



COURT OF CRIMINAL APPEAL

**THE HON. MR. JUSTICE
LAWRENCE QUINTANO**

Sitting of the 20 th September, 2013

Criminal Appeal Number. 64/2013

The Police

Vs

Hasan Djibril Ibrahim

The Court,

Having seen the charges brought against the appellant Hasan Djibril Ibrahim [identity card no. 44475 (A)] before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having for the month of May 2012 on these islands, when ordered so by a Court or so bound by contract failed to give to Rita Ogbobor and/or to their children the sum fixed by that contract or laid down in the contract as maintenance for her and/or their children, within fifteen days from the day on which according to such order or contract, such sum should be paid.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on

the 30th January 2013, by which, the Court, after having seen articles 338(z) of Chapter 9 of the Laws of Malta, found accused guilty as charged and condemned him to a period of one week detention.

The Court explained in clear words the terms of the judgement to the accused.

Having seen the application of appellant filed on the 11th February, 2013, wherein he requested this Court to revoke and cancel the decision being appealed against by declaring the accused not guilty thereby freeing him from such accusations according to law. Alternatively, and without prejudice, should this appeal not be successful, this Honorable Court is respectfully being requested to reform the part dealing with the punishment by imposing a punishment which should be more equitable.

Having seen the records of the case.

Having heard Counsels' submissions during the hearing of the

Now therefore duly considers.

That the grounds of appeal of appellant consists of the following:-

- a. The parties used to live together as a result of which a child was born. The conditions of the contract referred to above were agreed to with the accused accepting to pay maintenance as indicated in the contract. This obligation has been honoured.
- b. The accused trusted the aggrieved party by paying her in cash with the result that the accused has realized that the aggrieved party is simply trying to take advantage of the matter denying the payment.
- c. In fact during the cross examination, dates were given to the aggrieved party indicating when she was paid who simply denied not in a vehement manner, hoping to make a windfall in the matter. As a result of the decision of the first Court, this has served to wet the appetite of the aggrieved party to try and take advantage of this unfair result.

d. The issue is a matter of credibility which aspect the appellate court is being requested to consider in the light of the matter.

e. Furthermore, and without prejudice to the above written, there is clear doubt in the matter which aspect should serve to militate in favour of the accused.

f. The above arguments are not to be considered to be exhaustive which this Court is respectfully requested to consider.

Has considered

According to the current incident report (see page 12), on the 17th June 2012 Rita Ogbobor filed a complaint at the Mosta Police Station that Ibrahim Hassan Djibril 4475A had failed to give her the due maintenance amounting to 150 Euros for the month of May 2012 according to decree 14978/2011 of the 13th September 2011. (See public deed dated 30th August 2011 in the records of Notary Elsa Bonello – provision about 150 Euros maintenance to rise every year in accordance with the cost of living).

The Court has heard Rita Ogbobor stating on oath the appellant Djibril Ibrahim Hasan was her partner and that they had signed a contract of maintenance in Maltese though she does not understand the Maltese language. The witness denied having received any maintenance for the month of June 2012 (Appeal 66/13), for the months between October 2011 and December 2011 (Appeal 65/13), **May 2012 (Appeal 64/13)**, and April 2012 (Appeal Number 63/13). In December 2011 she was paid 100 Euros and not the full 150 Euros. There is a document to prove that this payment has been effected.

The Defence submitted that as far as case 65/13 was concerned, it was pleading the nullity of the proceedings as the appellant had been notified in the English language.

During the cross examination the defence asked the witness whether she had been paid in cash without asking for a receipt. The witness said that the only maintenance payment she had received was the payment in cash made in court during the Court proceedings and this amounted to the 100 Euros she had already testified about. After further questioning by defence lawyer and by the Court the witness confirmed what she had said before. Had she been paid, she would have stated that she had received the money.

On the other hand, appellant Hasan Djibril Ibrahim testified that he had paid the maintenance in cash. He confirmed that in March 2013 he insisted on having a receipt because he was not trusting her. He affirmed that when, on other occasions, he had paid his partner in cash, there was a witness who could confirm that these payments had been accepted. He affirmed that he had paid for the maintenances due in April, 2012, May 2012, June 2012 and for the maintenance due between October 2011 and December 2011.

Under cross examination, the witness stated that the last time he had paid the maintenance due was in December 2012 when he paid, according to the Prosecution 100 Euros, and, according to the defendant, 150 Euros. The Prosecution pointed out that according to the document he had paid 100 Euros and he then asked when this money was paid. The defendant answered that the payment had been effected in March 2013.

Here appellant's lawyer intervened to clarify matters by stating that the amount that had been paid March 2013 was meant to cover the period July 2012 to November 2012 when the appellant had paid this amount in court.. The Prosecution here insisted that the period in question involved in two of the cases were the months April 2012 and May 2012.

Has considered

The defence submits that any doubt about whether the contravention was committed should go in favour of the appellant. First of all, this Court does not disturb any decision of the Court of Magistrates as long as the latter court could have reached that conclusion reasonably and legally. Secondly, the Court, having heard and seen both witnesses, finds the version of Rita Ogbobor more credible. The appellant has fallen behind in his payments time and again. Moreover, it is inconceivable how Rita Ogbobor could go on reporting to the Police the appellant's failure to pay the maintenance money when this money had been paid according to the appellant. Thirdly, the part payment of 100 Euros instead of 150 Euros also indicates that the appellant was constantly defaulting in his payments. Finally, the appellant says that whenever he paid the maintenance amount in cash, he was always accompanied by a witness. The Court notes that this person never took the witness stand in any of the four cases being examined.

The defence alleges that the defendant had to deal with some medical and employment problems. The Court is not convinced at all by all this and no evidence has been provided that the Family Court has varied the original decree in any way.

Conclusion

The Court is rejecting the appeal and is confirming the judgement of the 30th January 2013 (Appeal number 64/13) in the names of 'The Police vs Hasan Djibril Ibrahim.

< Final Judgement >

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