THE COURT OF CRIMINAL APPEAL

The Hon. Mr. Justice Aaron M. Bugeja M.A. (Law), LL.D. (melit)

Appeal number – 254/2019

The Police

vs.

Jeremiah ANI

Sitting of the 14th July 2020

The Court,

1. This is an appeal from a judgment delivered by the Court of Magistrates (Malta) on the 19th September 2019 against Jeremiah ANI, holder of a Maltese identity card number 0368412L, who was charged with having, during the month of October 2018 and previous months, in these Islands, by several acts committed by him, even if at different times, which constitute violations of the same provision of the Law or of related provisions of the Law, and were committed in pursuance of the same design :

(i) Used violence, including moral, and, or physical violence, and , or, coercion, in order to compel his ex-wife Luana Ani to suffer or omit anything or to diminish her abilities or to isolate that person or to restrict access to money, education or employment, in violation of section 251(1) of Chapter 9 of the Laws of Malta;

(ii)Caused his ex-wife Luana Ani fear that violence will be used against her or her property or against the person or the property when he knew or ought to have known that his course of conduct will cause the other so to fear, in violation of Setion 251B(1) of Chapter 9 of the Laws of Malta;

(iii) Without reasonable excuse, contravened any prohibition or restriction imposed upon him by a protection order issued by Magistrate Dr. A Vella LL.D. on the 21st March 2016 in violation of Section 412C (11) of Chapter 9 of the Laws of Malta;

(iv) Uttered insults or threats against his ex-wife Luana Ani, in violation of section 339(e) of Chapter 9 of the Laws of Malta.

2. By means of the said judgment, the Court of Magistrates (Malta), found the accused not guilty of the first and second charges and therefore acquit him from the same, whereas it found him guilty of the third and fourth charges and condemned him to one year imprisonment suspended for a period of two years in terms of article 28A of the Criminal Code, while it also issued a restraining order against him in favour of Luana Ani for a period of two years.

3. Jeremiah ANI filed an appeal against this judgment whereby he requested this Court to **vary** the said judgment by confirming that part where he was declared not guilty of the first and second charges, whereas to alter, revoke and change the said judgment where he was found guilty of the third and fourth charges and thus by declaring him not guilty thereof and consequently to acquit him. The reasons for this appeal are the following : -

(1) The prosecution failed to prove the existence of the Protection Order issued by the Court of Magistrates on the 21st March 2016. The appellant declared under oath that he was not aware of such order and that it was

never issued against him. Only a photocopy of the Protection Order was exhibited. Moreover in the minute indicating the filing of the Order it was stated that an 'informal copy 'of the Order was exhibited. Subsequently no witness took the stand to confirm same. It was on the basis of this document that the Court of Magistrates based its judgment to condemn the appellant on the first and second charges. The appellant made reference to article 636 of Chapter 12 of the Laws of Malta relating to the criteria for authentication of documents, which provision was applicable to criminal proceedings in line with article article 520(1)(e) of the Criminal Code. The Prosecuting Officer in that case did not testify in these proceedings to confirm the same. Moreover there were many other documents which were exhibited in this case which however remained unauthenticated; and this including the text messages which were duly exhibited. These shortcomings should have resulted in the acquittal of the accused in relation to the third and fourth charges since these docs should have been deemed inadmissable.

(2) Prescription of the contravention. Amongst the messages which the Court took note of were those dated 24th February 2018 and 21st April 2018, which should not have been factored in since they were time-barred. Only the text message dated 7th October 2018 should have been considered for the purposes of the third and fourth chages. This text message was however somewhat flimsy. Moroever this text message was never authenticated and hence the evidence wasn't brought to the level expected.

(3) After referring to jurisprudence on the same matter, with reference to text messages brought as evidence, the appellant opined that these did not show or portray any threat at all. There were many more messages as would be the case between a couple such as this one with kids in common. This action was taken by appellant's ex wife simply because she suspected that the appellant got involved into a stable relationship with another person. Apart from this, the text message referred to by the Court did not cause any sense of alarm or apprehension as is requested to prove for purpose of nature of contravention with a view to local case law.

