

**Court of Magistrates (Malta)
As A Court of Criminal Judicature**

Magistrate Dr. Claire L Stafrace Zammit B.A. LL.D.

**The Police
[Inspector Trevor Micallef]**

-vs-

Mikko Henrik Carl-Johan Sebenius

Case Number: 444/14

Today, the 14th of March, 2016

The Court,

Having seen that the accused Mikko Henrik Carl-Johan Sebenius, holder of Swedish Identity Card Number 880412-0239.

Was charged with having in these islands on the 01st of May 2014, at about five in the morning (05:00 a.m.) in St Julian's or in the vicinity:-

- 1) Assaulted or resisted by violence or active force not amounting to public violence PC1486 Dirk Pace, a person lawfully charged with a public duty when in the execution of the law or of a lawfully order issued by a competent authority;
- 2) Accused further with having on the same date, time, place and circumstances committed slight bodily harm on the person of PC1468 Dirk Pace;
- 3) Accused further with having on the same date, time, place and circumstances reviled, threatened or caused bodily harm on PC1469 Dirk Pace 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;

- 4) Accused further with having on the same date, time, place and circumstances willfully disturbed the public good order or the public peace;
- 5) Accused further with having on the same date, time, place and circumstances disobeyed the lawful orders of any authority or of person entrusted with a public service, or hindered or obstructed such persons in the exercise of their duties;
- 6) Accused further with having on the same date, time, place and circumstances was found drunk in a public place or a place open to the public; and
- 7) Accused further with having on the same date, time, place and circumstances even though in a state of intoxication, publicly uttered obscene or indecent words.

Seen all documentary evidence exhibited in these proceedings;

Seen the note of the Advocate General dated the first (1) of May 2014 whereby it gave its consent that this case be tried by summary proceedings;

Heard all evidence and submissions of both parties.

Having considered that the accused, who is of Swedish nationality, lives here in Malta with a gaming company as software tester and quality assurer and on the day of the incident he was working till one o'clock in the morning since he was overtime and after work he decided to go have a beer in Paceville. As about three (3) o'clock in the morning he decided to go home to sleep and there is where the incident took place where there was an altercation with several police who were passing by with a van and according to them the accused bumped into the van and uttered rude words. According to the accused the story was not that he bumped into them but he was accidentally

hit by the mirror of the same van but he never uttered rude words and never intended to be violent with the police but rather they were violent with him.

Having considered that the main dispositions of the law which are being dealt with in this case are Articles 95 and 96 of the Criminal Code of Malta which are fairly similar to each other but on the other hand they are two different dispositions.

The common element between the two is the victim who has to be a public official whilst in his official duties. Article 95 necessitates that there are threats or insults to this public official by the aggressor:

“Whosoever, in any other case not included in the last preceding two articles, shall revile, or threaten, or cause a bodily harm to any person lawfully charged with a public duty, while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or unduly influence him in the discharge of such duty.....”

It is important to point out that various authors of law make a distinction as regards the motive of such an offence. They say that in the first instance it is not necessary that the threats, insults etc. are committed in the moment that the public official is doing his duty. That **Prof. Mammo** in his notes quote the authors **Cheveau et Helie** who say that:

“Quando l’oltraggio si verifica nel corso delle funzioni, il motivo che lo determina e’ differente; la legge vede soltanto il turbamento, l’ingiuria fatta all’esercizio delle funzioni, l’insulto che degrada la loro dignita’; avesse pure quest’ingiuria una causa

determinante estranea alle funzioni, il turbamento all'esercizio di esse sussisterebbe".

In the other two instances there must be a nexus between the threats etc. and the performing of their official duties.

Article 96 on the other hand, contemplates three instances for the completion of such a crime. In the first instance there need be an outward force or resistance. A passive disobedience to orders by the official is not enough. In fact **Prof Mamo** states:

"It is only when the insubordination or defiance goes so far as to obstruct the execution of the law or of lawful orders of the competent authority that the crime of attack or resistance can arise. The purpose of the agent in this crime, therefore, must be precisely that of obstructing or frustrating the execution of the law or of the lawful orders of the competent authority, by opposing the action of those charged therewith".

Furthermore as already said, there must be an element of violence accompanying such actions of aggressors otherwise this crime does not subsist.

In the second instance, the violence must be directed against an official who was carrying out his lawful duties. Therefore it is important that if this public official is not in his uniform, there must be a clear identification of himself as such to the aggressor otherwise the crime does not subsist.

In the third instance, it is also important that the criminous behaviour be directed against this official whilst carrying his lawful duties or after giving lawful orders. Profs Mamo says that:

“Therefore, any violence committed after the law or the order has already been executed, even though it may be on account of such execution, would not give rise to this crime”.

Our courts had the occasion of listing down certain principles as regards these provisions of the law. In fact in the Court of Appeal judgment in the names **II- Pulizija v. Joseph Zahra** (decided 9th September 2002) it was said that:

“Dana l-artikolu (referring to Article 96) jirrikjedi mhux biss li l-vittma tkun persuna inkarigata skond il-ligi minn servizz pubbliku (the same as Article 95(1)), izda wkoll li r-reat ikun sar filwaqt li dik il-persuna hekk inkarigata minn dak is-servizz pubbliku “tkun qed tagixxi ghall-ezekuzzjoni tal-ligi jew ta’ xi ordni moghti skond il-ligi minn xi awtorita’ kompetenti”. Din l-espressjoni hi differenti minn dik uzata fl-Artikolu 95(1) – “waqt li jkun jaghmel jew minhabba li jkun ghamel dan is-servizz, jew bil-hsieb li jbezzghu jew li jinfluwixxi fuqu kontra l-ligi fl-ezekuzzjoni ta’ dan is-servizz”.

