



COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR. KEVAN AZZOPARDI B.A. LL.D

Today the 15th of May 2023

The Police

Inspector Clayton Camilleri and Inspector Andrew Agius Bonello

vs

Ljubica Nedimovic

The Court:

Having seen that the accused Ljubica Nedimovic (I.D. No. 580178M) was arraigned under arrest;

Having seen the charges brought against the accused, that is:

- 1. And charge her with having at a time between eleven o'clock (23:00hrs) in the evening of the 5th May 2023 and one o'clock in [the] morning (01:00hrs) of the 6th May 2023 at Triq Dun Karm, Birkirkara failed to observe the conditions imposed by the Court of Magistrates (Malta) (Magt. Dr. G. Vella LL.D) with a decree issued on the 8th April 2023 with which she had been temporarily*

released from custody under a number of conditions including to remain within her residence between the hours of half past eight (20:30hrs) and half past six in the morning (06:30am)

Furthermore the Court was asked that, should the accused be found guilty, besides the punishment stipulated by law, to revoke the decree with which the accused had been temporarily released from custody (*contrario imperio*) and to order the re-arrest of the accused and that the deposit and personal guarantee are seized in favour of the Government of Malta as stipulated by article 579 of Chapter 9 of the Laws of Malta;

Having seen that the accused did not admit to the charges brought against her;

Having seen the documents produced by the Prosecution and that the Prosecution in the sitting of the 7th May 2023 declared that it has no further evidence to produce;

Having seen that the Prosecution's request of the 15th May 2023 to produce further documentary evidence, which met the strong objection of the defence, was denied;

Having seen that the accused did not testify, and that during the sitting of the 15th May 2023, declared that it has no further evidence to produce;

Having seen the acts of the case;

Having heard the Defence Counsel and the Prosecuting Officer's final oral submissions;

Considerations:

This is a case where the Prosecuting Officer is alleging that the accused was arrested at night at a time when the accused should have been indoors, and this in view of the conditions imposed for her release from arrest by the Court of

Magistrates (Malta) (Magistrate Dr. Gabriella Vella LL.D) by means of a decree issued on the 8th April 2023. The proof tendered by the Prosecution relates to the identity of the accused and the conditions imposed for her release from arrest by the Court of Magistrates. The latter proof was done through an unofficial copy of the decree and bail conditions. The prosecution did not produce proof as to the actual arrest of the accused.

It is an established principle that in relation to criminal charges brought against an accused, the Prosecution has to prove its case in the degree established at law. The Court of Criminal Appeal held that:

“Jispetta lill-Prosekuzzjoni li turi bi provi ammissibbli, fl-istadju prepost għal produzzjoni tal-provi tagħha li jkun ġie kommess il-fatt vjolattiv tal-kundizzjonijiet tal-ħelsien mill-arrest, li l-istess fatt ikun seħħ ukoll waqt li kien hemm kundizzjonijiet tal-ħelsien mill-arrest li kienu għadhom jorbtu lill-ġudikabbli, kif ukoll li tipprova dawk il-kundizzjonijiet tal-ħelsien mill-arrest hekk viginti bla aqwa prova li huwa l-kopja legali integra u sħiħa tal-istess digriet – inkluż bl-emendi jew żidiet li jkunu saru wara l-emanazzjoni tad-digriet tal-ħelsien mill-arrest oriġinali. Jekk dan ma jkunx sar, allura ma jkunx jista jitqies integrat ir-reat de quo.”¹

In this case the Prosecution did not present, when it had the opportunity to do so, an authenticated copy of the decree and bail conditions of the Court of Magistrates of the 8th April 2023. For the Court to be able to find the accused guilty of the charges brought against her, the Prosecution needs to prove the case against the accused beyond reasonable doubt. A copy of the decree and conditions certainly cannot be considered as the best piece of evidence in the circumstances. The Court of Appeal again held that:

“Dan huwa procediment ta’ natura penali. Huwa l-obbligu tal-Prosekuzzjoni li tipprova l-każ tagħha lil hinn minn kull dubju dettat mir-raġuni. Jispetta lil Prosekuzzjoni tipprova l-eżistenza ta’ digriet, maħruġ mill-Qorti kompetenti, li juri, qabel xejn x’kienu l-kundizzjonijiet tal-għoti tal-ħelsien mill-arrest fil-konfront tal-imputat. L-aqwa prova f’dan il-każ huwa indubbjament id-digriet

¹ Court of Criminal Appeal, Hon. Dr. Aaron M. Bugeja M.A. (Law), LL.D. (melit), The Police vs Jason Caruana, Criminal Appeal No. 208/2020, 16th December 2021, p.5.

sħiħ – iġifieri d-digriet originali magħqud ma kwalunkwe bidla li setgħet saret fih u li kienet fis-seħħ fiż-żmien meta jkun allegatament seħħ ir-reat de quo.”²

The Court fails to comprehend the conviction of the Prosecution when it declared that it had no further evidence to produce that the facts of the case, and the elements of the offence, had been proven to the degree required at law for the accused to be found guilty of the charges brought against her. Apart from the fact that the Prosecution failed to prove the bail and its conditions, the Court would have also at least expected the Prosecution to bring evidence of the arrest of the accused, and this by producing as witness the police officer who arrested the accused. Such witness would have been in a position to attest under oath the facts of the case, particularly the fact that the accused was not at the residence mentioned in the alleged bail conditions at a time when she should have been there, and therefore the locality where she was found at a particular moment in time. In the absence of such proof, the Court cannot find the accused guilty of the charges brought against her.

Decision

For these reasons, the Court, in view of the lack of proof, acquits the accused Ljubica Nedimovic of the charges brought against her, and orders her release from arrest.

Kevan Azzopardi B.A. LL.D
Magistrate

Josanne Gauci
Deputy Registrar

² Ibid p.4.