



Court of Criminal Appeal

Hon. Ms. Justice Dr. Consuelo Scerri Herrera LL.D.

Appeal number: 39/ 2019

The Police

Vs

Elena Anatolievna Camilleri

Today the, 30th May 2019.

The Court,

Having seen the charge brought against Elena Anatolievna Camilleri holder of identity card number 0100916L, before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having:

On the 5th of November 2018 at around 19.55hrs whilst inside Naxxar Police Station, Zenqa Street, Naxxar:

1. Reviled, or threatened or caused a bodily harm to PS 1526, WPC 328, PC 201 and PC 636 persons lawfully charged with a public duty, while in the act of discharging their duties or because of his having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty.

Having seen the judgment meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 6th of February, 2019 whereby the Court, after having seen and considered Section 95 (1) of Chapter 9 of the Laws of Malta, found the accused Elena Anatolievna Camilleri guilty of the charge brought against her and condemned her to pay a fine (multa) of eight hundred and fifty euro (€850).

Having seen the acts of the proceedings;

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

Having seen the appeal application presented by Elena Anatolievna Camilleri in the registry of this Court on the 12th of February 2019 whereby this Court was requested to revoke, reverse the judgment and acquit her from the charge brought against her.

Having seen the grounds for appeal of Elena Anatolievna Camilleri:

The aggravation is clear and manifest and consists of the following:

- a) With all the utmost respect to the Court of Magistrates, from the testimony of the accused, the Court should have believed her when she explained in detail to the Honourable Court that the words uttered by her were addressed to her ex-husband and not to the Police. She had no reason to offend the Police, something that she would never do. She went to the police only for help and the anger she had was towards the father of her child and not towards the Police.
- b) The appellant is not accusing the police of having lied in their affidavits, but she submits that there was a misunderstanding, since the words were said against her ex-husband and not to them. In fact, she even returned to the police station later, and she would not have returned to the station, had she offended them.
- c) From the affidavits of all three police, it transpires that the alleged words were uttered by the accused when she stormed out of the station. With all due respect, it does not make sense for the accused to offend the Police just when

she is telling and showing them how her husband had beaten her up by hitting her on the neck and pulling her hair. The truth was that she had uttered the words on her way out, which words were beyond any doubt referred to her ex-husband.

- d) She humbly submits that from the evidence in front of the Court of Magistrates, i.e. from the police affidavits and from her detailed consistent testimony, she should have been acquitted since at no time did she revile the Police.

The Court took note of all the acts of the proceedings.

The Court heard the lawyers make their submissions regarding the appeal during the sitting of the 30th April 2019.

Considers further.

WPC 328 Lilian Attard gave her sworn evidence dated 17th November 2018 wherein she stated that on the 5th November 2018 at about 7.55pm while she was on duty second watch at the Naxxar Police station the appellant reported that earlier on in the day at about 7.30pm she went to get her minor daughter from her ex husband Josef Camilleri from St Bartolomeo street, Gharghur from in front of his bar being the F>C Football club and called her daughter to go with her. The appellant stated that her ex husband had told their daughter so that she would not go with her and thus she went inside and Josef started to punch her on the back of her neck and started to pull her hair. The appellant said that she left and went to report the incident.

The appellant stated further that her daughter was still with her father Josef Camilleri despite the fact that the minor should be in her care . The appellant was asked to bring a copy of the Court decree to the police station though she did not provide a copy at the time of the report.

Elena was instructed to report to a health care centre to see if she had injuries and obtain a medical certificate and to bring a copy of the court decree.

Whilst at the police station, the appellant started saying that since we are police we should be able to bring back her daughter from her husband and she started saying *"You as police have the pistols and the authority to get my daughter back now"*.

PS 1526 explained to the appellant the procedure according to the Maltese Law and in the presence of WPC 328, PC 201, PC 636 and myself appellant said the words *"The police can fuck off"* and stormed out of the police station.

It is to be noted that although the appellant was contacted several times to produce a medical certificate regarding the alleged injuries she suffered she failed to do so.

PS 1526 C. Borg too gave his sworn evidence in writing by means of a sworn affidavit dated 17th November 2018 and confirmed all that WPC 328 Attard stated . However he added that the appellant was creating trouble and shouting at WPC 328, PC 636 and PC 201 and we all started to try to calm her down by speaking to her.

He explained to her that the police could not just turn up and take the child from him and her over to her but all it could do was go to check ad see if the child was being looked after and should her husband keep on refusing gto hand over the child she had to go to a lawyer and present an application in court.

