



**COURT OF MAGISTRATES (GOZO)
AS A COURT OF CRIMINAL JUDICATURE**

Magistrate Dr. Neville Camilleri B.A., M.A. (Fin. Serv.), LL.D.

**The Police
(Inspector Frank Anthony Tabone)**

vs.

OMISSIS

Number: 207/2012

Today the 15th. of November 2017

The Court,

Having seen the charges brought against the accused **OMISSIS**

charged with having on the 23rd. of December 2011 and on the previous days, in different places in Gozo, with several acts committed even if at different times, constituted violations of the same provision of the law, and were committed in pursuance of the same design:

1. with the purpose of destroying or damaging the reputation of the person of OMISSIS, offended such person by words, gestures, or by writing or drawing, or in any other manner (Articles 252(1) & (2) of Chapter 9);

2. on the same date, time and circumstances insulted the person of OMISSIS (Article 339(1)(e) of Chapter 9).

Having seen the documents exhibited and all the acts of the proceedings.

Having heard the evidence brought forward by the Prosecution and the injured party.

Having heard the testimony of the accused.

Having seen that during the sitting of the 5th. of April 2017 (*a fol. 87 et seq.*), the Prosecution, the injured party and the defence, whilst making reference to the cases bearing the names **OMISSIS vs. OMISSIS** (Case Number OMISSIS) and **OMISSIS vs. OMISSIS** (Case Number OMISSIS), requested the Court that all the testimonies of the various witnesses who testified in the mentioned two cases including all the documents which have been filed in these same two cases should apply to the current case (Case Number OMISSIS). The Court, after having seen that the two cases being referred to above were heard by this Court as currently presided, acceded to the request here above-mentioned.

Having seen the written Note of Submissions filed by the Prosecution on the 10th. of July 2017 (*a fol. 93 et seq.*).

Having seen the written Note of Submissions filed by the injured party on the 13th. of July 2017 (*a fol. 97 et seq.*).

Having seen the written reply of Submissions filed the defence on the 29th. of September 2017 (*a fol. 105 et seq.*).

Having heard, during the sitting of the 4th. of October 2017, final oral submissions on behalf of the injured party and the accused.

Having seen that this case was being heard together with cases bearing the names **OMISSIS vs. OMISSIS** (Case Number OMISSIS) and **OMISSIS vs. OMISSIS** (Case Number OMISSIS).

Having considered

That reference will be made to the most salient testimonies heard and documents exhibited during these proceedings and the other cases mentioned above.

The Acts of the Case contain the following documents:

- (a) complaint by the injured party dated 4th. of March 2012 (*a fol. 2*);
- (b) affidavit of Inspector Frank A. Tabone Doc. "A" (*a fol. 3*);
- (c) statement by the accused Doc. "FT" (*a fol. 4 et seq.*);

That in his affidavit (Doc. "A" - *a fol. 3*), Prosecuting Officer **Inspector Frank Anthony Tabone** stated that during the first week of March 2012 he received a complaint from the injured party OMISSIS where in OMISSIS requested the police to initiate criminal proceedings against the accused since he felt that on the 23rd. of December 2011 whilst being interrogated by him in the presence of WPC 58 Lorita Buhagiar, the accused damaged his reputation and insulted him when she confirmed and reaffirmed that the injured party suffers from blackouts and when she used to live with him he used to drop on the floor without giving her any explanations of what really happened to him. He exhibited a copy of the statement released by the accused, marked as Doc. "FT" (*a fol. 4 et seq.*).

That, during the sitting of the 27th. of March 2012, **WPC 58 Lorita Buhagiar** testified and confirmed statement marked as Doc. "FT" (*a fol. 4 et seq.*).

During cross-examination, she testified that the accused was given ample time to read the statement and then she chose not to sign it.

That, during the sitting of the 16th. of May 2012, **Dr. Joseph Vella** (representative of the Gozo General Hospital) testified (*a fol. 9*) that

according to their records there is no file with the name of OMISSIS (holder of Identity Card Number OMISSIS).

