



COURT OF CRIMINAL APPEAL

JUDGE

The Hon. Dr. Antonio Mizzi LL.D., Mag. Juris (Eu Law)

Appeal no. 178/2016

**The Police
Vs**

Stoyan Nikolaev Stoyanov

holder of identity card number 51837 (A)

This, 26th September, 2018.

The Court,

Having seen the charges brought against the appellant Stoyan Nikolaev Stoyanov before the Court of Magistrates (Malta) :

on the 21 July 2015 at about 2.4 whilst in the Balkanika Food Store in St. Paul's Bay

1. Assaulted the person of Ilko Todorov with a hard object that is a cash register and caused him slight injuries as certified by Dr. S. Arian MD of Mater Dei Hospital;
2. Also accused with having on the same date time place and circumstance committed theft of currency to the detriment of Daniela Todorova Mlekanova which amount is more than Euro 112 but less than Euro 233;

3. Also accused with having on the the same date time place and circumstance committed voluntary damage on a cash register speaker system and on a scale which damages amount to Euro 648.99 to detriment of Daniela Todorova Mlekanova;

4. Also accused with having on the same day time place and circulstance uttered insults and/ or threats to Ilko Todorov and to Daniela Todorova Mlekanova not otherwise provided for in this code or if provoked carried such insults beyond the limit warranted by the provocation;

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 7th April, 2016, by which, the Court, whilst acquitted the offender Stoyan Nikolaev Stoyanov from the second (2) and fourth (4) charge, after seeing sections 221 (2) and 325 (1) (b) of the Criminal Code, found him guilty of the first (1) and third (3) charge and condemned him to one year imprisonment which by application of article 28 (1) of Chapter 9 of the Laws of Malta is being suspended for a period of three (3) years from today.

In terms of section 28H (1) of Chapter 9 of the Laws of Malta, the Court also ordered the offender to pay injured party Daniela Todorov Mlekanova the sum of six hundred and forty eight euro and ninety nine cents (€648.99) within six (6) months from today.

The Court also bind Stoyan Nikolaev Stoyanov to hold peace with Ilko Todorov and Daniela Todorova Mlekanova and also not to molest them in any way under a penalty of one thousand euro (€1000) for a period of one year from today.

In accordance with sections 28A (4) and 28H (7) of Chapter 9 of the Laws of Malta, the Court explained in clear and simple language the meaning of this judgement to the offender, and the consequences which would follow if he fails to abide by it, that is if he commits another offence which is punishable by imprisonment within the operative period, and/or if he fails to pay the injured party the amount prescribed above within the time limit stipulated above.

Having seen the application of defendant Stoyan Nikolaev Stoyanov filed on the 14th April, 2016, wherein they humbly pray this Court to reform the said judgement in that it confirms the part of the judgement where the accused was acquitted from the second and fourth charges and nullifies, revokes and cancels that part of the judgement which found and thus acquit him from all charges.

That the grounds of appeal of defendant i consist of the following:

1] The parte civile, and witnesses for the prosecution indicated different dates as to when the incident actually took place. The doctor and the police indicated the 21 of July 2015 wherein the parte civile all mentioned the 20th of July 2015. Quite astonishingly the Court held that '... the Court does not have any doubt on when the incident happened ..'. It is obviously clear that someone had messed up the dates in this particular case, and the appellant fails to understand why the Magistrate who decided, chose to decide that the correct date was that indicated by the police and the medical certificate and not the date indicated by the alleged victims. It seems, unfortunately, that the First Court chose for no justified academic reason to believe that the correct date was that indicated in the police report and medical certificate because in that manner, by choosing the 21st of July, the date mentioned on the charges would have been justified. The accused can confirm that in actual fact the incident date was the 20th July 2016 and not as mistakenly indicated by the First Court;

Moreover, the charges indicated a specific date. A confusion in the dates to say the least created a reasonable doubt as to when the incident took place. In lieu of the said confusion the First Court was duty bound to acquit and not decide to unilaterally choose the date which conveniently for the prosecution was indicated in the charges. Consequently, the appellant respectfully submits that he should have been acquitted from all accusations.

