

State of Palestine

Judiciary

Appeal Case No. 243/2022

Judgment issued by the Nablus Court of First Instance, in its capacity as an appellate court authorized to conduct the trial and to deliver the judgment on behalf of the Palestinian Arab people.

The governing body is headed by Judge Mr. Firas Abdel-Ghani and includes the members Judges Muhammad Jaradat and Majd Annab.

Court reporter: Shorouq Abu Abdullah

Appellant: Abdul Rahman Asaad Aref Thaher (Nablus, Yasid)

His attorneys: Muhannad Karama and/or Laila Asfour and/or Dhafer Sa'eda

Defendant: State Attorney

Subject of the appeal: The judgment issued by the esteemed Nablus Magistrate Court in the criminal case No. 2411/2020 of 1/20/2022, convicting the appellant of the third charge, which is the slander against the Palestinian Authority in violation of the Article 45 of Decree-Law No.10 of 2018, in terms of Article 191 Penalties No. 16 for the year 1960 and accordingly sentencing him to imprisonment for a period of three months and obliging him to pay an amount of 100 JD for trial expenses.

Grounds for Appeal

Formally:

The appeal is submitted within the statutory period and fulfils its formal requirements. Accordingly, the Public Prosecution should accept it in form.

Substantively:

- (1) The Magistrate's Court erred when it ignored the legal arguments raised by the defence attorney to challenge all procedures, since the arrest of the appellant at the Preventive Security Service was carried out without a legal arrest warrant and without a search warrant and/or refusing to present the search warrant, as well as without a warrant authorizing the invasion of the privacy of individuals. As the Magistrates Court did not give permission to the defence attorney and ignored deciding on these defences without any legal justification. Especially, since the defence insists on the invalidity of all investigation and arrest procedures against the appellant, and this also requires the invalidity of his statements which took a course of interrogation

during the interrogation before the Preventive Security Service and the invalidity of all his statements during Interrogation before the Public Prosecution.

- (2) Alternatively, the Nablus Magistrate Court erred in its decision to convict the appellant, when the indictment against the appellant exceeded the limits. Especially since the indictment is the regulating framework for the facts attributed to the appellant. By referring to the indictment, the Court will find that it has been devoid of any incident indicating the appellant's Slander against the Palestinian Authority, contrary to the text of Article 45 of Decree-Law No.10 of 2018, according to the court's reason for its decision of conviction. Rather, the court will find that the facts cited by the Public Prosecution in the context of accusing the appellant of what is attributed to him constitute nothing but a violation of the provisions of the law and the Palestinian Basic Law, which is a legal transgression by the Public Prosecution, with the aim of giving legitimacy to the behaviour of the executive authority in suppressing press freedoms and liberties. If what is attributed to the appellant in the indictment constitutes a crime, the Public Prosecution would have to pursue Roya TV channel responsible for broadcasting these satirical TV shows. However, the Public Prosecution was designed to be in this file, especially the indictment, to be a safety valve to suppress freedoms and give legitimacy to abuses committed by the executive authority and practiced against citizens, journalists and human rights defenders, who defend their opinions and express themselves under the threat of arbitrary arrest without an arrest warrant, as happened with the journalist Abd al-Rahman Daher (the appellant). And an indictment in which the Public Prosecution disregards its powers deprived of it in the context of the executive authority's encroachment on the powers of the legislative and judicial authorities attributed to the appellant.
- (3) In turn, the Preventive Security Service interrogated the appellant after his arrest and confiscated his private devices without an arrest warrant, search, or permission to access the appellant's devices later. Therefore, the Public Prosecution provided legal cover to the Preventive Security Service for its transgression of the law. The Magistrates Court also deals with this matter with its authority and control within the framework of the final investigation it is conducting and until the issuance of a final judgment.
- (4) The Nablus Magistrate Court erred in its decision on the subject of this appeal in the part related to the third charge, which is the slander against the Palestinian Authority, contrary to the provisions of Article 45 of Decree Law No. 10 of 2018 on cybercrime, in the sense of Article

191 Penalties No.16 of 1960, and he was convicted and sentenced accordingly to three months imprisonment without verifying any element of the crime attributed to the appellant. As the Court notes that the elements of the act attributed to the appellant are not verified in any of its elements.

The law requires that all the following material elements of the act be attributed to the appellant:

“The offender committed an activity that consists of stating internal thoughts regarding the National Assembly and disseminating such statements to the public. The acts attributed to the victim must be specific act and cannot be merely a desire to act. Moreover, it must be based on a specific legal article ... etc.”

However, in considering the evidence of the Public Prosecution, it was not proven that the appellant issued any statement or act prejudicial to any official entity and/or any official body or institution until the text of the aforementioned article condemned and sentenced accordingly and alternately. Even if what the Public Prosecution attributed to the appellant is correct, freedom of opinion and expression is guaranteed to every person to say what he wants and to express what is going on within him within the limits of the law. On the failed assumption that what is attributed to the appellant is true, as the Public Prosecution did not prove that the appellant abused by saying or doing against the institutions of power and / or broadcasting that among the people until he was convicted of this charge.

