



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.
CONSUELO-PILAR SCERRI HERRERA**

Sitting of the 12 th November, 2003

Number 640/2001

**The Police
Inspector David Saliba
V**

JOSEPH ANTHONY XUEREB

The Court

Having seen that the accused **JOSEPH ANTHONY XUEREB** aged tenty eight, son of Julius and Pauline nee Kavanagh, born in Clapham, Lambeth, United Kingdom on the tenth of October 1973 and residing at 50/5, St. Paul Flats, Cuschieri Street, Gzira, in possession of identity card number 458992M was arraigned before her accused with having in these Islands of Malta between the 21st and 23rd of October 2001, falsely devised the traces of an offence in such a manner that criminal proceedings may be instituted for the ascertainment of such offence.

For having on or during the same period and circumstances reviled or threatened a Magistrate, namely Dottor Miriam Hayman LL D in the exercise of her functions or because of her having exercised or with intent to intimidate or unlawfully influence her in the exercise of her functions.

For having on or during the same period and circumstances transmitted by post any postal article of any kind whatsoever or form, which is in any way threatening, offensive or libellous.

For having rendered himself a recidivist in accordance to section 49 and 289 of the Criminal Code having already been found guilty of an offence which was handed down on the 20th of April 2001.

For having committed an offence during the suspended period of a Court judgment given in terms of Section 9 of Section 152 which was imposed on him on the 20th of April 2001 which judgment was handed down by Magistrate Dottor Silvio Demicoli.

Moreover he is accused for having by means of any writing whether anonymous or signed on his own or in a fictitious name threatened the commission of any crime whatsoever.

Having seen all the documents exhibited in the acts of these proceedings in particular the relevant sections at law as indicated by the Attorney General in his note dated 24th of April 2002 exhibited in these proceedings at fol 119.

Having heard the accused declare that he has no objection to having his case decided by this Court.

The Court also heard the accused plead guilty to all charges brought forward against him by the Prosecution with the exception of the second charge referring to

reviling or threatening a Magistrate in terms of Section 93(1) of the Criminal Code.

The Court gave enough time to the accused to see if he wanted to retract his plea of guilt, however notwithstanding such time given to the accused for reconsideration, the accused registered a guilty plea in the sitting of the 21st of October 2003.

The Court heard the Defense and Prosecution make their submissions with regard to this charge of reviling a Magistrate and the appropriate punishment that the Court should award to the accused, for the offences it finds the accused guilty of.

The Court thus before going on to discuss the appropriate punishment that it should award in this case, felt it necessary to discuss the elements of the offence which the accused did not plead guilty to in particular the vilification of a Magistrate.

It is thus imperative for the Prosecution to prove the following elements of the offence under review in particular:

1. the threat must be done to a Magistrate;
2. in the exercise of his/her function or because of his/her having exercised his/her function or with intent to intimidate or unlawfully influence him/her in the exercise of his/her function.

Thus both elements have to be present in order for the Court to find guilt.

With regard to the first element there is no doubt that the subject of such a threat is a Magistrate in that it is Magistrate Miriam Hayman who today is still exercising her duty as a Magistrate.

Regarding this *soggetto passivo*, **Manzini** in his book **Trattato di Diritto Penale Italiano - vol. 8 - pg. 723** states when dealing with threats in general that:

"La tutela penale si estende a qualunque persona fisica che abbia le capacita naturale di sentire l'effetto psichico delle minacce."

In this case however, the subject has to be a Magistrate who is capable of feeling the physical effect of the threat.

The material element of this case is the way in which the threat was made in this case by a writing to the Magistrate telling her that she has contracted 'Anthrax'. This in itself, no doubt is definitely a threat especially during the period of time in which it was sent when there was a scare all over the world regarding this poisonous substance. No doubt either that the Magistrate as she herself stated, took the envelope she received with great seriousness so much so that she even informed the Civil Protection Department about it and spent four days in exile in confinement and this caused her great discomfort.

The *dolus* or *mens rea* of the offence of the threat consists:

- a. of the consciousness of the unlawful act namely the threatening of an unlawful harm in order to intimidate the *soggetto passivo*, and thus no specific intent is needed;
- b. the free will to commit that act.