(4) The appellant also claimed that the punishment was unjust. The relationship between the parties was now stable and they were both responsible for their three kids. Moreover no evidence was brought to confirm the protection order.

Considers as follows :-

4. That on the 11th October 2018 the St. Julian's Police Station received a report from Luana Ani stating that she was separated from her husband who, for the past two years, had been repeatedly

threatening her over the phone whenever they had arguments regarding their children's access rights. She added that her husband, the appellant, had a Court Protection Order issued against him for a period of three years on the 21st August 2016 which was allegedly in operation at the time of the report.

5. From investigations carried out it transpired that the victim had also reported physical violence allegedly committed by the appellant in her regard. Victim added that she felt constantly scared by the appellant. Questioned why Police reports were not lodged earlier, she claimed that the appellant threatened to kill her if she did. Consequently, the appellant was arrested and spoken to where he denied the allegations put before him.

Considers further:

6. The appellant raised a number of grievances which may be summed up as follows:

a. The Court of Magistrates could not have found the appellant guilty of the third charge since the Protection Order duly exhibited was in no way authenticated and hence not admissible as evidence, despite the fact that court effectively relied on this piece of evidence to establish guilt.

b. Secondly with regards to the finding of guilt of the fourth accusation, out of the three incidents indicated by the Court, only the alleged facts mentioned on the last date referred to could be

considered as not time-barred for the purposes of the prosecution of the criminal action.

c. Moreover, the appellant could not have been found guilty of the uttering any threats, since effectively there were no real threats in terms of Article 339 (1)(e) of the Criminal Code.

d. Finally, the punishment imposed upon the appellant was unjust especially with a view to the circumstances as a whole of the case at issue.

Considers further : -

7. First of all this is an appellate Court tasked with the revision of the decision made by the Court of Magistrates (Malta) as a Court of Criminal Judicature. This Court does not change the analysis of the facts and the law as well as and the decision made by the Court of Magistrates when it appears to it that the Court of Magistrates was legally and reasonably correct. In the judgment delivered by the Court of Criminal Appeal in its Superior Jurisdiction in the case ***Ir-Repubblika ta' Malta vs Emanuel ZAMMIT***[1] it was held that this

[1] 21st April 2005. See also, inter alia, ***Ir-Repubblika ta' Malta vs Domenic Briffa***, 16 th October 2003; ***Ir-Repubblika ta' Malta vs Godfrey Lopez*** and ***Ir-Repubblika ta' Malta v. Eleno sive Lino Bezzina,*** 24th April 2003, ***Ir-Repubblika ta' Malta vs Lawrence Asciak sive Axiak*** 23rd January 2003, ***Ir-Repubblika ta' Malta vs Mustafa Ali Larbed***; ***Ir-Repubblika ta' Malta vs Thomas sive Tommy Baldacchino***, 7th March 2000, ***Ir-Repubblika ta' Malta vs Ivan Gatt***, 1st December 1994; ***Ir-Repubblika ta' Malta vs George Azzopardi***, 14th February 1989; ***Il-Pulizija vs Andrew George Stone***, 12th May 2004, ***Il-Pulizija vs Anthony Bartolo***, 6th May 2004; ***Il-Pulizija vs Maurice Saliba***, 30th April 2004; ***Il-Pulizija vs Saviour Cutajar***, 30th March 2004; ***Il-Pulizija vs Seifeddine Mohamed Marshan*** et, 21st October 1996; ***Il-Pulizija vs Raymond Psaila et***, 12th May 1994; ***Il-Pulizija vs Simon Paris***, 15th July 1996; ***Il-Pulizija vs Carmel sive Chalmer Pace***, 31st May 1991; ***Il-Pulizija vs Anthony Zammit***, 31st May 1991.