That, during the sitting of the 16th. of May 2012, **Dr. John Xuereb Dingli** also testified (*a fol. 10 et seq.*) regarding Doc. "OMISSIS 1" (*a fol. 21 of Case No. OMISSIS*). Whilst confirming the contents of this document, he says that OMISSIS had asked him to state whether he was ill from any condition or not. He says: "*I had already filled in a certificate showing same most of the things contained in two thousand and eight (2008)*" (*a fol. 10*). He says that has known OMISSIS since 2001 and that before he had been taking care of his parents, adding that apart from being a patient of his, he is also his friend. He says that over eleven years, he went with OMISSIS for three times for three hours on his boat saying that OMISSIS was able manoeuvre the boat on his own which is at least 40'.

During cross-examination, which was held during the sitting of the 3rd. of February 2015 (*a fol. 213 et seq.* of Case No. OMISSIS), when he was asked if OMISSIS suffers from blackouts, he replied in the negative. He also says: "*Never. I mean considering what he does it would be, he goes sailing single-handed; he can't possibly suffer from blackouts*" (*a fol. 213 of Case No. OMISSIS*). He also says: "*And he would have told me about them because that is very dangerous to have if you are on your own on a boat*" (*a fol. 213 of Case No. OMISSIS*). Asked how regularly does OMISSIS visit him, he replies: "*Fairly regular. Because last years he has, the frequency has got come less. Because I have been finding him healthy all the time and I don't push to him to do more than two yearly visits. So basically it's, so it's been at least I think approximately two years that I've seen him*" (*a fol. 214 of Case No. OMISSIS*). He says that OMISSIS is totally healthy and says that these visits were on a check-up basis and not on an illness basis.

That, during the sitting of the 16th. of May 2012, Prosecuting Officer **Inspector Frank Anthony Tabone** also testified (*a fol. 13 et seq.*) regarding what he had been informed on the 14th. of October 2011 by PS 1407 and PS 1233 as to what the accused had reported. He also testifies about what the accused had reported later with PS 676

Edelon Spiteri. He says that on the 18th. of October 2011, OMISSIS reported at the Victoria Police Station and filed a complaint to initiate criminal proceedings against the accused in view of her reports. He says that on the 23rd. of December 2011, the accused was spoken to by himself and that she released statement exhibited and marked as Doc. "FT 5" (*a fol. 17 et seq.*) (same as Doc. "FT" (*a fol. 4 et seq.*)). He says that in her statement, the accused insisted that OMISSIS suffers from blackouts.

During cross-examination, which was held during the sitting of the 21st. of October 2014 (*a fol. 71(c) et seq.*), he says that OMISSIS had told them that the accused had lodged a false report in relation to the alleged blackouts he suffered. He says that they proceeded against the accused since she alleged that the injured party suffered from blackouts and because she lodged a false report that the injured party was not taking care of his son. He says: "*She told me there were issues on the decree and were not clear enough*" (*a fol. 71(f)*). The accused always told him that she was doing what her lawyer OMISSIS told her to do.

That, during the sitting of the 6th. of June 2012, **OMISSIS** exhibited the following: (a) copy of documents contained in the Court of Appeal file regarding Application Number OMISSIS (including a decree given on the OMISSIS) marked as Doc. "OMISSIS 5" (*a fol. 22 et seq.*), a timeline of events marked as Doc. "OMISSIS 6" (*a fol. 29 et seq.*), charge-sheet marked as Doc. "OMISSIS 7" (*a fol. 31*) and another charge-sheet (including an affidavit) marked as Doc. "OMISSIS 8" (*a fol. 32 et seq.*). He says that in the latter two cases he was found not guilty.

That, during the sitting of the 10th. of July 2012, **OMISSIS** testified (*a fol. 36 et seq.*) and confirmed the complaint dated 4th. of March 2012 signed by him and found *a fol. 2*. He says that here had been a sitting and during that hearing PS Edelon Spiteri testified that when the accused made the Police Report, the accused had indicated that there was something wrong not only with him but also with the OMISSIS family. He says: "*So to me the slander was being extended not just to me but even to my extended family and this goes with other*

allegations that OMISSIS had been making over the years which I won't get into the details here" (a fol. 37). He further testifies: "So based on that additional information from Sergeant Spiteri and given that also during that sitting Inspector Tabone had given his testimony that he had also interrogated OMISSIS as a follow up to the October complaint, I surmised that OMISSIS was again repeating the same slander against me and that was the basis that I wrote this additional complaint dated March fourth (4th.) two thousand and twelve (2012) where I asked the Inspector to investigate if during the follow up interrogation she had repeated the same thing which to me was another instance of slander and to be addressed as a separate charge because it happened on a different date" (a fol. 37-38).

