



MALTA

**COURT OF CRIMINAL APPEAL**  
**HIS HONOUR THE CHIEF JUSTICE**  
**SILVIO CAMILLERI**

Sitting of the 1 st September, 2014

Number 243/2013

**Police**

**(Inspector Bernard Charles Spiteri)**

**v.**

**Helen Katrina Milligan**

**The Court:**

1. Having seen the charges brought in the Court of Magistrates (Gozo) as a Court of Criminal Judicature against Helen Katrina Milligan, daughter of Peter and Betty, born in the United Kingdom, holder of Maltese Identity Card No. 24196A, consisting of having:

On the 4<sup>th</sup> December, 2012 during the Court Sitting at the Gozo Law Courts, Victoria, Gozo:

1. With the intent to destroy or damage the reputation of Anthony Xuereb ID. 36966G, offended such person by words or gestures or any other matter where such defamation consisted in vague expressions or indeterminate reproaches, or in words or acts which are merely indecent.
2. uttered insults or threats to the person of Anthony Xuereb ID 36966G.
2. Having seen the judgment delivered by the Court of Magistrates (Gozo) as a Court of Criminal Judicature on the 8<sup>th</sup> May, 2013 whereby the Court acquitted the accused from the second charge brought against her and after having seen and considered section 252(1) of Chapter 9 of the Laws of Malta, found the accused guilty of the first charge brought against her and sentenced her to a fine (multa) of one hundred Euros (€100.00).
3. Having seen the appeal application filed by Helen Katrina Milligan on the 23<sup>rd</sup> May, 2013 whereby this Court was requested to vary the judgement appealed from in the sense that the appellant should be acquitted from the first charge brought against her whilst the second part of the judgement where the applicant was acquitted from the second charge brought against her should be confirmed.
4. Having seen the acts of the proceedings including the affidavits exhibited, and having heard the witnesses and listened to the submissions of the parties.
5. The facts of the case may be summed up as follows:

In the course of summary criminal proceedings during a court sitting in Gozo on the 4<sup>th</sup> December 2012 while the accused Helen Katrina Milligan was on the witness stand testifying in her defence she allegedly uttered the word “sick” addressed at Anthony Xuereb who had constituted himself as injured party in the proceedings.
6. The grievance of the appellant Helen Katrina Milligan is essentially one: that the first court made a completely wrong evaluation of all the evidence, in particular as to whether the appellant had the required criminal intent for the offence.

7. The case law of this court on this kind of grievance is constant and long standing in the sense that this Court does not disturb the first court's evaluation of the evidence unless for serious reasons in such a way that this court revises that evaluation only in the eventuality that the first court could not reasonably reach the conclusions it arrived at on the basis of the evidence available to it.
8. The facts of the case are quite simple and it is precisely on the interpretation of those facts where the appellant and the injured party disagree. In fact in her appeal application the appellant does not deny that during the evidence she said the word "sick" but she argues that the word was not meant as a description of the complainant Anthony Xuereb but as a description of the situation made up of the totality of the circumstances of the case<sup>1</sup>. On the other hand, according to Anthony Xuereb, the complainant, when the appellant in the course of her cross-examination in the relevant criminal proceedings uttered the word "sick" she was clearly referring to him as being sick. In fact in his evidence before this court he testified that ""Dr. Caruana was cross-examining and asking Ms. Milligan questions and in answer to one of those questions, Ms. Milligan said, "Well, he's sick!" while the question was relating to me."<sup>2</sup> Mr Xuereb continued saying that his lawyer asked for the presiding Magistrate's intervention to tell the witness to be careful in her choice of words and "to regularise herself" and that the Magistrate did give instructions but immediately after the appellant again repeated the same thing. Mr. Xuereb said that his lawyer took note and afterwards decided to file the complaint because the incident was one in a long list of insults against him and his family.<sup>3</sup> At one stage he also confirmed that in fact the same word was used by the appellant in his regard and in regard to members of his family on other occasions as well. According to Mr. Xuereb her implication

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<sup>1</sup> Fol 71-72

<sup>2</sup> Fol 42

<sup>3</sup> *ibid*

was that there is something wrong with him and with his family. He adds that the term “sick” is hurtful apart from not being true<sup>4</sup>.

**9.** Dr. Justyne Caruana, Mr. Xuereb’s legal counsel in the relevant criminal proceedings which gave rise to the present ones, confirmed that on the date in question the appellant was produced as a witness and she (Dr. Caruana) was questioning her (the appellant) and at one stage, in answer to her questions, the appellant called Mr. Xuereb sick and added “she said that he’s sick”<sup>5</sup>. Dr Caruana continued to testify that at one point she drew the attention of the appellant “to watch out and how to refer and to control sort of herself”<sup>6</sup>. Dr. Caruana added that “I deemed it not an appropriate way to address a person. And I remember also drawing the attention to the Court to advise Ms. Milligan to guard herself”. Dr. Caruana clarified that during the proceedings in question the appellant twice referred to Mr. Xuereb as being sick<sup>7</sup>. During cross-examination upon a question as to what kind of situation was the word “sick” referring to Dr Caruana emphatically confirmed that the appellant “called him “sick””. (emphasis as made by the witness).

**10.** The deputy registrar in the relevant criminal proceedings, Ms. Mary Jane Attard, confirmed that during those proceedings the word “sick” was uttered by the appellant and thought that the word was addressed towards Mr. Xuereb but she could not recall what the context was. At a later stage of her evidence, however, the same witness stated that while she was sure that the word “sick” was uttered by someone during the proceedings she was not quite sure whether the word was said by the appellant or by Mr. Xuereb<sup>8</sup>.

**11.** The accused voluntarily took the stand and essentially the relevant part of her evidence can be summed up as saying that while she conceded that during the relevant proceedings she uttered the word “sick” she was not referring to

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<sup>4</sup> Fol 42-43

<sup>5</sup> Fol. 53

<sup>6</sup> Fol. 54

<sup>7</sup> Fol. 55-56

<sup>8</sup> Fol. 57-63

Mr. Xuereb but she used the word to describe the situation and that what she actually said was that “it’s sick” and that she was not referring to anybody in particular at all and added “I mean I would have used chosen, you know, if that’s what I meant, I would have chosen different words...”.

**12.**The witness Dr. Angele Agius produced by the defence did not testify to anything which could be of assistance to the Court to come to any conclusions.

**13.**The above being the state of the evidence it is absolutely clear that there are no serious reasons according to law for this court to disturb the first’ court’s evaluation of the evidence which was produced before it. This Court, having re-heard the witnesses produced before the first court is satisfied that the first court’s evaluation of the evidence was completely reasonable and that accordingly it was completely justified to reach the conclusions which it arrived at. This would be sufficient at law for the appeal to be rejected but having heard the witnesses produced this court can add that it is also convinced without any doubt that the appellant did state during her cross-examination that Mr. Anthony Xuereb was sick and that she did so precisely because she knew that describing him as such was hurtful, offensive, intended to damage his reputation and to expose him to contempt. Moreover, in the circumstances in question, describing a person as someone who is sick can by no means be considered as giving vent to a vague expression or an indeterminate reproach falling within the terms of subarticle (2) of article 252 of the Criminal Code.

For the aforesaid reasons the Court rejects the appeal filed by the appellant Helen Katrina Milligan and confirms the judgement of the first court appealed from.

**< Final Judgement >**

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