



Criminal Court of Appeal

Hon. Judge Edwina Grima, LL.D

Appeal No: 615/2022

The Police

vs

Anastasija Afanasjeva

Today, the 20th of September 2023

The Court,

Having seen the charges brought against accused Anastasija Afanasjeva, holder of identification card number 0160153A, wherein she was charged before the Court of Magistrates (Malta) of having on the 11th October 2022 and/or the preceeding days and months, in Mellieha and in the Maltese Islands:

1. Harassed her ex-partner Darren Cuschieri on more than two occasions and behaved in a way, which she knows or ought to know amounts to harassment;
2. Harassed her ex-partner Darren Cuschieri on more than two occasions and behaved in a way which she knows or ought to know that such harassment amounts to stalking;

And further charged of having on the 21st October 2022 between 21:30hrs and 23:00hrs in Triq il-Mithna il-Ġdida, Mellieħa:

3. Disobeyed the lawful orders of Inspector Audrey Micallef, PS 2018, PS 1010, PC 2180, PC 8, PC 1514 and PC 1508, who are persons entrusted with a public service, or hindered or obstructed such persons in the exercise of their duties, or otherwise unduly interfered with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrated or undoing what has been lawfully done by other persons, or in any other manner whatsoever unless such disobedience or interference falls under any other provision of this Code or of any other law;
4. Moreover the accused Anastasija Afanasjeva is deemed to be a recedivist after being sentenced for an offence by a judgment which has become res judicata.

The Prosecution requested the Court to issue a protection order, during the proceedings against the accused to the benefit of the victim and his family as per Article 412C of Chapter 9 of the Laws of Malta.

The Prosecution also requested the Court to provide for the safety of the victim and his family or for the keeping of the public peace, in addition to, or in lieu of the punishment applicable to the offence, requires the accused to enter into her own recognisance in a sum of money fixed by the Court as per Article 383 et seq of Chapter 9 of the Laws of Malta.

The Prosecution also requested the Court that in case of a conviction, besides the decided punishment according to law, the Court orders the accused to incur the payment of costs in the employment of experts, as provided in Article 533 of Chapter 9 of the Laws of Malta.

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature dated the 23rd of October 2022, wherein the same Court, after having seen Articles 251A, Art. 251H(a)(b), 251HA, Art. 202, Art. 251AA, 251H(a)(b), 25HA, Art. 388(ee) and Art. 49/50 of Chapter 9 of the Laws of Malta, found the accused Anastasija Afanasjeva guilty of the said charges and by virtue of Article 28A of Chapter 9 of the Laws of Malta, condemned her to two (2) years imprisonment suspended for four (4) years together with a restraining order for a period of three (3) years.

Having seen the appeal application filed by the Attorney General on the 17th of November 2022, wherein he requested this Court to reform the judgment of the First Court by confirming the finding of guilt of the accused in virtue of the accused's guilty plea and impose the appropriate punishment in accordance with and within the established parameters of the law.

Having seen all the records of the case.

Having seen the updated conduct sheet of respondent, exhibited by the Prosecution as requested by this Court.

Having heard the testimony of Inspector Audrey Micallef, as requested by the defence.

Having seen that on the 17th of March 2023, Dr Joseph Giglio for respondent, in view of the testimony of Inspector Audrey Micallef requested that respondent be authorised to withdraw her admission of guilt filed before the First Court.

Having seen the preliminary judgment of this Court of the 31st of May 2023 wherein the request brought forward by Respondent Anastasija Afanasjeva to withdraw her guilty plea was rejected and thus the Court ordered the continuation of the hearing of the appeal, with regards to the grievances put forward by the Attorney General in the appeal application.

Considers:

The sole grievance put forward by the Attorney General deals with the punishment meted out by the First Court when it found Respondent Afanasjeva Anastasija guilty of the charges brought against her. The Attorney General criticizes the appellate judgment with regards to the application of article 28A of the Criminal Code in favour of Respondent since, having been found guilty of recidivism in terms of article 50 of the said Code, the First Court was precluded from meting out a suspended jail term and thus the punishment inflicted on respondent was of its nature contrary to the provisions of the law.

It is undoubted that the Attorney General's grievance is well-founded and this in view of what is provided in article 28A(7)(b) of the Criminal Code, which provides:

“(7) An order under sub-article (1) shall not be made in any of the following cases:

....

(b) where the person sentenced is a recidivist within the terms of article 50.”

Thus, Respondent could not benefit from the said disposition of the law having been found guilty, upon her own admission, of being a recidivist in terms of articles 49 and 50 of the said Code.

This notwithstanding the Court had also examined the acts and the testimonies tendered before this Court with regards to the facts of the case and the circumstances surrounding Respondent's admission of guilt before the First Court. The Court heard the testimony of Inspector Audrey Micallef, regarding the circumstances leading to the arraignment of Respondent under arrest, and also the testimony of Respondent herself.

Respondent was arraigned in court after a report filed by her ex-partner alleging that he was being harassed by her in view of the continuous messaging by SMSs and telephone calls as well as stalking. In her statement released to the Police, which the Court has taken cognisance of, although accused chose not to answer the questions put to her regarding the said harassment, as was her right to do so, however, she admitted that she was still in love with her partner and that he had indicated to her that he was still interested in her and that is why she had not given up on their relationship. From the acts it also results that a separate case regarding an incident where Respondent had used violence against injured party, which proceedings are still pending, had preceded the facts surrounding the present case, which incidents were triggered when injured party informed Respondent that he did not wish to continue with their relationship. After this break up, wherein it seems Respondent allegedly reacted with violence, she started stalking injured party and sending him

continuous messages, 168 of them he had not even read or answered, hoping for a reconciliation.

The messages sent by Respondent to her ex-partner were not intimidating messages or messages containing threats of violence but were messages indicating an insistence from her part that she was still in love with injured party and still hoping that they could get back together. Respondent even stalked her ex-partner waiting daily outside his residence in the hope that he would speak to her.

Furthermore, apart from the facts surrounding this incident, the Court also notes that Respondent's early guilty plea should be taken into consideration when deciding the nature of the punishment to be inflicted. Thus, although the First Court could not mete out a non-custodial punishment in terms of article 28A of the Criminal Code, as rightly pointed out by the Attorney General, however, in the circumstances of this case an effective prison term is contra-indicated, Respondent admitting at an early stage to the charges brought against her, and in view of the fact that to date no further incidents have arisen between Respondent and injured party.

Consequently, for the above-mentioned reasons, the Court upholds the appeal filed by the Attorney General, varies the judgment of the First Court, confirms that part of the judgment where Respondent was found guilty of the charges brought against her, and confirms also the Restraining Order issued by the First Court in terms of article 382A of the Criminal Code for a period of three years, however, varies the punishment inflicted and after having seen article 22 of Chapter 446 of the Laws of Malta discharges Respondent Anastasija Afanasjeva on condition that she does not commit another crime within three years from today.

The Court warns Respondent with the consequences at Law should she commit another crime within the three-year time frame during which she is being conditionally discharged.

Edwina Grima

Judge