12th June, 1959

Judge:—

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

The Police

versus

William St. John

Offence against Decency and Morals — Public Place — Art. 223 and 352(z) of the Criminal Laws.

It does not seem that any particular specific intent is required as an ingredient of the crime of offence against public decency and morals. It is certainly necessary for the Court to look into the background of the whole circumstances of each particular case, in as much as, if those circumstances disclose that the act committed by defendant happened to be obscene merely through a careless disregard of the commonly accepted rules of decency, then there would not be a crime of offence against decency or morals committed in

public, but only a contravention consisting in the making of obscene acts or gestures in public.

This is an appeal entered by the defendant against a judgment delivered by the Criminal Court of Magistrates for the Island of Malta on the 30th April, 1959, whereby the said William St. John was found guilty of having committed an offence under section 223 of the Criminal Code, that is, an offence against decency or morals, in a public place or in a place exposed to the public, and was sentenced to the punishment of imprisonment for five days and to a fine (multa) of five pounds (£5);

This Appellate Court, after hearing the arguments of Counsel for the appellant and those of the Senior Crown Counsel, considers as follows;

It has been pressed upon the Court that the evidence of Agnes Townsend should be discarded. This submission is accepted by the Court, not so much on the mere ground that Agnes Townsend is a woman of loose morals, or that at one time she was a patient in the Hospital for Mental Diseases, but on the much more substantial grounds that she had openly declared, after a previous incident a few days before with the appellant, that she would revenge herself and get even with him, and that the more serious part of her version of the facts in the present case has been shown to be totally unsupported by the rest of the evidence;

The only act of the appellant which must be scrutinised for the purposes of the appeal, in as much as it is the only one which is proved, and which forms the subject — matter of the judgment of the First Court, is that described by the appellant himself in the evidence which he gave at his own request and in the evidence of witnesses Incorvaja and Pisani;

The appellant, after recounting that at a bar, called "Joe's Bar", he was sitting at the counter near Townsend and that she had refused to talk to him, goes on to

state:— "Then I told her that if I was not good enough to talk to her, I was not good enough to sit next to her, I got up put my hands under her arms in order to lift her off the stool, and, if I touched her breasts in so doing, I certainly did not do it intentionally. I put my arms round her not to feel her or anything, but just to pull her off the stool!";

Witness Incorvaja gives this version:— "I saw the accused St. John approaching the said Townsend from behind, passing both his hands from under her arms and holding her from her breasts, trying to tumble her over";

The other witness, Pisani, states:— "The latter (Agnes Townsend) was sitting on a stool near the counter, when accused St. John went near her, and from behind her back he grabbed her from her breasts and tried to tumble her over from the stool";

The provision of law on which the judgment now appealed from relied is that of sec. 223 of the Criminal Code;

An exhaustive study of this section was made by this Court in the case "The Police vs. Iris Gatt", decided on the 15th September, 1956, and it does not seem that any particular specific intent is required as an ingredient of the crime under that section. Counsel for the appellant quoted the eminent text-writer Carrara (vide appeal petition); but it may be noted that, although it is true that Carrara, in para. 2945, p. 49, Vol. VI, seems to hold that a specific intent is requisite, however, in the annotations to his own text (vide note (2) appended to the end of this paragraph, and reproduced at page 52) he appears to have later qualified his opinion to a certain degree. Nevertheless, it is certainly necessary, as it was pointed out in the judgment of this Court afore quoted, to look into the background of the whole circumstances of each particular case, in as much as, if those circumstances disclose that the act happened to be obscene merely through a careless disregard of the commonly accepted rules of decency, then

there would not be a crime under section 223, but merely a contravention under sec. 352(z) of the Code;

Now, in this particular case, a close scrutiny of the facts, and of all else that led up to the incident, shows, in the considered opinion of this Court, that the appellant resented the fact that Townsend refused to speak to him and decided, there and then, to eject her unceremoniously from the stool she was sitting on, and proceeded to do so in the manner afore described;

It should be noted that there is really no difference between what the appellant says and what the two witnesses, Incornavja and Pisani, say; the act was undoubtedly that described by the appellant himself, as both witnesses agree that it was meant to lift Townsend bodily from off the stool. The way in which the appellant took hold of Townsend was indecent, but the indecency was not really an end in itself, but was merely the effect of a careless disregard, on the part of the appellant, of the way in which he was handling the woman in public;

Consequently, in accordance with the principles laid down in the aforesaid judgment, the appellant does not fall to be found guilty of a crime under sec. 223, but only of a contravention under 352(z), that is of making an obscene act or gesture in public;

The circumstances, mentioned by Incorvaja, that the appellant was drunk and could hardly stand on his feet, need not be enquired into for the purpose of this contravention, as the law expressly includes in its provision relating thereto the case of the offender being in a state of intoxication;

This minor offence is cognisable by this Court, in as much as the wording of the original charge is such as to adapt itself to its inclusion;

Moreover, having taken into consideration all the surrounding circumstances of the case, particularly the clean

conduct sheet of the appellant, and his excellent service record, this Court deems it proper to apply the section hereunder mentioned;

For the afore going reasons:—

This Court allows the appeal in the sense that this Court declared the appellant not guilty of an offence under section 223 of the Criminal Code, but guilty only of the contravention of making an indecent act in public under section 352(z), and orders that the appellant be discharged conditionally under section 23(1)(a) of the Criminal Code; and thus varies the judgment of the First Court.