Fil-Qorti tal-Maġistrati (Malta)
Bħala Qorti ta' Ġudikatura Kriminali

Magistrat Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

Illum: 6 ta' Marzu, 2019

Il-Pulizija
(Spettur Elton Taliana)

-vs-

Salvatore Chircop, detentur tal-karta tal-identita` numru 972446M; u

Stanley Chircop, detentur tal-karta tal-identita` numru 239372M

Kumpilazzjoni Nru. 118/2016

Il-Qorti,

Rat l-akkużi miġjuba fil-konfront tal-imputati **Salvatore Chircop** u **Stanley Chircop** u ċioe` talli-

Nhar il-11 ta' Ġunju, 2014, u fil-ġranet, ġimgħat u xhur ta' qabel ġewwa Birkirkara u f'dawn il-Gżejjer:

B'nuqqas ta' ħsieb, bi traskuraġni, (meta bl-ommissjoni tagħhom naqqsu li jassiguraw li Serafina Chircop tingħata l-għajnuna kollha li kienet teħtieġ) involontarjament ikkaġunaw il-mewt ta' Serafina Chircop, liema mewt seħħet fil-11 ta' Ġunju, 2014, u dan bi ksur ta' l-Artikolu 225 (1) tal-Kapitolu 9 tal-Liġijiet ta' Malta.

Rat in-nota tal-Avukat Generali permezz ta' liema baghat lill-imputati biex jigu gudikati minn din il-Qorti bhala Qorti ta' Gudikatura Kriminali kif mahsub fis-segwenti artikoli:

a) Fl-artikolu 225(1) tal-Kapitolu 9 tal-Ligijiet ta' Malta;
b) Fl-artikoli 7, 8, 11, 14, 16, 17, 19, 20, 23, 31, 383, 384, 385 u 386, 532A, 532B u 533 tal-Kapitolu 9 tal-Ligijiet ta' Malta.

Rat li l-imputati m'ghandhom l-ebda oggezzjoni biex il-kaz jigi hekk trattat.

Rat l-atti u d-dokumenti kollha.

Semghet it-trattazzjoni finali.

Ikkunsidrat-

Illi qabel xejn irid jinghad illi ghalkemm din il-kawza tirrigwarda reati li allegatament sehhew fl-2014, l-istess kawza giet mismugha minn din il-Qorti, kif diversament presjeduta, u l-ewwel udjenza quddiem din il-Qorti, kif preseduta, giet mizmuma fl-1 ta' Frar, 2018.

Illi f' dan il-kaz ma jidhirx illi hemm kontestazzjoni dwar l-istat mediku w fiziku li nstabet fih Serafina Chircop, mart Salvatore u omm Stanley Chircop, l-imputati, meta din giet mehuda l-isptar minn gewwa darha b'ambulanza nhar is-7 ta' Gunju, 2014.

Illi gie esebit certifikat tal-mewt ta' Serafina Chircop, li mietet fl-eta` ta' 64 sena.[1]

Illi l-Ispettur **Luke Bonello** ta rendikont tal-investigazzjonijiet li saru dwar dan il-kaz fejn semma' illi nhar is-7 ta'Gunju, 2014, *"il-pulizija tal-Għassa ta' Birkirkara konna ġejna nfurmati li kienet iddaħlet persuna anzjana femminili ġewwa l-Emerġenza u kienet fil-periklu tal-mewt. Minn aktar investigazzjoni li saru mill-Pulizija kienet iddaħlet l-isptar fi* ***stat ħażin ta' iġene u kif ukoll diversi bed sores f'gisimha fejn waħda minnhom fuq il-hip kienet għada anka tidher l-għadma."***[2] L-Ispettur izid jgħid *"Bażikament mill-investigazzjoni li għamilna aħna kif ukoll morna fuq il-post konna* ***sibna li r-residenza kienet fi stat mhux daqshekk ta igene.*** *….. Irriżultalna wkoll …. li s-sinjura kienet tbati min attrite, kaz t'attrite daqsxejn kiefer u kienet ilha ghal dan l-aħħar* <u>*seba' (7) snin*</u> *qabel it-two thousand fourteen (2014) tbati b'din il-kundizzjoni fejn il-kundizzjoni tagħha kienet qed tiddeterjora anka* <u>*fl-aħħar erba (4) xhur kienet spiccat, ta' hajjitha kienet spiccat bed ridden*</u>*."* Irrizulta li Serafina Chircop kienet tirrifjuta li tiehu l-medikazzjoni ghajr ghal *painkillers*. Ma kienet trid lil hadd imissha minhabba fl-ugigh li kienet afflitta bih.[3]