(5) The Magistrate Court erred in its judgment to convict the appellant and justified that by saying, as stated in the Court's judgment, “This incident is proven through the evidence reviewed above, as it was mentioned in the highlights n/2, which contains an order to access the accused's private devices issued by the Public Prosecution in 23/8/22020 until the extraction of all the evidence proving the charges against him. As it was stated through the extracts that the accused sent a message denouncing the Security Services and describing them as “Screw them and their Security services. Such thugs, disrespectful people.” The conciliation was not successful in interpreting the text of the aforementioned article and applying the elements of the crime attributed to the appellant. The Court did not prove that the appellant had broadcasted that among the people, as it assumes its validity, it was just a private conversation between two people as it was stated in the Court's judgment at the beginning of the fifth page that the aforementioned accused, dated in 28/7/2020. During a conversation on Facebook with a person called Nassim, the accused described the security men as thugs and cursed them with

the words: "Screw them and their Security Services. Such thugs, disrespectful people."

Since the Court's judgment, the subject of this appeal, was not based on any legal basis in this reasoning, as the text of Article 45 of the Cybercrime Law, Article 191 Penalties No.16 of 1960, on which the court relied in issuing its ruling on the charge of slander against the Palestinian Authority, among the elements of the act attributed to the appellant does not fulfil the material element, and it has been proven through this incident, assuming its validity, that what was attributed to the appellant is about a private chat and was not mentioned to the public.

- (6) In turn, the Magistrates' Court erred in its decision, the subject of this appeal, to convict the appellant in the part related to the third charge, as it did not properly assess the evidence until the conviction decision was issued, as none of the facts contained in the indictment were proven against the appellant in any way.
- (7) Alternately, the Nablus Magistrate Court erred in its decision on this appeal, since, by referring to the evidence of the Public Prosecution, your esteemed Court finds that what is attributed to the appellant, assuming its validity, are facts that occurred prior to the issuance of Decree Law No. 10 of 2018 regarding cybercrimes. The facts in respect of which the appellant was investigated, assuming its validity, as they are all facts that occurred before the aforementioned law was issued, and that in this case the Court should have decided to stop the appellant's prosecution for this charge for this reason.
- (8) Alternately, as the Public Prosecution's evidence was devoid of any technical evidence linking any of the aforementioned accounts to the appellant. It was a priority for the Public Prosecution, in the context of its endeavour to prove its claim, to conduct a technical examination to link the mentioned electronic accounts to the appellant.
- (9) Alternately, His Excellency the judge of the Nablus Magistrate Court, made a mistake in its decision to convict the appellant, due to the absence of any seizures and that the Public Prosecution did not show the aforementioned seizures to the competent court. Showing the investigation file without referring to all the contents by the Public Prosecution on the face of cassation was a mistake committed by the Magistrate Court, which necessitates annulment of the Court's decision to convict appellant.
- (10) **The request:** For all the legal reasons mentioned and others that the esteemed Court deems appropriate, I request the esteemed Court to accept the appeal in form and then in substance, and consider this appeal as a pleading, and as a result, the original criminal case, the

subject of this appeal, is dismissed for the invalidity of all arrest and investigation procedures and / or stopping the appellant's prosecution for the charge of slander against the Palestinian Authority based on the above-mentioned reasons, and alternately announcing his innocence from the third charge, which is slander against the authority due to the absence of any of the elements of the act attributed to the appellant and/or the illegality of the claim. As it was contrary to the Palestinian Basic Law and the international agreements that the Palestinian Authority has joined in ensuring freedom of opinion, expression, and freedom of journalism. The role of the esteemed Court, with respect, is to expand the interpretation of the contents of these freedoms without leaving the matter of their appreciation to be subject to arbitrariness by the Public Prosecution and the institution of the executive authority.

Honourable Court, the court's role, with respect, is to supervise the litigation procedures from the moment of arrest until the judgment is issued. This role extends within the framework of the final investigation that the court is carrying out to decide the case before it. The project has granted the judge this authority to ensure respect and implementation of the law. As the judge does not hesitate to protect the proper application of the provisions of the law, just as he is keen to achieve rebuke in the judgments he issues, so he seeks in return not to allow those in charge of applying the law to be arbitrary or deviant while carrying out their work.

