



Court of Criminal Appeal

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

Appeal Nr: 54/2016

The Police

(Insp. Godwin Scerri)

vs

Salih Usta

Today the 28th June, 2018;

The Court,

Having seen the charges brought against Salih Usta, holder of Maltese identification card number 22538A, before the Court of Magistrates (Malta) as a Court of Criminal Judicature, charged with having on the 25th September, 2015 at about 23:30hrs as the person responsible for the establishment styled as Murphy's Bar, situated in Tourist Street, St. Paul's Bay:

1. Played or permitted to be played amplified music without the necessary permits for the competent authority.

2. Also accused with having on the same date, time, place and circumstances operated a loud speaker, gramophone, amplifier or similar instrument made or caused or suffered to be made which was so loud to have caused a nuisance to his neighbour Christopher Maggi.

3. Also accused of being in possession of a licence failed to comply with any applicable provision of this act or with any condition, restriction or other limitation to which the license is subject; and

4. Also accused of becoming a recidivist after sentenced on the 4th December, 2014 before Magistrate Dr. Charmaine Galea LL.D in terms of sections 49 and 50 of Chapter 9 of the Laws of Malta.

The Court was kindly requested that in case of guilt the licence of said establishment be cancelled or suspended for anytime on its discretion;

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature delivered on the 1st February, 2016, whereby the Court found the accused Salih Usta, as a recidivist under section 49 of the Criminal Code, guilty of all the charges laid against him and, whilst considering the third charge to be comprised in the first charge, condemned him to the payment of an ammenda of two hundred and fifty euro (€250);

Having seen the appeal application presented by Salih Usta in the registry of this Court on the 5th of February, 2016 whereby this Court was requested to reverse the decision of the Magistrates Court and find the accused not guilty as charged, quashing the punishment and acquitting him accordingly;

Having seen the grounds of appeal as presented by the appellant Salih Usta;

Having hear the witnesses under oath;

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

Having seen the records of the case;

Considered:

1. That appellant felt aggrieved by the judgment of the first Court on the ground that the facts brought before the said Court should not have led to a finding of guilt against him. Appellant's arguments in favour of this ground will be examined *seriatim* but prior to this, it is necessary for this Court to decide on the preliminary plea made by the Attorney General during the hearing of the 5 of October 2017;

2. During the above mentioned hearing, the Attorney General brought forward the plea of nullity of the application of appeal since it is laid down in the Maltese language when the proceedings before the first Court, including its judgment, were made in the English language. Now, in accordance with article 516 of the Criminal Code, the Maltese language is the language of the courts and the language of all the proceedings. By way of exception, however, Chapter 189 of the laws of Malta, provides that in the courts of criminal jurisdiction, where all the accused speak the English language, the court shall order that the proceedings be held in the English language. This exception is clearly for the benefit of the accused and in this case the first court had ordered that the proceedings be held in the English language as from the first hearing before it and proceeded to pronounce judgement also in the English language;

3. In accordance with article 419 of the Criminal Code, recently amended by Act I of 2018, the application of appeal shall, apart from conforming with the general rules regarding judicial acts, shall also contain a brief description of the facts of the case, the grounds of appeal and a demand that the judgement of the first court be reversed or varied. Whereas conformity with the above requisites was on pain of nullity, this is no longer the case after the amendments introduced by Act I of 2018. Within this framework, appellant's, or rather his legal counsel's decision to introduce his appeal in the Maltese language when the proceedings were held in the English language does not prejudice appellant in any manner. The holding of proceedings in the English language in accordance with Chapter 189 is for the benefit of the accused and his counsel's decision to file the application in the Maltese language is a matter for him to decide. This court finds no ground to declare the application null and therefore turns down the plea of nullity brought forward by the Attorney General;

4. Having dealt with the preliminary plea, the Court will not deal with the arguments made by appellant regarding the sole ground of appeal the first being that he was operating the bar in question in complete conformity with the license issued and in particular that the alleged infringement took place at 22.50 hours when the license prohibits the playing of music after 23.00 hours. This argument necessitates a review of all the facts of the case in order for this Court to be in a position to decide whether the first Court before it could have legally and reasonably come to its conclusion;

5. On the 25 September 2015 Christopher Maggi called at the Qawra Police Station to complain about continued disturbance in the form of loud music coming from Murphy's Bar till the early hours of the morning which had been going on for the past months. At 23.30

hrs, the police went to investigate the complaint and noted that music was being played from loud speakers attached to apparatus used by a duo of entertainers. The owner had no license to play amplified music. Rita Maggi explained that she lives two doors down the bar run by appellant and that she lodged a complaint due to the inconvenience cause by the music coming from appellants bar to the extent that she is unable to sleep or watch television with base vibrating all over and starting at 8pm. This usually lasts till after eleven and even one in the morning;

6. Christopher Maggi stated under oath that his complaints are all regarding the high level of base sound coming from appellant's bar into his bedroom and living room. Witness, like his mother, find no objection with regard to playing of music at that level in the weekends but finds it completely unacceptable that this should also go on during the week. Complainant also finds no objection to playing and singing after 11pm at low volume but cannot tolerate loud base volume at certain instances;

7. A representative of the Malta Tourism Authority stated that Murphy's Bar is licensed to operate as a bar and the license granted to appellant does not include a permit to play music;

8. Appellant testified that he has been operating this bar since 2013 and that it is only complainant that has an issue with music being played within this bar. He entertains his customers by providing music and also sings against pre-recorded music. He has requested the Malta Tourism Authority to provide him with a license to play amplified music but this has not been issued to date;

9. Having considered the above testimonies and all the documents exhibited in this case, it is the opinion of this Court that the judgement

of the first Court is both legally and reasonably correct. The licenses afforded to appellant to run his bar does not include a permit to play music. Complainant is being more than reasonable in his demands to exercise his right to live in peace and dignity when he states that he is not against the playing of music especially during the weekends but that this goes on during the week and at a time when he normally needs to retire in bed is just unacceptable as the base music emanating from appellant's bar reverberates through his home which is just one door away;

10. If appellant's arguments that the bar and complainant's house are situated in an area of Qawra which is prone to noise generated by music from catering establishments and their patrons are intended to mean that he can do as he wishes, including the playing of music without the necessary permits, then he fundamentally is incorrect. Appellant is also not correct in arguing that there was reasonable doubt as to whether the noise was a source of inconvenience to complainant. The first Court was perfectly within its rights to accept one testimony from the other in accordance with article 638 of the Criminal Code .

11. The same applies with regard to complainant's decision to convert the premises previously occupied as an office, into his residence when the bar was already in operation. Appellant must abide by the conditions of his license and the law in general and therefore contain the noise generated from his activity in a way that it does not cause unnecessary inconvenience to his neighbours. His contention that he took remedial measures to minimize the noise by installing sound proofing panels were noted by the first Court with a degree of caution and it is the conclusion of this Court that such measure do not grant an automatic right to appellant to act beyond the terms of his license. The Court also rejects the argument that from all

the neighbours it is only complainant that is encountering a problem and the least said about such reasoning, the better;

12. For the above reasons, the appeal is hereby being denied.