forget the pain he had in his penis – (it is to be pointed out that intoxication does not constitute a defence to any criminal charge, save in the circumstances mentioned in article 34(2) of Cap. 9 of the Laws of Malta, which circumstances do not subsist in this case) says that the police were hitting him and he was defending himself, pushing the police so that he could run away. Appellant Blessing Johnson Zale says that she did not fight the police, that the police were trying to arrest her husband and were fighting with him. When she saw this she tried to pull the police away from her husband. She held a policeman from his shirt to leave her husband alone. She asserts in her statement: "I dragged the police because they were pressing the neck of my husband and told them to leave him alone. I did this because I knew that my husband was sick, very serious, he has sickness in his part."

12. It is true that appellants admitted to all the charges brought against them, but, as indicated in paragraph 10, it would not appear that P.C. Grech suffered his injuries through any act of appellants. Moreover, as regards P.S. Mercieca, it is unclear who of appellants inflicted the injuries mentioned above. In the Court's opinion, the situation with which the police were faced seems to have been mishandled.

13. In view of the above, while the finding of guilt cannot be altered once appellants admitted to all the charges, this Court finds that the punishment must necessarily be reviewed.

14. For these reasons, the Court reforms the appealed judgement, revokes it in so far as it condemned both appellants to six (6) months imprisonment and instead condemns them to a period of four months imprisonment, which sentence shall not take effect unless, during the period of one year from today, appellants Sunday Johnson and Blessing Johnson Zale commit another offence punishable with imprisonment. The court explained to appellants in ordinary language their liability under article 28B of Cap. 9 of the Laws of Malta if during the operational period they commit an offence punishable with imprisonment. The Court points out to the Registrar his duties in terms of article 28A(8) of Cap. 9 of the Laws of Malta.