



Criminal Court of Appeal

Hon. Judge Dr. Edwina Grima, LL.D.

Appeal Nr: 41/2022

The Police

(Inspector Jean Paul Attard)

Vs

Xiaoduo Ye

Today the 28th day of October 2022

The Court,

Having seen the charges brought against Xiaoduo Ye before the Court of Magistrates (Malta) as a Court of Criminal Judicature charged with having on the 15th of December 2021, throughout various times in St. Julians, Malta;

1. Reviled, or threatened, or caused a bodily harm to PC 547 D. Sacco, PC 479 F. A. Portelli, PC 1005 R. Scicluna, PS 922 V. Medati, PC 297 C. Farrugia, OC 1468 D. Pace, PC 1200 K. Tufigno, PC 1023 F. Farrugia and PC 332 O. Galea who are 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 him in the discharge of such duty; *Article 95 of Chapter 9 of the Laws of Malta.*
2. Assaulted or resisted by violence or active force not amounting to public violence, PC 547 D. Sacco, PC 479 F. A. Portelli and PC 1005 R. Scicluna who are persons lawfully charged with a public duty when in the execution of the law or of lawful order issued by a competent authority; *Article 96(1) of Chapter 9 of the Laws of Malta.*
3. Caused slight injuries on PC 547 D. Sacco as certified by Dr. Abigail Hili (MD 4595) of Mosta Health Centre; *Article 221 of Chapter 9 of the Laws of Malta.*
4. Caused slight injuries on PC 479 F. A. Portelli as certified by Dr. Kelly A. Vella (MD 6420) of Mosta Health Centre; *Article 221 of Chapter 9 of the Laws of Malta.*
5. Caused slight injuries on PC 1005 R. Scicluna as certified by Dr. Kelly A. Vella (MD 6420) of Mosta Health Centre; *Article 221 of Chapter 9 of the Laws of Malta.*

6. Wilfully disturbed the public good order or the public peace; *Article 338 (dd) of Chapter 9 of the Laws of Malta*
7. Failed to abide by the provisions of the regulations about the mandatory use of medical or cloth masks; *Reg. 3 of Subsidiary Legislation 465.48 of the Laws of Malta*
8. 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, or in any manner whatsoever, unless such disobedience or interference falls under any other provisions of this Code or of any other law; *Article 338(ee) Chapter 9 of the laws of Malta.*

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature of the 8th of February, 2022 whereby the Court after having seen Article 17, 23, 31, 95, 221(1), 338(dd)(ee), 382A and 412C of Chapter 9, and Reg. 3 of SL 465.48 of the laws of Malta, declared the accused Xiaoduo Ye not guilty of charge number 2, from which charge he was acquitted, but guilty of all the remainder of the charges (number 1, 3, 4, 5, 6, 7, 8) and condemned him to an effective three (3) months imprisonment and to a fine of (€1,000) one thousand Euro. Furthermore, in terms of Article 382A and 412C of Chapter 9 of the Laws of Malta, for the purpose of providing for the safety of PC 547 D. Sacco, PC 479 F.A. Portelli, PC1005 R. Scicluna, PS922 V. Medati PC297 C. Farrugia, PC1468 D. Pace, PC1200 K. Tufigno, PC1023 F. Farrugia and PC332 O. Galea the injured person, for the keeping of the public peace and for the purpose of protecting the mentioned officers from harassment and/or other conduct which will cause a fear of violence, the Court is hereby issuing a restraining order against the accused Xiaoduo Ye who is particularly prohibited from molesting and/or approaching in any way or form the mentioned officers. This order shall take effect upon the judgement becoming *res judicata* and shall be for the maximum period prescribed by law. The Court explained to the accused the consequences at law should this order be breached. Furthermore, the Court ordered the forfeiture of the sword according to law.

