



Court of Criminal Appeal

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

Appeal number: 236/2019

The Police

(Inspector Daryl Borg)

Vs

Yusuf Mohamud Isse

Today the, 28th January, 2020

The Court,

Having seen the charges brought against Yusuf Mohamud Isse holder of Refugee Commission number 15460, before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having:

On the 18th of July 2019 between three o'clock and four o'clock in the afternoon from Triq il-Miratur Floriana and on these Islands:

1. Committed theft of vehicle, make Volkswagen Passat bearing registration number ABL-343 to the detriment of Marjoraine (Margaret-Anne) Ruggier and/or other persons, which theft is qualified by value which exceeds two thousand three hundred and twenty nine euros and thirty seven cents (€2,329.37) and the nature of thing stolen in breach of Articles 261, 267 and 271 of Chapter 9 of the Laws of Malta;

2. Also for having committed theft of mobile phone to the detriment of Marjoraine (Margaret-Anne) Ruggier and/or other persons, which theft is qualified by value which exceeds two hundred and thirty two euros and ninety four cents (€232.94) but does not exceed two thousand three hundred and twenty nine euros and thirty seven cents (€2,329.37) and the nature of thing stolen in breach of Articles 261, 267 and 271 of Chapter 9 of the Laws of Malta;
3. Also for having driven vehicle bearing registration number ABL-343, make Volkswagen Passat, without a driving license and this in breach of Article 15 (1) of Chapter 65 of the Laws of Malta;
4. Also for having driven vehicle bearing registration number ABL 343 make Volkswagen Passat, without being covered by an insurance policy and this in breach of Article 3(1) of Chapter 104 of the Laws of Malta.

Having seen the judgment meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 20th of July 2019 whereby the Court, after having seen Sections 17, 261, 267, 271, 280 of Chapter 9 of the Laws of Malta and Section 15 (1) of Chapter 65 of the Laws of Malta as well as Section 3 (1) of Chapter 104 of the Laws of Malta the Court found the accused guilty of all the charges brought against him and condemned him to fourteen (14) months imprisonment and disqualified him from holding a driving licence for a period of twelve (12) months from today. After having seen Article 392 A (2) and 401 (3) of Chapter 9 of the Laws of Malta, the Court ordered that a copy of this judgement together with the acts of these proceedings are sent to the Attorney General within the time limit stipulated by Law.

Having seen the acts of the proceedings;

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

Having seen the appeal application presented by the Attorney General in the registry of this Court on the 8th of August 2019 whereby this Court was requested to reform the judgment proffered against the accused by:

1. Confirming that part of the judgment whereby the Court of Magistrates found the accused guilty of all the charges brought against him;
2. Cancels and revokes that part of the judgment whereby the Court of Magistrates condemned the accused to fourteen (14) months imprisonment, and instead impose the relative punishment which is in accordance with the law as well as to mete out the consequences of the finding of guilt prescribed by law.

Having seen the grounds for appeal of the Attorney General:

That on the 23rd of July 2019, in terms of article 392A of the Criminal Code, the Attorney General received the records of these proceedings and felt aggrieved by the aforesaid judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature, in relation to the punishment meted out by the said Court;

That the reasons due to which the appellant Attorney General feels aggrieved by the aforesaid judgment of the Court of Magistrates (Malta) are clear and manifest and consist of the following;

That the accused was found guilty of various offences, the gravest of which, in terms of punishment, is that of theft aggravated by value which exceeds two thousand three hundred and twenty-nine euro and thirty-seven cents (€2,329.37), and the nature of the thing stolen. The punishment established for this offence is that stipulated in article 280 (1) in conjunction with article 279 (b) of the Criminal Code, which articles state the following:

279. Whosoever shall be guilty of theft aggravated by "amount" only shall be liable - (b) if the value of the thing stolen exceeds two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37), to imprisonment for a term from thirteen months to seven years.

280. (1) *Where the theft aggravated by “amount” is accompanied with one or more of the other aggravating circumstances, with the exception of that of “violence” or “means”, the offender shall be liable, as the case may be, to the punishments established in the last preceding article, which shall not, however, be awarded in their minimum.* [underlined by the appellant].

That according to article 20 of the Criminal Code, when the law expressly provides that a punishment shall not be awarded in its minimum, the punishment to be awarded shall always include at least one-third of the difference between the minimum and the maximum;

That moreover, the accused was also found guilty of theft aggravated by value which exceeds two hundred and thirty-two euro and ninety-four cents (€232.94) but does not exceed two thousand three hundred and twenty-nine euro and thirty-seven cents (€2,329.37), and the nature of the thing stolen. The punishment established for this offence is that stipulated in article 280 (1) in conjunction with article 279 (1) (a) of the Criminal Code, which articles state the following:

279. *Whosoever shall be guilty of theft aggravated by “amount” only shall be liable – (a) if the value of the thing stolen does not exceed two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37), to imprisonment for a term from five months to three years;*

280. (1) *Where the theft aggravated by “amount” is accompanied with one or more of the other aggravating circumstances, with the exception of that of “violence” or “means”, the offender shall be liable, as the case may be, to the punishments established in the last preceding article, which shall not, however, be awarded in their minimum.*