Having seen the records of the case.

Having seen the updated conviction sheet of the defendant.

Now therefore duly considers,

Case law about the date in the writ of summons

According to our case law the date indicated in the writ of summons cannot be changed after the submissions of the defence (Judge J. Galea Debono -Police vs Rita Zammit)decided on the 14.04.2005 by the Court of Criminal Appeal) though the Prosecution may request changes in the details of the summons while the defence is underway.

Other cases insist that the charges really fall within the parameters of the dates indicated. In fact, in the case the Police vs Michael Cini decided by Judge V. Degaetano on the 20th July, 2004 (Court of Criminal Appeal Inferior Jurisdiction), it was held that *‘Although in his statement to the Police as well while testifying in Court the appellant had admitted that there were occasions when he had shared the resin with other people, the records nowhere reveal that this trafficking took place between the 4th April , 2002 and in the month before that.’* The Court therefore, held that this ground of appeal should be accepted.

In this case we did not have a change of date after the submissions made by the defence. Nor do we have any discrepancy between the dates indicated and the evidence as was shown in the case referred to in the previous paragraph. Nor do we have any mistake committed by the Prosecution when using the letters ‘am’ or ‘pm’ because the times indicated is ‘02.45’ which is the twenty-four-hour clock. In fact, no am or pm appear.

Facts of the case:

As to the facts of this case the affidavits refer to the time 02:45 of the 21st July, 2015 when the report reached the Qawra Police Station from the Police headquarters. The medical certificate indicates the time 4:10 of the 21st July, 2015.

Apart from the three affidavits and the doctor’s certificate the people who testified were:

- a) Iko Todorov (Fol . 28-34)
- b) Daniela Todorov Mlekanova (Fol 35-39)
- c) Ivelina Todorov (Fol 40-44)
- d) Malcolm Caruana before the Court of Criminal Appeal .

Of these four only the victim referred to the date of the 20th July, 2015 . The rest did not mention the date at all. In the appeal application the appellant asserts ‘ Wherein the part civile all mentioned the 20th July, 2015’. The transcriptions do not reflect this assertion at all because only one person mentioned the 20th July, 2015.

This Court will not delve into what the witnesses said because the facts of the incident are not being contested by the appellant. His only ground of appeal is about the doubt as to the date of the actual event.

According to the affidavit of WPS F. Quattromani, after the call from the Police Headquarters at 02:45, she proceeded to the place of the crime with two other officers. They found the victim Ilko Todorov ‘*With an amount of blood oozing out of his head*’.

The affidavit by PC 312 Joseph Sultana also confirms that blood was still oozing out from the victim’s head.

These details show that the Police had gone to the place immediately after the phone call from the Police headquarters. The distance from the Qawra Police Station to the store is just a few minutes away. And the most important point -blood was still oozing from the victim’s head.

This detail shows that not much time had passed since the attack on the victim and hence, like the Court of Magistrates, this Court is morally convinced that the date indicated is the correct one.

Above all, when there is a conflict about the details of the crime or of the time the Court does not necessarily have to acquit. This was also held in the case Carmelo Farrugia v Rokku Farrugia, Civil Court, decided on the 24th November, 1966 by Judge Maurice

Caruana Curran. It is the duty of the Court to analyze any such details and to establish whether one version is more morally convincing than the other. It should only acquit where it cannot reach any conclusion which is morally convincing. It is true that the alleged victim referred to the date 20th July, 2015 but one must keep in mind that the alleged victim may not have been aware of the change of date as the incident took place after midnight.

Consequently, the Court is not upholding the appeal of Stoyan Nikolaev Stoyanov and is confirming the judgement of the first Court.