Notwithstanding all this, he states that the appellant continued to shout and complain that her husband had hit her and took her child and was refusing to hand her over to her . She started to hit herself on her neck and pull her own hair and address the police with the words *"Fuck Off and Fuck you.. You as police have the pistols and the authority to get my daughter back now."*

He confirms that the appellant was asked to curtail her discourse many a time and not to carry on insulting the police and was informed that the police would be taking action against her and if she wanted to press charges against her husband she would need to get a medical certificate to confirm the injuries sustained by her . She replied that she does not give a damn about the injuries and all she was interested in was to get back her child and just stormed out of the station whilst telling the police officers to *" Fuck off"*.

PC 636 Brandon Pullicino confirmed all that WP 328 Attard stated in her affidavit and added that the appellant was asked to produce a court decree in view of the report she had made against her husband that he was keeping the daughter and refusing to pass her on back to the appellant. He confirmed that whilst she was the police station that being police we had to get her daughter back from her ex husband and she started saying the words “ *you as police have the pistols and the authority to get my daughter back now*”.

He also explained that PS 1526 explained to the appellant the procedure according to Maltese law in the presence of WPC 328, PC 201 and PC 636 that has to be followed for her to get her daughter back from her ex husband when the appellant uttered the words “*The police can fuck off*” and she stormed out of the police station.

PC 201 Isaac Farrugia gave his evidence on oath and confirmed the version of events as explained by WPC 328 Attard. He also repeated the same words that the other police officials said in their affidavit as the words expressed by the appellant in their regard.

The appellant **Elena Anatolievna Camilleri** gave evidence before the Courts of Magistrates (Malta) as a Court of Criminal Judicature on the 30th January, 2019 and she confirmed that she was involved in a big fight and possibly the police misunderstood her. She explained that she has been separated from her husband for three and a half years she complained that although her husband should be maintaining her daughter he does not give her one cent. Though on the other hand she said that her husband should have access to their daughter once a week though because of her kindness she allows him to be with her every day.

When the incident broke out she says that her ex husband had kept her daughter for two extra days and she had called him many times and asked him to bring back their daughter to her since it was Sunday and the following day she had school. She said that he called her and addressed her rudely. She called him again and since he was in the presence of his girlfriend he wanted to show off and so she went to report to

the police what had happened. She says that she is known at the police station and every time they tell her to engage a lawyer . She said that when last year she had a relationship she was deprived from seeing her daughter for two months and she was going crazy.

On the 5th November, 2018 she confirms that she went to the police station but denies having told the police to arrest her ex husband. She said that she only told them to call her husband and push him to return her child since the morrow was a school day. She confirmed that her daughter should have been returned two days before and thus had gone twice to the police station. She said the police told her to communicate with her lawyer. She said that the police asked her to take to them a certificate and she said she did though they told her that they could do nothing but told her to communicate with her lawyer. She denies having spoken to the police roughly she said she is not a silly woman. She said that she addressed her husband rudely not the police. She added that she has nothing against the police.

In cross examination asked if she said the words “*Fuck off fuck off*” she says that she did though not to the police but to her husband. Then she also said that “*maybe when you have depression, you nervous, don’t know, I didn’t mean to the police I apologise, I swear, I don’t even have in my brain to say to the police just maybe you take me wrong but everything I wanna say to my husband because I really started to hate him because he not even helped me in three years with my daughter.*”

Legal considerations.

The appellant was found guilty of the crime of Vilification, threats or bodily harm against other public officers as found in **section 95 of the Criminal Code** which provides the following :-

“Whosoever, in any other case not included in the last preceding two articles, shall revile, or threaten, or cause a bodily harm to any person lawfully charged with a public duty, while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or unduly influence him in the discharge of such duty, shall, on conviction, be liable to the punishment established for the vilification, threat, or bodily harm, when not

accompanied with the circumstances mentioned in this 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(5,000)".

There is no doubt that this case depends on the issue of credibility of the witnesses who gave their evidence and thus this is the exercise that the Court has to do, in that it must examine diligently carefully the evidence given and see who is most credible in relating the version of events of what happened on the 5th November 2018. The Court is face with two alternatives either that the four police officials who testified said an untruth or that the appellant is not correct in her version of events as given in court. However for this court to reach a conclusion that the appellant should not have been found guilty it must also conclude that the four police officers wanted to fabricate a criminal report in regard to the appellant that she has committed an offence when she did not.

This court is in the same position as the first court because the evidence that was produced by the prosecution was all written evidence apart from that given by the appellant and still the first court though that the version of events given by the police was more credible in the circumstances.

It is true that in the eventuality of conflicting evidence the court should proceed to acquit the accused but as was held in the leading case in the names **Il-Pulizija v Charles Ducker**¹ the court may believe some and discredit others it held the following:-

"Conflicting evidence per se, does not necessarily mean that whoever has to judge may not come to a conclusion of guilt, whoever has to judge may, after consideration of all the circumstances of the case, dismiss one version and accept as true the opposing one."

