



In the Criminal Court of Appeal

Madame Justice Consuelo Scerri Herrera, LL.D., Dip Matr., (Can) Ph.D

Appeal No: 265/2023/1

The Police

Vs

Ilhan Irem Yuce

Today 17th November 2023

The Court

Having seen the charges brought forward against the appellant, Ilhan Irem Yuce holder of Maltese Identity card number **0487820L**, born in Turkey on the 4th April 1990, residing at 26, Drewmie, Fl 5, Triq it-Torri, Msida and charged before the Courtss of Magistrate (Malta) as a court of Crminal Juudicature that on the 31st December, 2022 at about 11:00hrs whilst in Paola and in these islands:

1. Uttered insults and/or threats provided for in this code by being provoked and caried his insults beyond the limit warranted by the provocation of Leanne Fenech Yuce.

The court was also requested to issue a protection order for Leanne Fenech Yuce in terms of 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 21st June, 2023 whereby the Court found the accused Ilhan

Irem Yuce guilty of the first charge as proffered against him and consequently by virtue of article 383 of Chapter 9 of the Laws of Malta, was ordered to retain the public peace and the peace between the parties and to provide for the safety and security of Leanne Fenech Yuce, bound the accused Ilhan Irem Yuce to enter into his own recognizance for a period of twelve months and this under penalty in the sum of €2000 in default of observance of such conditions.

Moreover by virtue of article 382A of the Criminal Code the Court ordered the issue of a Restraining Order against Ilhan Irem Yuce in favour of Leanne Fenech Yuce for a period of one year (1) and this in accordance with the conditions laid out in the order attached to the judgement delivered by the first court.

The First Court explained the meaning of the judgment to the guilty party in a language which he understood and who in turn confirmed that he understood same.

Having seen the appeal application presented in the registry of this Court by Ilhan Irem Yuce on the 10th of July 2023, where he humbly requested this Honourable Court to accept this appeal, thereby cancelling and revoking the appealed judgment, and consequently finding him not guilty of the charge and thus acquitting the appellant from the charge proffered against him.

That the appellant felt aggrieved by the decision above mentioned and thus presented this humble appeal from such decision.

That the grievances are the following:

That first of all the proceedings are time-barred, and secondly, the contravention cannot be deemed as adequately proved, given that the words that were uttered by the appellant cannot be deemed as insults and/or threats and infact not even the *parte civile* considered them so.

a) The criminal proceedings are time-barred

That the charge preferred against the accused which refers to article 339(l)(e) of the Criminal Code is of a contraventional nature and therefore time barred by the lapse of 3 months in terms of article 688 (f) of the Criminal Code.

According to the charge sheet, the alleged contravention took place on the 31st of December 2022 and it transpires from the stamp on the same charge sheet that the charges were definitely not issued by the police before the 17th of February 2023.

From the acts it does not transpire when the accused/appellant was notified with the charges against him since the prosecution did not present a copy of the summons.

It transpires from the acts however that the injured party Leanne Fenech Yuce was notified with the proceedings during the week of the 27th of April 2023 and therefore, after the lapse of 3 months from the date of when the alleged contraventions took place.

It also transpires from the acts that the first time that the appellant was present in Court in relation to these proceedings was on the 12th of May 2023 and therefore, once again after the lapse of 3 months from the date of when the alleged contraventions took place.

Consequently, given that the prosecution did not present the summons to show when the appellant was notified with the charges (albeit in the Maltese language) in line with the jurisprudence which states that in the absence of the summons in the acts, the Court is to take the first appearance of the accused for the proceedings as the date when he was notified with the charges. In this case, in the absence of the summons and given that the date when the accused appeared for the first sitting of the case was more than 4 months after the date of when the alleged contravention took place, the criminal action should be declared as time barred.

**b) The words that were uttered by the appellant cannot be deemed as insults and
/or threats**

The appellant humbly submitted that the words in question "*just fuck her and leave*" were uttered towards Leanne's partner Francesco Calogiuri, and this was said by the appellant who at that time knew that Francesco was Leanne's partner. Consequently this phrase is referring to the relationship that was then official between Francesco and Leanne, and which relationship seemed to be quite at an advanced stage given that Leanne had chosen to introduce Francesco to the children held in common between Leanne and the appellant and brought him into their lives. This is being said because the appellant feels that for the determination of guilt or otherwise in relation to the charge proffered against him, a distinction should be made between the current situation wherein these words were uttered in respect to a couple who were officially seeing each other and two complete strangers.

The appellant in fact humbly submits that in the particular circumstances the words (which definitely can never be taken as threats) cannot be deemed as an insult, given that not only they were referred to a couple who was already seeing each other, but most importantly because the *parte civile* herself did not feel insulted and her only reaction was to tell the appellant to "*talk properly in front of the kids*".

The charge with which the appellant is faced however, has nothing to do with talking improperly in front of the kids and consequently, irrespective of whether the use of such wording was proper in front of the children or not, the appellant cannot be found guilty of the charge as proffered against him since the phrase cannot be taken as an insult.

All this apart from the fact that the *parte civile* went to report this matter nine (9) days after it happened and from the PIRS report it transpires as well that this was not the main reason why she went to file the report. Thus, further corroborating the fact that the *parte civile's* main complaint was not because she felt insulted by the appellant's

use of those words, but her complaint concerned other allegations which however do not form part of the charges subject to these proceedings.

Having seen the reply of the Attorney General presented in the registry of this Court on the 27th of September 2023 wherein the Attorney General in his reply made reference to two charges when the accused was only charged with one contravention and also mentioned article 339 (1) (d) which does not reflect the contravention under examination and more so does not respond to the aggravations raised by the appellant in his application. Consequently, this Court will not be taking into consideration this reply.

Having heard the parties make their oral submissions on the 31st of October 2023.

Having seen the conviction sheet of the accused.

Considers;

In primis the accused is stating that the action in question namely the contravention found under article 339 (1) (e) is time-barred since the accused was notified with the charge after the lapse of three months since when the alleged contravention took place.

The Court examined the acts of these proceedings and it transpired that the alleged contravention according to the charge sheet took place on the 31st of December 2022.

Inspector Sherona Buhagiar signed the charge sheet in question on the 17th of February 2023. The first sign that the accused was notified is found at page 2 of the proceedings namely that on the 10th of May he appeared in Court unassisted. There is no positive notification of the accused presented in the acts of the proceedings and thus, it should be taken that the accused was first notified with the charge on this same day being the 10th of May 2023 thus, more than four months after the alleged contravention took place.

In case of guilt the charge as found in Article 339 (1) (e) of the Criminal Code carries a punishment of the payment of an ammenda. Thus, according to Article 688(f) of the Criminal Code the prescriptive period for this case is that of three months.

Therefore, due to the fact that the accused appellant was notified after the three month time frame, this Court declares that the action is time-barred and thus upholds the appeal filed by the applicant and abstains from taking further cognisance of the case.

Dr Consuelo Scerri Herrera

Honourable Madame Justice