



COURT OF CRIMINAL APPEAL

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

Appeal Number 196/2024/1

The Police

vs.

Habte Mariam Tsegethans

Today 26th. of September 2024

The Court,

Having seen the charges brought against the appellant **Habte Mariam Tsegethans**, holder of Identity Card Number 175297(A), charged in front of the Court of Magistrates (Malta) as a Court of Criminal Judicature with having on the 2nd. of July 2019 at around 7.30am in Mosta:

1. subjected Desiree Farrugia to an act of physical intimacy;
2. subjected Desiree Farrugia to any act, or conduct with sexual connotations, including spoken words, gestures and, or the

production, display or circulation of any written words, pictures, and, or any other material, where such act, words, and, or conduct is unwelcome to the victim, and could be reasonably be regarded as offensive, humiliating, degrading, and, or intimidating towards that person.

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature dated 3rd. of May 2024, which judgment was drawn up in the Maltese language, wherein the Court decided the following (*a fol. 44 et seq.*):

“Għaldaqstant, għal dawn ir-raġunijiet, il-Qorti wara li rat l-Artikolu 251A(1)(c) u (e) tal-Kap. 9 tal-Liġijiet ta’ Malta, qegħda ssib lill-imputat Habte Mariam Tsegethans ħati tal-akkużi miġjuba kontra tiegħu u qegħda tikkundannah għal tmien xhur prigunerija effettivi.

Il-Qorti qegħda wkoll toħroġ Ordni ta’ Trazzin ai termini tal-Artikolu 383 tal-Kap. 9 tal-Liġijiet ta’ Malta favur il-vittma Desiree Farrugia għal żmien sentejn mil-lum jew minn meta din is-sentenza ssir definittiva.

Il-Qorti spjegat lill-imputat l-obbligi tiegħu taht is-sentenza u l-imputat iddikjara illi fehem l-istess.”

Having seen the appeal filed by the appellant on the 20th. of May 2024, which appeal was drawn up in the Maltese language, by which he requested this Court to:

“jogħgobha thassar u tirrevoka s-sentenza appellata mogħtija fl-ismijiet premessi mill-Qorti tal-Maġistrati (Malta) bhala Qorti ta’ Gudikatura Kriminali kif presjeduta mill-Maġistrat Dr. Monica Vella nhar it-3 ta’ Mejju 2024, billi tillibera lill-appellant mill-imputazzjonijiet kollha miġjuba fil-konfront tiegħu. Alternattivament u mingħajr preġudizzju għat-talba preċedenti, f’każ li dan l-appell ma jintlaqax, tirriforma s-sentenza appellata fil-parti tal-piena billi timponi sanzjoni aktar ekwa u ġusta fiċ-ċirkostanzi ta’ dan il-każ.”

Having seen all the acts and documents.

Having seen the Reply filed by the appellate Attorney General on the 10th. of July 2024, which reply was filed as regards the appeal filed by the appellant.

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

Having heard final oral submissions regarding the first grievance raised by the appellant.

Considers

That this is a preliminary judgment regarding the first grievance raised by the appellant in his appeal application.

That the facts of the case relate to an alleged improper conduct of the appellant in that allegedly on the 2nd. of July 2019 the *parte civile* Desiree Farrugia was a passenger on a bus when the appellant boarded the bus and sat next to her. According to Farrugia, the appellant made advances of a sexual nature as a consequence of which she informed the bus driver who from his end closed the doors of the bus until the Police went on site.

That having established the above, this Court will proceed to examine the first grievance raised by the appellant.

Considers

That by means of the first grievance the appellant complains that the judgment delivered by the First Court should be declared null given that he does not understand the Maltese language as declared in front of the same mentioned First Court and given that proceedings had to be carried out in the English language.

That from the minutes of the sitting held in front of the First Court on the 1st. of December 2021 (*a fol.* 24) it results that the appellant had informed the Court through an interpreter that he did not understand the Maltese language but knows how to speak the

English language. As a consequence, the First Court ordered that the proceedings continue to be heard in the English language. That is what results to have happened in the subsequent sittings held in front of the First Court, yet the minutes of the sitting of the 2nd. of June 2023 (*a fol.* 41) and the subsequent ones (including the one when judgment was delivered) were drawn up in the Maltese language without there being any decree in this respect. As mentioned above, even the judgment of the First Court was drawn up in the Maltese language. For all intents and purposes, this Court notes that from the minutes of the sitting of the 3rd. of May 2024 (*a fol.* 43) that is when the judgment was delivered, it results that after the First Court read out the judgment it noted that the Court had explained the consequences and obligations imposed under the judgment both in the English language and in the Maltese language and that the appellant had declared he understood the same.