Court makes its own detailed analysis of the record of the proceedings held before the Court of first instance in order to see whether that Court was reasonable in its conclusions. If as a result of this detailed analysis this Court finds that the Court of first instance could not reasonably and legally arrive at the conclusion reached by it, then this Court would have a valid, if not impelling reason, to vary the discretion exercised by the Court of first instance and even change its conclusions and decisions.

8. In the ordinary course of its functions, this Court does not act as a court of retrial, in that it does not rehear the case and decide it afresh; but it intervenes when it sees that the Court of Magistrates, would have mistakenly assessed the evidence or wrongly interpreted the Law - thus rendering its decision unsafe and unsatisfactory. In that case this Court has the power, and indeed, the duty to change the decision of the Court of Magistrates or those parts of its decision that result to be wrong or that do not reflect a correct interpretation of the Law.

In ***Ir-Repubblika ta' Malta vs Domenic Briffa*** it was further stated:

> Kif gie ritenut diversi drabi, hawn qieghdin fil-kamp ta' l- apprezzament tal-fatti, apprezzament li l-ligi tirrizerva fl- ewwel lok lill-gurati fil-kors tal-guri, u li din il-Qorti ma tiddisturbahx, anke jekk ma tkunx necessarjament taqbel mija fil-mija mieghu, jekk il-gurati setghu legittimament u ragonevolment jaslu ghall-verdett li jkunu waslu ghalih. Jigifieri l-funzjoni ta' din il-Qorti ma tirrizolvix ruhha f'ezercizzju ta' x'konkluzjoni kienet tasal ghaliha hi kieku kellha tevalwa l-provi migbura fi prim'istanza, imma li tara jekk il-verdett milhuq mill-gurija li tkun giet "properly directed", u nkwadrat fil-provi prodotti, setax jigi ragonevolment u legittimament milhuq minnhom. Jekk il- verdett taghhom huwa regolari f'dan is-sens, din il-Qorti ma tiddisturbahx (ara per ezempju Ir-Repubblika ta' Malta v. Godfrey Lopez u r-Repubblika ta' Malta v. Eleno sive Lino Bezzina decizi minn din il-Qorti fl-24 ta' April 2003, Ir-Repubblika ta' Malta v. Lawrence Asciak sive Axiak deciza minn din il-Qorti fit-23 ta' Jannar 2003, Ir-Repubblika ta' Malta v. Mustafa Ali Larbed deciza minn din il-Qorti fil-5 ta' Lulju 2002, ir-Repubblika ta' Malta v. Thomas sive Tommy Baldacchino deciza minn din il-Qorti fis-7 ta' Marzu 2000, u r-Repubblika ta' Malta v. Ivan Gatt deciza minn din il-Qorti fl-1 ta' Dicembru 1994).

Considers further : -

9. That with regards to the first grievance, the Court made reference to the records of the proceedings from where it transpires that the Protection Order was really an informal photocopy of a purported original document. This document was not duly authenticated. Moreover the Prosecuting Officer who was prosecuting the case where the Protection Order was eventually issued never took the stand to confirm the same and if needed the identity of the person subject to the said Protection Order. Neither does it result from the records of the proceedings that the Registrar of Courts or the Deputy Registrar attached to the Court which issued the Protection Order ever took the stand in order to confirm the authenticity of the Protection order at fol 17. Furthermore, neither had it been proved beyond reasonable doubt that the said Protection Order was effective at the time of these allegations and this owing to the fact that no evidence was brought as to whether an appeal was ever lodged with regards to the judgement awarding the Protection Order at issue, in which event, the application of the order would have been held in abeyance until the Court of Appeal decided the matter at hand, lest a provisional one would have been issued – and which was not shown to have been the case. It is true that statements have been made about the application or imposition of

the Protection Order by some of the witnesses tendering evidence in this case but this Court is of the opinion that it needs further and official confirmation of the order imposed and the application thereof at the time of the alleged offences in order to uphold its breach.

