



The Court of Criminal Appeal

His Honour the Chief Justice Joseph Azzopardi

The Hon. Mr. Justice Joseph Zammit Mckeon

The Hon. Mrs. Justice Edwina Grima

Sitting of the 22nd January 2020

In the acts of the proceedings regarding the allegation of insanity in the names:

The Republic of Malta

Vs

Michael Emmanuel

The Court,

1. Having seen the charges brought against Michael Emmanuel holder of document with number 74870A accused with having on the night of the 14th September, 2018 and before seven o'clock (7am) of the 15th September, 2018 in Rahal il-Gdid:

- i. Maliciously, with intent to kill or put the life of Maria-Lourdes Agius in manifest jeopardy, caused her death;
- ii. Moreover, for having on the 13th September, 2018 at about half five in the afternoon (5.30pm) in Rahal il-Gdid with intent to commit grievous bodily harm on the person of Maria Agius, a person who has attained the age of sixty years and a person living in the same household, as well as on the person of Maria-Lourdes Agius, a person with whom he had a child in common and/or a person living in the same household and/or a person who had lived with within a period of three years preceding the offence, manifested such intent by overt acts followed by a commencement of the execution of the crime, which crime was not completed in consequence of some accidental cause independent of his will;
- iii. Moreover for having on the same day and in the same circumstances caused harm to the body or health of Maria Agius a person who has attained the age of sixty years and a person living in the same household, as well as on the person of Maria-Lourdes Agius, a person with whom he had a child in common and/or a person living in the same household and/or a person who had lived with within a period of three years preceding the offence, which harm is deemed to be of slight nature;
- iv. Furthermore, for having on the 14th of September, 2018 and/or during the previous months, by several acts, even if committed at different times, which constitute violations of the same provisions of the law or of related provision of the law, and committed in pursuance of the same design, as a person who knows or ought to know that Maria Agius, a person of 64 years of age, is an elder or a dependent adult and who, under circumstances or conditions likely to produce grievous bodily harm or death, wilfully caused or permitted Maria Agius, a dependent adult to suffer, or inflicted on such person unjustifiable physical pain or mental suffering, or having the care or custody of the same elder or dependent adult, wilfully caused or permitted the person or health of the elder or dependent adult to be injured, or wilfully caused or permitted the elder or dependent adult to be injured, or wilfully caused or permitted the elder or dependent adult to be placed in a situation in which her person or health is endangered.
- v. Also accused of having on the 14th September, 2018 disobeyed the lawful orders of any authority or of any person entrusted with a public service.
- vi. Also accused further of having in the past months, in these islands forged, altered or tampered with a Greek Identity Card or document, or used or had in his possession a Greek identity card or document, which he knew to be forged, altered or tampered with;
- vii. Committed any other kind of forgery, or knowingly made use of any other forged document (Greek driving license);
- viii. Forged any document or true copy of a document or an entry made in pursuance to Chapter 217, the Immigration Act, of the Laws of Malta;

ix. Without lawful authority used or had in his possession any document required for the purpose of Chapter 217, the Immigration Act, of the Laws of Malta.

The accused Michael Emmanuel replied that he was in a state of insanity when he committed those acts.

2. Having seen the application of the Attorney General filed before the Criminal Court wherein, in terms of article 402(5) of the Criminal Code the issue of the alleged insanity of accused person was submitted to the said Court.

3. Having seen the verdict of the jury of the 5th July 2019 wherein:

First Charge:- The jury with eight (8) votes in favour and one (1) vote against, find Michael Emmanuel not to have been in a state of legal insanity in terms of the first charge brought against him.

Second Charge:- The jury unanimously find Michael Emmanuel not to have been in a state of legal insanity in terms of the second charge brought against him.

Third Charge:- The jury unanimously find Michael Emmanuel not to have been in a state of legal insanity in terms of the third charge brought against him.

Fourth Charge:- The jury unanimously find Michael Emmanuel not to have been in a state of legal insanity in terms of the fourth charge brought against him.

Fifth Charge:- The jury unanimously find Michael Emmanuel not to have been in a state of legal insanity in terms of the fifth charge brought against him.

Sixth Charge:- The jury unanimously find Michael Emmanuel not to have been in a state of legal insanity in terms of the sixth charge brought against him.

Seventh Charge:- The jury unanimously find Michael Emmanuel not to have been in a state of legal insanity in terms of the seventh charge brought against him.

Eight Charge:- The jury unanimously find Michael Emmanuel not to have been in a state of legal insanity in terms of the eight charge brought against him.

Ninth Charge:- The jury unanimously find Michael Emmanuel not to have been in a state of legal insanity in terms of the ninth charge brought against him.

4. Having seen the judgment of the Criminal Court of the same day wherein the said Court after having seen articles 33(a), 402, 620, 627 and 628 of the Criminal

Code declared Michael Emmanuel not to have been in a state of insanity at the time of the commission of the acts. Thus, ordered that the acts of the proceedings be remitted before the Court of Magistrates (Malta) as a Court of Criminal Inquiry so that there may be the continuation of the compilation of evidence in his regard.