During cross-examination (a fol. 38 et seq.), when he was asked on which date did the alleged crime occur, he replies: "I do not know, I do not know what date it occurred, all I know is that sometime in December the Inspector had interrogated OMISSIS and that's why I, my complaint letter says in Maltese: "jekk huwiex il-kaz li minn Dicembru two thousand and eleven (2011) l'hawn till March"" [...], it seemed that she would have repeated the slander once more and that's what I asked the Inspector to investigate" (a fol. 38). He confirms that he had heard the testimony tendered by PS Edelon Spiteri but says that he does not have the exact date but says that the sitting was in March. He says: "I did not hear the slander myself, I did not hear the slander, not in two thousand and eleven (2011), not in two thousand and twelve (2012), never" (a fol. 39). Asked if he know about the issue in 2011 or not, he replies: "During the year two thousand and eleven (2011) I did not know what OMISSIS had said, I learned what she had been saying about me and my family during the testimony in March from, specifically from Sergeant Spiteri" (a fol. 39).

That, during the sitting of the 30th. of October 2012, **OMISSIS** testified (a fol. 51) and whilst making reference to his testimony of the 10th. of July 2012 specifies that the sitting he made reference to in his testimony was not held in March but was held on the 22nd. of February 2012.

That, during the sitting of the 30th. of October 2012, **Dr. Joseph Grech** on behalf of Vodafone plc testified (a fol. 44 et seq.) as regards to the calls made on the 14th. of October 2011 from mobile number

registered in the name of the accused. He exhibited a document regarding these calls which document is marked as Doc. "JG 1" (*a fol. 46*). Asked about the 15th. day of October 2011, he replies: "*And the fifteenth (15th) but there weren't any calls. We have only found those with regards with fourteenth (14th) of October*" (*a fol. 45*).

That, during the sitting of the 30th. of October 2012, **Emanuel Cini** on behalf of GO Plc testified (*a fol. 47 et seq.*) that they have got no mobile services in the name of the accused or her on her identity card number. He exhibited a document marked as Doc. "EC 1" (*a fol. 49*) containing a breakdown of calls from fixed line OMISSIS from 6pm of the 14th. of October 2011 until 11.00am of the 15th. of October 2011. He states that fixed line number OMISSIS is registered in the name of OMISSIS, of OMISSIS and exhibited a document marked as Doc. "EC 2" (*a fol. 50*).

That, during the sitting of the 26th. of March 2014 (*a fol. 63*), the Prosecution exhibited a transcript of the testimony given on the 22nd. of February 2012¹ by **PS 676 Edelon Spiteri** in another case (Case No. OMISSIS), which transcript was marked as Doc. "X" (*a fol. 64 et seq.*). In this testimony, PS 676 Spiteri testifies that on the 15th. of October 2011 at around ten past midnight (00.10am) he received a phone call at the Victoria Police Station where the accused reported that she was worried about the safety of her son and that she stated that she was aware that there was something wrong with the OMISSIS family and added that OMISSIS himself suffers from blackouts. He says that he phoned OMISSIS who informed him that his son was fine and was sleeping normally. He says that some days later, OMISSIS filed a complaint to initiate proceedings against the accused. He exhibited a copy of the report drawn up by him and other sergeants, which report was marked as Doc. "ES 1" (*a fol. 39 et seq.* of Case No. OMISSIS). When he was asked what was this "*something wrong with the OMISSIS family*", he replied that he could not understand not even himself, saying also: "*She said something about they don't stay at each other's place and they don't sleep over; something like that she was referring but I didn't understand the point*" (*a fol. 65*). Asked who was the accused

¹ The defence did not object (*a fol. 63*).

referring to when she said "OMISSIS family", he replies: "*close of kin, himself, his sister, mother*" (a fol. 65).

During cross-examination, which was held during the sitting of the 3rd. of February 2015 (a fol. 210 *et seq.* of Case No. OMISSIS), PS 676 Spiteri says that the accused appeared worried about her son. Asked if the tone of the accused's voice was panicked one, he says he cannot recall well the exact tone of her voice.

