



**QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI**

**MAGISTRAT DR.
JACQUELINE PADOVANI**

Seduta tal-11 ta' April, 2011

Numru 283/2007

**POLICE
INSPECTOR PIERRE MICALLEF GRIMAUD
VS
OKEAKPU CHINONSO JUDE**

The Court, having seen the charges brought against Okeakpu Chinonso Jude , 27 years, son of Emanuel and Maria, born in Nigeria on the 8th of October 1979, residing at St Joseph Flats/3 Triq l-Imhar, St Paul's Bay, holder of passport No. A2276445 and:

Charged him for having on the 5th of April 2007 at about 1.15pm, in Valletta, wilfully caused grievous bodily harm to the body or health of another person, namely PC 372 Jurgen Vella;

Charged him for having on the same date, time, place and circumstances disobeyed the lawful orders of any

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authority or of any person entrusted with a public service, or hindered or obstructed such person in the exercise of his duties;

And also charged him for having on the same date, time, place and circumstances, escaped from Police custody whilst being escorted to the nearest police station.

Having heard the evidence on oath.

Having seen the articles of Law and offences cited by the Attorney General on which the Court may adjudicate the accused. Having seen the note in the record of the proceeding of the 15 of June 2009 wherein the accused found no objection to being adjudicated by this Court.

Having heard oral submissions.

Deliberates:

The evidence of PS 1218 Ray Vella (at page 13 et seq.) is to full effect that on the day in question, the police received a request for police assistance for Alfred Bugeja. PS 1218 went on site together with PS 1444, PC 372 and PC 1474 and found the accused on his knees, begging Alfred Bugeja's permission to see his daughter. Alfred Bugeja was shouting at him to clear off and to give him all his daughter's possessions – which included her ID card. Bugeja also informed the police that his daughter was pregnant with the accused's child. PS 1218 said that Bugeja asked his daughter whether she wanted to go and live with the accused but she refused. PS 1218 said that he managed to calm the situation and requested the accused to accompany him to the Police Station so as to make arrangements or transfer of the girl's possession to Alfred Bugeja. PS 1218 exhibited Doc PS, the 'police report on the incident'.

PS 1444 Kenneth Brignano confirmed the testimony given by PS 1218 and stated that whilst they were escorting the accused to the police station, the accused opened the police car door and ran away.

PC 372 who was on guard duty at Castille tried to stop him but the accused pushed him and PC 372 fell and injured his hand. The accused was apprehended near the Central Bank of Malta.

PC 372 Jurgen Vella confirmed the evidence of PC 1444, how he saw the flight of the accused, how he reached him and was pushed and fell down, and how he apprehended the accused near the Central Bank. PC 372 stated that his wrist was fractured and required surgical intervention. PC 1474 Xerri at page 27 confirmed the evidence of his colleague.

Alfred Bugeja confirmed the evidence of the police. He said that he had received a phone call from the accused informing him that his daughter was pregnant, that her boyfriend was not the father of the child and that he had fathered the child. Bugeja admitted that he was very angry with the accused for his daughter was just 18 years old and refused to talk to the accused. The accused referred to have and kept knocking on the door. Bugeja decided to phone the police

Gianella Bugeja, daughter of Alfred Bugeja testified that the accused had gone to her father's house to request her hand in marriage but that her father refused to let him in. The accused kept knocking on the door, and begging on his knees to talk to him. She stated that she was pregnant, that the accused was the father of her child and that she wanted to marry the accused. She confirmed that when the police came home, she felt confused and afraid and told the police that she wanted to remain in her father's house. At page 39 she said that the entire family was opposed to the marriage.

The medical certificates Dok MDH accepted by defence as duly authenticated, confirm the fracture of the wrist which necessitated a surgical intervention.