Manzini says:

"E neccessario nell'agente la conoscenza dell'ingustizia della minaccia. Se egli errando anche colposamente, crede di agire iure, viene meno il dolo, perche pur rimanendo la volontarieta del fatto in se, manca la conoscenza di ledere un legittimo interesse altrui."

Manzini believes that if the threatener sincerely believes that he is behaving according to law, his threat would be short of *dolus* and consequently, it will not amount to an offence.

Thus it is the opinion of the Court that in the crime of a threat, the mens rea consists in the willful act of threatening someone with unjust harm in order to create in him a state of intimidation or fear. It is immaterial whether the threatener keeps his word or not. The fact that he is using adequate means to intimidate the subject is enough for the offence of threat to arise.

Manzini states that:

"Nel reato di minaccia l'intenzione e' implicita nell'azione, bastando la conoscenza e la volonta dell'azione stessa, per dare conto dell'elemento psicologico che occorre ad integrare il detto reato, indipendentemente dal fine specifico che il soggetto attivo vuole perseguire nei confronti del soggetto passivo."

Now, if one were to examine the statement released by the accused on the 25th of October 2001 exhibited in these proceedings by the Prosecuting Officer, and marked as document DS 2, one will immediately notice that the accused had contemplated sending this scare to the passive subject that is Magistrate Miriam Hayman for some time before he actually sent it.

He admits saying that he had heard of Magistrate Miriam Hayman from the local press when she was carrying out an inquiry with regards to the Ex Commissioner of Police.

He subsequently asked a fellow chamber maid of the hotel he worked in for some talcum powder, placed it in a plastic bag in an envelope and addressed it to Magistrate Miriam Hayman after writing a note to the effect "*Congratulations; you may have contracted Anthrax.*"

The accused being asked whether he had a motive for his actions, replied in the negative and said he wanted to play a joke and only realized the consequences of his act when he watched the news and saw the panic he caused.

From a close look at the evidence of Magistrate Miriam Hayman given on the 30th of October 2003, it transpires

that she felt threatened and felt rather uneasy. She explained how she was house bound for four days as ordered by the Civil Protection Department for a precautionary measure.

Undoubtedly thus, this Magistrate felt threatened and this all started because she attracted the accused's attention whilst she was exercising her duties in the inquiry of the Ex Commissioner of Police.

Thus the Court declares that she is finding the accused guilty of this offence.

With regards the appropriate punishment that the Court should award, the Court thought at length and this so that it would deliver justice and find a medium between the interest of society in particular the protection it should afford to its citizens and meeting out justice in punishing the accused for his unlawful behaviour.

The Court nominated a psychiatrist to examine the accused and **on the 8th April 2002 the Psychiatrist Doctor Joseph Vella Baldacchino presented his report** which the Court marked as document JVB which is exhibited at fol 96 of these proceedings.

From an examination of this report it results that the accused during the period of the commission of the offence was under due stress because of the demise of his younger brother in the United Kingdom. He had not known of his brother's death when it occurred because since he was very close to him, his relatives thought it would be better not to reveal such information. When eventually he got to know, he went through a bereavement process. He was feeling very angry because he did not pay his last respects to his beloved younger brother.

This witness explained that the accused was suffering from a depression, which was instigated by the illness which his brother caught, in particular cancer. He had a disturbed up bringing, having been brought up as an

orphan with his mother being an alcoholic and with suicidal tendencies, with a brother who is a criminal in and out of prison.

In the humble opinion of this expert, the accused was suffering from an adjustment disorder with mixed disturbances of emotions and conduct which adjustment incorporated the violation of right pertaining to others or of regular norms of society.

This expert went on to explain that although the accused had the intellectual and volitional powers required by law to be legally responsible for his actions, the accused was going through a very emotional state, acted upon impulse and that the accused was very sorry for the harm he caused which apology is not usually diagnosed in people suffering from such a condition.