During re-examination (a fol. 211 of Case No. OMISSIS), he says that the accused wanted the Police to go to injured party's place and check personally on her son. He says that after contacting OMISSIS, he called back the accused and informed her that the child was fine and that from their side they could do nothing more.

That, during the sitting of the 9th. of November 2016 in Case No. OMISSIS, the accused **OMISSIS** testified (a fol. 245 *et seq.* of Case No. OMISSIS) saying that she had a relationship with the injured party, that on the OMISSIS they had a child together and that three weeks after the injured party kicked her out of the house. Asked whether the relationship with the injured party was good or bad, she replies that at the time it was not good. Asked what happened after the birth of the child, she replies: "*He changed the locks, kept hold of my baby, and wouldn't let me get back in*" (a fol. 246 of Case No. OMISSIS). She says that the injured party got hold of the baby when she was breast-feeding him and that he kept saying that he was going to give him formula. She says that she tried to calm the injured party to see if he would let her back in and says that she walked away so that may be he would calm down and that nobody could calm him down. She says that she went to her lawyer OMISSIS who told her that she needed to make a police report in order to get the Courts to return her baby. She says that she filed the police report and she took actions to take the baby back. Asked if she remembers lodging something in Court, replies: "*No. I don't remember but I've filed lots of papers, lots and lots and lots. I mean, I have boxes and folders and files of papers. I don't know which paper you are referring to*" (a fol. 248 of Case No. OMISSIS). She says that after OMISSIS, she went to OMISSIS, to OMISSIS, to OMISSIS and to

OMISSIS. Asked about the judgment delivered by the Court of Appeal and as regards overnight stays, she testifies as follows: *"Well that basically as I was, it was explained to me that the overnight stays were to take place during the scholastic year. And then there were papers that, I remember OMISSIS saying that about an injunction, about the overnight stays on a Friday. Because I think the other party filed some papers or something. Look, there was a bit of confusion about what was going on. As I understood it, the overnight stays were not allowed. That was what was explained to me. So that is why OMISSIS filed the papers on the injunction. And then I remember there was a document and OMISSIS asked me where did this document come from and I didn't know and I thought, and then he just threw his hands up in the air and said I can't work under this kind of pressure, and I thought it was because there was something dodgy. You know, I couldn't understand why I was told no he is not go to overnight and then the next minute because papers were filed in Malta he was then allowed after a judgment. I couldn't understand. I thought a judgment was a judgment and that was it. You know, you couldn't change it. So that is why"* (a fol. 251 of Case No. OMISSIS).

During cross-examination (a fol. 251 et seq. of Case No. OMISSIS), to the question: *"After the judgment which you interpreted that the overnight stays were of a certain manner that you just described, was there any instance that you reported something to the Police about the overnight stays?"* (a fol. 252 of Case No. OMISSIS), replies: *"I can't remember, sorry"* (a fol. 252 of Case No. OMISSIS). She confirms that there was an instance when she reported to the Police regarding the safety of the child and says that at one point she was worried. She says: *"I was worried because he [the injured party] suffered from blackouts"* (a fol. 252 of Case No. OMISSIS). She says that she remembers calling late in the evening. She says that the Police did nothing and asked what she did tell them, she says: *"I can't remember"* (a fol. 254 of Case No. OMISSIS). She says: *"I was worried because of the behaviour of OMISSIS at the time"* (a fol. 254 of Case No. OMISSIS). Asked what did she tell the Police, says: *"I'm trying to remember"* (a fol. 254 of Case No. OMISSIS). She says: *"I was worried because there were times when he would come to my place, like, there were times when his erratic behaviour, like, things he was doing. He would bang his own head on the brick wall, stuff like that"* (a fol. 254 of Case No. OMISSIS). Asked if