The accused confirmed that he had gone to his girlfriend's home to ask for her hand in marriage. However Alfred

Bugeja called for the police and they took him away. The accused said that he panicked and ran out of the car towards Castille and that a person tried to stop him, they bumped into one another, as a result of which this person fell to the ground. The accused said he continued running until he was cornered by the police. The accused said that he was about to jump of the bastions but the police managed to calm him down.

The accused stated that he never realized that the person who tried to approach him near Castille was a police officer.

Deliberates:

The evidence produced in this case clearly shows that on the night in question, the world collapsed around the accused.

He had found out that his 18 year old girlfriend was pregnant and had decided to ask her father for hand on marriage, knowing that his future father in law was the notorious Porporina. He was refused an audience, but kept on knocking at the door and begging on his knees to be heard. Bugeja called the police. At this point in time, Bugeja asked his daughter to make her choice. Gianella Bugeja panicked and became confused and chose to stay with her father.

The accused was asked to proceed to the police station so that arrangements be made regarding Gianella's personal effects.

The police testified that the accused was emotionally shattered and was weeping in the police car. In a flash he jumped out of the police car and ran first towards Castille where PC 372 tried to approach him, tried to apprehend him but he turned towards the bastions and was about to jump off. It was only the prompt action of the police who managed to calm him down that Okeakpu still lives to tell the tale.

Deliberates:

It is the considered opinion of this Court that had PC 372 not hurt his hand, this case would never have come before these Courts.

Indeed the evidence of all the police officers was to the effect that the accused was never arrested but only asked to accompany them in order to make suitable arrangements for the transfer of Gianella Bugeja's personal effects.

In absence of an arrest and therefore police detention, there can be no 'escape' from police custody or detention.

There is no doubt in the Court's mind that the injuries sustained by PC 372 Jurgen Mallia were unfortunate as well as grievous in nature. The medical certificates and reports of surgical intervention that ensued is clear.

The Court however questions whether the accused had the generic intention to cause any harm at all.

Indeed in the judgement of the Criminal Court of Appeal, per Judge Joseph Galea Debono, in the case **The Police versus Victor Buttigieg**, decided on the 19th of May 2005, it was held that in circumstances of flight from the police, injuries to members to the Police Force were at best "involuntary":

"Tibqa' pero` il-*vexata questio* jekk bl-agir tieghu l-appellant kienx ipprova deliberatament jikkaguna offiza ta' natura gravi fuq il-kuntistabbli liema reat ma sarx minhabba xi haga accidentali w indipendenti mill-volonta` tieghu. L-appellant jichad li kellu din l-intenzjoni. Illi hu pacifiku li l-intenzjoni f'kazijiet bhal dawn tista' tigi dezunta mic-cirkostanzi, izda, fejn dan ic-cirkostanzi ma jkunux univoci w jkun hemm id-dubju dettat mir-raguni dwar il-vera intenzjoni tal-akkuzat, dan id-dubju ghandu jmur favur l-akkuzat. Fil-kaz in ezami una volta li l-Pulizija kien mal-genb tal-car kif jghid hu stess jista' jindika li l-

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appellant ma kellux l-intenzjoni li jtajru izda biss li jizgicca minn magenbu. B'dana kollu anke jekk ma kellux l-intenzjoni li jikkagunalu offiza ta' natura gravi, seta' u kellu jipprevedi li bis-sewqan tieghu ser jaghmillu xi hsara u f'kaz ta' intenzjoni generika li wiehed jaghmel hsara fuq il-gisem, il-principju regolatur hu li "*dolus indeterminatus determinatur ab exitu*".

Therefore the Court finds the accused not guilty of the first charge of wilful grievous bodily harm however guilty of involuntarily bodily harm, not guilty of the second and the third charge brought against him and acquits him of the same and after having seen Art 225, 226 (1) (b) Chapter 9 of the Laws of Malta, Art 7 Chapter 446 places him under a Probation Order for a period of two years under the supervision of the Director of Probation Services or any other probation officer nominated by him.

< Sentenza Finali >

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