

COURT OF CRIMINAL APPEAL

JUDGE

H.H CHIEF JUSTICE SILVIO CAMILLERI LL.D.

Sitting of 3rd March 2017

Appeal No: 148/2016

The Police

(Inspector Edel Mary Camilleri)

vs

Abdiqani Omar Abdillahi

The Court:

1. Having seen the charges brought against Abdiqani Omar Abdillahi, holder of Maltese Identity Card No. 129303A and Police Immigration No. 14D-009, before the Court of Magistrates (Gozo) as a Court of Criminal Judicature with having:

On the 3rd March 2016 in Gozo:

1. Reviled, or threatened, or caused a bodily harm to the staff at Gozo General Hospital who are 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, this in violation of articles 95 of Chapter 9 of the Laws of Malta;
2. On the same place, date, time and circumstances, even though in a state of intoxication, publicly uttered any obscene or indecent words, or made obscene acts or gestures and this in violation of article 338(bb) of Chapter 9 of the Laws of Malta;

3. On the same place, date, time and circumstances wilfully disturbed the public good order or the public peace and this in violation of article 338(dd) of Chapter 9 of the laws of Malta;
 4. On the same place, date, time and circumstances in a public place or place open to the public, was found drunk and incapable of taking care of himself and this in violation of article 338(ff) of Chapter 9 of the laws of Malta;
 5. On the same place, date, time and circumstances had committed an offence against decency and morals by any act committed in a public place or in a place exposed to the public and this in violation of article 209 of Chapter 9 of the laws of Malta;
 6. On the same place, date, time and circumstances caused another to fear that violence will be used against them, the staff of Gozo General Hospital, or their property or against the person or property of any of their ascendants, descendants, brothers or sisters or any person and this in violation of article 251B(1) of Chapter 9 of the laws of Malta.
2. Having seen the judgment of the Court of Magistrates (Gozo) as a Court of Criminal Judicature delivered on the 4th March, 2016 whereby the Court found the accused guilty as charged and conditionally discharged him under section 21 of Chapter 9 of the Laws of Malta for a period of one (1) year from the day of the judgement.
 3. Having seen the appeal application filed by the Attorney General in the registry of this Court on the 28th March, 2016 whereby this Court was requested to revoke the said judgment and to mete out in respect of the person charged the punishments and consequences prescribed by Law.
 4. Having seen that on the date of hearing of the appeal there appeared counsel for the appellant Attorney General and that the respondent, notwithstanding having been served with the notice of the hearing, did not make an appearance; having heard the submissions of counsel to the appellant Attorney General.
 5. The facts of the case may be summed up as follows:

Abdiqani Omar Abdillah was charged as aforesaid before the Court of Magistrates as a Court of Criminal Judicature on the 4th March 2016. When the case was called the person charged appeared not assisted by legal counsel and therefore an advocate for legal aid was appointed to assist him and an interpreter from English to Somalian was also appointed. The accused pleaded guilty to the charges and reconfirmed his guilty plea after the Court warned him to reconsider his plea and gave him sufficient time to reconsider his plea. Upon which the Court proceeded to deliver judgment as aforesaid.

6. The Attorney General's grievance consists in the allegation that the punishment meted out by the first Court was not in conformity with the law since the punishment of imprisonment and a fine should have been awarded in terms of articles 95 and 209 of the Criminal Code since although the first court invoked article 21 of the Criminal Code it did not comply with requirements of that article which lays down that for the Court to apply a lesser punishment it must state in detail in the decision the special and exceptional reasons for doing so.
7. The Attorney General is right in stating that since the first court declared in its judgment that it was applying article 21 of the Criminal Code then it should have complied with the demands of that article and "expressly stated in detail in the decision" the "special and exceptional reasons" why it was awarding a punishment below the minimum punishment prescribed in the article contemplating the offence¹. The judgment failed to do so.
8. The Attorney explicitly mentions the first charge and the fifth charge.
9. Article 95 of the Criminal Code, which lays down the offence contemplated in the first charge, forseees by way of punishment "the punishment established for the vilification, threat, or bodily harm ...

¹ Vide *inter alia* Inf App P v John Chetcuti 26/3/1992

increased by two degrees and ... a fine (multa) of not less than eight hundred euro (800) and not more than five thousand euro (5,000).

10. The Court observes that there is a discrepancy between the Maltese text and the English text of the first charge since in Maltese the charge is limited to “inġurja jew hedded bi kliem” (reviled or threatened, by words) while the English text states “reviled or threatened or caused a bodily harm”. In these circumstances, since the charge itself does not give sufficient information and no evidence at all was tendered which could throw light on the precise nature of the facts underlying the charge in question, the Court will construct the charge in the way the more favourable to the person charged and will therefore consider the charge admitted by the person charged as consisting in having “reviled or threatened by words”.

11. For the reasons already stated *viz.* since insufficient information is given in the charge itself and no evidence was tendered, the Court cannot construct the nature of the revilement or threat as falling within the definition of the more serious offence under article 249 of the Criminal Code and therefore the only possible alternative is that the revilement or threat in question is of the nature falling within the terms of the contravention envisaged in article 339(1)(e) of the Criminal Code, namely, “utters insults or threats not otherwise provided for in this Code, or being provoked, carries his insult beyond the limit warranted by the provocation”. This punishment for the offence under article 95 is that established for the vilification or threat when not accompanied with the circumstances mentioned in that article increased by two degrees and to a fine (multa) of not less than eight hundred euro (800) and not more than five thousand euro (5000). Therefore, in terms of articles 95, 339(1)(e), 7(2) u 31(1)(g) the punishment due according to law in this case for the offence in the first charge under article 95 of the Criminal Code is that of a fine (multa) or imprisonment for a term not exceeding three months.

12. The offence in the fifth charge is that defined in article 209 of the Criminal Code and this carries a punishment of imprisonment for a term not exceeding three months and a fine (multa).
13. Moreover, the offence in the sixth charge under article 251B(1) carries a punishment of imprisonment of 3 to 6 months or multa not less than €4658.7 and not more than €11,646.87.
14. The Court having also seen article 17(d) of the Criminal Code.

Therefore the Court allows the appeal filed by the Attorney General and modifies the judgment appealed from by revoking that part of the said judgment which conditionally discharged Abdiqani Omar Abdillahi under section 21 of Chapter 9 of the Laws of Malta for a period of one (1) year from the date of the judgment and instead sentences him to the punishment of imprisonment for one month and to the payment of a total fine (multa) of one thousand two hundred euro (€1200).

(sgn) Silvio Camilleri
Chief Justice

(sgn) Silvana Grech
D/Registrar

True copy

f/ Registrar