



COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICIATURE

DR TONIO MICALLEF TRIGONA LL.D., Mag. Juris (EU Law)
MAGISTRATE

765/00

This 6th day of November, 2001.
The Police
(Inspector Geoffrey Azzopardi)
vs
Zoran Stevanovic

The Court:

Having seen the compilation proceedings against the accused son of Rastko and Olga nee Nikolic, born in Belgrade and residing Birzebbugia, with having:

a) On November 18, 2000, in Mosta at about 7.30 a.m. with intent to commit a crime, i.e. the crime of grievous bodily harm on the person of Gordon Pace of Sliema, manifested such intent by overt acts which were followed by the commencement of the execution of the crime, when by means of a pointed and cutting instrument (scissors) dealt several blows towards the vital parts of the anatomy of Gordon Pace which crime was not completed in consequence of some accidental cause independent of his will;

b) With having on the same, date, place, time and circumstances, without a lawful order from the competent authority, and saving the cases where the law authorises private individuals to apprehend offenders, arrested, detained or confined Gordon Pace against his will, which arrest, detention and confinement was subjected to an attempted grievous bodily harm and was threatened with death;

c) With having on the same date, place, time and circumstances threatened Gordon Pace with a pointed and cutting instrument (scissors) and took up said weapon against said person;

d) With having on the same date, place, time and circumstances kept and carried a pointed and cutting instrument (scissors) without a licence of the Commissioner of Police;

e) With having on the same date, time and circumstances at the time of his committing a crime, i.e. the attempted grievous bodily harm against Gordon Pace, had on his person a pointed and cutting instrument (scissors).

Having seen the articles of law issued by the Attorney General for committal of the accused (folio 102).

Having heard prosecuting officer declare that he had no further evidence and the accused that he had no objection that the case be heard and decided by this court.

Having heard the evidence including the accused on oath.

Having examined the records of the proceedings and having heard final submissions of the prosecuting officer and defence counsel.

Considers:

The committal by the Attorney General charges the accused with attempted grievous bodily harm, illegal arrest, of being in possession of a cutting instrument without a licence from the Commissioner of Police, and uttering threats.

The crimes to which the charges relate are alleged to have happened on November 18, 2000, inside a warehouse, the property of 'BAM Ltd'. The person against whom the above mentioned offences are alleged to have been committed is Gordon Pace. Evidence shows that both the said Pace and the accused were employees of the above mentioned company. On the day in question the accused was meant to make some deliveries for the company in Gozo and had agreed to meet complainant at the warehouse. There is no doubt that an argument ensued between the two men because complainant had arrived late. It is on the entity of the argument and its consequences which require to be examined by this court in the light of the charges against the accused.

Evidence on this is conflicting in that the court has only the opposing versions of the two persons as to what actually took place inside the warehouse. The only other witness produced by the prosecution, in the person of one Robert Magro, is, in the court's opinion, inconclusive, in so far as the prosecution's case is concerned, there being no practical inference which the court can rely upon from the fact that complainant had emerged

from the warehouse uttering the words “he wanted to kill me”; this in the context of the witness having stated that when he knocked on the garage door there was no shouting or any commotion coming from inside the warehouse but merely voices. Nor, in the court’s opinion, can any useful inference be taken from the conflicting time element which results from the various testimonies.

It is a fundamental concept in criminal proceedings that the burden of proof rests with the prosecution. The proof must be conclusive and neither conjecture nor supposition can satisfy the prosecution's burden to prove its case. Whether considered piecemeal or cumulatively the required proof in this case cannot lead to accused’s conviction for the charges adduced against him.

In brief there is not sufficient evidence to sustain the attempted grievous bodily harm and in this context no cogent proof exists as to the possession, let alone the use, of a pointed instrument. Neither is there the slightest evidence to sustain the second charge concerning the illegal arrest. And in so far as to the offence relating to the threats, mentioned in the Attorney General's committal, as consisting in either a crime or a contravention, the evidence produced is conflicting when examined as constituting a contravention, while there is no evidence that it can subsist under section 249(2) of Chapter 9.

For these reasons the court decides that it does not find the accused guilty of any of the charges adduced against him and acquits him.

A. M. Trigona
Magistrate.

I declare that I have transcribed honestly and faithfully, and to the best of my knowledge the registration of the tape.

Albert P. Calleja,
Deputy Registrar.