



In the Court of Magistrates (Malta)
As a Court of Criminal Judicature
Magistrate Dr. Abigail Lofaro LL.D. Dip. Stud. Rel.
Mag Juris (Eur Law)
Hall 9

The Police
(Inspector Alfred Mallia)
(Inspector Morgan Azzopardi)

vs

Peter Ohaka

Today the 10th July, 2002

The Court;

Having seen the indictment whereby the accused was charged with having in Cospicua on the 12th October, 2001 at about 5.30p.m. and in the previous months :

1. By committing lewd acts, defiled a minor of either sex, these being Connie Magro of 14 years, Lacey Avellino of 12 years and Kimberley Mifsud of 11 years, which

defilement is aggravated in the case of Kimberley Mifsud who has not completed the age of 12 years;

2. And of having, on the same date, time and place, committed an offence against decency or morals by any act committed in a public place or in a place exposed to the public;
3. And further, under the same circumstances, of having, in the harbours, on the seashore or in any public place, exposed himself naked or been indecently dressed;
4. And further of having, under the same circumstances, even though in a state of intoxication, publicly uttered any obscene or indecent words or made obscene acts or gestures or in any other manner not otherwise provided for in this Code, offended against public morality, propriety or decency;
5. And further of having, under the same circumstances, disobeyed the lawful orders of any authority or of any person entrusted with a public service, PS1262 S. Zammit, or hindered or obstructed such person in the exercise of his duties;

Having seen the Attorney General's consent that this case be dealt with summarily and having heard accused reply that he has no objection that this case be dealt with summarily;

Having heard all witnesses, having seen all the evidence and all the documents produced and having seen all the acts of this case;

Having heard submissions by the Prosecution and by the defence;

Considers :

That the defence declared that it did not wish to produce any evidence in this case. Defendant admitted the third charge, however he did not admit the first, the second, the fourth and the fifth charges brought against him by the Prosecution.

Considers :

The Court examined the statement released by the defendant to the police, which statement was signed by defendant. In this statement defendant admitted that on

Friday 12th October 2001 he exposed his private parts in the presence of a woman. He stated that he was going down the stairs somewhere in Cospicua and that he exposed himself in the presence of a woman whom he did not know. When he came down the stairs he saw the police and he started running. This was the first thing that came to his mind. He was chased by the police who eventually apprehended him. Defendant denied that he also exposed himself in front of children. He stated that it could have been the case that some children might have seen him. However if they did so he did not see them. He said that the woman whom he had exposed himself in front of was aged thirty or over. Defendant stated to the police that he had exposed himself naked in public on more than one occasion and that on the day in question he had exposed himself more than once in public and that he had done so because he was having marital problems with his wife. He also said that he could control this situation and that he could avoid this from happening again in the future. Defendant also admitted in his statement that he heard the police who told him to stop and precisely he said, "I am not sure exactly that they told me to stop but I heard a noise 'hey, hey', from the police. I did not stop from running because I knew that I was going to be punished anyway. I tried to take my chances".

Connie Magro, Lacey Avellino and Kimberley Mifsud all stated on oath that defendant had unbuttoned his trousers and had exposed his genitals in their presence.

Considers :

That the first charge brought against the accused that is of committing lewd acts, defiled Connie Magro, Lacey Avellino and Kimberley Mifsud, minors, which defilement is aggravated in the case of Kimberley Mifsud who has not completed the age of 12 years, the Court cannot find defendant guilty of this charge since the Prosecuting Officer has not produced in Court the birth certificate of the three persons in question, that is of Connie Magro, Lacey Avellino and Kimberley Mifsud. These persons testified on oath, however they did not state their age, moreover, the Prosecuting Officer failed to produce in Court these persons' birth certificates, which would obviously have been the best evidence with regard to their age, therefore it is abundantly clear that this accusation has not been proved due to the fault of the Prosecuting Officer who has failed to produce the necessary evidence in Court that the persons in question were minors.

Coming to the second charge, that the accused committed an offence against decency or morals by any act committed in a public place or in a place exposed to the public, the Court refers to a judgement delivered by the Court of Criminal Appeal in the names “Il-Pulizija vs Raymond Caruana” dated 8th January 1996 wherein the Court decided that for the purposes of Section 209 of Chapter 9 of the Laws of Malta, this charge is proved if the acts in question are such that they offend public decency to the extent that the acts are such which can provoke, or which actually do provoke a sense of discomfort, disgust or repulsion. The Court also held in this judgement that the intentional element is satisfied if the act which offends public decency is voluntary and that no specific intent to offend the public morals is necessary. The Court held that the criteria to be used so as to establish or that the crime contemplated in Section 209 results or else if the act in question is merely a contravention contemplated in Section 338(bb) of Chapter 9, is that of establishing whether the acts are a result of carelessness or lack of regard, or whether to the contrary they are acts which intrinsically offend decency, or which have been deliberately made by the perpetrator so as to give vent to his urges or to those of others.