she did tell the Police that the child was in danger, she replies: *"I can't remember"* (a fol. 255 of Case No. OMISSIS) and then: *"I can't remember my exact word from like -"* (a fol. 255 of Case No. OMISSIS). Asked again whether she told the Police that their child was in danger, she replies: *"I can't remember for sure"* (a fol. 255 of Case No. OMISSIS). She says that she was concerned for the well-being of the child. She confirms that she followed her first call, by other calls. Asked whether she remembers what she told the Police in the subsequent calls, she replies in the negative and says that she remembers being on the phone with the support line *Appogg*. Confronted by the lawyer of the injured party that she is not saying the truth and that she is under oath and that she has to say the truth, she says: *"I am always telling the truth"* (a fol. 256 of Case No. OMISSIS). She is not sure whether she followed up the calls by actually going to the Police. Asked again if she actually went to the Police Station, she says: *"Probably"* (a fol. 257 of Case No. OMISSIS). She was once again told by the lawyer that she was not saying the truth and she replied that she was saying the truth and she is the most truthful person. Then she says: *"Because I've tried to move on with my life and to forget"* (a fol. 258 of Case No. OMISSIS). She says that before she had her son, she never made police reports. Asked if it is correct to say that she went to the Police accompanied by her lawyer, she replies: *"Quite possibly"* (a fol. 258 of Case No. OMISSIS). She says: *"I have trained my brain to forget"* (a fol. 258 of Case No. OMISSIS). Asked again whether on the night between the 14th. and the 15th. of October 2011 she went to the Police Station accompanied by her lawyer to make a report regarding the well-being of her child, she replies: *"I can't swear, I can't swear"* (a fol. 259 of Case No. OMISSIS). She says: *"From what I saw I had every reason to make a report"* (a fol. 259 of Case No. OMISSIS). Asked whether she was present when the Police gave evidence regarding what she is being asked, she replies: *"I don't know, I guess, I don't know"* (a fol. 260 of Case No. OMISSIS). Asked how does she know that the injured party suffered from blackouts, she replies by saying that she saw him when they were on the boat sailing together and when she was asked a context of time, she replies: *"You are asking me to remember something which I am trying to forget. When we were together -"* (a fol. 261 of Case No. OMISSIS). Asked about when she met the injured

party, she replies by saying that she cannot remember. Asked if she remembers that she met OMISSIS around the year 2004, she replies: *"Right now, no. I can't remember"* (a fol. 261 of Case No. OMISSIS). Asked after how many months or years did she start realising that the injured party suffered from blackouts, replies: *"I can only guess"* (a fol. 262 of Case No. OMISSIS) and then says: *"I don't know. I don't want to say the wrong thing. I don't know"* (a fol. 262 of Case No. OMISSIS). She testifies: *"What I can remember is that he had like we were on the boat and when we were living together and I asked him about it, you know, I said what happened? Why? And he said he didn't know"* (a fol. 262 of Case No. OMISSIS). Asked by the Court how many times did OMISSIS suffer from blackouts in her presence, she replies: *"That I can remember two"* (a fol. 262 of Case No. OMISSIS) and says that they happened within the same year. Asked what does she mean by blackout, she replies that the injured party had dropped to the floor and asked if he had drunk, she replies in the negative. Asked if he was taking pills or drugs, she replies: *"Not that I know of, no"* (a fol. 263 of Case No. OMISSIS). She says that at the time they were on good terms. She says that, after falling flat on the floor, the injured party did not go to a doctor and she did not even suggest. Asked why, she replies: *"Because I didn't feel that it was my place to tell him what to do"* (a fol. 264 of Case No. OMISSIS). She says that even though the injured party was her partner, *"It's not my place to tell him to go to a doctor. It's his decision. He is a grown man"* (a fol. 264 of Case No. OMISSIS). She says that she was surprised and shocked about this incident and says that it was not at the beginning of their relationship. Asked when was the second time that the blackout happened, she replies that this happened in the bathroom in OMISSIS when she found him on the floor by the toilet. She says that he was not hurt and was not bruised and there was no blood. She says that he did not drink and to her knowledge, the injured party was not taking drugs or pills. Asked whether this time she suggested that he should go to a doctor or may be take some medication, she replies in the negative and says that the injured party kind of brushed it off. She says that this happened before their child was born. She confirms that she was contesting access to the child saying that all she wanted was for her son to go back when he was a baby and that she went to Court to ask for her

baby back. She says that all she wanted was some time alone to breast-feed and bond with the baby but was not allowed. She confirms that litigation proceedings were about access and says that she did not want to deny access of the child to the injured party.

