



MALTA

COURT OF MAGISTRATES
(GHAWDEX) AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR.
ANTONIO MICALLEF TRIGONA

Sitting of the 4th July, 2014

Number 578/2014

Police

(Inspector Trevor Micallef)

vs

Mina Behzadi Tehrani

Andea Yazmin Carvajal Maturana

The Court,

Having seen the charges brought against the accused (holder of foreign passport number 45682648 and 87036112 respectively) with having on these islands on the 18th June 2014 at about eleven in the evening (11.00pm) in St George's Road St Julians:

1. reviled, threatened or caused bodily harm on a person lawfully charged with a public duty, while in the act of discharging his duty or because of having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty – Article 95 of Chapter 9 of the Laws of Malta);

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2. on the same date, time, place and circumstances assaulted or resisted by violence or active force not amounting to public violence against persons lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority (Article 96 of Chapter 9 of the Laws of Malta);
3. on the same date, time, place and circumstances willfully disturbed the public good order or the public peace (Article 338/dd of Chapter 9 of the Laws of Malta);
4. on the same date, time, place and circumstances disobeyed the lawful orders of any authority or of any person entrusted with a public service or hindered or obstructed such persons in the exercise of their duties or otherwise unduly interfered with the exercise of such duties either by preventing them from doing what they are lawfully enjoined or allowed to do or frustrated or undid what has been lawfully done by them or in any other manner whatsoever (Article 338/ee of Chapter 9 of the Laws of Malta);
5. on the same date, time, place and circumstances in a public place or a place open for the public where found in a drunken state (Article 338/ff of Chapter 9 of the Laws of Malta);

Having seen the Attorney General's request that the case be heard summarily to which accused did not oppose;

Having heard the evidence;

Having heard submissions:

Considers:

Accused were arraigned under arrest on the 19th June of the current year and charged, 'inter alia', with having vilified, threatened and caused bodily harm against public officers, as well as for having assaulted or resisted same public officers. The relevant articles of law are Article 95 and 96 of the Criminal Code amended recently wherein the punishments have been increased to better reflect the gravity of the crime. Other charges relate to contraventions, which the Court shall consider in the latter part of this judgment.

Turning to the two serious offences with which the accused are charged, on examination of the evidence, it would transpire that it was the police officers involved who precipitated events and mishandled the incident. On the night in question the accused were celebrating Chile's victory over Spain holding each from one end a clothed Chilean flag bereft of a stick. At one point, the waving of the flag got too close to a police officer identified as Sergeant Major 1450 Mario Rotin who took it away from the accused and passed it over to WPs139 Chantelle Costa. This, as far as the Court could determine, is the sole factor that is evinced from the footage of the video tape exhibited in the acts of these proceedings.

The salient points that emerge from the police officers' testimony are:

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1. that the flag at one point came close to the Sergeant Major's face, the Sergeant Major insisting that it brushed his face forcing him to bend his head backwards and acknowledging that he grabbed it from the accused Tehrani's hand and gave it to WPs319;
2. That having done so the same Tehrani asked him that the flag be returned touching the peak of his hat and, according to the Sergeant Major, addressing him with the words "why you act so stupid asshole!". The Sergeant Major states that the hat fell to the ground;
3. at this exact moment Pc 488 intervened holding accused Tehrani from her hands and putting her down on the ground applying handcuffs to her wrists, adding, that when he stood up and turned he was hit on the face by the other accused, correcting himself, that it was his cap that was hit which made him fall and which led the female police officer to arrest the co-accused;

That the Court notes some material inconsistencies in the testimony of the police officers.

That the accused besides having released a statement to the prosecuting officer, who it must be said, was exemplary in his treatment of the accused, both give a grim account of how they were treated by the police officers who arrested them which leads the Court to order that this judgment together with their evidence and that of the police officers be transmitted to the Minister responsible for the Police and the Police Commissioner for whatever disciplinary action they would deem proper to take against the police officers involved.

But, having said this, and without going into the merits of the Sergeant Major's reaction to the flag having brushed his face, the Court finds no justification on the part of the accused Therani in uttering those words attributed to her and said to have been addressed to the Sergeant Major irrespective whether she called him 'asshole' or 'silly'. Nor can she be justified in having touched his hat whether in jest or otherwise which also applies to the other accused Maturana for having done so to Pc488.

However, despite this, the Court affirms that the first two charges have not been proven according to their constituent elements. Nor is the Court satisfied that the contraventions as proffered against the accused according to the charge sheet have been proven according to law.

Consequently, acquits both accused of all the charges brought against them.

< Final Judgement >

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