Court of Criminal Appeal

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

Appeal Nr: 355/2016

The Police

vs

Michael John Rees

Today the 10th of July, 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 27th April 2016 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 acquitting him of all charges; and 4) in subsidium and in relation to the punishment meted out, to consider the alleged offence as a continuing offence together with other offences of the same nature but alleged committed on different dates namely on the 30th April, 7th May 2016 and 11th May, 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 its judgment of the 27th April, 2017 on the preliminary plea raised by the Attorney General during the hearing of the 9th March 2017;

Having heard submissions by the parties;

Having seen the records of the case;

Considered:

1. That this is a preliminary judgement on two requests made by appellant in his application of appeal which are being reproduced hereunder:

> This Honourable Court, in the circumstances above described, is respectfully asked

(1) to grant 'contrario imperio' (in terms of Section 424(b) Chap. 9, the production of the minor Child [M] (during the Appeal hearing – possibly to be heard in Judge's Chambers) so that the Court can assess if the Father ever refused to send her to the access meeting under review (of 30th April 2016) or any other for which he stands charged, or even whether he made obstacles for such visit/s; and
(2) to allow, (under *Section 424 (b) Chap.9),* even by a ruling *in limine litis* (per Sec. 646 (1) Chap 9) the evidence of witness *Mario Genuis* to be part of the evidence for the Defence and to consider to also interrogate the two police officers (names not known) who accompanied the Court Marshals at the child's apartment in Gzira on the 14th of May; Also relevant are Section 646(2) (deposition taken on oath at Sitting), and (4) protection of *proces – verbal*).

2. From an examination of the appeal application, it is evident that appellant is aggrieved, *inter alia,* by the proceedings before the Court of First Instance in that he was not allowed to produce in evidence his minor child M and the Court Marshal Mario Genuis in order to demonstrate that he was fully compliant with the order of the Civil Court (Family Section) to allow access of his minor child to his wife, the injured party, and that it was the minor who refused at all costs to meet her mother. Appellant's contention, therefore, is for this Court to allow him to produce in evidence before it, both the minor child and the Court Marshall on the premise that he was unjustly precluded from so doing in first instance;
3. The records show that there was only one hearing before the first court held on the 20 June 2016 and the record of that hearing is being reproduced hereunder:

Meta ssejhet il-kawza dehret l-Ufficcjal Prosekutur l-Ispettur Edward Zammit.
Deher l-akkuzat debitament assistit mill-Avukat Joseph Pace.
Deheret il-parte civile assistita mill-avukat Stephanie Caruana.
The Court orders that since the accused is English Speaking, these procedures, are to be continued in the English Language.
Furthermore, the Court orders that the cases 25, 26, 28 and 29 be heard with this case.

Maya Dimitrova Rees 82137A gave evidence under oath and exhibited the court decree and 2 documents.
The Prosecution exhibited the affidavits in each case and a declaration from the accused in cases 12 and 25,
The Prosecution declares they have no further evidence to submit.
Michael John Rees, the accused, gave his evidence on oath and exhibited emails.
Mario Genius gave his evidence under oath.
The defence declares that they have no further evidence to submit.
The parties made their submissions.
At this stage, the defence exhibited a copy of an application filed by the accused.
Inghatat is-Sentenza.
Issib lill-akkuzat hati ta' l-akkuzi migjuba kontra tieghu.

4. As for the request to reverse the decision of the First Court not to allow Mr. Genuis to give evidence, it is immediately apparent that Mr. Genius did in fact give evidence under oath. Now whether the first court deemed such evidence to be irrelevant or otherwise to the case is another matter which this Court will have the occasion to decide for itself after hearing Mr. Genius *viva voce* since the evidence adduced before the first court were not recorded;

5. As for the request for this Court to reverse the decision of the first court not to allow appellant to bring forward his minor child, M, to testify, the records show that applicant had filed an application in before the first court requesting that he be authorised to produce same as his witness. This application, in the Maltese language, was filed in the Registry of the Criminal Courts on the 15 June 2016, that is five days before the hearing scheduled on the 20th June (vide folio 22);

6. There is, however, no record of this application ever having been acceded to or denied and it appears that the first court proceeded with hearing the case and deciding the case without having first dealt with applicant request. Applicant, nonetheless, proceeded with taking the witness stand without first having requested that it be entered into the records that the first court had not yet decided on his application to produce the minor child as witness. Applicant is therefore not correct in asking this Court to reverse the decision of the first court not to allow the minor child to give evidence since there is no such

decision in the records of the case. This case was heard together with three other cases against applicant having the same merits but with the alleged offence being committed on different dates. The Court therefore examined the records of the other cases but found no such decree on the application merits of this debate;

7. Applicant also requested that the Police Officers that accompanied the Court Marshall, Mr. Mario Genuis, be *"interrogated"* by this Court. If applicant's intention is to request this Court to allow the Police Officers to give evidence at this stage of the proceedings, then such request is forthwith being denied in terms of article 424 (a) and (b) of Chapter 9 of the laws of Malta. Applicant could have summoned said witnesses before the first court as he was no doubt aware of their existence as is evidenced by records of the case. Furthermore, said witnesses were not requested in first instance and were therefore never unlawfully dismissed by the first court;

8. In conclusion, therefore, this Court abstains from taking further cognisance of the request to produce Mr. Mario Genuis as witness and for the avoidance of doubt, applicant is not being denied the right to produce him as witness to state to this Court his evidence as stated before the first Court; Denies the request of applicant to produce the Police Officers that accompanied Mr. Genuis to the apartment of applicant and finally, denies the request for the reversal of the decision of the first court not to allow the minor child M to give evidence there never having been such a decision entered in the records of the case;