



MALTA

QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI
MAGISTRAT DR.
DOREEN CLARKE

Seduta tas-27 ta' Awwissu, 2014

Numru. 586/2014

The Police
(Inspector Trevor Micallef)

vs

Nicklas Roland Sturk

Case Number: 586/2014

Today, the 27th of August, 2014

The Court,

Having seen the charges against Nicklas Roland Sturk, son of Roland and Sylvia nee' Nilsson, born in Sweden on the 28th of July, 1971, and residing at 36, The Amethyst, Mons. Alfred Mifsud Street, Pembroke and holder of identity card number 36842(A).

Charged with having in these islands on the 13th June, 2014 at about ten past eight in the morning (08.10a.m) in Mons. Alfredo Mifsud Pembroke or in the vicinity :-

1. Used any threatening, abusive or insulting words or behaviour, or displayed any written or printed material which is threatening, abusive or otherwise conducted himself in such a manner, with intent thereby to stir up violence or hatred against another person or group on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion, or belief or political or other opinion or whereby such violence or racial hatred is likely, having regard to all circumstances, to be stirred to the detriment of the children of family Grima and/or other persons.
2. And with having on the same date, time, place and circumstances wilfully disturbed the public good order and public peace.

Having seen sections 82A and 338(dd) of Chapter 9 of the Laws of Malta.

Having seen the consent of the Attorney General for this case to be tried summarily and that the defendant had no objection to the case being so tried.

Having heard the evidence and the submissions of the parties.

Having seen the acts of the proceedings.

Having considered

That this case refers to an incident which took place on the 13th June 2014 in Triq Mons Alfred Mifsud Pembroke at about 8.00am.

On that day Christine and Peter spouses Grima were in their residence when they heard noises in the street; this happened immediately after their children (who are adopted and are all African) had boarded the school transport. Both spouses Grima looked out (Christine Grima from the doorway and Peter Grima from a window) and could see the defendant, who lived on the opposite side of their road, arguing with an other neighbour, an elderly man. This argument, which was a verbal one, lasted for quite a few minutes and when the elderly neighbour went into his car to drive off the defendant started banging on the neighbour's car and uttering insults. At this stage Peter Grima called the police to inform them what was happening. When the neighbour drive off, apparently unharmed, the spouses Grima carried on with their daily routine inside their house although the defendant was still outside in the street and could be heard still uttering insults and saying that he will kill all negros.

Christine Grima continues to explain in her testimony that soon after this she took their refuse out and when the person who collects the refuse¹ came along she helped him by carrying some of their refuse to the corner of the street². The person who collects the refuse is a African; his name is Youre Ali. As Christine Grima was walking down the street carrying a box she heard the defendant (who was still out in the street) saying repeatedly "*you fucking Maltese bitch, helping negros*". Grima ignored him and told Ali that it was best for him to

¹ Christine Grima explained that the rubbish van does not drive into their street but there is a person who carries the refuse bags from each house and takes it to the corner of the street from where it is put in the van.

² Christine Grima explained that they even had a largish box to be thrown away which she carried to the street corner.

ignore the comments. When she was walking back to her house the defendant ran up to her repeating the same words; at a point he came very close to Grima so she put out the palm of her hand to ward him off and told him to *“get out of her face”*; on hearing these words defendant actually backed off and Grima proceeded to her house.

By the time she got to the gate of her house Grima realised that Youre Ali, who was close behind her, would soon be collecting refuse from defendant's house so, sensing that something might happen, she crossed the street and saw defendant approach Youre Ali from behind, grab him from the shoulders and push him to the ground. Luckily Grima reached Ali when he was being pushed to the ground and she managed to shield his head before it hit the ground. At that point defendant was going to start kicking Ali so Grima told Ali to get up and leave. Ali did get up but tried to gather the refuse bags which previously were in his hands but had scattered on his being pushed to the ground. In the meantime defendant was swearing and repeatedly saying: *“you fucking negros, I will kill every negro that comes to my street, I will kill every fucking negro”*. Grima was worried that matters were going to escalate so she told Ali to forget about the refuse bags and just leave. When Ali left, defendant turned to Grima and started shouting at her again, telling her: *“you fucking stupid Maltese, you let immigrants run your country”* and repeating that he will *“kill every negro that passes through this street”*. At that point Grima reacted by telling him that their street belongs to everybody and that he should go back to his house and be quiet. Soon after the police arrived on site.