Having seen the appeal application filed by the Attorney General on the 17th of February 2022, whereby this Court was requested to:

- 1) Cancel and revoke the same judgement where the appellant was found guilty of the charges 1, 3, 4 and 5 and instead to go on to acquit the appellant of those charges it deems were not proven to the required level at law and cancels the respective punishment.
- 2) Subsidiary and without prejudice to the above, only should this Honourable Court not find sufficient grounds to Cancel and Revoke the judgement in part or in its entirety, to instead go on to Reform the Judgement where the Court of Magistrates sentenced the appellant to three (3) months effective prison sentence and to a fine of one thousand (1,000) Euro and reform it to a less onerous sentence that reflects this case under appeal.

Having seen the grievances put forward by appellant in his appeal application.

Having seen appellant's conduct sheet filed by the Prosecution at the request of the Court.

Having heard submissions by the parties.

Having seen the acts of the proceedings.

Considers,

That the main grievance put forward by appellant in his appeal application is directed towards the merits of the case and the considerations which led the First Court to return a guilty verdict to the charges brought against him, excluding the second charge of which he was acquitted. Appellant laments that the evidence brought by the prosecution consisting mainly of sworn declarations or *affidavits* of the police officers involved in the altercation with appellant which led to the charges do not lead to

verdict of guilt beyond a reasonable doubt since it is not clear from such evidence what the nature of the injuries sustained by the said officers consisted of and whether these were sustained at the hand of accused. Consequently, the Court has re-examined the acts of the proceedings and this in order to be in a position to examine whether the evaluation of the evidence found in the acts as carried out by the First Court was reasonable and legally valid¹.

That from the acts of the proceedings the following evidence brought forward by the Prosecution emerges. Apart from the evidence tendered by the Investigating Officer Inspector Jean Paul Attard, the First Court heard the testimony of Cedric Attard from the Radisson Blue Resort and that of PS922 Valmore Medati. Together with this testimony tendered in open court, the Prosecution presented *affidavits* of the police officers involved in this incident and of the doctors who certified the injuries sustained by three of these officers.

Appellant at the time of the incident was a residing guest at the Radisson Blue Resort in St. Julians. It seems that although being asked by hotel staff to wear a mask whilst roaming in the public areas of the hotel due to covid health restrictions, appellant was not compliant with these repeated requests thus leading the hotel management to unilaterally terminate any contractual relationship with appellant and demanding that he evacuate from his room and the hotel premises. Appellant however once again refused to comply with these demands, necessitating hotel management to call for assistance from the police. From the evidence tendered by the police officers involved in the altercation with appellant it transpires that appellant refused even to obey police orders and upon the police confiscating a sword they found in his possession in his hotel room, appellant became aggressive towards the said police officers thus

¹ Ara, fost ohrajn, l-Appelli Kriminali Superjuri: Ir-Repubblika ta' Malta v. Rida Salem Suleiman Shoaib, 15 ta' Jannar 2009; Ir-Repubblika ta' Malta v. Paul Hili, 19 ta' Gunju 2008; Ir-Repubblika ta' Malta v. Etienne Carter, 14 ta' Dicembru 2004 Ir-Repubblika ta' Malta v. Domenic Briffa, 16 ta' Ottubru 2003; Ir-Repubblika ta' Malta v. Godfrey Lopez u r-Repubblika ta' Malta v. Eleno sive Lino Bezzina 24 ta' April 2003, Ir-Repubblika ta' Malta v. Lawrence Asciale sive Axiak 23 ta' Jannar 2003, Ir-Repubblika ta' Malta v. Mustafa Ali Larbed, 5 ta' Lulju 2002; Ir-Repubblika ta' Malta v. Thomas sive Tommy Baldacchino, 7 ta' Marzu 2000, Ir-Repubblika ta' Malta v. Ivan Gatt, 1 ta' Dicembru 1994; u Ir-Repubblika ta' Malta v. George Azzopardi, 14 ta' Frar 1989; u l-Appelli Kriminali Inferjuri: Il-Pulizija v. Andrew George Stone, 12 ta' Mejju 2004, Il-Pulizija v. Anthony Bartolo, 6 ta' Mejju 2004; Il-Pulizija v. Maurice Saliba, 30 ta' April 2004; Il-Pulizija v. Saviour Cutajar, 30 ta' Marzu 2004; Il-Pulizija v. Seifeddine Mohamed Marshan et, 21 ta' Ottubru 1996; Il-Pulizija v. Raymond Psaila et, 12 ta' Mejju 1994; Il-Pulizija v. Simon Paris, 15 ta' Lulju 1996; Il-Pulizija v. Carmel sive Chalmer Pace, 31 ta' Mejju 1991; Il-Pulizija v. Anthony Zammit, 31 ta' Mejju 1991.