5. Having seen the appeal application filed by accused Michael Emmanuel on the 12th July 2019 wherein he requested this Court to revoke the judgment of the Criminal Court following a verdict by the jury dated 5 July 2019 which declared that appellant was not in a state of legal insanity on all counts proffered against him and in its stead declares that the appellant was in a state of legal insanity at the time of the offences proffered against him, with all the consequences contemplated at law.

6. Having seen the reply of the Attorney General of the 16th September 2019, wherein for the reasons brought forward in his reply requested that the Court rejects the appeal filed by Michael Emmanuel and confirms the verdict and judgment of the First Court.

7. Having seen the minutes of the hearing of the 16th October 2019 wherein the Court adjourned the case for judgment solely with regards to the preliminary plea raised by the Attorney General regarding the nullity of the appeal application for the reasons laid out in his grievance.

8. Having heard submissions by the parties.

9. Having seen all the acts of the case.

Considers,

10. The plea of nullity of the appeal application put forward by the Attorney General appears to be threefold, since it is not clear whether the Attorney General is contesting accused's right of appeal from a judgment delivered by the Criminal Court with regards to the plea of insanity put forward by him. The Attorney General laments the wrong indication by appellant in his appeal application as to the Court before which he is filing his appeal, the lack of indication as to the precise article of law which gives him the right of appeal from the verdict and judgment regarding the plea of insanity and finally that the appeal application does not seem to have been filed in

the proceedings relating to the question of the allegation of insanity of the accused within the terms of articles 620 *et seq.* of the Criminal Code.

11. The Court at the very outset of its judgment affirms that judicial acts filed before any court may be declared null and void only within the limits laid down by law. Not only but our courts have always taken the stance to try and save the validity of judicial acts even more so when a person accused of committing one of the most heinous crimes and presumed innocent until otherwise decided by a panel of jurors, requests a review of a decision given by a court of first instance and this in order to safeguard the right of accused person to a fair hearing according to law. This is so since if the Court were to adopt the strict approach to the filing of written pleadings as advocated by the Attorney General in his reply, this would be tantamount to denying accused person from his substantive right of appeal.

*“Kif inhu risaput, pero`, din il-Qorti tipprova ssalva l-atti u ma tiddikjarax rikors ta’ appell bhala null fejn dan ikun possibbli, imqar bi ftit tigbid entro l-limiti permessi mill-ligi, ghax ikun gie sodisfatt il-minimu ta’ dak li hu rikjest ghall-finijiet tas-subartikolu (1) ta’ l-Artikolu 419 imsemmi – ara f’dan is-sens Il-Pulizija v. Robert Spiteri et App. Krim. 30/4/1990, Il-Pulizija v. Joseph Tabone App. Krim. 14/9/2007, u Il-Pulizija v. George Galea App. Krim. 15/2/2008.”*¹

12. Now the contents and form of an appeal application, being the written pleadings utilized to initiate a right of review from a decision delivered in first instance, are laid out in article 505 of the Criminal Code which states:

(1) Besides the indications common to judicial acts, the application shall contain a brief but clear statement of the facts of the case, the grounds of the appeal and the relief sought by the appellant.

(2) The application shall, on pain of nullity, be signed by an advocate or by the appellant himself.

(3) The record of the proceedings of the Criminal Court shall be lodged by the Registrar of Courts before the Court of Criminal Appeal within two working days from the day when the application is filed.

(4) A copy of the application shall be served on the Attorney General or on the accused, as the case may require, at least eight working days

¹ Il-Pulizija vs Joseph Meilak App Inf. 25.11.2009

before the day appointed for the hearing of the appeal, unless the court shall in any case of urgency direct service with a shorter notice.”

13. The only instance, therefore, wherein an appeal application may be declared null is when these written pleadings are not signed by an advocate or by appellant himself. Now it is evident from a glance at the appeal application that these requisites have been adhered to by appellant. There is a clear exposition of the facts of the case together with the grounds of appeal from the verdict and judgment of the Criminal Court with regard to the plea of insanity raised by appellant and finally the signature of defence counsel. Also the remedy being sought is clearly expounded. This Court therefore has no doubt as to what is being requested by appellant and that he is exercising his right of appeal as laid out in article 499(2) of the Criminal Code although this specific article of law is nowhere indicated in his appeal application.

“An appeal shall also lie at the instance of the accused from any decision given, on an application of the Attorney General, under article 402(5) or from any decision given, after the reading out of the indictment and before the accused pleads to the general issue of guilty or not guilty, on any of the pleas referred to in article 449(1)(e) and (f).”

14. Now the request made to this Court by appellant reads as follows:

“Consequently, after making reference to the acts of the case, for the reasons indicated and for all those reasons that will be submitted during the Appeal, the appellant prays this Honourable Court so that after considering all the evidence and all the arguments already put forth and those that will be brought up during the appeal proceedings it revokes the judgement as given by the Criminal Court following a verdict by the jury dated 5 July 2019 wherein the appellant was declared as not being in a state of legal insanity on all counts proffered against him and in its stead declares that the appellant was in a state of legal insanity at the time of the offences proffered against him, with all the consequences contemplated at Law.”