It is likewise true that according to article 638(2) of Chapter 9 of the laws of Malta *"the testimony of one witness if believed by those who have to judge of the fact shall be sufficient to constitute proof thereof, in as full and ample a manner as if the fact had been proved by two or more witnesses "*

¹Decided by the Crminal Court of Appeal on the 19th May 1997

Thus it is the duty of the court to see who is the most credible witness on the basis of possibility.

This is a Court of revision so its duty is to see that the first court did not reach an unsafe and unsatisfactory judgment on the evidence brought forward against the appellant. It cannot here new evidence and thus revises the evidence heard before the first court.

According to the judgment in the names **il-Pulizija ve Amante Camilleri**²

"Biex ikun hemm d-delitt ta' oltragg, hemm bzonn li l-kliem denunzjati bhala ingurjuzi jkunu nghadu lil wiehed li ghandu l-kwalifika ta' Ufficjal Pubbliku, u li jkunu nghadu officio durante vel contemplatione officii. Rekwizit iehor huwa li l-kliem jigu profferiti fil-presenza tal-Ufficjal in kwistjoni, ossia de viso, ghax altrimenti ma jkunx hemm rreat ta' oltragg izda dak ta' ingurja komuni. In oltre hemm bzonn li l-kliem ikun fil-fatt ingurjuzi, kif wkoll hemm bzonn l-element formali li jikkonsisti fl-intenzjoni li wiehed joffendi Ufficjal Pubbliku."

Therefore in order to be found guilty the accused/ appellant should have uttered words of vilification to a public officer and did so whilst the said public officer was carrying out his duties. It is of paramount importance that the words uttered were said in the presence of the public officer 'de viso' otherwise the offence of vilifying a public officer would not subsist.

In this case the four officers all stated and it is to be noted that none of them were cross examined even for clarity's sake that the appellant had gone to the Naxxar police station to report her ex husband for not having returned their daughter to her even. But whilst she was there she seemed not to want to understand what the procedure is and instead starting howling words of disrespect to the police officers whilst in the police station trying to take down her report .

For this crime to subsist it is imperative that the prosecution proves that the accused/ appellant *"reviled, or threatened, or cause a bodily harm to the police officers charged with a public duty, while in the act of discharging their duty or because of them*

² Delivered on the 17th October 1997 by the Criminal Court of Appeal

having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty,”

It appears that the appellant was angry and told the police to ‘fuck off ‘ and that they have the pistols and the authority to get her daughter back. But at no point in time did she threaten them or cause bodily harm. If one were to see the definition of the word ‘revile’ this means reprehend, reprobate. attack, blame, blast, criticize. Thus the words uttered by the appellant were not such as to amount to vilification of a public officer whilst discharging his duty.

However, incorporated in this offence is the contravention as found in article 338(ee) of the Criminal Code which provides the following:

“disobeys the lawful orders of any authority or of any person entrusted with a public service, or hinders or obstructs such person in the exercise of his duties, or otherwise unduly interferes with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any other manner whatsoever, unless such disobedience or interference falls under any other provision of this Code or of any other law; disobeys the lawful orders of any authority or of any person entrusted with a public service, or hinders or obstructs such person in the exercise of his duties, or otherwise unduly interferes with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any other manner whatsoever, unless such disobedience or interference falls under any other provision of this Code or of any other law”;

The words uttered by the appellant were such so as to interfere with the exercise of the duties of the public officers when she said to them that ‘ they have the pistols and the authority to get back her daughter”. These words are tantamount to an interference in their carrying out of their duties and thus this contravention which is incorporated in the offence of vilification of a public officer results to the satisfaction of the court. These words were directed to the police and not to her husband as

claimed by appellant and were directed as to prevent the police officers from doing what they are lawfully enjoined or allowed to do. It is evident that she was not happy with the approach taken by the police and not even by the advice given to her by them and thus tried to interfere in their work by telling them that due to the pistols they carry they could get back her daughter and thus suggested that they act on her report without following the procedure at law by first ascertaining that she truly had the care and custody of the minor daughter. Something they could not confirm since the appellant did not furnish them with a copy of the decree given by the Family Court.

The Court does thus is upholding the appeal of the appellant and is reforming the judgement given in that it is revoking that part of the judgment wherein it declared the appellant guilty of the charge of vilification of a public officer and condemned her to the payment of a multa of eight hundred euro (€800) and instead finds her guilty of the contravention of hindering and obstructing a police officer in the exercise of his functions and condemns her to the payment of fifty six euros (€56).

(ft) Consuelo Scerri Herrera

Judge

VERA KOPJA

Franklin Calleja

Deputat Registratur