leading to his arrest. During the process of his arrest, the police officers alleged that three of them (PC547, PC479 and PC1005) sustained slight injuries at the hand of appellant, the nature of which injuries result in the medical certificates exhibited in the acts and confirmed on oath by the doctors who issued the said certificates.

Appellant laments that from the evidence in the acts it is not clear whether the injuries sustained by the Police officers were a result of his aggressiveness towards them or the other way around, the police handling him in a rough manner when proceeding to his arrest and sustaining the injuries in the process. The Court deems that such a grievance is unfounded and this not only from the evidence of the police officers involved in this incident but most of all from the testimony of an independent witness being Mr. Cedric Attard employed as Chief Security Officer at the Radisson Blue Resort who attests to the fact that appellant lunged forward towards the police officers in an aggressive way thus necessitating that he be forcefully restrained. From the testimony of this witness, it transpires that appellant was exhibiting this strange behaviour even throughout his stay at the hotel, remaining immobile in the hotel gym for several hours, refusing to wear a face mask, arguing with hotel staff, and even with the lift itself, and being a nuisance even towards other guests. This problematic behaviour therefore led the hotel administration to terminate his stay. The Court unfortunately witnessed this strange behaviour from the part of appellant even throughout the hearing of the appeal proceedings.

From the affidavits of PC1023 F. Farrugia, PC332 O. Galea, PC479 F. A. Portelli, PC547 D. Sacco, and PC1005 R. Scicluna it is evident that when the police officers tried to confiscate the sword found in appellant's possession, appellant became aggressive towards them jumping onto PC332 thus leading the other police officers to try to restrain appellant and in the process sustaining slight injuries at appellant's hand. Moreover, although appellant had every right at law to call the said police officers to testify under cross examination as is his right at law in terms of article 360A of the Criminal Code, appellant never exercised this right and thus his allegation that the

injuries were not inflicted by him on the policemen, is not proven and this on a balance of probabilities. Thus, this first grievance is being rejected.

Considers furthermore,

That appellant in his second grievance laments that the punishment inflicted by the First Court was excessive, the said Court not taking into consideration that he is a first-time offender with a clean criminal record, a prison sentence therefore being too onerous in the circumstances.

The Court notes that appellant was arraigned in Court on the 16th December 2021, and was granted bail by this Court as otherwise presided on the 24th February 2022. Moreover, the punishment inflicted by the First Court is within the parameters laid out by law and therefore this Court finds no reason to vary the same, considering above all that accused's intransigent behaviour reflects a person who does not bow down to authority in any way and thinks that he can defy all and sundry adamant to have his way at all costs. Consequently, although it is true that appellant can be deemed to be a first-time offender however the serious nature of the violations of law of which he was found guilty combined with his non-compliant and obstinate attitude leading to bouts of aggressiveness can only be met with a severe punishment as rightly inflicted by the First Court. Therefore, even this grievance is being rejected.

Consequently, for the above-mentioned reasons, the Court rejects the appeal filed by appellant and confirms the appellate judgment in its entirety.

(Sgn) Judge

True copy

Joyce Agius

Deputy Registrar