Ikompli jaghti aktar dettalji skoncernanti dwar dak li rrizulta minn investigazzjonijiet ma familjari ta' Serafina: *"Kien irrizultalna wkoll li s-Sur Chircop, Salvatore Chircop kien jiehu hsieb id-dar u kien jaghmel li jista` biex jitma` lil martu u anka kien irrizultalna wkoll li l-mara kienet*

[1] **Dok.ET3** a fol.175
[2] Fol.186
[3] Fol. 186-187

tpejjep hafna u hu ***kien ikollu*** ***jzommilha s-sigaretti hu*** ***biex tpejjep fejn anka kienu nstabu xi hruq fuq sidirha li kien irrizulta li kien meta kien ikun qed jitmaghha s-soppa ma kinitx tkun kapaci tibla` bizzejjed u kien jaqa` fuq sidirha u kienet tinharaq****. Jigifieri minn hemmhekk kien irrizulta ghalfejn kellha xi hruq fuq sidirha.".*[4]

L-ex spettur jixhed kif qabel ma sahhitha marret lura, id-dar u t-tindif kienu f'idejn Serafina li ddeskriviha bhala *"il-pilastru tad-dar";* id-decizjonijiet kienet tohodhom hi w dejjem riedet li tghaddi taghha.[5] Il-piz waqa' fuq zewgha izda l-igene kien hazin hafna. Minkejja l-isforzi ta' zewgha jirrizulta li gie punt meta ***"il-kundizzjoni li kienet ma kinitx li toqghod id-dar....Riedet li tkun il-hin kollu taht kura medika konstanti...*** *qaghdu fuq li riedet hi mhux is-Sinjuri biss izda l-familjari kollha li jekk hi trid hekk naghmlu hekk."*. Ikkonferma li l-imputati kienu jabitaw ma Serafina Chircop.[6]

Illi **WPS 301 Loren Vella** xehdet *"Ircevejna telefonata min Mater Dei fejn qalulna li kienet kif daħlet persuna min go residenza f'Birkirkara li litteralment kienet fi stat li kienet qegħda* ***fil-periklu tal-mewt kienet qeghda fi stat ta' negligenza****"*. WPS 301 kompliet tgħid *"Negligenza kbira jiġifieiri* ***min naħa tal-familjari għax ma tawx kasha****. Jien mort fuq il-post Mater Dei fejn jien sibta fuq stretcher fetal position kienet* ***mimlija bed sores, il-ħmieg li kellha fuqa kien litteralment imwaħħal ma gisimha li kellha anke kullana madwar għonqa li kienet imdeffsa gol gilda bil-hmieg li kellha, kellha l-hip bone***

[4] Fol.187-188
[5] Fol.188-189
[6] Fol.190

litteralment tidher ghax il-gilda kienet ittieklet mid-dud. Ghalkemm hi kellha ghajneja miftuħin ma kienux concious fis sens ishek qed tħares lejk fil-baħħ *u dak il-ħin kellha tittiehed recess biex jnaddfuha u jippruvaw jsalvawalha hajjitha prattikament.”.*

Wara Mater Dei irrikorriet fir-residenza tal-imputati u tal-mejta: *“Jien mort fuq il-post id-dar taghhom fejn ezatt kif tidħol mil-bieb ixomm riħa qawwija tinten insopportabbli ma tissaportijix li jien kemm tlajt fuq iccekjajt il-kamra u erġajt hriġt l'barra ghax litteralment ma tissaportix.* ***Fuq kien hemm sodda inkallata, ħmieġ ma tiddiskrevihx. Kien hemm demm u ishu likwidu fuq is-sodda li kien ilu niexef, dubbien ħafna jdur fuq roqgħa fuq is-sodda*** *apparti li ma nsemmux il-klieb li bdew jitħallew jilghaqu dawn* ***il-lożor mahmugin inkallati****. Ifhimni jien dak il-ħin infurmajt lil Ispettur u gew tal-fotografija.”*[7]

