Court of Criminal Appeal

Hon. Mr. Justice Dr. Giovanni M. Grixti LL.M., LL.D.

Appeal Nr: 354/2016

The Police

vs

Michael John Rees

Today the 27 of April, 2017.

The Court;

Having seen the charges brought against Michael John Rees, holder of Maltese identification card number 82113A, before the Court of Magistrates (Malta) as a Court of Criminal Judicature, with having on the 30th of April 2016 between 11am and 1pm refused to allow access to a child to Maya Dimitrova Rees, as ordered by a Court or bound by contract, without just cause to give such access;

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature delivered on the 20th June, 2016, whereby the Court found the appellant, then accused, guilty and condemned him a period of detention of one (1) week;

Having seen the application of appeal presented by Michael John Rees in the registry of this Court on the 1st of July, 2016 whereby this Court was requested to 1) grant *contrario imperio* the production of a minor child as witness; 2) to allow the evidence of witness Mario Genius and consider it as admissible circumstantial evidence together with accompanying police officers; 3) to reverse the decision of the Magistrates' Court and find the accused not guilty as charged and acquiting him of all charges; and 4) in subsidium and in relation to the punishment meted out, to consider the alleged offence as a continuing offience together with other offences of the same nature but alleged committed on different dates namely on the 27th April, 7th May and 11th May 2016 and to inflict one punishment in terms of article 18 of the Criminal Code Chapter 9 of the laws of Malta and to consider that any punishment restrictive of personal liberty is not in the best interest of the child;

Having seen the grounds of appeal;

Having seen the records of the sitting of the 9th March 2017 where the Attorney General registered an objection to the appeal filed by applicant in that there is no request therein to inverse or vary the decree of the first court;

Having see the record of the sitting of even date whereby this Court ordered that the objection raised by the Attorney General and all submissions made in this case be deemed also to be made in the records of the applications of appeal numbered 352/2016, 353/2016 and 355/2016.

Having heard submissions by the parties;

Having seen the records of the case;

Considered:

1. That this is a preliminary judgement on the objection raised by the Attorney General during the sitting of the 9th March 2017 namely that appellant failed to make a request in the application of appeal for the reversal of the decision of the court of first instance not to allow the minor child of the accused and the injured party, together with the Court Marshal Mr. Mario Genuis to testify and that failure to do so means that the appellant has no remedy at law at this stage in that regard;

2. From the outset it must be pointed out that the application of appeal is unnecessarily lengthy and rife with details which could have been avoided and made for a more legible and discernable application. Such length and unnecessary details, most of which consist of the background to the facts and not the facts themselves, have given rise to complications which further compound the sensitive nature of this case to the extent that applicant prolonged his submissions also in the final demand regarding the penalty meted out when such demand in accordance with article 419(1) of the Criminal Code shall be *sic et simplicitur* for the reversal or variation of the judgement;

3. Applicant made a number of demands in his application of appeal and according to applicant, two of these demands are with regard to a decree of the first court whereby it turned down his request for his minor child to give evidence and for the evidence of a Court Marshall to be deemed admissable. The Attorney General's objection is to the effect that when applicant requested the reversal of the judgement of the first court, he failed to make a specific request for the reversal of the said decree;

4. As already stated, applicant chose to make several demands and prior to the final demand for the reversal of the judgement of the Magistrates' Court, he also made a request for the reversal of the decree as aforestated. Now whether this should be made together with the final demand or otherwise is irrelevant to the question at issue and the Attorney General is not correct in requesting a denial of applicants request;

5. Article 415(1) of Chapter 9 of the laws of Malta provides that an appeal from an interlocutory decree which does not bar the continuation of the case, may be entered only after the

definitive judgment and together with an appeal from such judgment. Through the present application, is also seeking a reversal of the interlocutory decree which he deems barred him from bringing forward his daughter as witness and having the evidence of the Court Marshall considered as relevant to his case. Subarticle (4) of the same article, however, makes it abundantly clear that "*An appeal from the merits shall include an appeal from the interlocutory decrees, even though such decrees may not have been specifically indicated*". The Maltese text is admitedly clearer in meaning than the English version in that it states that an appeal on the merits includes "*igib mieghu"* an appeal on interlocutary decrees;

6. Any further considerations on this matter are therefore not necessary and this Court concludes that even though the demands in the application of appeal are made in such unclear terms, these nonetheless include that for the reversal of an interlocutory decree 'proferred' during the proceedings before the Court of First Instance which were also mentioned several times in the grounds of appeal themselves

7. The plea of nullity requested by the Attorney General is therefore being rejected.