This version of events was more or less confirmed by Peter Grima who was going in and out of the house while all of this was happening since he was on the phone with the police.

It is worth noting that in the police incident report³ it is stated that when the police arrived on site "*RIU⁴ members could clearly hear the person making threats towards coloured people*".

It is also worth noting that the defendant is not contesting that the incident took place, he is not contesting the fact that he pushed Youre Ali to the ground, and neither is he contesting that he used the words indicated by Christine and Peter Grima.

What defendant is contesting is the chronology of the events. Defendant is claiming that when he was going back home at 8.00am from Paceville⁵ he saw a black man on his doorstep and he reacted by *taking him from behind, pulling him down the stairs and neutralising him*. At that point neighbours came out and tried to stop him and it was at that point that he had the altercation with the elderly neighbour.

It should be pointed out that defendant insisted, both on releasing his statement as well as when he was testifying before this Court, that he reacted the way he did when he saw Youre Ali on his doorstep because of an aggression he suffered a few weeks before. Defendant explained that a few weeks before the incident in question he was returning home from Hugo's Terrace when he was assaulted by two persons who he claims were black; in this assault defendant was stabbed in his buttocks and suffered the theft of his laptop and some documents. Defendant is claiming that he did not realise that Youre Ali was there collecting refuse but thought that he was one of his assailants who had returned. Defendant also explained that although he called for help when he was being attacked none of his neighbours offered any assistance. This angered defendant because when one of his neighbours suffered an arson he had helped to extinguish the fire. It was for this reason, defendant claims, that

³ Exhibited at page 5 of the acts of the proceedings.

⁴ The Rapid Intervention Unit of the police force.

⁵ In the statement released to the prosecuting officer (exhibited at page 9 of the acts) defendant explained that at the time of the incident he was going back home from Paceville.

when the neighbours came out to stop him from beating Youre Ali he reacted aggressively in their regard.

It is clear that that whilst there is no conflict in the evidence as to the incidents that took place and the words uttered by the defendant, there is a conflict regarding the timeline of the events i.e. which incident preceded which. Since the only witnesses who gave evidence are the spouses Grima on the one hand and the defendant on the other hand the resolution of this conflict can depend only on the credibility of these persons.

Having seen and heard the three witnesses giving their testimony the Court is satisfied that the events took place in the sequence described by the spouses Grima and that the defendant alleged a different timeline in order to try to excuse his behaviour and the words that he uttered. The Court is convinced that when defendant used the language that he did he was aware that his aggressors were not present, and that the person that he saw (Youre Ali) was the refuse collector.

Having considered

There are two charges brought against defendant: incitement to racial hatred in terms of section 82A of Chapter 9 of the Laws of Malta and breach of public peace in terms of section 338(dd) of the said Chapter 9 of the Laws of Malta.

In terms of section 82A of Chapter 9 of the Laws of Malta *whosoever uses any threatening, abusive or insulting words or behaviour, ..., or otherwise conducts himself in such a manner, with intent thereby to stir up violence or hatred against another person or group on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion or whereby such violence or racial hatred is likely,*

having regard to all the circumstances, to be stirred up shall be guilty of an offence.

This provision was included in the Criminal Code by Act III of the year 2002. The reasons for this introduction was very clearly expounded by the Court of Criminal Appeal in the judgement *The Police vs Stephen Chetcuti et*⁶

Ma hemmx dubbju li l-liberta` ta' l-istampa kif ukoll il-liberta` ta' l-espressjoni huma fundamentali f'socjeta` demokratika, u ghalhekk ir-restrizzjonijiet ghal tali libertajiet ghandhom ikunu limitati ghal dak li huwa strettament necessarju biex jigu protetti valuri u drittijiet ohra, xi whud minnhom importanti daqs l-istess dritt ghall-liberta` ta' espressjoni u ta' l-istampa. Fost dawn id-drittijiet l-ohra hemm id-dritt li persuna tipprotegi r-reputazzjoni taghha, kif ukoll id-dritt li persuna (jew grupp ta' persuni) ma tigix insultata jew esposta ghal disprezz minhabba, fost affarijiet ohra, ir-razza, twemmin jew origini nazzjonali jew etnika taghha. Ir-razzizmu huwa, sfortunatement, fenomenu li qed jerga' jerfa rasu f'diversi pajjizi – fatt dan li din il-Qorti tista' tiehu konjizzjoni gudizzjarja tieghu – u huwa proprju ghalhekk li hafna pajjizi (inkluza Malta) u l-komunita` internazzjonali jghaddu ligijiet u jiehdu mizuri⁷ biex jpprovaw jarginaw jew jaghmlu tajjeb ghall-hsara li tali razzizmu necessarjament igib fit-tessut socjali⁸.

