



COURT OF CRIMINAL APPEAL

**HON. MR. JUSTICE
JOSEPH GALEA DEBONO**

Sitting of the 12th July, 2007

Criminal Appeal Number. 107/2007

**The Police
(Spt. JJ Fenech)
(Spt. N. Cutajar)**

vs

**Peter Karl Bargmann
Herman Dieter Raake**

The Court,

Having seen the charge brought against the defendants Peter Karl Bargmann and Herman Dieter Raake before the Court of Magistrates (Malta) as a Court of Criminal Judicature for having,

1. at the Malta Freeport, Birzebbugia, on the 11th July, 2004, in their capacity as Captain and Chief Engineer respectively, of the sea vessel CMA CGM VERLAIN, through imprudence, carelessness, unskillfulness in their

art or profession, or non-observance of regulations, caused the death of Raymond Van Beck;

2. as per decree of the 23rd of July, 2004, also charged with having on the same day, time and circumstances, in their duty of an employer failed to ensure the health and safety at all times of all persons who may be effected by the work carried out for them as an employer.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 8th March, 2007, which, declared both defendants not guilty of the charges brought against them and consequently decided to acquit them from all the said charges.

Having seen the application of appeal filed by appellant Attorney General on the 23rd March, 2007, wherein he requested this Court to reverse and revoke the decision of the Court of Magistrates, find guilt and inflict the punishment in terms of law.

Having seen the records of the case;

Having seen that the Attorney General's grounds for appeal are briefly the following :- that the first court did not consider the circumstantial evidence of the case and instead of accepting it as conclusive, as it should have done, opted to ignore it. The incident could only happen because the bow thruster was on. Whether it was fully operational or in standby mode is the key to the issue. All circumstances point out to the fact that through the negligence of both accused Raymond Ven Beck died. There is no other logical interpretation of the facts and therefore the Court had to establish the guilt of both accused.

Having seen the reply filed by both accused to the Attorney General's appeal;

Having seen accused persons' updated criminal conduct sheet filed by the Prosecution on this Court's orders.

Having seen the minute filed by both accused in the course of the sitting of the 21st. June, 2007, wherein they pleaded that the Attorney General's application of appeal was null and void;

Having heard submissions by Defence Counsel and Counsel for the Prosecution on this preliminary plea in the course of the same sitting.

Having seen that the case was then adjourned to today's sitting for a decision on said preliminary plea;

Now therefore the Court, having considered that :-

The accused are submitting that the application is null because in one paragraph the Attorney General mentioned the expression "wrong appreciation of the law and facts of the case." Defence Counsel queried the meaning of this expression . The words used in legal jargon were "interpretation" and "application" of the law. What law was the application referring to? The application did not state how and where the Court appreciated the facts wrongly. The Attorney General was limiting himself to an argument which was thrown out by the first Court. That the bow thruster was on is not a fact but an argument which the Magistrates Court dealt with in great detail. The grounds of appeal had to be mentioned but those mentioned in the application were not grounds of appeal. Therefore the application was formally deficient and left the Defence in a quagmire as to how it was going to defend the appeal. The judgement of the Court of first instance was a very detailed one and did not deserve to be dealt with in this way.

On the other hand Counsel for the Prosecution argued that all the requirements laid down by law for the validity of an application of appeal had been met in the Attorney General's application and Defence Counsel had not mentioned one point in their submissions, which, if upheld by this Court, would make the appeal null.

Having considered that;

Section 419 of the Criminal Code states that :- besides the indications common to judicial acts, the application of appeal from a judgement of the Courts of Magistrates shall, under pain of nullity , contain (a) a brief statement of the facts; (b) the grounds for appeal and (c) a demand that the judgement of the inferior court be reversed or varied. No other requirement, which, if absent , would entail nullity of the application, is mentioned anywhere else in the Code.

Now whereas the Attorney General's application of appeal in this case is a paragon of brevity verging on the telegraphic, it cannot be said that any of the above mentioned three requirements has been omitted. In fact these are included in the last three paragraphs of the said application respectively

It is true that the facts of the case have been stated in skeletal form but at least they do mention that the cause of Raymond Van Beck's death was the fact that the accused left the bow thruster of the vessel CMA GMA Verlain on while Van Beck was inspecting the vessel below the waterline, at Malta Freeport, on the 11th. July, 2004. This is the fact that according to the Attorney General is the basis of accused's criminal responsibility and lies at the center of the facts in issue in this case. As such this Court cannot say that " a brief statement of the facts" was not included in the application.

Similarly , although the grounds of appeal are - to put it mildly - very briefly mentioned , it cannot be stated that they are absent so as to render the application of appeal null. These are that the Court of first instance did not consider the circumstantial evidence of the case and ignored it when it should have reached a different conclusion. Of course whether this ground of appeal will be upheld is another matter, but in the generic terms in which it is drafted, it allows this court to review the entire gamut of the facts of the case and make a fresh evaluation of the evidence tendered before the Court of first instance.

In this connection , the point stressed by Defence Counsel in their submissions as to the meaning of the expression "wrong appreciation of the law and facts of the case" used in a previous paragraph is not of relevance to the issue of the applications' nullity. This expression which appears to be a literal translation of "apprezzament hazin tal-ligi u tal-fatti tal-kaz" very commonly used in appeal applications drafted in the Maltese language, is inserted in a paragraph , which is not required "ad validitatem" in the application of appeal and even if the terminology used therein is not the best , it certainly does not invalidate the application of appeal , because the grounds for appeal are those included in the penultimate paragraph of the application of appeal and not in this paragraph under review. It is abundantly clear to this Court that what the Attorney General is requesting is a fresh evaluation of the evidence - particularly the circumstantial evidence - tendered before the Court of instance in the hope that this Court will reach a different conclusion. Whether this exercise will be successful is of course a different matter, particularly as the arguments made by the Attorney General in his application could not have been sketchier. It need hardly be stated that no fresh grounds for appeal, that is grounds of appeal which are not listed in the application, can be considered by this Court.

Finally the last paragraph of the Attorney General's application contains the third and final requirement "ad validitatem" mentioned in Section 419 (c) with a request for the judgement appealed from to be reversed and revoked. This requirement is not in issue in the preliminary plea raised by both accused.

For these reasons, while deploring the style and scarcity of content in the Attorney General's application - which it has also done on a number of previous appeals - it dismisses the preliminary plea of nullity of the appeal application and is therefore ordering that the appeal be proceeded with by hearing submissions on the merits of the case.

< Final Judgement >

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