She confirms that her first job in Malta was in Ponsonby Street, Gzira. She does not remember when. Asked how long had she been in Malta before she found her first job, she replies: *"I can't remember"* (a fol. 270 of Case No. OMISSIS). She confirms that she followed a course when she came to Malta. Asked to confirm whether she already had a residence of Malta ID Card in 2002, she replies: *"I had an ID Card, I can't remember the dates but yes I did have an ID Card"* (a fol. 270 of Case No. OMISSIS). Asked to confirm whether all this happened before she met the injured party, she replies: *"Probably"* (a fol. 271 of Case No. OMISSIS). She says that after her child was born, it is not correct to say that at no stage she was denied access to the child. She says that she was denied access to the child in the beginning and specifies that this happened for around a week. She says: *"it was a massive trauma, you know, like having a baby taken away"* (a fol. 271 of Case No. OMISSIS). She says that at the time the child was about three weeks old and says that she did not have access because the injured party would not let her back to her son. Asked to confirm whether she was still breast-feeding the child during this one week, she replies in the affirmative. Asked how was she breast-feeding the child if she did not have access, she replies: *"He wasn't, there were, you know - "* (a fol. 272 of Case No. OMISSIS). Asked if she did it remotely, replies: *"Yes, I did have a pump"* (a fol. 272 of Case No. OMISSIS).

Having considered

That in the statement (Doc. "FT" - a fol. 4 et seq.) released by the accused on the 23rd. of December 2011, which statement was released after the accused consulted with her lawyer (a fol. 4), when she was asked with reference to her report made on the 14th. of October 2011 and was asked why she requested the Police to bring over her son from her ex-partner OMISSIS, she replies: *"I was informed by my lawyer OMISSIS that on page 36 sec. 76 of the Judgment made by the Court of Appeal on the OMISSIS, which judgment states*

quote: "The Court is therefore of the view that the visiting times fixed by the Court of First Instance are to be confirmed except that, in the interest of the child, during the scholastic year, the father collects the child on Tuesdays and Fridays after school and return him to plaintiff at 6pm. Access during the weekend is to be enjoyed by the father on alternate days, in the sense that one week the father will have the child on Saturday and the following on Sunday and this from 10am to 6pm. Access to the child during the holidays and on special days as decided by the First Court will stand". In view of this section I phoned my lawyer and informed him that OMISSIS did not return our son and also told him that I was worried. My lawyer told me that all I could do is to make a report and basically that's what happened. What I like to add is that my son was never prepared to go over and sleep at my ex-partner residence. That night I also phoned OMISSIS, he didn't answer the phone and I made the report with the police" (a fol. 5). When asked why did she tell the Police that she was worried about the safety of their son, she replies: "Because as I have already told you, it was the first time our son slept there and I was worried in case OMISSIS blacked out" (a fol. 5). When she was told that OMISSIS stated he never suffered from any blackouts and that she had lodged a false report, she replied: "He is lying all you have to do is look at the judgment. About the blackouts when I used to live with him and can confirm that he used to drop on the floor and when I used to ask him what happened he always told me that he didn't know what happened to him" (a fol. 5). Asked if she had anything in writing to prove that OMISSIS suffers or used to suffer from blackouts, she replies in the negative. She says: "What I like to add it that I phoned at the Victoria Police Station for the second time because the persons from Appogg told me to keep insisting and to phone the police again, since I was worried about my son" (a fol. 5).

Having considered Legal Considerations Regarding the Level of Proof Required

That the Prosecution is bound to bring forward evidence so that the Court can find the accused guilty as charged. **Manzini**² notes the following:

² **Diritto Penale** (Vol. III, Chapter IV, page 234, Edition 1890).

“Il così detto onero della prova, cioè il carico di fornire, spetta a chi accusa – onus probandi incumbit qui osseroit”.

In the Criminal field the burden of the Prosecution is to prove the charges beyond reasonable doubt. With regards to the defence, enhanced by the presumption of innocence, the defence can base or prove its case even on a balance of probabilities meaning that one has to take into consideration the probability of that version accounted by the accused as corroborated by any circumstances. This means that the Prosecution has the duty to prove the tort attributable to the accused beyond every reasonable doubt and in the case that the Prosecution being considered as not proving the element of tort the Court has a duty to acquit the accused.