15. The Court is perplexed that the Attorney General failed to understand the nature of this appeal and the legal basis of the request put forward by appellant. Not only does the appeal application make clear reference to the proceedings undertaken before the Criminal Court upon an application filed by the Attorney General himself before the said Court of the 8th April 2019 regarding the plea of insanity of the accused, but also indicates the date on which the verdict and judgment of the Criminal Court were delivered with regards to the said application.

The Court reiterates that the request put forward by appellant is clear as to its nature and also its substance, and therefore considers the grievance put forward by the Attorney General in this regard as completely unfounded.

16. Having thus concluded the Court consequently is of the firm opinion that although appellant, files his appeal from the judgment of the First Court under the heading “**In the Criminal Court of Appeal**” and indicates the words “**Hon. Madame Justice Dr. C. Scerri Herrera**”, this in no way implies that the appeal application was filed before the Court of Criminal Appeal in its inferior jurisdiction, as contended by the Attorney General. Although it is true that there is no indication in the designation of the case that the proceedings relate to the allegation regarding the plea of insanity, however as already pointed out there is no doubt that appellant is requesting a review of the decision of the jury and the subsequent judgment regarding the plea of insanity raised by him during the compilation proceedings, the Attorney General triggering the proceedings of a trial by jury to determine the said plea in terms of articles 402(5) and 620 of the Criminal Code. The proceedings before the Criminal Court henceforth were set into motion, with a verdict and judgment delivered by the Criminal Court delivered according to law. Thus the Court envisages no nullity in this regard.

17. Also not only was the appeal application filed in the registry of this Court, in its superior jurisdiction, but above all the legislator himself considered that the power to amend written pleadings by the Court should extend also to those acts filed before the courts of criminal jurisdiction, and rightly so. In fact article 520(1)(c) of the Criminal Code provides that article 175 of the Code of Organisation and Civil Procedure is to be made applicable also to the said courts *mutatis mutandis*. Today, therefore, the said disposition of the law gives this Court the power to carry out those amendments required to written pleadings so as to save them from nullity, wherein article 175(2) of Chapter 12 of the Laws of Malta reads as follows:

“Any court of appellate jurisdiction may also order or permit, at any time until judgment is delivered, the correction of any mistake in the application by which the appeal is entered or in the answer, including any mistake in the indication of the court which delivered the decision appealed from, in the name or character of the parties, or in the date of the judgment appealed from.”

Provided that any court of appellate jurisdiction may also order corrections in the judgment of the court of first instance and other corrections that the court of appellate jurisdiction considers to be justified in the acts of the case at any stage of the appeal proceedings until the appeal is adjourned for judgment, at the request of any of the parties, and after granting the parties an opportunity to be heard

18. The *raison d'être* behind the introduction of article 175 of the Code of Organisation and Civil Proceedings and its applicability to the courts of criminal jurisdiction was expounded in a judgment delivered by this Court in its inferior jurisdiction in the case *Il-Pulizija vs Charles Mifsud* (15/10/2019) wherein it was decided:

“Illi din l-emenda kienet dahlet bl-Att XXII tal-2005 li d-dibattiti parlamentari dwaru juru li l-intenzjoni tal-leġislatur, riflessa fl-istqarrijiet magħmula mill-ġja Ministru Dr. Tonio Borg u ġia Segretarju Parlamentari Dr. Carmelo Mifsud Bonnici, kienet li jithaffu proċeduri ġudizzjarji u jitnaqsu l-formaliżmi żejda. Mid-dibattiti parlamentari relattivi għall-bidla introdotta bl-Att I tal-2018 fir-rigward tal-applikazzjoni mutatis mutandis ta' dawn id-disposizzjonijiet għall-Qrati ta' Gustizzja Kriminali, jirriżulta li dawn riedu jiġu applikati speċifikament għal dan il-kuntest penali”

19. The amendment to written pleadings may even be ordered by the Court of its own motion as laid out in subarticle 3 to article 175:

“Any judicial or administrative omission or mistake in a judicial act may until the court shall have delivered judgment and disposed of the case be remedied by a court of its own motion.”

20. Thus by the powers conferred on this Court by the said disposition of the law, the Court orders that the words “Hon. Madame Justice Dr. C. Scerri Herrera” in the appeal application under the heading of the said application be erased.

Consequently for all the above mentioned reasons the Court rejects the preliminary plea raised by the Attorney General and after the said corrections are carried out in terms of this judgment, orders the continuation of

proceedings regarding the appeal application filed by accused Michael Emmanuel.

(ft) Joseph Azzopardi
Chief Justice

(ft) Joseph Zammit Mckeon
Judge

(ft)Edwina Grima
Judge

VERA KOPJA

Franklin Calleja

Deputat Registratur