Also, the case before the court has a political nature, since the appellant's prosecution was the result of his journalistic work and running a critical TV program with political implications. It is worth mentioning that the appellant's prosecution continued even after his release by a decision of Nablus Magistrate Court, where he was arrested by the Israeli occupation forces for a period of 38 days, and he was interrogated about details related to his statements and the investigation that took place with him at the Preventive Security Service and the Public Prosecution. Subsequently, he was summoned by the Preventive Security Service regarding the same case, without any legal memorandum allowing that for all of this. The defence requests the acceptance of the appeal as subject matter, annulment and/or annulment of the appealed judgment, declaration of the appellant's innocence on the third charge, and annulment of the judgment obligating him to pay an amount of 100 JD in exchange for expenses and trial expenses.

Trial procedures

In the ongoing trial held in public and in the session of 6/27/2022, it was decided to accept the appeal in form, due to its receipt of the information and its fulfilment of its formal requirements. Then the appellant's representative repeated the appeal list, and an attorney for the Public Prosecution office denied the appeal list. The legal requirement, and the prosecutor pleaded, seeking to reject the appeal in substance

and support the appealed verdict, since the appealed sentence was in conformity with the principles and the law, then the session was adjourned for scrutiny and the issuance of the sentence.

In the session of 10/5/2022, the trial procedures were concluded by reading the resolution.

Court

After deliberation, the appellant appealed against the Nablus Magistrate's Court judgement No. 2020/2411 of 2022/1/20, convicting the appellant of the third charge against the public authority, contrary to the provisions of Article 45 of Decree Law No. 10 of the year 2018 regarding cybercrimes, in the sense of Article 191 of the Penal Code, and accordingly the judgment of imprisonment for a period of three months and obligating him to pay trial expenses of 100 Jordanian dinars. And with our court's treatment of the fourth, fifth and sixth reasons of the appeals list related to the first instance court's mistake by assessing the evidence and by applying the correct law to the facts, then after returning to the papers, the case and the evidence presented therein with regard to the charge with which the appellant was convicted, which is the offence against the Public Authority, we find that the established incident that the appellant sent, via the WhatsApp, is a private message during a conversation with a girl named Majdouline, and he replied (their sister is on the sister of their devices with my legs, small people who are mutilated). In the context of talking about the Palestinian security services, and this was proven through the minutes of the appellant's interrogation in 9/16/2022.

In which was mentioned (...and by his question about the same conversation with the female citizen, Majdouline, that you said (Screw them and their Security services. Such thugs, disrespectful people.) He answered: anyone who practices bullying against any protestor in the street and transgresses the law and prevents any movement within the framework of the law with thugs and intimidation ,we are against him, and these people present themselves as Security men in civilian clothes, and they practice the law with thuggery, and they prevent anyone from expressing his opinion, and when I said disrespectful thug people, because it was a conversation between me and my friend ...) This was supported by the extracts of the conversation via the WhatsApp, which is among the contents of the highlighted investigation file n /2 which shows the phrase mentioned by the appellant and referred to above, and it is in a private conversation via the WhatsApp with a girl named Majdoleen. By applying the rule of law to the above-mentioned incident, our court finds that the crime of slander has been defined by the legislator in Article 188/1 of the Penal Code No. 16 of 1960 as (1) slander is the assignment of a specific matter to a person, even in the context of doubt and questioning, that would undermine his honour and dignity, or Exposing him to people's hatred and contempt, whether that article is a crime that requires punishment or not (while Article 189 of the same law clarified the forms in which the act of slander and slander takes place

until the punishment for that act takes place, which is either in person in front of the victim or in a place where other people can hear it or in absentia during a meeting with many people collectively or individually, or that the slander takes place in writing and conditional on what is published and broadcast among people or distributed to a group of them, or what is sent to the victim of open offices, postcards, and the last image that it falls through publications by means of newspapers or any other type of publications and publishing media.

The legislator has set out a special provision for the punishment of slander directed at the National Assembly, the official bodies of the state, the courts, public administrations, the military, or any employee, in Article 191 of the same Penal Code, meaning that this article is read together with Articles 188 and 189 of the Penal Code. Accordingly, since the phrases that the appellant sent through the WhatsApp to the girl are merely written messages during a private conversation, which has not been published and disseminated among people or distributed to them as required by Article 3/189 of the Penal Code, which negates the element of publicity with the offense to which these messages and conversations are not criminalized. The Penal Code does not extend to the appellant's act referred to above by criminalizing the matter that necessitates declaring the appellant's innocence of the charge of which he was convicted, contrary to what the Court of First Instance went to, which makes the aforementioned reasons of appeal affect the appealed judgment without the need to examine the rest grounds of appeal.

So,

Pursuant to the provisions of Article 336 of the Code of Criminal Procedure, the Court decided to accept the appeal as a subject matter, cancel the appealed judgment, and declare the appellant's innocence from the charge of slander against the public authority, contrary to Article 191 of the Penal Code, in accordance with Article 45 of Decree-Law No. 10 of 2018 regarding crimes because the act does not constitute a crime and does not require punishment.

A judgment in attendance was issued and read publicly in the name of the Palestinian Arab people, and understood in 10/5/2022.