



Court of Criminal Appeal

Hon. Mr. Justice Dr. Giovanni M. Grixti LL.M., LL.D.

Appeal Nr: 78/2016

The Police

(Inspector Maurice Curmi)

vs

Felix Idris Oduh

Sitting of the 30 November, 2017

The Court,

Having seen the charge brought against Felix Idris Oduh, before the Court of Magistrates (Malta) as a Court of Criminal Judicature, with having on the 24th May 2015 at about 23:30hrs whilst in Qawra Police Station, Tourist Street, St. Paul's Bay, refused or failed to provide a specimen for a breath test when required to do so in pursuance of the law;

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature of the 12th February, 2016, whereby the Court found appellant Felix Idris Oduh guilty of the charge laid against him and condemned him to one (1)

month imprisonment which by application of section 28A (1) of Chapter 9 was suspended for a period of one (1) year and also suspended all driving licences of appellant for a period of six (6) months;

Having seen the application of appeal presented by Felix Idris Oduh in the registry of this Court on the 22nd of February, 2016 whereby he requested this Court to revoke the judgement of the Court of Magistrates (Mata) as a Court of Criminal Judicature of the 12th February 2016 and declare appellant as not guilty of the charge brought against him and consequently acquit him from all charges and penalties;

Having seen the grounds of appeal;

Having seen the records of the case;

Having seen the updated conduct sheet of the appellant, presented by the prosecution as requested by this Court;

Having heard submissions by Counsel to appellant and by the Attorney General;

Considered:

1. That appellant felt aggrieved by the judgement of the first court on the ground of an incorrect decision. Subsidiarily, appellant also puts forward arguments regarding the severity

of the punishment imposed on him but then fails to request a variation of the judgement in that respect and this Court can not take cognisance of the latter arguments once no request is made in that respect. This Court will therefore only consider the arguments of appellant regarding the finding of guilt;

2. From an examination of the application, the second argument must be dealt with prior to any other since appellant states that it is not true that Ivan Sammut gave evidence before the first court and that therefore the only witness of the prosecution was PS 1586 Ronnie Attard via his affidavit. From a reading of the judgement, the first court stated that it heard the evidence of Ivan Sammut. It then went on to summarise the facts of the case from the evidence adduced. The records of the case indicate that Ivan Sammut gave evidence under oath during the sitting of the 6th November 2015. Appellant's argument is therefore not correct and is hereby being dismissed;

3. Appellant's arguments appearing as (a), (c), (d) and (e) necessitate an examination of the facts in order for this court to be able to come to decision as to whether the first court could have legally and reasonably arrived at its conclusion. In his affidavit, PS 1586 Ronnie Attard stated that both parties had called at the Qawra Police Station following a traffic accident in St. Pauls Bay and the traffic wardens were called to assist when Mr. Sammut pointed out that appellant was under the influence of alcohol. He then proceeded to request a breath test from appellant after informing him of his rights and that refusal to undergo the test will in itself amount to a crime, which test appellant refused to undertake;

4. Ivan Sammut testified that following a minor impact between his car and that of appellant whilst both were parking their vehicles appellant objected to the suggestion of calling the traffic wardens and agreed to go to the police station which was a few meters away. The police wanted to take a breathyliser test but had no idea why they wanted to do so in respect of the appellant. He did not even see any reason why the test needed to be done as he did not notice anything remarkable on the appellant and did not suggest to the police that they make such a test;

5. Appellant testified that whilst at the station no one asked him to undergo a breath test and that he had not been drinking alcohol that night. It is not the first time he was asked to provide a breath test and that he would not have had any difficulty in doing so on that night;

6. From the above summary of testimonies, it appears that the evidence tendered by PS 1586 must have been referring to facts regarding some other incident. Both appellant and the other driver made it clear that appellant never refused to submit himself to a breath test. The other driver was asked several times whether there was any reason to suggest the taking of such test and he replied in the negative and also that he did not indicate to the police officer that appellant must have consumed alcohol. This court, in fact, deems it quite unlikely that a police officer would simply authorise a driver to leave the station and proceed to his car if there exists a suspicion that warrants the taking of a breath test;

7. From this perspective, it is difficult to see how the first court could have come to a finding of guilt based on the affidavit of the police officer when Mr Sammut himself never described any scenes of refusal to give a breath test;

8. For these reasons, whilst abstaining from taking further cognisance of the other arguments, this Court upholds the appeal and consequently revokes the judgement merits of this case, finds the appellant not guilty and acquits him of the charge.