



Criminal Court of Appeal

Hon. Judge Dr. Consuelo Scerri Herrera, LL.D., Dip Matr., (Can)

Appeal Nr: 165 / 2022

**THE POLICE
(INSPECTOR SARAH MAGRI)**

VS

MITULKUMAR VASANTBHAI PATEL

Today the 8th July 2022

The Court,

Having seen the charges brought against Mitulkumar Vasantbhai Patel born on 17 March 1995 in India, residing in Msida, holder of identity card number 205448 A, before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having:

On the 10th April 2021 at around 22:50 hrs in Triq Dawret il-Gudja, Gudja driven vehicle no. LDJ-213:

(a) Drove a motor vehicle or any other vehicle without a driving licence.

The Prosecution requested that the mentioned person be disqualified from holding any driving licence for a period of time that the Court deems fit.

Having seen the judgement meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 22nd March, 2022, whereby the Court after having seen the charges acquitted the person charged of the charge brought against him.

Having seen the appeal application presented by the Attorney General in the registry of this Court on the 19th April, 2022, whereby he humbly requests that this Honourable Court so that, after considering all the evidence, and all the arguments already put forth and also those that will be brought up during the appeal proceedings, it pronounces judgement by either varying or reversing the judgement wherein the Court of Magistrates found Mitulkumar Vasantbhai Patel not guilty of the charges brought against him and therefore acquitted him therefrom.

Having seen the acts of the proceedings;

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

Having seen that, on the 24th March 2022, the appellant Attorney General received from the Court of Magistrates (Malta) the records of these proceedings;

Having seen that the Attorney General is by means of the present application appealing from the said judgement; that the reasons due to which the appellant Attorney General feels aggrieved by the aforesaid judgement of the Court of Magistrates (Malta) are clear and manifest and consist in the following;

That the affidavit of **PS 2323**, being in Maltese, was deemed inadmissible by the Honourable Court of Magistrates on the basis of Article 5(5) of Chapter 189 of the

Laws of Malta, and the accused was consequently acquitted due to lack of evidence against him;

That, in the Attorney General's view, in light of Article 516(2) of the Criminal Code, the Honourable Court of Magistrates had a duty to interpret the aforementioned affidavit to the accused in the present case;

That this provision establishes that;

*“Where any person charged does not understand the language in which the proceedings are conducted or **any evidence** is adduced, such proceedings or evidence **shall** be interpreted to him either by the court or by a sworn interpreter”;*¹

That the affidavit of PS 2323 constitutes “evidence” for the purposes of Article 516(2) – indeed the best and only evidence – and that therefore the Court had a duty to interpret the contents of the affidavit to the accused in accordance with the law;

That this is being argued especially because the Honourable Court of Magistrates has a duty to take “any measure or thing necessary for the fullest investigation of the case”;²

That while the appellant Attorney General acknowledges that Article 6(3)(a) of the European Convention on Human Rights provides that “Everyone charged with a criminal offence has the minimum right to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him”, the appellant refers in this regard to the judgement delivered by the European

¹ Emphasis of the appellant.

² This, in accordance with Articles 397 and 525(3) of the Criminal Code.

Commission of Human Rights in the names of *X vs Austria*,³ which establishes that:

“In the Commission's opinion, one cannot derive from this provision a general right for the accused to have the court files translated. [...] The applicant must assume personal responsibility for any remaining linguistic difficulty, for the very reasons set out above (article 6 (3) (b) [of the Convention]).”

That, therefore, in light of the above, the Honourable Court of Magistrates could not have found the accused not guilty only because the affidavit in question was not translated into the English language;

The court heard Dr. Nathaniel Falzon make his submissions on behalf of the Attorney General once the appellate was duly notified and failed to appear.

Considers:

That the appellate appeared before the courts of Magistrates on the 22nd March 2022 duly assisted by his lawyer and requested that the proceedings are held in the English language and the Court upheld the request since the appellate is a foreigner and presumably does not understand the English language.

That the proceedings were thus held in the English language and the witnesses that testified gave evidence in the English language.

It appears however that the prosecution exhibited the affidavit of PS 2323 R Gauci dated 12th April 2021 which was taken in the Maltese language and the accused qua appellate and the prosecution failed to ask the court to have this document

³ Application 6185/73 of the 29 May 1975.

translated in the English language. However, it is the duty of the court to see that all the evidence and documents produced in this case were in the English language once it ordered that the proceedings are held in the English language. It is the right of the accused qua appellate to understand the nature of the proceedings brought forward in his regard. This is a right that is protected by the Constitution of Malta namely in article 39 (6) which provides the following:

- (6) Every person who is charged with a criminal offence -
 - (a) shall be informed in writing, in a language which he understands and in detail, of the nature of the offence charged;
 - (e) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge

Besides the Criminal code due to amendments that were introduced by Act IV of 2014 provides in article 534AB the following, namely:-

534AB. (1) Saving the provisions of articles 355AC, 355AS, 392 and 445, it shall be the duty of the Police or of the Court, as the case may be, to inform the suspect or the accused without undue delay of the following procedural rights:

- d) the right to interpretation and translation;*

Therefore, it is clear that the court had a duty to ensure that such a document was translated for the benefit of the appellate prior to passing judgment.

Thus the court is hereby upholding the appeal presented by the Attorney General and is declaring the judgment delivered by the first court on the 22nd March 2022 to be null and void and orders that the proceedings are remanded back to the first court so that the case may be examined afresh and thus the

appellate will not be deprived from his right to double examination in terms of the law.

(ft) Dr. Consuelo Scerri Herrera
Honourable Madame Justice

True copy

Nadia Ciappara
Deputy Registrar