That this Court makes reference to Article 3(d) of Chapter 189 of the Laws of Malta wherein the following is stated:

“In a court of criminal jurisdiction –

[...]

(d) where a court has ordered proceedings to be conducted in the English language, that language shall be used in all subsequent stages of the proceedings, unless the order is revoked by that court or any other court before which the proceedings are pending.”

[emphasis added]

That reference ought to be made also to the judgment delivered on the 25th. of May 2023 in the names **The Police vs. Kristic Miroslav** (Number 32 / 2023) where this Court as diversely presided stated the following:

“In this case all proceedings were carried in English except for the charge sheet found in *fol.* 1 filed by the

Prosecution and the Current Incident Report drawn up by the Police at *fol. 2 et seq.* The Court minute found in page 7 started off in the Maltese language though carried on in the English language. From then all the evidence brought forward and the Court verbals are all in English.

That Maltese case-law on this subject is not unanimous. In some cases the position adopted by these Courts was that appeal applications or judgments written in a language that was not the language of the proceedings as ordered by the Court brought about their nullity. This was the traditional approach adopted in the case **The Police vs. Martin Barnes**¹. That Court considered that where a Court ordered proceedings to be conducted in English, that language had to be used in all subsequent stages of the proceedings, unless the order was revoked by that Court or any other Court before which the proceedings were pending. It added that where the wrong language was used, the nullity of the application of appeal could be raised by the Court *ex officio*.

[...]

This Court notes that since 1995, various legal amendments were introduced aimed at limiting, as much as possible, rigid and strict interpretation and application of procedural law. Courts accepted this current and started adopting a more practical and substantive approach in their administration of justice. This can be seen in the **Denning and Nkwocha** cases mentioned above. More recently, this Court in the case **Il-Pulizija vs. Rudy Dorekens**² adopted a similar flexible approach towards the language of the proceedings issue. It stated that the choice of language made by the Court could be also reversed implicitly by

¹ "Decided by the Criminal Court of Appeal on the 11th. of December 1986."

² "Decided by the Criminal Court of Appeal on the 25th. of September 2018."

the same Court or by a subsequent Court and such a decision needed not be necessarily minuted in the records or in any way explicit. The Court concluded that it could be tacit and implicit.

[...]

According to the traditional approach the judgment delivered by the First Court should be declared null and the Court abstains from taking further cognisance of it since the appellant does not understand the Maltese language and the Court of First Instance had already accepted this fact so much so that the proceedings were held in the English language.

20. In this context this Court reiterates that the provisions of Chapter 189 of the Laws of Malta are subject to and must be interpreted first in line with Article 5 of the Constitution of Malta. The language of these Courts is Maltese by default. But if an accused is English speaking in terms of Article 7 of Chapter 189, then he has the right to request the Court to have criminal proceedings carried out in English. If proceedings are carried out in English for the benefit of the accused, all pleadings should be carried out in that language.

Consequently, for the above mentioned reasons, the Court refrains from taking cognisance of the other plea mentioned in the appeal application and accepts the preliminary plea raised by the defence in his application of appeal and declares the judgement delivered by the First Court as null and thus so as not to deprive the appellant from his right of double examination is sending back the acts of these proceedings to the Courts of Magistrates so that he may be judged afresh.”

That this Court notes that the First Court might have been aware that it mistakenly delivered a judgment in the wrong language so much so that it felt it was necessary to register in the records of the case that it had explained to the appellant, both in the English and in the Maltese language, his obligations vis-à-vis the judgment which was just delivered. This means that the appellant could not understand the Maltese version of the judgment so delivered. For all intents and purposes, this Court notes that the appellant declared in front of this same Court that he could not understand completely the Maltese language but he could understand the English language.

That after considering what has been stated above, this Court will uphold the first grievance raised by the appellant and hence will declare the judgment delivered by the First Court as being null. For all intents and purposes it is being noted that the proceedings held in front of the First Court **are not** being declared null but it is only the appealed judgment which is being declared null.

Decide

Consequently, for all the above-mentioned reasons, this Court upholds the first grievance raised by the appellant Habte Mariam Tsegethans and hence declares the judgment delivered by the First Court as null and, so as not to deprive the appellant from his right of double examination, orders that the acts of the proceedings be remitted back to the Courts of Magistrates so that he may be judged afresh.

Dr. Neville Camilleri
Hon. Mr. Justice

Alexia Attard
Deputy Registrar