The Court of Criminal Appeal made a detailed examination of the constitutive elements of the offence created by the said section 82A in the judgement *The Police vs Norman Lowell*⁹. In that judgement the Court confirmed that what is required for the offence under section 82A to subsist is the actus reus: the use

⁶ Decided 07.11.2003.

⁷ The Court of Criminal Appeal is here referring to the introduction of section 82A of the Criminal Code.

⁸ The emphasis is of this Court.

⁹ Decided 15.07.2013.

of threatening, abusive or insulting words, and the mens rea: the intention to stir up violence or hatred against another person on account of (in this case) race, colour or ethnic origin. Furthermore it is not necessary to show that by his acts defendant actually stirred violence or hatred, since the law requires only that the words uttered are likely to stir up violence or hatred; in the words of the Court of Criminal Appeal:

Huwa biżżejjed dak iċ-ċans li tinħoloq mibegħda razzjali bil-kliem li jingħad biex ikun soddisfatt dan l-element.

It has to be pointed out that the likelihood that the words uttered will stir up violence or hatred must be examined regard being had to the circumstances in which the words were uttered. Therefore (also in accordance with what was said in the judgement *The Police vs Norman Lowell*) regard must be had not only to what was said but also to who it was said and where it was said.

There can be no doubt that the words uttered by defendant are threatening, insulting and abusive with regard to African and/or black people; consequently neither can there be any doubt as to the actus reus required.

As to the intentional element it must be pointed out that defendant started using this abusive language with regards to black persons before Youre Ali had come in the street. He first started the threats and insults when he had the altercation with the elderly neighbour; the threats, insults and abusive language were then directed at Christine Grima (whose children are African) when she was helping Youre Ali, and also at Youre Ali himself. Furthermore defendant continued by repeating that he “*will kill every fucking negro that comes into the street*”.

Defendant submitted that in a street where the residents obviously have a high regard for black people¹⁰ his words could never have stirred up violence or hatred. Whilst it may be safe to make that assumption in relation to the spouses Grima, no evidence whatsoever has been brought before this Court to show what opinion (positive or negative) defendant's neighbours may have of African or black people. The fact that no one offered him assistance when he was being assaulted is more likely to be an indication that the neighbours simply did not want to get involved. If their attitude is to be taken as an indication of the regard in which they held the persons concerned in that aggression (i.e. the aggression suffered by the defendant) this (their not offering assistance) is more likely to be an indication of their opinion of defendant rather than of his aggressors. However for purposes of the case in hand this is mere speculation since the reasons for which the neighbours chose not to involve themselves when defendant suffered an aggression are only known to them and no evidence has been brought before this Court in this regard.

What was shown to this Court, on the other hand, was that threatening, insulting and abusive language was used, and that, regard being had to what was said, how it was said and where it was said, the words uttered were likely to stir hatred or violence.

In these circumstances the first charge brought against defendant is proven in the degree required by law.

The second charge brought against defendant is that of breach of the public peace.

¹⁰ He is making this assumption because no one offered him assistance when he was being assaulted by two black people.

Kopja Informali ta' Sentenza

There can be no doubt that while the incidents above described were taking place defendant was shouting and causing a commotion in his street; this second charge is consequently also sufficiently proven.

That with regards to the penalty to be meted out the Court is taking into consideration on the one hand the nature of the offences of which defendant is being found guilty and on the other hand his clean conviction sheet.

Wherefore the Court, after having seen sections 82A and 338(dd) of Chapter 9 of the Laws of Malta, finds defendant guilty of the charges brought against him and condemns him to six (6) months imprisonment which term, by application of section 28A of the said Chapter 9, is being suspended for a period of two years.

The Court explained to the defendant in ordinary language the significance of this judgement and of the consequences should he commit an other offence in the period of two years.

< Sentenza Finali >

-----TMIEM-----