

Court of Criminal Appeal
Hon. Mrs. Justice Dr. Edwina GrimaLL.D.

Appeal Nr: 505 / 2017

The Police
Inspector Maurice Curmi
Vs
Geraldine Myra Noel

Today the 27th of February 2019

The Court,

Having seen the charges brought against Geraldine Myra Noel holder of Maltese Id Card Number 61462(A), before the Court of Magistrates (Malta) as a Court of Criminal Judicature accused with having on the 3rd July 2016 at around 3: 00hrs whilst in the residence Feria Flats, Flat 1, Raddet ir-Roti, St. Paul's Bay:

1. Operated a loud speaker, gramophone, amplifier or similar instrument, made or caused or suffered to be made¹ which shall be so loud to have caused a nuisance to her neighbours Carmel Attard and Mario Abela;
2. Also accused with having, with the object of destroying or damaging the reputation of Carmel Attard, offended same person by words, gestures or by any writing or drawing or in any other manner.

The Court was kindly requested that in case of guilt provides for the security of Carmel Attard (Kap 9 sec 383).

¹ The Maltese version of this charge is as follows “Haddimt jew gieghelt jew hallejt lil min ihaddem loud speaker, gramafon, amplifikatur jew strument bhal dawn, aghmilt jew inkella gieghelt jew hallejt li jsiru **hsejjes** daqshekk qawwija li jdejq lid-detenturi jew lin-nies li jkunu joqoghdu fil-qrib cioe lil Carmel Attard u Mario Abela.” It results that in the English version the word “hsejjes” which is translated to “any noise” in article 41 (2) (b) of Chapter 10 was left out.

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 27th November, 2017 whereby the Court after seeing section 41(2)(b) of Chapter 10 of the Laws of Malta, declares the accused Geraldine Myra Noel guilty of the first charge and condemns her to the payment of a fine (ammenda) of fifty euro (€ 50) whilst acquitting her of the second charge.

Furthermore, in terms of section 383 of the Criminal Code, the Court is also binding Geraldine Myra Noel for a period of one (1) year from today under a penalty of one thousand (€ 1000) euro to hold peace with Mario Abela and Carmel Attard.

Having seen the appeal application presented by Geraldine Myra Noel in the registry of this Court on the 30th November, 2017 whereby this Court was requested to reform and modify the judgment delivered by the First Court on the 27th November, 2017 in the sense that whereas it is to be confirmed where the accused was acquitted from the second charge, it is to be revoked in that accused was found guilty of the first charge and consequently acquit the appellant from the said First charge and cancel the guarantee imposed in virtue of Article 383 Chapter 9 of the Laws of Malta.

Having seen the acts of the proceedings;

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

Having seen the grounds for appeal of Geraldine Myra Noel wherein the following grievances were put forward:

1. That there is conflicting evidence regarding whether any music was actually played or not or that the volume of the TV was high;
2. That in fact there was also conflicting evidence whether accused insulted the complainants or not and in fact the First Court acquitted the accused from this charge;
3. That hence on this same ground of Conflicting evidence, the First Court should have similarly acquitted the accused - in dubio pro reo.

4. That whether the volume of the TV was high or not is of a subjective nature and not only no technical tests were carried out to determine whether the volume was satisfactory or otherwise but moreover no independent or objective evidence was submitted to determine whether or not the said sound could be heard from the complainants' flats.
5. That since the accused was acquitted from the second charge regarding the alleged insult, the First Court should not have applied article 383 Chapter 9 of the Laws of Malta simply on the charge of "loud music".

Considers:

That the facts at issue concern an incident which took place on the 3rd of July 2016 at 3:00am at FERIA Flats, Flat 1, Raddet ir-Roti Street, St. Paul's Bay. In fact according to the affidavit entered into the acts of the case by PC914 Ivan Mifsud² a report was filed by Carmel Attard on 16th August 2016 referring back to an incident which had occurred on the 3rd July. Attard reported that he had confronted appellant because of loud music being played at 3a.m. and she insulted him and told him that she can do as she pleases. Attard called the police after this confrontation who came on site and after they spoke to appellant she complied with their orders and lowered the volume. Another resident of the same block of flats, Mario Abela confirmed Attard's version with the exception of the language used in his regard by appellant as claimed by Attard. Police spoke to appellant who said that she was having problems with her neighbours for no apparent reason. She claimed to be watching television and did not have any other apparatus on so it was not possible that the noises which the neighbours allegedly heard were being emitted from her television set. In her evidence she expounded further on the nature of the problems which she has with her neighbours, particularly Attard and added also that she was actually asleep on her sofa with her television set on when Attard came knocking and yelling outside her door asking her to put down the volume since she was disturbing him and other neighbours in the same block of apartments. She alleged that the volume was very low and definitely not causing a nuisance even considering the size of her television set which is 32inch in diameter.

² Dated the 10th November 2016 at folio 2 of the acts of the proceedings.

Considers:

That during the final oral submissions entered by the parties before this Court and heard on the 25th October 2018, the defence raised a fresh grievance namely that the action taken against the accused in the case of the charge for which she was found guilty was time-barred by the three month prescriptive period and this owing to the fact that the incident had taken place on the 3rd of July 2016 whilst the charge sheet was issued by the Executive Police only on the 29th October 2016.