10. The parte civile argued that at fol 18 of the records of these proceedings, there is another interim protection order which was imposed by the Court of Magistrates in the course of these proceedings, where this Court can therefore take note of the similarities in the signature and the details of the appellant which appear on either document.

11. Article 635 of the Code of Organisation and Civil Procedure, which provision deals with modes of proving handwriting, and which is also applicable via the provision of article 520(1)(e) of the Criminal code, reads as follows:

> Where it shall be necessary to ascertain the handwriting of any person by whom a document has been written or signed, such proof may be made –
> (a) by the person who wrote or signed the document acknowledging his own handwriting;
> (b) by means of witnesses who actually saw the person write or sign the document;
> (c) by means of witnesses who, although they have not seen the person write or sign the document, are acquainted with his handwriting;
> (d) by the comparison of handwritings, or by other circumstances or presumptions;
> (e) by means of experts in handwriting, in cases of writings difficult to verify.

12. This Court, can by virtue of paragraph (d) of this provision, conduct the exercise which is being proposed by the *parte civile*

representative. Clearly, the identification document number mentioned on both documents and the details of the appellant as seen on the charge sheet as proffered against him are the same. Moreover the appellant's signature can be seen on both documents and in this Court's view they are clear enough to state that they tally with a high degree of confidence. However the fact remains that the document at fol 17 still remained unauthenticated, and the judgment in which it was awarded was not proven to be res iudicata.

13. For the reasons mentioned above, this Court deems that the Court of Magistrates (Malta) could not legally and reasonably find the appellant guilty in relation to the third charge on the basis of the document exhibited at fol 17 of the records of these proceedings.

Considers further :-

14. Another aggravation concerns the finding of guilt of the fourth charge brought against the appellant based on the plea of prescription raised by the appellant in relation to the first two incidents referred to by the Court of Magistrates in its judgment. The charges brought against the appellant were stated as being qualified by the application of article 18 of the Criminal Code. However, for some reason, in the formal accusatory document, the Attorney General omitted the reference to article 18 of the Criminal Code in relation to the offences mentioned in the original charge sheet.

15. The main consequence of this grievance was that the applicability of article 18 of the Criminal Code to this case was in question. The Court of Magistrates gave its own detailed reasons for the application of article 18 of the Criminal Code in this case, despite the fact that the Attorney General decided not to include this article in his formal accusatory document.

16. Essentially the Court of Magistrates stated that despite this omission on the part of the Attorney General, the Court of Magistrates was not precluded from applying the said article 18 of the Criminal Code as article 18 was not in itself an additional or aggravated offence, but it was more pertinent and relevant to punishment that could be inflicted on the accused. Apart from that the Court of Magistrates held that article 18 of the Criminal Code was included in the original charge sheet filed by the Commissioner of Police in this case. That Court buttressed its argument by reference to the cases : ***Il-Pulizija vs. Lawrence sive Lorry Cuschieri*** of the 30th October 2001 and ***Il-Pulizija vs. Fatiha Khallouf*** of the 25th September 2001 relating to the interpretation of article 18 of the Criminal Code and ***Il-Pulizija vs. Omissis*** of the 26th October 2017 relating to the nature of the formal accusatory document filed by the Attorney General before the Court of Magistrates in terms of article 370(3) of the Criminal Code and claiming that one guilt is established, there was nothing stopping the Court of Magistrates from applying the appropriate punishment that it deemed applicable to the circumstances of the case as expressed in the

charge sheet. In his formal accusatory document, the Attorney General does not express any narrative and therefore reference had to be made to the charge sheet in order for the Court to be able to give context to its decision. That Court made reference to the judgment in the case ***Il-Pulizija vs. Francesco sive Godwin Scerri*** of the 18th April 2012 where it was decided that unless the Attorney General directed otherwise, the articles of the Law mentioned by the Attorney General in his formal accusatory document and the original charges had to be examined together in order for the Court to understand the case.

