



Criminal Court of Appeal

Hon. Judge Edwina Grima, LL.D

Appeal No: 19/2022

The Police

(Insp. Christina Delia)

vs

George-Cristian Mandrescu

Today, the 1st day of July 2022.

The Court,

Having seen the charges brought against appellee George-Cristian Mandrescu, holder of Romanian identity document number ZL 252135, wherein he was accused before the Court of Magistrates (Malta) of having:

1. On the 19th November 2015, sometime between ten past nine in the morning and one thirty in the afternoon, from No. 366, Flat 1, Triq il-Kbira San Ġuzepp, Santa Venera, committed theft of jewellery and other belongings, which theft is aggravated by means, amount which exceeds two thousand and three hundred and twenty nine Euro and thirty seven cents and place, to the detriment of Lorraine Cilia and Joseph (Joseph Saviour) Deguara and/or any other persons.

The Court was also requested to deal with the accused as a recidivist under article 49, 50 and 289 of Chapter 9 of the Laws of Malta, after being sentenced by a judgment which has become absolute.

The Court was also requested that in pronouncing judgment, it orders the offender to make restitution to the injured party of any property or proceeds stolen or knowingly received or obtained by fraud or other unlawful gain to the detriment of such party by or through the offence, or to pay to such party such sum of money as may be determined by the Court as compensation for any such loss as aforesaid or for any damages or other injury or harm in accordance to Article 15A of Chapter 9 of the Laws of Malta. Moreover, the Court was requested to sentence the person convicted to the payment of the costs incurred in connection with the employment in the proceedings of any expert or referee in accordance to Article 533 of Chapter 9 of the Laws of Malta.

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature dated the 14th of January 2022, wherein the same Court, after having seen Articles 261(b)(c)(e), 263, 267, 269(g), 278, 279(b) and 280(2) of Chapter 9 of the Laws of Malta, found and declared the offender George-Cristian Mandrescu guilty as charged, without however declaring him a recidivist and subsequently condemned him to twenty-one months imprisonment.

Having seen the appeal application filed by the Attorney General, on the 1st of February 2022, wherein he is requesting this Court to vary the said judgment by:

1. Confirming that part of the judgment wherein the Court found appellee guilty of the first charge of aggravated theft in accordance with Articles 261(b)(c)(e), 263, 267, 269(g), 278, 279(b) and 280(2) of the Criminal Code, Chapter 9 of the Laws of Malta;
2. Reverses that part of the judgment wherein the Court omitted from finding guilt under section 49, 50 and 289 of the Criminal Code, Chapter 9 of the Laws of Malta;
3. Varies the judgment to find appellee guilty in accordance with section 49, 50 and 289 of the Criminal Code, Chapter 9 of the Laws of Malta;
4. Varies that part of the judgment wherein the Court condemned appellee to twenty one months imprisonment, and adds such punishment in accordance

with section 49, 50 and 289 of the Criminal Code, Chapter 9 of the Laws of Malta.

Having seen all the records of the case.

Having seen the updated conduct sheet of appellee, exhibited by the prosecution as requested by this Court.

Having heard submissions by the parties.

Considers:

That, the appellant Attorney General brings forward one main grievance lamenting an incorrect application of the Law made by the First Court when it chose not to deal with the charge of recidivism, and this in the light of the unconditional admission of guilt registered by appellee in the hearing of the 7th January 2022.

That, the Court notes that from the minutes of the proceedings held on the 7th January 2022, appellee George Cristian Mandrescu admitted to the charges brought against him and after being given ample time to consider his guilty plea, he reiterated the same. However although presented with this unconditional admission the First Court chose to acquit appellee from the charge of recidivism on the following grounds: -

With respect to the request by the prosecution to deal with the accused as a recidivist, the Court points out that the documents exhibited and presumably relevant to the determination of this aspect of the proceedings, are actually in the Romanian language and therefore, for obvious reasons at law, the Court will abstain from taking cognisance of the said documents.

The Court notes at the outset, that the documents filed by the Prosecution in order to sustain the charge of recidivism, contrary to what the First Court decided in its judgment, are not entirely in the Romanian language since the preliminary part of the document contains an official declaration by the Romanian authorities in the English language confirming that there are three previous convictions registered in

appellee's name. This document was issued by the said authorities on the 21st of October 2016 and therefore approximately 6 years before appellee was charged before the court regarding offences relating to a theft allegedly committed on the 19th November 2015. It transpires from the minutes of the sitting of the 7th January 2022, that appellee was not present in Malta after the commission of the offence and was brought to face justice on the strength of a European Arrest Warrant on the 11th November 2021, appellee finally being brought to court to face the said charges on the 7th January 2022.

Considers:

That, as has been decided by these Courts over the years, recidivism is in fact a stand-alone charge and has to be proven independently of any other charge brought against the accused and this beyond a reasonable doubt. If this level of proof is not reached, like any other offence, the accused would be acquitted of the same.