Xehed **Dr. Michael Spiteri** fejn spjega il-qagħda li kienet fiha Serafina Chircop fejn dan xehed *“U dan jindika li s-sinjura Serafina Chircop bin numru tal-identita 889249M……iddaħlet fid-dipartment tal-Emergenza nhar is-7 (sebgħa) ta' Gunju elfejn u erbatax (2014) għal ħabta tas-siegha u kwart (13:15) ta' wara nofs n nhar. Hija kienet inġabet minn..b'ambulanza mir-residenza tagħha u aħna innutajna illi,* ***il-pazjenta kienet f'kundizzjoni ħażina hafna.*** *In-nurse li kienet gabitha bl-ambulanza kienet qalet illi l-pazjenta kienet instghabet minduda fuq in naha tax xellug tagħha, u mill-informazjoni illi kellna anke* ***mill-kondizzjoni tal-pazjenta kien jidher li kien hemm evidenza li l-pazjenta ma kienetx setghat tikkura lilha nnifisha tajjeb u lanqas***

[7] Fol. 22-23

tiġi ikkurata*…Dehrilna ukoll li z-zokkor kien qieghed fuq in naha l-baxxa tal-gisem…u* ***kien hemm anke hafna feriti fuq il-gisem****…Meta l – pazjenta . . .* ***giet mahsula , u caqlaqnieha , minn tahta hargu hafna insetti u anka kien hemm evidenza ta' hafna sulfarini tahtha*** *…. ."*[8]

Dr. Spiteri ghadda biex jikkonferma l-*medical file* ta' Serafina Chircop u senjatament in-notamenti tieghu *"kont ghedt illi l - pazjenta qieghdha . . . kienet qieghdha fi stat hazin hafna ta' sahha . Fil - fatt kont ukoll ikkumentajt u ha nikwota* ***"patient is in moribund state"****"*. Tenut kont tal-kondizzjoni moribonda tal-pazjenta gie deciz li bil-kaz jigu nformati l-pulizija.[9] Mill-*medical file* rrizulta li l-pazjenta li kienet tbati minn *rheumatoid arthritis,* kienet irrifjutat *knee replacments* darba fl-2010 u darba'ohra fl-2011[10] wara li ddecidiet li ma kienx fl-ahjar interess taghha tenut kont tar-riskji li affacjat.[11] In kontro-ezami Dr Spiteri ikompli *"Hemm kazijiet fejn tista' tispicca bed ridden u ghalhekk .* ***… f' dawn it - tip ta' kazijiet huwa importanti li dawn it - tip ta' pazjenti jinaghtaw kura il - hin kollu . . . ermm . . . mhux kura medika biss imma anka basic hygiene u … . . . iddawarhom kemm jista' jkun*** *. . . ermm . . . fis - sodda . Ir- raguni hija li dawn jistghu jispiccaw f' kundizzjoni li huma ma jkunux jistghu jaghmlu din il - bicca tax - xoghol ghalihom infushom".* [12]

[8] Fol.137-138
[9] Fol.139
[10] Fol.140
[11] Fol.142
[12] Fol.141

Illi xehdet **Antonella St. John,** in-*nurse* illi ħarget mal-ambulanza li biha twasslet l-isptar Serafina Chircop. Tispjega li hekk kif daħlet gewwa il-fond 15, Triq l-Isqof Labini, Birkirkara, id-dar matrimonjali, sabet mara fix-xifer tas-sodda b'idejha maghluqin bhal ma jkunu meta wiehed qed jitlob, *'clasped'*, taht in-naha tax-xellug ta' wiccha. Ghajneha kienu mwahhla mal-frixx u zzid *"jista' jkun li tant kienet ilha hekk li l - kulur t' ghajneha intielef tal - ghajn . ….L - ghajn bajda kienet . Din l - ghajn . L - ghajn kienet imwahhla …. L - iris . . . il - kulur ehe gie abjad… Kienet imwahhla , ma niftakarx kinetx il - lizar jew l - imhadda ….. Niftakar bhala response , …. tkun tirrispondi ghal painful stimuli biss , jigifieri* ***jekk tghitilha ma ticcaqlaqx , jekk tipprova tghajtilha ma tiftahx ghajneha , pero meta tmissha kient muguha*** *…. stajna innizluha b' incirata ghal mod kif kienet , speci* ***tant kienet rigid , li x' hin dawwarnieha , bhala unit ,*** *hekk kienet b' saqajha qed nitkellmu lagenba ,* ***qisna qbadna xi haga mwahhla……meta speci dawwarnieha lagenba dal – genb kien catt*** *. . . ..* ***Kien catt .*** *[Qorti : Iccataja]..Ehe ……* ***[genbha] wehel mal - lizar*** *. Niftakar* ***malli ghollejna , malli lilha qlajnieha bilmod minn mal - lizar ghax bdiet twegga' , kien hemm hafna riha tinten u bdew itiru hafna insetti . Errmmm . . . kien demm skur , demm iswed*** *[Qorti : Jigifieri kien ilu hemm]…Ehe .* ***U hafna suffarini .*** *Niftakar . Errmm . . . tellajnieha fuq l - incirata , nizzilnieha , niftakar kien hemm xi relatives li kien hemm min minnhom beda jibki , speci "kif giet ! kief giet !" . Qaluli li kienet hi li tirrifjuta l – ghajnuna."*[13] .