That the following principles, as clearly outlined by the Constitutional Court in its judgment of the 1st. of April 2005 in the case **The Republic of Malta vs. Gregory Robert Eyre et**, must be applied:

“(i) it is for the Prosecution to prove the guilt of the accused beyond reasonable doubt; (ii) if the accused is called upon, either by law or by the need to rebut the evidence adduced against him by the Prosecution, to prove or disprove certain facts, he need only prove or disprove that fact or those facts on a balance of probabilities; (iii) if the accused proves on a balance of probabilities a fact that he has been called upon to prove, and if that fact is decisive as to the question of guilt, then he is entitled to be acquitted; (iv) to determine whether the Prosecution has proved a fact beyond reasonable doubt or whether the accused has proved a fact on a balance of probabilities, account must be taken of all the evidence and of all the circumstances of the case; (v) before the accused can be found guilty, whoever has to judge must be satisfied beyond reasonable doubt, after weighing all the evidence, of the existence of both the material and the formal element of the offence.”

That **Lord Denning** in the case **Miller vs. Minister of Pension**³ explained what constitutes “proof beyond a reasonable doubt”. He stated:

“Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence ‘of course it is possible but not in the least probable’ the case is proved beyond reasonable doubt, but nothing shall of that will suffice”.

Having considered

That according to the Prosecution and the injured party, the accused breached the following sections of the law:

- Section 252(1)(2) of Chapter 9 of the Laws of Malta (defamation);
- Section 339(1)(e) of Chapter 9 of the Laws of Malta (insults).

Having considered

It is crystal clear that judicial proceedings between the injured party and the accused regarding their child had been of a very litigious nature and that each one of them resorted to various legal actions and that various acts had been filed in these proceedings. In its judgment, the Court of Appeal notes the following: *“The evidence produced in this case show that both parties have presented an interminable number of applications/police reports which basically show that the parties cannot agree on anything, not even on minor matters. In fact even where there were no real problems, issues were inflated making it more difficult for the Court to decide the case of the basis of the original demands made in the sworn application”* (a fol. 152 of Case No.

³ 1974 - 2 ALL ER 372.

OMISSIS). In a footnote of the mentioned judgment, the Court of Appeal notes that: *“They disagreed on where and how to give birth to the child, his vaccination, access, feeding, medical problems, doctor’s choice, christening, child’s name and surname, breastfeeding, MMR inoculation, his clothing, visitation rights, attendance to kindergarten. In fact the child, for some time, ended up in two different kindergartens”* (a fol. 152 of Case No. OMISSIS). As an aside, the Court notes that communication between the injured party and the accused practically consisted of agreeing not to agree on anything. This Court hopes that along the passage of time they learnt to communicate better and this for the well-being of their child!

There is no doubt that both parties consulted their respective lawyers. It also results that even though the Court of Appeal delivered its judgment on the OMISSIS (a fol. 133 *et seq.* of Case No. OMISSIS), and even though the mentioned Court of Appeal delivered a decree dated OMISSIS, the accused resorted to other judicial action. The Court is satisfied that the accused resorted to such latter action only because, according to her or according to the advise she had been given, the judgment was not clear where it concerned the sleepovers of the child.

After considering all that has been brought forward in these proceedings, the Court notes that no shred of proof exists that the injured party or any member of his family suffered from blackouts.

As regards the first (1st.) charge brought against the accused, the Court notes that in the previous paragraph it has been noted that no shred of proof exists that the injured party or any member of his family suffered from blackouts. In the judgment delivered on the 26th. of April 2011 in the names **Il-Pulizija vs. Sergio Zampa et**, the Court of Magistrates (Malta) as a Court of Criminal Judicature noted the following:

*“Fis-sentenza moghtija mill-Qorti ta’ l-Appell nhar it-30 ta’ April 2011 mill-Qorti ta’ l-Appelli Kriminali fl-ismijiet **Il-Pulizija vs. Joseph Vella**, biex ikun hemm ir-reat ta’ ngurja skond l-Artikolu 252, il-kliem (jew gesti, kitba, ecc., skond il-kaz)*

ingurjuzi jridu jkunu gew komunikati, direttament jew indirettament, lil terza persuna – mqar terza persuna wahda – ghax b'hekk biss jista' jitwettaq il-hsieb li jkollu l-agent li jtellef jew inaqas il-gieh tal-persuna ngurjata ("with the object of destroying or damaging the reputation of any person", fit-test Ingliz). Huwa necessarju li l-persuna li tigi ngurjata tigi identifikata.