That the accused was also found guilty of driving a motor vehicle without a driving licence in breach of article 15 (1) of Chapter 65 of the Laws of Malta. That the punishment for this offence is that of a fine (*multa*) not exceeding one thousand and two hundred euro (€1,200) or to imprisonment not exceeding one year, as well as the disqualification from holding or obtaining a driving licence for a period of not less than eight days [See article 15 (1) and (3) of Chapter 65 of the Laws of Malta];

That finally, the accused was also found guilty of driving a motor vehicle without being covered by an insurance policy in breach of article 3 (1) of Chapter 104 of the Laws of Malta. That the punishment for this offence is that of a fine (*multa*) of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding four thousand and six hundred and fifty-eight euro and seventy-five cents (€4,658.75), or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment, as well as the disqualification from holding or obtaining a driving licence for a period of twelve months [See article 3 (2) (a) and (2A) of Chapter 104 of the Laws of Malta];

That in view of the above, the appellant is of the opinion that the Court of Magistrates was not correct in the quantum of fourteen (14) months imprisonment meted out against the accused, and this is because the punishment arrived at in terms of article 17 of the Criminal Code in the case of concurrent offences and punishments exceeds that of fourteen (14) months imprisonment. In fact, the minimum punishment for the offence contemplated in the first charge, which offence is the gravest of all the offences of which the accused was found guilty, is that of around twenty-four months (24) months imprisonment, and therefore, the punishment of fourteen (14) months imprisonment meted out by the Court of Magistrates is below the minimum prescribed by law. This is also being said in view of the fact that in its judgment, the Court of Magistrates did not refer to any provision of the law on the basis of which it could have awarded that punishment, nor did it state any special and exceptional reasons, as required by article 21 of the Criminal Code, as to why it was awarding a punishment below the minimum prescribed by law.

Having heard the parties make their final oral submissions with regards to this appeal filed by the Attorney general during the sitting of the 3rd December 2019.

Having seen the conviction sheet of the appellate exhibited in the acts of thee proceedings.

Considers further.

The Court examined the acts of the proceedings in particular all that took place on the day of his arraignment on the 20th July 2019 (fol. 6). The accused appellate pleaded guilty to all charges even when given ample time to reconsider his guilty plea the accused appellate insisted on registering a guilty plea. The Court then went on to pronounce judgement and found the accused guilty upon his own admission and condemned him to a period of imprisonment of fourteen months and disqualified him from holding a driving license for a period of twelve months from that day.

The Attorney General filed an appeal basing its aggravations on the fact that the court of first instance meted out a wrong punishment that does not fall within the parameters set out by law.

The accused was found guilty of the offence of various offense, the gravest being that of theft aggravated by value (article 261 (c) of Chapter 9 of the laws of Malta) which exceeded the sum of €2,329.37 and also by the aggravation of tee thing stolen (article 261 (g) of the Criminal code. The punishment provided for in the code for this offence with its aggravations is that stipulated in article 280 (1) together with article 279 (b) of the same chapter 9 of the laws of Malta which inter alia states that where the theft is aggravated by amount and another aggravating circumstance as is the case with the exception of violence or means the offender is liable to the punishment mentioned in article 279 (from a term of thirteen months to seven years) and shall not be awarded in their minimum.

Now in addition article 20 of the Criminal code provides as correctly highlighted by the Attorney General in his application that the law expressly provides that punishment shall not be awarded in its minimum, the punishment to be awarded shall always include at least one third of the difference between the minimum and the maximum. Thus in regard t the first offence the punishment that had to be awarded was not less than 23 months.

In addition the accused was also found guilty of the charge of driving without a valid license and this offence to carries a punishment of imprisonment of found

guilty no exceeding one year or to a multa of €1,200 together with the disqualification of holding a driving license.

Finally the accused was found guilty of driving a vehicle without an insurance policy and in case of guilt as is the case under examination the punishment prescribed by law is that of maximum imprisonment of three months or to the payment of a fine not less than €2,329.37 and nit more than €4,658.75.

The accused brought no reason to the court why it should go below the minimum in applying section 27 in highlighting and grave and serious reasons why it should go below the minimum prescribed by law.

Thus in the circumstances the appeal of the Attorney General should be entertained since the punishment awarded by the courts of Magistrates (Malta) as a Court of Criminal Judicature was in correct.

The Court thus is confirming that part of the judgment wherein the accused was declared guilty of the charges but revokes that part of the judgement given by the first court regarding the punishment imposed by upholding the appeal of the Attorney General and after seeing the relevant sections at law namely 261, 267, 271, 280 of Chapter 9 of the laws of Malta, section 15 (1) of Chapter 65 of the laws of Malta and section 3 of Chapter 104 of the laws of Malta condemns the accused appellate to a term of 30 months imprisonment and confirms that part of the judgment given by the Courts of Magistrates (Malta) as a court of Judicature wherein it ordered that the accused is disqualified from holding a driving license for a period of one year which period however starts to run as form today at midnight.

(ft) Consuelo Scerri Herrera

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VERA KOPJA

Franklin Calleja

Deputat Registratur