



## **Court of Criminal Appeal**

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

Appeal nru. 413/2018

**The Police**

**(Inspector John Spiteri)**

**(Inspector Godwin Scerri)**

**Vs**

**Mearg Haile**

Today, 24th May, 2021

The Court,

Having seen that charges proffered against Mearg Haile, holder of Romanian Residence Permit Card 78005761 with having on these islands and/or in BLK C3, F13, Triq il-Frejgatina, Saint Paul's Bay, on the 12<sup>th</sup> October, 2018 between 21:00hrs and 00:00hrs;

1. Engaged in non-consensual carnal connection, that is to say, vaginal or anal penetration of a sexual nature with any bodily part and/or object, or oral penetration with any sexual organ of the body of Merry Shume Deressu;
2. And more of having on the same date, place, time and circumstances without a lawful order of the competent

authorities, and saving the cases where the law authorizes private individuals to apprehend offenders, arrested, detained or confined Merry Shume Deressu against her will;

3. And more of having on the same date, place, time and circumstances committed a non-consensual act of sexual nature on the person of Merry Shume Deressu; a person mentioned in Article 202 of Chapter 9 of the Laws of Malta;

4. And also for having pursued a course of conduct caused Merry Shume Deressu to fear that violence will be used against her or her property or against the person or property of any of her ascendants, descendants, brothers or sisters or any person mentioned in article 222(1) of Chapter 9 of the Laws of Malta;

5. Caused Merry Shume Deressu slight injuries as certified by Dr.Mignonne Vella MD Reg : 3052; Dr.Mario Scerri MD;

The Court was requested to provide for the safety of Merry Shume Deressu in accordance with Article 383, 384, 385 of Chapter 9 of the Laws of Malta and to issue a Protection Order in accordance with the provisions of Article 412C of Chapter 9 of the Laws of Malta under such restrictions or prohibition as the Court may Consider necessary;

Having seen the judgement of the Court of Magistrates as a Court of Criminal Judicature of the 29<sup>th</sup> October 2018 wherein it declared exhaustion of proceedings with regard to the first, second, third and fourth charge these being renounced by the aggrieved party, “ordering a protection order under Article 412C of Chapter 9 of the Laws of Malta for the fifth (5<sup>th</sup>) charge since there was an admission of guilt of this charge”;

Having seen the appeal application filed by the Attorney General in the Registry of this Court on the 9<sup>th</sup> November 2018 requesting that the judgement be quashed, declared null and void and for this Court to proceed to decide the case according to law;

Having seen the acts of the proceedings;

Having heard submission by counsel to the Attorney General and counsel to appealed;

Having seen the updated conduct sheet of the appellate, presented by the Prosecution as requested by this Court;

Having seen the grounds for appeal of the Attorney General of the 9<sup>th</sup> November 2018;

Having considered:

1. That this appeal was brought forward by the Attorney General on the singular ground that the judgement of the first Court is null and void for two reasons, namely due to the fact that it does not indicate the article of the law for which the appealed was found guilty and also for the reason that the first court did not mete out a punishment as it was obliged to do since the imposition of a Protection Order under article 412C of the Criminal Code does not amount to a penalty;

2. That in sustaining his argument, the Attorney General cites article 382 of the Criminal Code which states when delivering a judgement against an accused has been found

guilty, shall award the punishment and shall quote the article of the Criminal Code or any other law creating the offence. Now, from a reading of the appealed judgement, it is evident that the first Court failed not only to quote the article of the law for which the accused was found “guilty” but also failed to mete out the punishment according to law when it decided to issue a Protection Order in terms of article 412C of the Criminal Code. The Court also imputes to the failure of the first Court that of not having pronounced itself on the guilt or otherwise of the accused on the fifth charge;

3. It is settled jurisprudence that failure to comply with the provisions of article 382 of the Criminal Code is equal to a failure of an essential formality which gives rise to nullity. Now the first court failed to declare the accused guilty and yet meted out what it deemed to be the appropriate punishment without quoting the relevant article of the law. It has been decided many a time by this Court, that unlike article 383, article 412C can not be imposed in lieu of the penalty prescribed by law. This Court sees no reason why it should make any further considerations on this grievance other than that the first Court erred in three instances when delivering judgement against the accused namely by not declaring the accused guilty given that he pleaded guilty to the fifth charge, not quoting the relevant article of the law creating the offence and in not awarding the punishment prescribed by law;

4. Thus the judgement of the first Court is being declared null and void on the basis of non conformity with three essential formalities of the law;

5. That in terms of article 428(3) of the Criminal Code, when this Court decided that there exists a breach of an essential

formality in the judgement of the first Court under pain of nullity, shall revoke the judgement and decide on the merits. Now a declaration of nullity brings about various effects which vary from case to case. The first among these is that already stated that it is for this Court to decide on the merits as provided in article 428(3) of the Criminal Code. The declaration of nullity, however, affects only that part of the judgement where the accused was found guilty or as in this case where the court omitted to declare the accused guilty. This gives rise to a partial declaration of nullity since this Court will not decide on those charges of which the accused has been acquitted which in this case refer to those charges where the first Court declared exhausted (vide *Il-Pulizija vs Karmenu Attard*, *Crt of Criminal Appeal* 28.4.1995). Furthermore, the grounds of appeal will then be considered as submissions before this Court (vide *Il-Pulizija vs Dr. Alfred Grech*, *Crt of Crim App* 10.09.2007) and finally when meting out the penalty, this Court is not bound by the article 428(7) of the Criminal Code and is consequently free to impose any higher penalty on the guilty party. (*Il-Pulizija vs Joseph Farrugia* *Crt of Crim App* 13.1.1995);

6. Having seen from the records of the case that the first Court declared exhaustion of proceedings with regard to the first, second, third and fourth charge and that the Attorney General did not register an appeal on that decision, this is equal to an acquittal on the said charges and the Court will therefore, on the basis of the above consideration, not enter into such merits;

7. Having also considered that appealed pleaded guilty to the fifth charge before the Court of Magistrates as a Court of

Criminal Inquiry and confirmed his plea of guilt after being given sufficient time to retract or confirm the plea;

8. Now therefore, finds the accused guilty of the fifth charge and whilst confirming that the proceedings are exhausted in respect of the first, second, third and fourth charge, and after having seen article 221 of the Criminal Code, condemns the accused to a term of imprisonment of one (1) year, which term shall not be served unless the accused commits any other offence punishable with imprisonment within a term of two (2) years from today in terms of article 28A of chapter 9 of the laws of Malta;

9. In order to provide for the safety of Merry Shume Deressu, the Court issues a Protection Order in terms of article 412C of the Criminal Code for a period of five (5) years from today.

10. The Court explained to the accused in clear terms his obligations arising out of this judgement both with respect to the suspended sentence and the Protection Order and accused confirmed that he understood the Court's explanation.

**(sgd) Giovanni M. Grixti**

**Judge**

**True Copy**

**Christopher Camilleri**

**Deputy Registrar**