



MALTA

COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR.
JOSETTE DEMICOLI

Sitting of the 29th September, 2014

Number. 350/2012

The Police

(Inspector Joseph Mercieca)

(Inspector Jason Sultana)

Vs

Idris Sayid Ali

Magistrate Dr Josette Demicoli

29th September 2014

The Court,

Having seen the charges brought against the accused Idris Sayid Ali, 24 years, son of Idris and Safia, born in Somalia on the 3rd January, 1988, and residing at the Marsa Open Centre, Xatt il-Mollijiet, Marsa, holder of Maltese id. Card no. 43877A with having on the 18th March 2012, at about 11.45p.m. in Triq ix-Xatt, and/or in the wherabouts thereof, in Gzira:

1. with intent to commit a theft, manifested such intent by overt acts which were followed by the commencement of the execution of the crime, which crime was not completed in consequence of some accidental cause independent of the will of the offender and, if executed, it would have been to the detriment of Khaled Abulkasem and/or any other person/s;
2. without a lawful order from the competent authorities and saving the cases where the law authorizes private individuals to apprehend offenders, arrested, detained or confined Khaled Abulkasem against his will;
3. at the time of committing a crime against the safety of the government or against the person (other than involuntary homicide or involuntary bodily harm) or of theft or injury to property (other than involuntary injury to property); or at the time of being arrested for a crime, he had on his person any arm proper or ammunition or any imitation thereof;

4. carried outside any premises or appurtenance thereof, a knife or a cutting or pointed instrument, of any description, without a licence or permit from the Commissioner of Police;
5. uttered insults and/or threats in regard to Khaled Abulkasem or, on being provoked, carried his insults beyond the limit warranted by the provocation.

Having seen all the acts and documents exhibited;

Having seen the Attorney General's consent that this case be dealt with summarily and that the accused has no objection that the case be tried summarily.

Having heard the prosecution and defence counsel make their submissions.

Considers:

The accused is being charged with attempted theft, with having detained Khaled Abulkasem against his will, that he was carrying a knife whilst committing a crime and this without a licence from the Commissioner of Police and that he uttered insults and/or threats in regard to Khaled Abulkasem.

The Court is faced with two conflicting versions. Khaled Abulkasem's version of events when he filed the report was that whilst he was walking near the KFC outlet in Gzira, he met the accused and asked him for a lighter. The accused replied that he did not have a lighter and so

the alleged victim began walking towards Testaferrata Street with the accused following him. Suddenly, the accused started hurling insults towards the alleged victim. Then, the accused went onto Khaled Abulkasem, took out a knife and put it at Khaled Abulkasem's neck and requested money from him. Khaled Abulkasem testified that he reacted immediately by pushing away the accused. A Police vehicle passed by and asked the Police for help.

The accused did not testify in these proceedings. However, it transpires from his statement that he denies the charges except for being in possession of the knife. He stated that he went to Gzira alone at about 10.30p.m on that day. He was seated on a bench and Khaled Abulkasem (whom he did not know at the time) asked for a cigarette and told him that he did not have. Then, Khaled Abulkasem took out his mobile phone and called someone. After he phoned he moved away but stayed nearby. Then, the accused walked away. Khaled Abulkasem started following him at a distance. The accused crossed the road and walked back towards Gzira. After about twenty/twenty-five minutes of walking, the accused noticed that two other men joined Khaled Abulkasem and it was at that point that he took out his knife and held it down in his right hand. Then, the three men hurried up towards him. They saw two policemen and went to report him to the police and thus he was arrested.

The Court deems that the version given by the accused is more truthful. Infact, when Khaled Abulkasem took the witness stand he testified that at the time of the incident he was alone and that he met the two Libyans after and that he did not even know their name. He also stated that he did not make any phone calls at the time of the incident. However, from the acts of the case it results otherwise and the call lasted for about twenty minutes. He also stated that the incident occurred at 11.00p.m. and testified that KFC outlet was closed. However, it has transpired from the acts of this case that although KFC closes its doors at 11.00p.m.

there would wither be customers left or staff inside the outlet. Thus, Khaled Abulkasem is not credible. Moreover, it has also transpired that the accused had €145 in his pockets. Thus, the only charges which have been proven are the third and fourth charges.

With regards to punishment the Court took into consideration the circumstances of the case and the fact that he has a clean record.

For the above-mentioned reasons, the Court after having seen articles 41(1)(a), 86, 261, 262(1)(b), 262(2), 270, 275, 277(a), 339(1)(e) of Chapter 9 of the Laws of Malta, articles 6, 51(7), 55(a)(b) and 56 of Chapter 480 of the Laws of Malta acquits the accused of the first, second and fifth charges and finds him guilty of the third and fourth charges and by application of article 7 of Chapter 446 of the Laws of Malta puts him on a probation order in terms of the law for a year and condemns him to pay a fine of €116.47.

The Court orders that this judgment be notified to the Office of Director of Probation.

< Final Judgement >

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