Therefore, in these proceedings, the Court is faced with two different scenarios, on the one hand that of the police whom there was no doubt of their capacity as such since they were wearing uniforms and they were in a police van. On the other hand, there is the version of the accused substantiated by other witnesses who vouched for his integrity and impeccability in his work and in his behaviour in general.

The version of the police namely those of **PC 1468 Dirk Pace** who was the official who allegedly suffered the acts of the accused states that the accused hit the mirror of the van which went past the accused in Elia Zammit Street, Paceville and allegedly uttered the words “fuck you”. PC 1468 was allegedly next to the van who was going to park near Burger King.

He says that they walked up to him and ordered him to stop, he stopped and then asked him his passport which he did not have and all of a sudden he ran the opposite direction and after a while he went running towards him and they bumped into each other and ended up on a wall by a door. The police said he suffered various injuries to which he presented a medical certificate presented as Dok. CSH 1.

PC 1468 continues to say that according to him the accused hit the passenger mirror of this van and after the incident him and PC 593 went to stop him. They were outside seeing everything. He said that the officers from the van did not do anything after the mirror was hit, both parties kept on walking in their own direction. He said that the accused first started talking with PC 593 to which he did not hear what they were saying because in his words “in Paceville its too noisy”. Then PC 1468 asked him his name and surname which he provided and for his passport to which he replied that he did not have it on him. PC 1468 then witnessed by telling him to accompany them next to the van to see whether there were any damages but that the accused

was never under arrest. After that he says that a female friend came next to the accused and all of a sudden he ran opposite and while the police in question started running after him, Mr Sebenius automatically changed direction and started running towards PC 1468 with the consequence that they bumped into each other and fell and they came on top of each other on the floor, Mr Sebenius on the pavement facing up and the officer facing down partially on top of him.

The testimonies of the other police officers mostly corroborated what has been said by PC 1468. However of particular importance is that the police officers who were in the van and saw the accused hit the mirror asked him if he was ok, therefore implying that they did not get the feeling that the accused was being violent or otherwise. In fact one of the police officers who was a passenger whose side mirror was hit asked him if he was OK and the accused replied nothing. Had the accused uttered the words "fuck you", this police officer PC 1200 would have surely noticed or heard him since he was the one closest to the pavement and therefore to the accused at that moment in time.

PC 1200 also confirmed that the van was moving slowly whist there was the hit. He also confirmed on cross examination that it was the van who hit the accused and then the accused tapped the glass of the van to get the attention of the police officers who were in the van. It was at that moment that PC 1200 asked him if he was ok.

The testimony of the accused **Mikko Sebenius** which was given on the 4th May 2015 was somewhat different from that of PC 1468. He first explained that after that he was hit by the mirror of the van, he got frightened and wobbled a bit because he was going to fall with the hit. He uttered the words like "Watch out" but then both him and the van proceeded with where they were going. He then proceeded to go next to e-cabs to get a taxi and since he was eating, decided to wait on a step until he was finished. It was at that time that four police officers came to him and one of them told him to say sorry. After he replied "why should I say sorry" and according to him another police officer threw his food on the ground and all of a sudden he felt someone standing behind him who hit him on his face while he was still sitting. The he says that he put his hands above his head to protect himself.

He says that he tried to stand up whilst asking again why should he be sorry, what has he done and saying that at that moment he felt very frightened. It was at that moment that one of the four police officers grabbed him like a headlock and dragged him towards Burger King whilst telling him that he has to say sorry. He says that he was in total panick that at one point released himself from the officer who was dragging him and ran away from them and found other police officers in front of him, that is when he ran back and accidentally ran into one police officer. At that moment he was thrown in a police van and later gave a statement which he confirmed on oath.

The Court, after heard all evidence and seen the demeanour of the accused is of the opinion that if the police officers involved in the case mainly PC 1468 and PC 539 handled the situation correctly, then this incident would not have happened.

It became clear that the accused never hit the van mirror intentionally and never uttered the words "Fuck You" as was confirmed by the other officers. It is also clear that with the noise and confusion around Paceville, the above two officers could have never heard those words and could have never been sure of the intentions of the accused. Therefore, before doing what they did, they should have approached the accused and asked for clarifications from him before assuming that he did what he did intentionally.

It is obvious that the accused was frightened at that moment in time when he was being confronted by them telling him that he has to be sorry for something that was not even explained to him.

Therefore, it is the duty of any police officer, whilst exercising their authority, to exercise it in a diligent manner and with respect to the rights of the other persons because while it is true that they have to demand respect but first of all they have to respect the other persons so that these respect them. They should not assume that the people they stop are criminals who want to harm

them unless and until there is a clear threat that the person is going to commit an act of violence against them or does in fact insult or threaten them.

In this case, nothing of this sort occurred. The accused was faced with something surreal and without any explanation and this is why he got frightened and decided to escape.

This court is of the opinion that none of the crimes mentioned in the charges against the accused were proven because the *mens rea* was never present in the mind of the accused. The fact that he was maybe a bit drunk did not prevent him from knowing fully what was happening and did not prevent him from behaving in a correct manner whilst walking in the road.

On these basis the accused Mikko Henrik Carl-Johan Sebenius is acquitted from all the charges brought against him since not proven.

Dr Claire L Stafrace Zammit B.A. LL.D.
Magistrate