That, in the judgment in the names **Il-Pulizija vs Jason James Agius** delivered by this Court, diversely presided, on the 5th of November 2001, it was stated that –

Bhal ma dejjem gie ritenut, l-ahjar prova sabiex tigi ppruvata xi akkuza bhal dawn in kwistjoni hi li tigi esebita kopja ufficjali tas-sentenza relattiva, u wara ssir il-prova ta' l-identita` ... l-obbligu tal-prosekuzzjoni li tesebixxi dawk is-sentenzi jibqa' dejjem, minkejja l-esenzjoni moghtija mill-akkuzat li tipproduci prova ta' l-identita`. Jekk ma tigix esebita jew prodotta tali prova permezz tal-kopja ufficjali tas-sentenza li tisemma fl-akkuza, allura wiehed ma jistax jghid li saret l-ahjar prova dwar jekk verament precedentement l-appellant kienx ikkommetta xi reat iehor li tieghu gie misjub hati ...

That, also, in the judgment in the names of **Il-Pulizija vs Joseph Zahra** delivered by this Court, as otherwise presided, on the 24th of February 2003, it was concluded that –

Ghalkemm il-fedina penali tista' tittiehed in konsiderazzjoni mill-Qrati ta' Gustizzja Kriminali biex ikunu jistghu jikkalibraw il-piena, l-imputazzjoni tar-recidiva dejjem tinnessita li ssir il-prova tal-kundanna jew kundanni

precedenti; tali prova ssir permezz ta' kopja legali tas-sentenza jew sentenzi precedenti kif ukoll billi jigi ppruvat a sodisfazzjoni tal-qorti - permezz ta' xhieda jew minn ezami tal-istess sentenza jew sentenzi (jekk din jew dawn ikunu jaghtu l-konnotati mehtiega tal-persuna Qrati tal-Gustizzja kkundannata) jew minn ezami tal-atti tal-kawza ta' dik issentenza jew ta' dawk is-sentenzi precedenti - li dawk is-sentenzi jirreferu ghall-persuna li tkun qed tigi akkuzata bir-recidiva.

That, in this present case, the Attorney General is contending that given that appellee admitted unconditionally to all the charges brought against him, then, irrespective of whether proof of the same has been brought forward, he should have been found guilty of the same. The Court immediately states that it does not agree with this line of reasoning put forward by the Attorney General. When the Court is about to deliver judgment, it must be morally convinced that the charges to which the accused is admitting actually exist at law. Having thus premised, however, the Court finds that it cannot agree with the reasoning expounded by the First Court that the charge of recidivism has not been proven and this beyond a reasonable doubt. The document exhibited by the Prosecution is an official declaration issued by the Ministry of Administration and Interior of the Republic of Romania dated the 21st of October 2016 a few months after the commission of the crime with which appellee was eventually charged. This document was transmitted from this foreign authority as a result of an official request sent by the Maltese authorities (Criminal Record Office) to its Romanian counterpart providing full details of the person to whom the request referred as evidenced by Document CD3 at *folio 7* of the court records. These same details are then reflected in the charge sheet brought against the person of accused as being George-Cristian Mandrescu born in Romania on the 22nd January 1989 to Valentin Nica and Mariana Nica bearing personal registration number 1890122033354, which registration or identification number is found on the copy of appellee's identity card exhibited as Document CD1 at *folio 5* of the court records. It is this Court's firm opinion, therefore, that there was enough evidence in the acts to show that on the date of commission of the offence, appellee had already been convicted by three foreign Courts (Germany, Austria and Belgium) in terms of article 49 of the Criminal Code, sub-article 2 and 3 clearly necessitating the following:

(2) In any proceedings under or for the purposes of this article, a document, duly authenticated, which certifies that a person was convicted on a date specified in the document of an offence against the law of that State, or part of that State, shall be admissible as evidence of the fact and date of the conviction without any need for further evidence.

(3) A document shall be deemed to be duly authenticated if one of the following conditions applies:

(a) it purports to be signed by a judge, magistrate or officer of the sentencing State; or

(b) it purports to be certified, whether by seal or otherwise, by the Ministry, department or other authority responsible for justice or for foreign affairs of the sentencing State; or

(c) it purports to be authenticated by the oath, declaration or affirmation of a witness

From an examination of the document which adheres to the conditions laid out in this article of law it transpires that there are three convictions against accused becoming final on the 3rd March 2010, 31st May 2014 and 5th August 2015 by three foreign courts. Appellee, in whose native language these documents were filed and could therefore understand fully the contents of the same, does not contest this piece of evidence and fully admits to all the charges brought against him after being granted the assistance of a lawyer and given ample time by the First Court to consider his guilty plea, the consequences of which were fully explained to him. In fact the First Court states thus in its judgment:

Having considered the accused's declaration as minuted in today's sitting, following his guilty plea, that he had enough time to think and reconsider such guilty plea, that he clearly understood the nature of the charges brought against him, and that he understood clearly that his guilty plea, as pointed out by this Court, was to lead to serious consequences in terms of punishment as pointed out by this Court

However since from the wording of the document it is not clear what these convictions consisted of, although the Court is of the opinion that the application of article 49 of the Criminal Code results, thus rendering appellee a recidivist at law, however, an increase in punishment in terms of article 50 and article 289 of the Criminal Code cannot be entertained, such increase being finally at the discretion of

the court, irrespective of an admission of guilt or otherwise. Thus the punishment inflicted by the First Court will not be varied.

Consequently for the above-mentioned reasons the Court partially upholds the appeal of the Attorney General, varies the said judgment by confirming the same where appellee was found guilty of the charge brought against him, however declares him a recidivist in terms of article 49 of the Criminal Code. Confirms the remaining part of the judgment including the punishment inflicted against appellee of 21 months imprisonment.

Edwina Grima
Judge