The Court also heard the Psychiatrist Doctor Peter Muscat who is the personal doctor of the accused. **Doctor Peter Muscat explained** that the accused underwent a number of psychotherapy sessions which made him realize that his behaviour was totally inappropriate. The behaviour of the accused was indicative of a person who had trauma throughout his upbringing. However, in his opinion, he now no longer poses a threat to society and himself. He explained that it is only now that the accused understood the nature of what he had done and that at the moment of commission was unaware of the severity of his actions. It is only now that his behaviour is normal.

The Court also nominated the Senior Probation Officer Miriam Sevasta to draw up a pre sentencing report to help the Court in giving out an appropriate punishment and **on the 17th December 2001 Miriam Sevasta presented this report.** A thorough examination of this report confirms that the accused had problems in his childhood and grew up in the United Kingdom without a father figure and relations with him only got better when the accused came to Malta in 1992 when he was twenty one years old. Miriam Sevasta stated that the accused is happily married

with a daughter and contributes to his daughter's upbringing and is always in the company of his wife and child. She states that the accused is employed regularly as a Porter with the Waterfront Hotel in Gzira and that he was not dismissed from his work even though there are these proceedings going on. The Senior Probation Officer Miriam Sevasta confirmed this in the updated report presented in Court on the 21st July 2003 and explained that the accused was always employed. Miriam Sevasta stated that the accused had accepted that he had committed a wrong and that he regrets his action and apologizes for all the discomfort that he had caused to society and in particular to Magistrate Miriam Hayman. She explained that at no moment in time had the accused the intention to harm the Magistrate and that he only acted on impulse for a joke.

In her updated report the Senior Probation Officer Miriam Sevasta, suggested that in her opinion the appropriate punishment would be that of a Probation Order since the accused would benefit from such an order. She explained that the accused always corroborated with her and went to all the meetings she had organized with him. She stated he was very co-operative and even after she drew up the report he remained in contact with her on a regular basis and that he had committed no other offences since his arraignment in Court.

The Court heard Joseph Camilleri testifying on the 23rd May 2003 and say that he was the past employer of the accused. He said that he knew the accused to be very honest, loyal and a gentleman, so much so, that he even trusted him with the closing up of the shop on a daily basis and only made the accused redundant when his work load reduced considerably.

Joanne Xuereb, the wife of the accused who very often accompanied the accused to Court for his sitting, **explained** the impact these proceedings had on the accused and that it is only today, two years after the commission of such offence, that the accused is getting

back to normal working hard and looking after his daughter.

Julius Xuereb the accused's father **described** his son as a weak person because he was faced with great problems in his youth.

In view of the above the Court after having seen all the relevant sections at law as indicated by the Attorney General in his note of the 27th April 2002 a fol 119 namely articles 93(1), 110(2), 249(1), 49, 50, 31, 17(b), 20, 22, 23, 28A to 28H and 533 of Chapter 9 of the Laws of Malta and Section 26(d) of Chapter 254 of the Laws of Malta, declares it finds the accused **JOSEPH MARY XUEREB guilty of all the charges brought forward against him and decides to give him a second chance and puts him under a Probation Order for the maximum period of three years in terms of section 7(1) of Chapter 446 of the Laws of Malta.**

This, the Court is doing because it is satisfied that the supervision of the offender by a Probation Officer is desirable in the interest of securing the rehabilitation of the offender and protecting the public from harm from the offender and preventing the commission of other offences.

The conditions of the order are the following:

- a. that he keeps regular contact with the Probation Officer who will be nominated by the Director of Probation Services and thus should attend all meetings fixed by such officer;
- b. that he attends a psychiatrist of his choice at least once very six months throughout the probationary period of three years and do what he is told by such psychiatrist;
- c. that the above mention probationer appears before the Court together with the Probation Officer once every six months so that the Court may have direct control over him.

The Court also orders the accused to pay a multa of two hundred and fifty maltese liri [LM250].

Informal Copy of Judgement

The Court orders that a copy of this judgment is served to the Director of Probation Services so that in terms of Section 7(8) of Chapter 446 of the Laws of Malta, such Director may assign a Probation Officer to be responsible for the supervision of the probationer.

The Court explained the importance of this judgment to the accused in terms of Section 7(7) of Chapter 446 of the Laws of Malta and what would happen should he fail to adhere to it.

< Final Judgement >

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