The Court in this judgement also referred to a judgement delivered by the Criminal Court in the names “Il-Pulizija vs Ferdinand Grima” on the 7th November 1949, and stated that section 209 of Chapter 9 has not defined the libidinous acts but instead has contented itself with stating that these acts must be such that they offend public decency or morals. I quote :

“U bizzejjed li l-att ikun tali li joffendi s-sens tad-decenza fi grad tali li wiehed jista jghid li inissel jew li jista inissel senso di disagio, disgusto o repulzione: (Antelisei Manuale di Diritto Penale Giuffre, Milano, 1996 parte speciale Vol. 1, 456). L-element intenzjonali hu sosdisfatt jekk l-att offensiv tad-decenza fil-grad imsemmi ikun volontarju bla ma hu mehtieg id-dolo specifiku. Hekk ukoll dik il-Qorti fis-sentenza fl-ismijiet “Il-Pulizija kontra Michael Angelo Grech” datata 22 ta’ Ottubru 1955 (Vol. 39 part 4, 1095) irreteniet korrettement li l-att ta’ min ikun f’post pubbliku bil-qalziet miftuh u bil-parti genitali tieghu barra huwa tali li joffendi l-pudur u l-morali u jikkostitwixxi reat ikkontemplat fl-Artikolu 209 u mhux ingurja rizultanzi minn semplici atti indicenti, kif lanqas il-kontravvenzjoni ta’ min jesponi ruhu gharwien jew liebes mhux xieraq prevista fil-paragrafu (g) tal-Artikolu 338. Id-differenza bejn ir-reat ikkontemplat fl-Artikolu 209 u dak ikkontemplat fl-Artikolu 338 (bb) giet ezaminata fl-

Appell Kriminali “Il-Pulizija kontra Iris Gatt” deciz fil-15 ta’ Settembru 1956 (Vol. XL part 4, 1177) u f’dak il-kaz il-Qorti Kriminali irreteniet illi kriterju li wiehed jista juza biex jistabilixxi jekk att illi joffendi d-dicenza jew il-morali pubblika kommess fil-pubbliku jew f’post espost ghall-pubbliku jikkostitwux id-delitt previst fl-Artikolu 209 jew jammontawx ghall-kontravvenzjoni in kwistjoni hu dak illi wiehed jara jekk dawk l-atti ikunux l-effett ta’ espadetezza, jew ta’ non kuranza, jew ta’ nuqqas ta’ rigward, jew jekk ghall-kuntrarju jkunux atti li intrinsikament joffendu d-decenza u jkunu gew maghmula deliberatament sabiex min jaghmilhom jaghti sfog ghall-volji laxjattivi tieghu jew ta’ haddiehor”.

In the case in question defendant admitted to the police that he deliberately exposed himself in public and this to give vent to his desires provoked according to him by the fact that he was not having normal sexual relations with his wife. Therefore this is certainly not a case of carelessness or of lack of regard on the part of defendant but a specific act committed by him and therefore the offence contemplated under section 209 of the Criminal Code has been amply proved.

Considers :

With regard to the third charge, that the accused exposed himself naked or was indecently dressed in the harbours or on the seashore or in any public place, this charge has been admitted by the accused and the Court after having seen Section 338 (q) of the Criminal Code finds defendant guilty of this third charge.

The Court also finds defendant guilty of the fourth charge that is that he publically uttered any obscene or indecent words or made obscene acts or gestures or in any other manner not otherwise provided for in this Code, offended against public morality, propriety or decency and this after the Court saw Section 338 (bb) of the Criminal Code.

The Court also finds defendant guilty of the fifth charge brought against him that is of having disobeyed the lawful orders of any authority or of any person entrusted with a public service, PS1262 S. Zammit, or hindered or obstructed such person in the exercise of his duties and this after the Court saw Section 338 (ee) of the Criminal Code. Defendant is being found guilty also of this fifth charge as he himself admitted in this statement that he heard the police uttering words such as hey, hey, in his presence. However he stated that he did not stop, he

continued running, he tried to take his chances because he knew that he was going to be punished anyway. Clearly defendant, in his statement, has admitted this fifth charge.

Therefore, in recapitulation, the Court frees defendant from the first charge which has not been proved against him, but finds him **guilty** of the **second**, **third**, **forth** and **fifth** charges brought against him and this after the Court saw Sections 209, 338(q), 338 (bb) and 338 (ee) of Chapter 9 of the Laws of Malta.

The Court considers, regarding punishment, the fact that defendant has a clean criminal record and that when he committed the crimes in question he was in a troubled state of mind as he had been having serious marital problems with his wife. The Court does not deem imprisonment to be a fit punishment to fit the crime and deems it far more appropriate for the defendant as well as for society in general that defendant be given another opportunity to reform himself and therefore the Court, after having seen also Section 9 of Chapter 152 of the Laws of Malta, frees the accused on condition that he does not commit another offence for a period of six months from today.

The Court declares that it has explained to Peter Ohaka the legal consequences of this judgement and that if he commits another offence within this period of conditional discharge he may also be punished for these offences.

(ft) Rita Saliba
Deputat Registratur