17. The Attorney General issues a formal accusatory document indicating the articles of the law on the basis of which the person charged may be sentenced in terms of article 320 (3) (a) of the Criminal Code. Those are the parameters within which the Court of Magistrates may acquit or convict. As mentioned in ***Il-Pulizija vs. Omissis*** quoted by it, the Court of Magistrates was bound by the formal accusatory document as transmitted to it by the Attorney General, given that the Law itself entrusts that Office with the role of Public Prosecutor responsible for the issue of the formal accusations, in this case, in terms of article 370(3) of the Criminal Code – independently of the decisions made and discretion exercised originally by the Commissioner of Police as reflected in his charge sheet.

18. In the case ***Il-Pulizija vs. Michael Carter*** decided by this Court presided by Chief Justice Emeritus Vincent de Gaetano on the 7th December 2001 it was held that : -

> Meta, invece, ir-rinviju ghall-gudizzju jsir skond is-subartikolu (3) tal-Artikolu 370 (u allura wiehed qed jitkellem fuq ghall-anqas reat wiehed, fost dawk imputati, li huwa ta' kompetenza tal-Qorti Kriminali), in-nota ta' rinviju ghall-gudizzju tassumi rwol simili ghal dak ta' l-att ta' akkuza quddiem il-Qorti Kriminali. Fin-nota ta' rinviju ghall-gudizzju skond l-Artikolu 370(3) ma jistghux jizdiedu reati li dwarhom ma tkunx saret il-kumpilazzjoni; l-Avukat Generali, naturalment, jista' jnaqqas reat jew reati u anke jzid skuzanti. Bhal fil-kaz tal-att ta' akkuza, jekk fin-nota ta' rinviju ghall-gudizzju taht l-imsemmi Artikolu 370(3) l-Avukat Generali jakkuza lil xi hadd bhala awtur ta' reat, il-Qorti tal-Magistrati, wara li tkun akkwistat il-kompetenza bil-kunsens ta' l-akkuzat (Art. 370(3)(c)), tista' ssibu hati ta' tentattiv ta' dak ir-reat, jew ta' reat iehor anqas gravi izda kompriz u involut f'dak ir-reat, jew bhala komplici f'dak ir-reat.

19. Alas, in the case ***Ir-Repubblika ta' Malta vs. Anthony Muscat et***, decided by this Court in its Superior Jurisdiction on the 22nd January 2009 it was further held that :

> In-nota ta' rinviju ghall-gudizzju, kif appena tigi presentata quddiem il-Qorti tal-Magistrati bhala Qorti ta' Gudikatura Kriminali, tiddefinixxi (u tista' wkoll tirridimensjona billi targina) l-parametri tal-imputazzjoni jew imputazzjonijiet kontra l-akkuzat li jkun.

20. That Court quoted also from the judgments delivered by this Court in the previous ***Il-Pulizija vs. Trevor Farrugia*** decided on the 29th January 1996 and ***Il-Pulizija vs. Enrico Petroni et*** decided on the 8th June 1998.

21. The fact that the Attorney General omitted any reference to article 18 of the Criminal Code is presumed to have been a reasoned decision. But even if it were not, the Court of Magistrates would

still be bound by it. It is an omission that carries its own consequences. And this position, slightly different from that expounded by the Court of Magistrates in its judgment, is based on the following authority.

22. In the case ***Il-Pulizija vs. Carmel Vella*** of the 6th January 2010 this Court presided by Judge Lawrence Quintano considered the provisions of article 18 of the Criminal Code as being a *benefit* granted to the person charged, on account of the fact that when several breaches are committed by the offender, even if committed at different times, but constituting violations of the same provision of the law, and committed in pursuance of the same design, such breaches are deemed to make up one single offence, that is referred to as a continuous offence; however the punishment for this continuous offence is that punishment prescribed by law for the provision that would have been repeatedly violated, but increased by one or two degrees.