In the first place the Court notes, as was also pointed out by the prosecution in rebuttal of this grievance, that appellant failed to raise the ground of prescription as one of her grievances in her appeal application. According to local case law the appeal lodged can only be limited to grievances expounded in one's application and no new grounds of appeal can be raised in open court unless they are derivative from the grounds which are laid out in the application lodged. In fact as was stated in the judgment delivered by this Court in the names 'Police vs Gaetan Gatt':

*"Hija giurisprudenza ormai pacifika li l-Qorti ta' l-Appell ma tistax tiehu konjizzjoni ta' ragunijiet ta' l-appell, ossia aggravji, li ma jkunux gew imsemmija fir-rikors ta' appell. L-artikolu 419(1)(b) tal-Kap. 9 jittellem car dwar il-htiega li fir-rikors ta' appell ghandu jkun hemm, taht piena ta' nullita`, ir-ragunijet tal-appell". U bhalma ntqal fl-Appell Kriminali Il-Pulizija v. Darren Attard deciz fit-3 ta' Settembru 2001: "Hija giurisprudenza kostanti li galadarba tigi specificata r-raguni, jew jigu specificati r-ragunijiet, ta' l-appell, l-appellant ikun marbut b'dik ir-raguni jew b'dawk ir-ragunijiet, fis-sens li tkun biss dik ir-raguni jew dawk ir-ragunijiet li jistghu jigu kkunsidrati minn din il-Qorti, salv, naturalment, aggravju jew aggravji li jistghu jitqiesu li huma komprizi u involuti fl-aggravju jew fl-aggravji kif specificati."*³

Having said that though, the grievance put forward by appellant at this late stage of the proceedings relates to the plea of prescription meaning that the statutory time limit for the prosecution to bring forward its case had elapsed. Having thus premised the plea of prescription consequently may be raised at any point during

³ Decided on the 13th January 2013 by Judge David Scicluna. See also *Ir-Repubblika Ta' Malta Vs Mark Pace* decided by the Court Of Criminal Appeal (Superior) on the 07/11/2002, presided over by Judges De Gaetano Vincent, Filletti Joseph A., Scicluna David.

the proceedings and may even be raised *ex officio* by the court, even at appellate stage if it transpires⁴, and this in terms of article 694 of the Criminal Code that the prescriptive period has run in its entirety:

694. Prescription shall be applied ex officio, and it shall not be lawful for the party charged or accused to waive prescription.

According to article 318 of the Code of Police Laws, article 41(2) of the same law, which is the offence for which the appellant in this case was found guilty by the First Court, is considered to be a contravention, hence carrying the punishments stipulated thereof in accordance with article 7(2) of the Criminal Code. In turn in terms of article 688(f) of the Criminal Code, the prescriptive period applicable in the case of contraventions amounts to three (3) months.

Now with reference to the facts of the case it is evident from the acts of the proceedings that the charges against appellant were issued by the Executive Police on the 29th October 2016, and thus after the prescriptive period applicable to the first charge had lapsed. Now although the report was lodged with the police only in August 2016 for an offence allegedly committed in July of the same year, the person allegedly responsible for the offence was already known to the complainant from the day of the incident itself.

Considers further:

That in view of the fact that the plea of prescription can be raised at any juncture during proceedings including at appellate stage and which plea can be raised even by this Court *ex officio*, the Court is of the opinion that the plea of prescription as raised by appellant is well-founded. It is clear that the action which was taken against appellant with regards to the first charge for which she was found guilty, should have never proceeded further from the moment the case was lodged in court

⁴ Huwa ben sapat illi eccezzjoni ta' preskrizzjoni tista' titqajjem fi kwalunkwe stadju u fil-kaz ta' ligijiet penali tista' titqajjem ex officio mill-Qorti. "Minkejja d-decizzjoni tal-Ewwel Qorti l-appellant ghandu dritt illi jqajjem din l-eccezzjoni ta' preskrizzjoni fi stadju tal-appell, kif fil-fatt ghmel u din il-Qorti thoss illi l-argument tal-appellant huwa wiehed korrett u jimmerita illi jkun milqugh - App.Inf II-Pulizija vs Ramon Sant Hili. – 25/03/2010.

and this owing to the tardiness on the part of the Executive Police to prosecute. Thus the first Court could not legally proceed with the hearing of the case relating to this charge in terms of article 41 of the Code of Police Laws and ultimately find guilt against appellant, the criminal action having been time-barred at the outset of proceedings.

Having thus established, it is clear that when the writ of summons was filed by the police, the criminal action taken with regards to the first charge purported against the appellant was already time-barred and therefore no action could be initiated and continued by the prosecution against the accused in that respect. With regards to the second charge, the appellant was acquitted from this charge and hence since there is not appeal lodged in this regard by the Attorney General, the acquittal of the second charge is hereby being confirmed.

Consequently for the above mentioned reasons, the Court accedes to the plea of prescription raised by appellant, reforms the judgment delivered by the First Court, declares the first charge brought against accused as time-barred and acquits appellant from the same, whilst confirming the acquittal from the second charge. Therefore acquits appellant from all the charges brought against her.

Edwina Grima

Judge