

19th. April, 1958.

Judge:—

The Hon. Mr. Justice W. Harding, K.M., B.Litt., LL.D.

The Police

*versus*

Corporal John Alan Peat

**Penknife — Arms Proper — Art. 64 of the Kriminal Law,  
— Art. 15(a) of the Weapons Ordinance.**

*The Weapons Ordinance exempts from its operation a penknife, but it must be a penknife "not provided with any other blade than that of a penknife". Wherefor, an instrument, even having to outward appearance the size and shape of a pocket penknife, but looking like an awl with a sharply pointed end, used for cleaning pipes, cannot be conve-*

niently termed as being that which is commonly considered to be the blade of a penknife. Consequently, the exception envisaged by the law does not fall to apply to such an instrument.

*This, however, does not imply that such a penknife comes within the definition which the law gives of "Arms Proper". Arms proper are all fire-arms and all other weapons, instruments and utensils, which are mainly intended for defensive or offensive purposes. It is not correct, therefore, to classify such an instrument as "arm proper" for the reason that it can be used for offensive purposes. The instrument, in order to be an arm proper, must be mainly intended for defensive or offensive purposes; the possibility of its being so used is not enough, as there are many other instruments which are undoubtedly not arms proper or weapons, and which, that notwithstanding, could be used for a defensive or offensive purpose.*

This is an appeal entered by the Attorney General against a judgment given by the Criminal Court of Magistrates for the Island of Malta on the 24th. January, 1958, whereby the defendant was acquitted of the charge of having, at Valleta, on the 31st December, 1957, carried a knife with a pointed blade, without a licence from the Commissioner of Police;

The learned Magistrate in the Court below acquitted the defendant on the ground that exhibit "A" was only a penknife used for cleaning pipes, and as such was not to be considered a weapon in terms of the Arms Ordinance;

This Court, after hearing the arguments, considers;

Exhibit "A" has, to outward appearances, the size and shape of a pocket penknife. But it would not appear to be correct to exclude the charge in terms of sec. 15(a), that is, on the ground, "sic et simpliciter", that it is a penknife. In fact, this particular penknife, besides being provided with one blade which is the ordinary blade of a penknife, has also attached to it a thin, awl-shaped instrument, just a little over two inches long, tapering to a

fine point. Now, in sec. 15(a) the law exempts from its operation a penknife; but it must be a penknife "not provided with any other blade than that of a penknife", and, clearly, an instrument looking like an awl with a sharply pointed end, cannot be conveniently termed as being that which is commonly considered to be the blade of a penknife. Consequently, the exception envisaged by the law does not fall to be applied;

It seems, however, that the Prosecution considers exhibit "A" as coming within the definition of arms proper. In fact, in its appeal petition, the Prosecution states, "inter alia":— "This penknife is an instrument which may be used for defensive or offensive purposes";

Maybe the Prosecution was misled by the note which the Police usually put on the writ of summons referring to the section of the particular law under which the charge is brought; a note, of course, which does not form part of the charge in any way, and which is merely intended for convenience of reference by the Magistrate;

"Arms proper" is an expression which is defined in sec. 64 of the Criminal Code. This interpretation is applicable in view of section 5 of Chapter 57 Revised Edition, and of sec. 2 of Chapter 106. "Arms proper" are all fire-arms and all other weapons, instruments and utensils, which are mainly intended for defensive or offensive purposes. It is not correct, therefore, for the Attorney General to argue that the fact that exhibit "A" may be used for defensive or offensive purposes is sufficient to bring it under the definition of an arm proper. It "must be mainly intended for such use". And the Court is not in any way satisfied that the awl-shaped instrument attached to this penknife is mainly intended for such use. Even if it be not meant for cleaning pipes, it would not seem correct to conclude that it is mainly intended for defensive or offensive purposes. The possibility of its being so used is not enough, as there are many other instruments which are undoubtedly not arms proper or weapons, and which, that notwithstanding, could be used for a defensive or offensive purpose, such as, for instance, a lady's hat-pin;

Section 13(1) of Chapter 106, however, runs as follows:— "Whosoever shall carry a knife of any description with a pointed blade, or any pointed instrument, without a licence from the Commissioner of Police.....";

Now, it cannot be denied that the instrument afore-described, attached to this particular penknife, is a pointed instrument;

, This Court does not deem it correct to go so far as to make the sweeping statement that any pointed instrument would come within the scope of sec. 13(1). To return to the same example, a hat-pin would not — apart, of course, from the fact of its being "de facto" used to cause a bodily injury, in which case it would constitute an aggravating circumstance — fall under section 231 Chapter 12. Nor would the keeping of an awl by a shoe-maker require a licence. It would be safe to say that the circumstances of each particular case must be looked at;

This Court is of opinion that in the present case this pointed instrument comes within the purview of section 13(1), as there are no concomitant circumstances which could be deemed sufficient to exclude it therefrom, such as would be the case in the afore-quoted examples. A pipe could very well be cleaned with a differently shaped instrument. A penknife, armed with that instrument, ceases to be an innocent object. Exhibit "A" is a pointed instrument, in so far as that part of it is concerned, with nothing to take it away from the operation of the law;

The Court, therefore, allows the appeal of the Attorney General, reverses the judgment of the Court below, and, upon seeing section 13(1) Chapter 106 and Section 24 Chapter 12, (as amended by section 7 of Ordinance VI of 1947), declares the defendant guilty of carrying a pointed instrument without a licence from the Commissioner of Police, and sentences him to the punishment of a fine (amenda) of ten shillings, and, moreover, orders the forfeiture of the penknife in question.

---