



COURT OF CRIMINAL APPEAL

Hon. Mr. Justice Dr. Neville Camilleri
B.A., M.A. (Fin. Serv.), LL.D., Dip. Trib. Eccles. Melit.

Appeal Number 299/2019

The Police

vs.

Kevin Hodkin

Today 13th. of September 2023

The Court,

Having seen the charges brought against the appellant **Kevin Hodkin**, holder of Identity Card Number 54602(A), charged in front of the Court of Magistrates (Malta) as a Court of Criminal Judicature with having on the 22nd. of February 2018 around 22.54hrs in Café Rouge, ix-Xatt ta' Bormla:

1. by means of an electronic communications network or apparatus threatened the commission of a crime or with intent to extort money or any other thing, or to make any gain, or with intent to induce Jean Paul Micallef to do or omit

from doing any thing, or threatened to accuse Jean Paul Micallef or to make a complaint against, or to defame, Jean Paul Micallef or other persons or made any other improper use thereof;

2. insulted, threatened by words or in any other way Jean Paul Micallef;
3. by his course of conduct caused Jean Paul Micallef to fear that violence would be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or other family members.

The Court was requested that, in case of the finding of guilt, to provide for the safety of Jean Paul Micallef in accordance with Article 383 of Chapter 9 of the Laws of Malta.

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 31st. of October 2019 wherein the Court, after having seen Articles 49(a) and (c) of Chapter 399 of the Laws of Malta, Articles 251B(1) and 339(1)(e) of Chapter 9 of the Laws of Malta, found the accused guilty of all the charges brought against him and condemned him to the payment of a fine (*multa*) of one thousand Euro (€1,000) whilst, in terms of Article 22 of Chapter 446 of the Laws of Malta, conditionally discharged him for a period of one (1) year from the date of the judgment. The Court issued a Protection Order in favour of Jean Paul Micallef for a period of three (3) years from the day of the judgment and the accused was bound to observe all the conditions set in the decree issued on the day of the judgment and which forms part of the same judgment. The Court also explained to the appellant the consequences of the judgment as prescribed in Article 22(3) of Chapter 446 of the Laws of Malta.

Having seen the appeal filed by the appellant on the 8th. of November 2019 by which he requested this Court: *“to revoke and reverse the decision of the Court of Magistrates where it found the appellant guilty of the accusations brought against him, and this by,*

instead, declaring him not guilty of committing such offences and consequently liberate him, and alternately reform the decision appealed from by inflicting a more just punishment instead of the one inflicted by the Court of Magistrates, according to the circumstances of the case."

Having seen all the acts and documents.

Having seen that this appeal had been assigned to this Court as currently presided by the Hon. Chief Justice Mark Chetcuti on the 9th. of January 2023.

Having seen the updated conviction sheet of the appellant exhibited by the Prosecution as ordered by the Court.

Having seen the transcript of the oral submissions heard by this Court as diversely presided.

Having heard, during the sitting of the 20th. of June 2023, legal counsels declare that they had no further submissions to add to the submissions which were heard by this Court as diversely presided.

Considers

That this Court notes that reference ought to be made first to what results from the acts of the proceedings:

- In his affidavit **PS 583 Evan Grech** (*a fol. 21 et seq.*) says that the complainant Jean Paul Micallef reported that on the 22nd. of February 2018, while he was at Café Rouge in Cospicua, he received an email from kev.hodkin@yahoo.co.uk with a bomb threat. The relevant words were: "*and be careful what car is behind you IED XXL BOOM CIAO*" (Doc. "JM 3" - *a fol. 33*). PS 583 Grech further says that the complainant said that he had installed solar panels for the appellant and that the appellant was defaming him about the services rendered. He says that the complainant sent the appellant an email asking him to desist or else he would file legal proceedings against

him and that the appellant had replied that it was not true that he was defaming the complainant and requested him to stop threatening him. PS 583 Grech says that at the time the complainant's vehicle was parked near the Cospicua shoreline and when he read the threat he drove to St. Paul's Bay and that on the following day his wife had to drive the vehicle away from that point because of the presence of a fork lifter.

- In another affidavit, **PS 583 Evan Grech** (*a fol. 23*) said that on the 24th. of February 2018, the appellant called him as requested and admitted that he had threatened Micallef but he had been insulted and his family was also threatened.
- During his testimony, the complainant **Jean Paul Micallef** (*a fol. 40 et seq.*) exhibited a number of emails and he described their contents. He says that on the 22nd. of February 2018 after 9pm when he was at the Café Rouge, he received an email with a threat because of the words "IED XXL BOOM CIAO". He says that he checked the meaning of "IED" which initials stand for "intelligent explosive device" and that because of the threat he took action and filed a report at the Cospicua Police Station. He also went to the Floriana Police Station because he felt under threat and says he had to rent a vehicle for a month and was afraid that something would happen as the vehicle was parked in front of the house.