*Jinghad bla dubju ta' xejn li sabiex jissussisti dan ir-reat kif imfisser fis-sentenza moghtija mill-Qorti ta' l-Appell nhar it-3 ta' Settembru 2001 fl-ismijiet **Il-Pulizija vs. Joseph Gauci** li: "Ma hemmx dubbju li l-ingurja kontemplata fl-Artikolu 252(1) tal-Kap. 9 trid tkun maghmula bil-hsieb specifiku li dak li jkun inaqas jew itellef il-gieh ta' haddiehor. Hi dottrina pacifika li meta l-kliem ikunu manifestament ingurjuzi, tali intenzjoni specifika hi prezunta u jkun jinkombi fuq l-imputat jew akkuzat li jipprova (imqarr fuq bazi ta' probabilita') li daww il-kliem ma qalhomx bil-hsieb li joltragga izda b'xi skop iehor rikonoxxut mill-ligi li jinnewtralizza l-animus ingurjandi" (Vide **Francesco Cascun vs. Re Sac Charles Vella** deciz mill-Qorti ta' l-Appelli Kriminali nhar it-13 ta' Mejju 1961).*

*Issa jif jghid **Gateley**, "Words which impute to the plaintiff the commission of a crime for which he can be made to suffer...by way of punishment are actionable. **Antolisei** jghid "Per la consumazione del reato di defamazione é necessario che l'espressione offensive pervenga a conoscenza di un'altra persona e sia da altri percepita. La perfezione del reato si verifica allorché i fatti che li concretano vengono a conoscenza di altre persone".*

The Court makes reference to a judgment delivered by the Court of Criminal Appeal in the names **OMISSIS vs. OMISSIS** decided on the OMISSIS where the Court of Criminal Appeal confirmed a judgment delivered on the OMISSIS by the Court as currently presided in which judgment the accused was found guilty under Article 252(1) of Chapter 9 of the Laws of Malta for having said that the injured party was "sick".

After considering what has been noted above, particularly that no evidence whatsoever exists that the injured party suffered from blackouts, and after considering what the accused stated in her statement (Doc. "FT" - *a fol. 4 et seq.*) released on the 23rd. of December 2011 regarding the injured party's alleged blackouts, the Court notes that when the accused told Inspector Frank Anthony Tabone that the injured party suffered from blackouts this is tantamount to the crime envisaged in Article 252(1) of Chapter 9 of the Laws of Malta. It results that the accused offended the injured party by saying that he suffered from blackouts. It results that the accused said this voluntarily with the intent to damage the reputation of the injured party. Hence the accused will be found guilty of the first (1st.) charge brought against her. In the circumstances in question, considering all the circumstances in their proper perspective, by saying that a person suffers from blackouts can by no means be considered as giving vent to a vague expression or an indeterminate reproach falling within the terms of subarticle (2) of Article 252 of the Criminal Code.

As far as the second (2nd.) charge brought against the accused is concerned, it does not result that what the accused said is tantamount to an insult and hence the accused will not be found guilty of the mentioned charge.

Having considered

That it results that only the first (1st.) charge brought against the accused has been sufficiently proven.

With regards to the punishment to be inflicted, the Court will be taking into consideration various factors, including the nature of the first (1st.) charge brought against the accused and the clean conviction sheet of the accused (Doc. "A" - *a fol. 9* of Case No. OMISSIS).

Consequently, the Court, for the above-mentioned reasons,

- due to lack of sufficient evidence at law, does not find the accused guilty of the second (2nd.) charge brought against her and hence acquits her from the said charge

and

- after having seen Article 252(1) of Chapter 9 of the Laws of Malta finds the accused OMISSIS guilty of the first (1st.) charge brought against her and condemns her to a fine (*multa*) of two hundred Euros (€200.00).

Dr. Neville Camilleri
Magistrate

Ms. Mary Jane Attard
Deputy Registrar