23. Yet, this benefit, does not come for free. Article 691 of the Criminal Code states that in case of a continuous offence, the period of prescription starts running from the day on which the last violation of the law would have taken place. In practice, this provision could have the effect of extending the period of presciption beyond the original expiration of the prescriptive period for the first violation of the Law. This is what the judgment in the ***Lawrence Cuschieri*** case chastised. However the position taken in ***Lawrence Cuschieri***

was contrasted by subsequent judgments, including ***Carmel Vella*** itself. Application of this article led to divergent in case law.

24. However, whereas an accused person could benefit from the effects of article 18 of the Criminal Code in case of proven separate violations of the same provision of the law committed by the same person in pursuance of a common design being considered as one offence that may be punished with a punishment higher by one or two degrees, on the otherhand, the same accused person would be subject to a longer period of prescription of the criminal action triggering from the day on which the last violation of the Law took place.

25. This Court in ***Carmel Vella*** held as follows : -

> L-imputat ikun ħa l-vantaġġ permezz tal- artikolu 18. Iżda mal-vantaġġ irid jieħu wkoll l- iżvantaġġ.

26. Now against the position taken by the Court of Magistrates in this case, in the judgment delivered by this Court presided by Chief Justice Emeritus Vincent de Gaetano on the 5th July 1996 in the case ***Il-Pulizija vs. Joseph Cini*** it was held that : -

> Bhalma l-paragrafi ta' l-artikolu 17 tal-Kodici Kriminali (re: konkors ta' reati u ta' piena) ma jistghux jittiehdu in konsiderazzjoni u jigu applikati mill-Qorti jekk il-prosekuzzjoni ma tressaqx aktar minn imputazzjoni ta' reat wiehed fl-istess kawza, hekk ukoll jekk il-prosekuzzjoni ma tkunx ikkontemplat id-diversi infrazzjonijiet bhala reat kontinwat u gabithom kollha fl-istess kawza bhala tali reat kontinwat, il-Qorti necessarjament, trid taghti sentenza separata f'kull kawza ossia ghal kull infrazzjoni jew ghall-infrazzjonijiet migjuba f'dik il-kawza. L-uniku rimedju li tipprospetta l-ligi hu li jekk il-Qorti tara li d-diversi infrazzjonijiet f'kawzi

separati kellhom jigu ttrattati bhala reat kontinwat f'kawza wahda, l-Qorti ghandha timmodera u tadegwa l-piena ghac-cirkostanzi.

27. Furthermore in the appeal proceedings named ***Ir-Repubblika ta' Malta vs. David Gatt*** decided by the Court of Criminal Appeal in its Superior Jurisdiction on the 12th December 2013, it observed that the Attorney General did not invoke article 18 of the Criminal Code by reference to the individual accusations levied in the counts of the bill of indictment in that case. In this particular case, the Attorney General too decided not to qualify the articles of the Law by the application of Article 18 of the Criminal Code. In ***David Gatt***, this Court, sitting collegially decided, in an unequivocal manner that : -

> 18. Kwantu għall-artikolu 18, dan la hu kontemplat fil-Kapi individwalment u lanqas bejn it-Tieni u t-Tielet Kap stante li jidher li si tratta ta' infrazzjonijiet distinti. Fi kwalunkwe każ fejn il-prosekuzzjoni ma tkunx ikkontemplat diversi infrazzjonijiet bħala reat kontinwat, l-uniku rimedju hu li jekk il-Qorti tara li d-diversi infrazzjonijiet kellhom jigu ttrattati bhala reat kontinwat, il-Qorti għandha timmodera u tadegwa l-piena għaċ-ċirkostanzi.