During his cross-examination (*a fol. 59 et seq.*) the complainant confirmed that the incident about the inventor of the solar panels dated back to 2017. He says that he had been informed by an acquaintance of the appellant that the latter had tried to dissuade this person from using his services. He confirms that he had sent a letter to the appellant to stop this bad publicity and had also referred to a letter signed by the appellant stating that he had been satisfied with the services (Doc. "JM 1" - *a fol. 46*). He confirmed that the emails were sent by him and that he was at a coffee shop in Cospicua. The

complainant also explained how he had been aware that the appellant had been in the army and so he felt seriously threatened when he discovered what the initials stood for. He kept carrying out checks on his vehicle as the authorities seemed reluctant to help.

That the Court will now move forward to consider the grievances raised in the appeal application.

Considers

That in his first grievance the appellant submits that the charge sheet is wrongly worded as he was accused of committing the offences inside Café Rouge when according to him it is evident that he was never present in the vicinity of these premises and was certainly not there when the alleged offences took place. He says that the *parte civile* stated that he knew that at that moment he (the appellant) was in Gozo and there is no evidence that he (the appellant) was inside the Café Rouge. Hence, the appellant submits that he could not be found guilty of the charges brought against him.

That this Court notes that there is no doubt that the complainant was at the Café Rouge when he received the email in question, the contents of which email made him feel threatened. The fact that the appellant was not physically at Cospicua at the time does not relieve him of criminal responsibility because the alleged crime results in the place where the email was received because it is at this particular spot that the complainant became aware of the email in question. It is immaterial where the email was sent from. This Court agrees with the First Court when in the appealed judgment it was stated that the alleged crime was completed once it reached its destination and was read by the complainant. As a consequence, this Courts finds that there there is no mistake in the charge sheet and hence the first grievance is being rejected.

Considers

That in the second grievance the appellant submits that the evidence did not reach the level of proof beyond reasonable doubt and hence the decision of the First Court is unsafe and unsatisfactory. He says that the Prosecution relied on the admission made by him but there is no record that he was warned and informed about his rights. As to the level of proof required, the appellant referred to a number of judgments which all state that the level of proof of the evidence of the Prosecution must be beyond reasonable doubt. He says that the Prosecution did not provide any evidence that the email address kev.hodkin@yahoo.co.uk belongs to him and more so that it was he himself who sent the emails in question. He says that no IT experts verified the IP address.

That this Court notes that it was not necessary for an IT expert to verify the IP address for the reason that the best evidence in these proceedings were the testimony of the complainant and the filing of the emails. The Court notes that the whole chain was exhibited so that there is a continuous line running through them. The email is a document and a print out of it is definitely acceptable as the best evidence one can provide. The Court also notes that during the cross-examination the defence did not ask any questions about the veracity of any of the emails. The defence was more concerned on whether the complainant felt afraid or not and the questions were primarily meant to discover the level of the complainant's anxiety.

That this Court further notes that the Court of Magistrates did not rely on the admission made by the appellant that he had sent the relevant email. It is quite clear from Article 638(2) of Chapter 9 of the Laws of Malta that the evidence of one person is enough if he is believed by those who have to judge. This Court concludes that the judgment of the Court of Magistrates is safe and satisfactory and that the decision is legally and logically in order. Hence even the second grievance is being rejected.

Considers

That the third grievance of the appellant is that the alleged threats must be taken in the context of exchanges which escalated through the fault of the *parte civile* himself. He argues that if this Court is convinced that the Prosecution has proved its case, then it requested to take into consideration the context of the alleged threats. He says that the complainant started threatening him with legal action since the episode was instigated by the said complainant. He further says that there was no intention on his part to carry out the threat and that it is not true that the complainant was afraid of the threat and says: *“he (the complainant) himself admitted that the accused had gone to live in Gozo, and therefore it was improbable that the accused was following him to set up a bomb. In fact, on the same day he received the so called threat, he drove his car to his house, the next day his wife drove the same car and he then left it for weeks at his mechanic’s garage”* (a fol. 80).

That as far as this grievance is concerned, this Court notes that even if the appellant was for some reason or other dissatisfied with the services of the complainant, he should have never used the words he wrote. It ought to be noted that bomb threats are to be taken seriously and no amount of references to context, as suggested by the appellant, can cancel the effects of such threats. There is a danger to one’s life at stake and one never knows whether the person who is threatening will carry out what he is saying. For this reason, the third grievance is also being rejected.

Decide

Consequently, for all the above-mentioned reasons, this Court rejects the appeal filed by the appellant and confirms the judgment delivered by the First Court in its entirety and specifies that the one (1) year conditional discharge in accordance with Article 22 of Chapter 446 of the Laws of Malta and the Protection Order for three (3) years start from today.

Finally, this Court has warned the appellant about the serious consequences which may arise if he commits another crime within the next year from today.

Dr. Neville Camilleri
Hon. Mr. Justice

Alexia Attard
Deputy Registrar