



MALTA

COURT OF CRIMINAL APPEAL

THE HON. MR. JUSTICE

DAVID SCICLUNA

Sitting of the 11 th February, 2015

Criminal Appeal Number. 218/2011

The Police

v.

... omissis ...

Thomas George Devenish

The Court:

1. Having seen the charges brought by the Executive Police against *omissis* and Thomas George Devenish, holder of Maltese Identity Card No. 41837A and British Passport No. 800571688, before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having on the 20th April 2011 at about 02:30 in Valletta:

omissis alone:

1) without intent to kill or to put the life of any person in manifest jeopardy, caused grievous bodily harm to PC 1379 David Mizzi as certified by Dr. D. Sladden of Mater Dei Hospital;

both *omissis* and Thomas George Devenish:

2) assaulted or resisted by violence or active force not amounting to public violence, PC 1379 David Mizzi and L. Bombardier 85612 Manuel Spiteri, persons lawfully charged with a public duty, in the execution of the law or of a lawful order;

3) reviled, or threatened, or caused a bodily harm to PC 1379 David Mizzi and L. Bombardier 85612 Manuel Spiteri, persons lawfully charged with a public duty, while in the act of discharging their duty or because of their having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty;

4) attempted to use force against PC 1379 David Mizzi and L. Bombardier 85612 Manuel Spiteri with intent to insult, annoy or hurt such persons;

5) in any manner wilfully disturbed the public good order or the public peace;

Thomas George Devenish alone:

6) for being a recidivist, after being sentenced for an offence by Mgt. Dr. Saviour Demicoli LL.D on the 19th November 2009 which sentence has become absolute;

2. Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 21st April 2011 whereby the Court condemned the said Thomas George Devenish to a term of two (2) years imprisonment suspended for four (4) years in accordance with the provisions of Article 28A Chapter 9 of the Law of Malta. The Court explained in clear words the terms of the judgement to the accused;

3. Having seen the appeal application presented by the Attorney General in the registry of this Court on the 12th May 2011 whereby this Court was requested to reform the judgement in the sense that it confirms the part whereby the accused were found guilty of all the charges brought against him, confirms the punishment in respect of *omissis*, revokes the part of the judgement concerning the punishment awarded by the Court of Magistrates (Malta) to the said Thomas George Devenish, and consequently proceeds to inflict a fresh punishment against the said Thomas George Devenish in accordance with the law;

4. Having seen the records of the case; having seen appellant's updated conviction sheet presented by the prosecution as requested by this Court; having heard submissions; having considered:

5. The Attorney General has appealed on the basis that where a person is a recidivist in terms of article 50 of the Criminal Code, a suspended sentence of imprisonment cannot be awarded. In this respect he refers to article 28A(7)(b) of Chapter 9 of the Laws of Malta which provides that "*an order under subarticle (1) shall not be made in any of the following cases:- (b) Where the person sentenced is a recidivist within the terms of article 50*". The Attorney General further observes:

"That Thomas George Devenish on the 21st April 2011, after admitting to the charge of being a recidivist, was found guilty by the Honourable Court of being a recidivist in terms of article 49 and 50 of the Criminal Code.

"In this respect, the punishment awarded by the First Court was incorrect and could not have been a suspended sentence but had to in fact be an effective term of imprisonment reflecting the punishment proffered in articles 241, 216(1), 95, 96, 388(dd), 339(1)(d), 49 and 50 of the Criminal Code.

"Also it is to be noted that in light of the fact that the offences were against persons charged with a public duty and the strong stance taken by the Honourable Court with regards to offences related to such persons the sentence should lean towards a heavier punishment and not a lenient one as happened in this case."

6. Respondent presented a written reply on the 27th January 2015 wherein he raised a number of issues which this Court does not need to go into.

7. Indeed, this Court has examined the record and has noted a discrepancy between the decision written *di proprio pugno* by the Magistrate presiding the first Court and the transcribed judgement. This discrepancy has not been noticed by either party. While the transcribed judgement indicates that respondent Devenish was found guilty of all charges, including therefore the charge relating to recidivism, the handwritten decision which is found at page 2 of the record, clearly states that respondent was discharged from the sixth charge, i.e. that whereby he was charged with being a recidivist. Evidently whoever transcribed this decision, overlooked the final part which states "**6. Discharged.**" (emphasis by this Court). This is the decision as pronounced by the first Court and it is this decision which is binding. Consequently, in view of the fact that respondent Devenish was discharged from the charge relating to recidivism, it was perfectly legitimate for the first Court to award a suspended sentence of imprisonment.

8. For these reasons this Court dismisses the Attorney General's appeal and confirms the judgement of the first Court as indicated at page 2 of the record,

Informal Copy of Judgement

inasmuch as it found him guilty of the charges marked 2 to 5 and inasmuch as it discharged [*recte*: acquitted] him from the charge marked 6.

< Final Judgement >

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