28. It was the Attorney General's duty and responsibility to accuse the appellant. In his formal accusatory document, the Attorney General chose not qualify the fourth charge by the provisions of article 18 of the Criminal Code. The formal accusatory document binds the Court of Magistrates as a court of criminal judicature. The qualification and application of article 18 of the Criminal Code is not simply a matter of fact that may be clarified by reference to the original charge sheet. As shown above, the application of article 18 of the Criminal Code by the Public Prosecutor, or the lack of it, my have huge strategic value and significance in the Prosecutor's line of action in a given prosecution. It does affect punishment, but not only.

29. The decision whether to accuse a person on the basis of article 18 of the Criminal Code may also affect the determination of the merits of a given case – given that article 691 of the Criminal Code regulates specifically the prescription of the criminal action for continuous offence. Furthermore as ***Joseph Cini*** and ***David Gatt*** illustrate, if article 18 of the Criminal Code is not imputed by the Attorney General in his formal accusatory documents, the only remedy – ***l-uniku rimedju*** - for a court of criminal jurisdiction is to moderate its punishment according to the circumstances if it appears to it that the various breaches of the Law could have been regarded as a single offence according to the provisions of article 18 that would have otherwise been applicable, if only the Attorney General included it in his formal accusatory document.

30. And in case of a similar omission on the part of the Attorney General, it does not make much legal sense to consider the provisions of article 18 of the Criminal Code applicable for the purposes of prescription – despite its omission from the formal accusatory document – and consider not applicable for the purposes of awarding the higher punishment. It is either applied to a case or not applied at all. In this case, the Attorney General failed to qualify the fourth charge as a single offence in terms of article 18 of the Criminal Code. Hence his decision to omit this reference means that he was not imputing any multiple violations as a single offence subject to one, albeit higher punishment. However that same decision did not qualify any multiple violations of the same

provision of the law by the same person in pursuance of a common design as a continuous offence. Hence the provisions of article 692 of the Criminal Code were not rendered applicable to the person charged in this case. As the ***Joseph Cini*** dictum states

> jekk il-prosekuzzjoni ma tkunx ikkontemplat id-diversi infrazzjonijiet bhala reat kontinwat u gabithom kollha fl-istess kawza bhala tali reat kontinwat, il-Qorti necessarjament, trid taghti sentenza separata f'kull kawza ossia ghal kull infrazzjoni jew ghall-infrazzjonijiet migjuba f'dik il-kawza.

31. Conversely, if the Prosecution did not contemplate the various violations of the law as a continuous offence and did not profer them in the same case as a continuous offence, the Court necessarily has to consider the prescriptive period for each infraction proferred in the case.

32. Consequently, this part of the grievance concerning the finding of guilt of the fourth charge as put forward by the appellant is being upheld in relation to the messages sent on and before the 21st April 2018. However this does not apply to those instances mentioned by the parte civile as happening on the 30th September and 7th October of the year 2018.

Considers further : -

33. Secondly with regards to the same grievance, the appellant opines also that the messages referred to by the Court cannot be considered as constituting a threat in accordance with the interpretations given by local jurisprudence to Article 339(1)(c) of the Criminal Code.

34. In a judgment delivered by this Court, collegially composed in the case ***Ir-Republika ta' Malta vs. Ivan Gatt***, decided on the 1st. December, 1994, it was held that the exercise to be carried out by this Court in cases where the appeal is based on the evaluation of the evidence, is to examine the evidence, to see, even if there are contradictory versions – as in most cases there would be – whether any one of these versions could be freely and objectively believed without going against the principle that any doubt should always go in the accused 's favour and, if said version could have been believed and was evidently believed by the jury, the duty of this Court is to respect that discretion and that evaluation of the evidence even if as a result of the evaluation conducted by this Court, would have led this Court to a conclusion different from the one reached by the jury. Such discretion will therefore not be disturbed and replaced by its own unless it was evident that the jurors would have made a manifestly wrong evaluation of the evidence and consequently that they could not have reasonably and legally have reached that conclusion.[2]

35. In ***Il-Pulizija vs. Joseph Frendo*** decided by this Court presided by Chief Justice Emeritus Vincent Degaetano on the 7th July 1995, it was held that

> Fil-kuntest ta` l-artikolu 339(1) (e) tal-Kodici Kriminali, theddida tfisser li l-agent jipprospetta lill-persuna ohra hsara ingusta fil-futur (liema hsara ma tkunx tammonta ghal reat iehor ikkontemplat band'ohra fil-Kodici), liema hsara tkun ukoll ipprospettata li tiddependi mill-volonta` ta` l-istess agent.'

