



Court of Criminal Appeal

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

Appeal Nr: 423/2016

The Police

(Inspector Trevor Micallef)

vs

Mohammed Hussein Abdi

Today the 18 December 2017

The Court,

Having seen the charges brought against Mohammed Hussein Abdi, holder of identification card number 155698A, before the Court of Magistrates (Malta) as a Court of Criminal Judicature, with having in these Islands on the 16th July, 2016 ten to five in the morning (04:50am) in St. Julian's and/or in the vicinity;

Produced, sold or otherwise dealt with the whole or any portion of the plant Cannabis in terms of Section 8(e) of the Chapter 101 of the Laws of Malta;

Further for having on the same date, time, place and circumstances committed this offence in, or within 100 meters of the perimeter of a school, youth club or centre, or such other place where young people habitually meet in breach of Article 22(2) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;

Further for having on the same date, time, place and circumstances assaulted or resisted by violence or active force not amounting to public violence, persons lawfully charged with a public duty when in the execution of the law or of a lawfully order issued by a competent authority (Art 96 Chapter 9 of the Laws of Malta);

Further for having on the same date, time, place and circumstances accuse him further with having on the same date, time, place and circumstances reviled, threatened or caused bodily harm on the persons lawfully charged with a public duty, while in the act of discharging his duty or because of having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty (Art. 95 Chapter 9 of the Laws of Malta)

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature delivered on the 10th August, 2016, whereby the Court found the accused not guilty of the charges brought against him and acquitted him of the said charges and further ordered that the drugs exhibited as Document ET be destroyed, once this judgement becomes final, under the supervision of the Registrar, who shall draw up a proces-verbal documenting the destruction procedure. The said

proces-verbal shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

Furthermore, the Court ordered the release of Document ET 1 (the sum of nine Euro (€9) in coins, the sum of sixty five Euro (€65) in notes and three (3) one Dollar (\$1) notes) and Document ET 2 (mobile phone) in favour of Mohamed Hussein Abdi.

Having seen the appeal application presented by the Attorney General in the registry of this Court on the 30th August, 2016 whereby this Court was requested to revoke the said judgement, and also requested this Court to find the said Mohamed Hussein Abdi guilty of all charges proffered against him and to mete out in his respect all the punishments and consequences prescribed by Law.

Having seen the grounds of appeal as presented by the appellant Attorney General;

Having seen the updated conduct sheet of the appealed, presented by the prosecution as requested by this Court;

Having heard submissions by the Attorney General;

Having seen the records of the case;

Considererd:

1. That from the records of this case respondent was acquitted from all charges relating to drug trafficking on the basis that whereas the charge sheet proffered that the alleged crime was committed on the 16 of July 2016, all the witnesses and documents pointed to an event which took place on the 14 of July. It is to be noted that the prosecution initially presented a charge sheet in the Maltese language alleging that the offence took place on the 14 July. However, since respondent does not speak or understand the Maltese Language, the first Court ordered that the proceedings be held in the English Language, which language is spoken by respondent;
2. The Attorney General contends that the first Court arrived at its judgement as a consequence of a wrong application of the law and puts forward five arguments which will be dealt with *seriatim*;
3. In the first reasoning brought forward, the Attorney General notes that the alleged offence took place on the 14 July 2016 and respondent was brought under arrest before the first Court the day after and the date of the 14 July was correctly indicated on the charge sheet in the Maltese language (folio 1 of these proceedings). The conclusion of this premise by the Attorney General is that the error appeared in the translated charge sheet into the English Language and that this amounts to a *lapsus computetri*. The Attorney General is not correct in his argument in that from the records of the case it is evident that the charge was not read in the Maltese language and translated in the English language. The charge was read by the Prosecuting Officer under oath in the language which is understood by respondent. It is those facts which were available to the accused in order for him to be in a position to prepare his defence and this Court cannot therefore accept the reasoning of the Attorney General as a ground to reverse the judgement of the first Court;
4. The second argument brought forward by the Attorney General is that respondent himself testified that the event alleged against him took place on the 14 of July 2016 and that he was thereby never “misguided as to the offence or offences which the charges referred to or when they allegedly took place”. The Court examined the transcript of evidence adduced by respondent where he recounts the sudden event leading to his arrest while on the shore in an attempt to roll a cannabis joint which he uses as a means of medication for his paranoia having been shot in the leg when in Ethiopia. This however, does not

change the fact that respondent was referring to an incident which happened on the 14 of July. The prosecution had a legal remedy to ask for and obtain a correction in the charge sheet and it was not for the first Court to decide *ex cathedra* that although the charge sheet indicates one date the facts took place on another date and proceed nonetheless by proferring a judgment which would essentially refer to facts that took place on a different date;

5. The Attorney General argues that in accordance with established case law, the indication as to the time when the offence was committed is important for the accused to be able to prepare his defence. Nowhere in the appeal application or in the oral submission does the Attorney General refer to such jurisprudence. If, however, reference is being made to those judgments regarding contraventions where a slight difference in the time of the actual happening of the alleged offence does not amount to a reason for acquittal, then the Attorney General is manifestly incorrect. In this case respondent is charged with a very serious crime allegedly committed on a particular day and that is the charge for which he is answerable, which charge can not, at this stage, be amended or altered;

6. The Attorney General further argues that the first Court based its consideration on judgments regarding cases conducted in the Maltese language whereas the charge sheet in this case and exhibited in the Maltese language contains the correct date and it is only the translation which refers to a different date. The Attorney General punctuated this argument with and exclamation mark and it is in this spirit that this Court will deal with such an argument by considering same to be trivial and not worthy of any further examination except that in the first Court was correct in referring to the judgment *Il-Pulizija vs Andre Falzon* (Crt of Crim App 19.11.2015) which in turn referred to *Il-Pulizija vs John Mary Briffa* (Crt of Crim App 18.10.2005);

7. The same consideration must be directed towards the fifth and final argument raised by the Attorney General when it brings forward a *critique* of the operation of the first Court when it pointed out the discrepancy of its own motion in the judgement when the defence did not point out the difference in dates and that this was tantamount to a tacit acceptance of a mistake in translation. This Court is perfectly in accord with that of first instance in that it was duty bound to judge on the

facts brought it before by examining all evidence in relation to the charge which charge was evidently different from the facts adduced.

8. For the above reasons the appeal of the Attorney General for a reversal of the judgement of the first Court and for a finding of guilt of respondent is being turned down.