



Court of Criminal Appeal

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

Appeal Nr: 353/2014

The Police

(Inspector Trevor Micallef)

vs

Nicklas Ronald Sturk

Sitting of the 29th November, 2018

The Court,

Having seen the charges brought against Nicklas Ronald Sturk, holder of Maltese identification card number 36842A, before the Court of Magistrates (Malta) as a Court of Criminal Judicature, with having in these islands on the 13th June, 2014 at about ten past eight in the morning (08.10a.m) in Mons. Alfredo Mifsud Pembroke or in the vicinity:-

1. Used any threatening, abusive or insulting words or behaviour, or displayed any written or printed material which is threatening, abusive or otherwise conducted himself in such a manner, with intent thereby to stir up violence or hatred against another person or group on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion, or belief or political or other opinion or whereby such violence or racial hatred is likely, having regard to all circumstances, to be stirred to the detriment of the children of family Grima and/or other persons.

2. And with having on the same date, time, place and circumstances wilfully disturbed the public good order and public peace.

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature delivered on the 27th August, 2014, whereby it found defendant guilty of both charges proffered against him and condemned him to six (6) months imprisonment which term, by application of article 28A of Chapter 9 of the laws of Malta, was suspended for a period of two years;

Having seen the appeal application presented by Nicklas Roland Sturk in the registry of this Court on the 9th September, 2014 whereby this Court was requested *to vary the said judgement by confirming the finding of guilt in the second charge and revoking the rest of it thereby meted out and applying a lesser and more appropriate punishment;*

Having seen the grounds of appeal as presented by appellant;

Having heard submissions of both parties;

Having seen the records of the case;

Having seen the updated conduct sheet of appellant, presented by the prosecution as requested by this Court.

Considered:

1. That this appeal concerns the finding of guilt on the first charge and the punishment inflicted by the first Court and there is, therefore, no contestation with regard to the finding of guilt on the second charge. Appellant argues that the formal element of the crime contemplated under article 82A of the Criminal Code, the first charge, was not present and that the interpretation of the first Court with regard to this formal element was not correct;

2. This Court having thoroughly examined the facts of the case and the judgement of the first Court finds that the interpretation of the formal element of the crime under examination by the first Court was legally correct. It is appellant's recounting of the facts which is not correct and which have induced him to believe that he did not have the intention to stir racial hatred when he uttered the words and behaved in an utterly unacceptable manner towards his neighbours and the refuse collector of dark skin;

3. Appellant's recount of the events was not accepted by the first Court which chose, as it was free to do, the version of events as recounted by complainants. The facts of the case were clearly and correctly summarised by the first court in its judgement and there is no

need to have them reproduced herein, except as will be stated henceforth. Appellant would have the first Court believe that the incident was a very simple one, namely that having three weeks before been accosted by two persons whom he describes as Africans, on his own doorstep and stabbed four times and his lap top computer stolen, as soon as he caught sight of a person also of dark skin on his doorstep, later learning that it was a refuse collector, he lost control of his inhibitions when he began insulting the collector;

4. The first Court gave more credibility to the version of events as recounted by complainants. On that day, the Grima family heard a disturbance in their street. Appellant was heard shouting and swearing and kicking the car of their senior citizen neighbours. This continued for some time together with a direct affront with the neighbour and fearing that something might happen to him. Complainant heard bad language and swearing by the accused stating several times that he will kill every f... negro that came to that street. As the evidence will show, the reason for this outburst was due to the neighbours not having given him assistance when he had been accosted by thieves of dark skin. After repeated similar declarations, a dark skinned refuse collector appeared in the street and complainant went to help him carry some bulky cardboard boxes but he declined her help. At that point the accused stepped in using the same language and pushed the collector to the ground and were it not for complainant's prompt action to cushion his head, he might have suffered injury. He also swore at the complainant calling her a f... Maltese bitch for helping negroes. The refuse collector righted himself up and continued with his work to the encouragement of complainant and was advised to leave the scene but he was concerned for the refuse which now lay sprawled onto the street. The police were called on the scene and by the time they arrived they could still hear the accused swearing and denegrating dark skinned people;

5. The facts therefore are completely different than those which the accused would have us believe. This was not an affront lasting a few seconds due to a mistaken identity which, according to him, would have given rise to another crime of a lesser degree. The ranting, swearing and shouting started well before the refuse collector appeared in the street where appellant resides and this included insults against all those Maltese that helped dark skinned people who, according to the accused, are now running the country. The accused could not understand why none of his neighbours came to his rescue when he was accosted and stabbed by two dark skinned people when he himself helped them when their house was on fire and yet they are willing to help the persons of dark skin. The situation went on for quite some time as explained above;

6. The first Court was therefore correct in concluding that the formal element of the crime under article 82A of the Criminal Code was also present. Accused's exhaltations against dark skinned persons in the road were heard from indoors for quite some time before he came up with the feeble excuse regarding the refuse collector. It was heard from complainants' house and their young children who, according to their mother's testimony, were left negatively impressed when they asked her for the meaning of the word negro and whether now all negroes will be killed;

7. The elements constituting this crime were clearly explained by the Court of Criminal Appeal in the case **The Police vs Norman Lowell** of the 15 July 2013 which this Court considers to be a guiding principle. With regard to the formal element of the crime required of article 82A of the Criminal Code, the Court explained that the requisite intention of the wrong doer is that of stirring up violence or racial hatred or the probability of stirring up violence or racial hatred. This Court sees no reason why it should depart from such clear and learned description of this formal element. It has very often been stated in a

short yet meaningful manner that intention is subjective but is proved objectively. Shouting in the middle of the street, causing such a disturbance which includes banging on a neighbour's car, showing aggravation towards the same neighbour and using threatening language and unacceptable adjectives to describe dark skinned persons clearly renders the act *reus*. **Archbold - Criminal Pleading Evidence and Practice 2014 Edition pgs 29-54 - Sweet & Maxwell**) in fact, merely cites English Law namely the Public Order Act 1986 and the Racial and Religious Hatred Act 2006, where the offence is committed if a person intends thereby to stir up racial hatred, or having regard to all the circumstances racial hatred is likely to be stirred up thereby. *"An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling"*. This provision is in line with the considerations of the above cited judgement. The first grievance is, therefore, not being upheld;

8. Appellant, also puts forward a second grievance concerning the punishment meted out by the first Court on the ground that it was disproportionate to the facts of the case. This crime is punishable with imprisonment from six months to eighteen months and the first Court meted out the minimum term of imprisonment prescribed. Accused's arguments that his anger was directed against his neighbours for their lack of intervention during his unfortunate stabbing and robbery does not weigh against the discretionary powers of the first court in meting out the punishment which it deems fit for the crime for which an accused is found guilty. This Court sees no impending reason why it should substitute the discretion exercised by the first Court with regard to the meted punishment;

9. For these reasons, this Court decides not to uphold the appeal. Consequently the period of two years suspension of the term of

imprisonment of six months shall start to run from today and the Court explained in clear terms the obligations of the accused arising out of this judgement in accordance with article 28A of Chapter 9 of the laws of Malta.