[2] ***Ir-Republika ta' Malta vs. Mustafa Ali Larbed*** decided on the 5th July, 2002.

36. Likewise in the case ***Il-Pulizija vs. Joseph Gauci*** the following was laid out:

> Biex ikun hemm theddid is-suggett attiv irid ikun qed jipprospetta - bil-kliem, gesti jew b'mod iehor - xi forma ta' hsara ingusta fil-futur (anke jekk fil-futur immedjat) lis-suggett passiv. Huwa veru li ma hemmx ghalfejn li l-hsara prospettata tkun determinata fis-sens li jigi indikat b'xi grad ta' precizjoni l-interess, guridikament relevanti, tas-suggett passiv li jkun qed jigi minaccat; u f'dan is-sens huwa korrett Antolisei meta jghid: ".e` sufficiente che la minaccia sia tale da turbare la tranquillita` della persona a cui e` rivolta, come nel caso che taluno dica ad un altro: 'ti faro` vedere di che cosa sono capace'" . Pero` dan it-turbament dejjem irid ikollu xi bazi oggettiva.[3]

37. This Court is of the opinion that the above criteria apply to the incidents that happened on the 30th September and 7th October 2018. The Court of Magistrates could legally and reasonably conclude that the appellant was guilty of this contravention in these two instances. This Court doesn't share the view of the appellant with regards to the harmless intention on his part when uttering these words, apart from the fact that he never acutally denied saying or texting these threats, but he only tried to minimise the effect these could have had on the victim in this case.

Decide

Consequently, for the above-mentioned reasons the Court upholds in part the appeal lodged and while confirming the acquittal from the first and second charges as proferred against the appellant, this Court revokes that

[3] Decided by the Court of Criminal Appeal presided by Chief Justice Emeritus Vincent Degaetano on the 12th June 2003.

part of the judgment of the Court of Magistrates where it found the appellant guilty of the third charge from which this Court is acquitting the appellant and declaring him not guilty thereof, thereby freeing him from punishment and consequences relative to this third charge. Furthermore this Court varies the judgment of the Court of Magistrates also in relation to the finding of guilt in relation to the fourth charge, whereby this Court confirms the appellant's guilt in relation to the fourth charge, however for the reasons mentioned above, not in terms of article 18 of the Criminal Code, but finds him guilty of the two separate instances of breach of article 339(1)(e) of the Criminal Code that were proven to have happened on the 30th September 2018 and on the 7th October 2018. The Court has also taken note of the submission made by the parte civile that since the date of the judgment there was no repetition of previous incidents and that the parte civile was insisting on having the Restraining Order in place. Consequently, this Court revokes the punishment that was meted out against the appellant in the appealed judgment limitedly to the sentence of one year imprisonment suspended for two years in terms of article 28A of the Criminal Code and in view of the fact that the appellant was acquitted from the third charge but found guilty of two contraventions included in the fourth charge, replaces that punishment by an ammenda of one hundred sixteen euro forty six cents (€116.46).

In the meantime this Court is upholding that part of the judgment wherein that Court issued a restraining order against the appellant in terms of article 382A of the Criminal Code for a period of two years as detailed in the said judgment and the attached decree.

The Court explained in clear words and in a language which the appellant understands, the repurcussions he could face by virtue of article 382A(3) of the Criminal Code if he fails to observe the restraining order as imposed upon him.

Aaron M. Bugeja
Judge