[13] Fol.144-145

Ix-xhud kompliet tixhed dwar dak li kkonstataw malli Serafina giet rikoverata l-isptar *"bhala griehi jiena hawnhekk fil - karta classifikajthom bhala pressure source , stage 4 (four) , li jkunu* ***deep necrotic*** *u kellha wahda (1) , stage 3 (three) u jkun fiha speci hafna pass [recte: pus/materja] u hekk , heq niftakar li hadnieha l - emergenza u hsilnieha . . . qed . . . Hsilnieha bhala unit kif kienet , u* ***beda niezel hafna demm*** *, speci qas stajna .* ***Kienet miksija feriti , kollu niftakar il - left side kien gerha wahda***"*.[14] Nurse St. John tkompli li kienet in-neputija li cemplet ghall-ambulanza u li rikbet maghha fl-ambulanza flimkien ma ragel iehor. Qalulha li Serafina kienet tirrifkuta l-ghajnuna.[15]

Minn hawn jirrizulta bla dubbju li din il-mara, li ma kienitx ta xi eta` avvanzata hafna, 64 sena, kienet ilha ma tiddawwar minn fuq genbha tax-xellug ghal ghadd konsiderevoli ta' zmien tant li minn **ghajnejha sal-kumplament ta' genbha, wahhlu mal-frixx; genbha sahansitra iccajtja u fejn instabet mitluqa fuq sulfarini filwaqt li kienet qed issofri minn hafna griehi kawzati minn bedsores**.

Illi xhud ohra li kkonstat l-istat detetorjat li ngabet fih Serafina Chircop kienet **Dr. Maria Grech** li ezaminat lil Serafina Chircop fid-dipartiment tal-Emergenza malli wasslet bl-ambulanza. Tghid hekk: *"giet* ***kellha pressure sores…[jigu] meta toqoghd hafna hin fl-istess pozizzjoni****….****kellha ksur f'left femur f'saqajha tal-left*** *u kellha ksur ukoll fin-naha tar-right hawnhekk iddokumentat bhala old*

[14] Fol.145
[15] Fol.146

fracture ksur qadim…kien hemm ksur u pressure sores.".[16] Illi x-xhud tkompli tgħid illi hija kienet kellmet lil konsulet taghha Dr. Michael Spiteri li min naha tieghu mexxa ghax kienu tal fehma illi dan kien *"każ ta neglect"*.[17] Tikkonferma li **kien hemm ksur gdid *"Fis-sieq, spiral fracture of left femur"*.**[18]

Illi ghalhekk jirrizulta li Serafina Chircop sahansitra kienet qed tbaghti minn ksur li ma gietx ikkurata ghalih.

Xehdet **Giovanna Antida Grech,** oħt Serafina Chircop, li qalet li ohta kienet persuna illi ma kienetx trid tara tobba u li kienet tibża ħafna mil-isptar. Ikkonfermat illi kienet hi li cemplet ghal ambulanza meta ratha li *"ma kinitx f'sensiha"*.[19] Sabitha mghottija bi gverta. Id-dar dak il-hin kien hemm Salvatore Grech.[20] Tghid li kienet tkellem lil l-oħta bit-telephone kuljum iżda ma kienetx tmur taraha ta' spiss minhabba li kienet tiehu hsieb ommha.[21] Kemm il-darba kienet tgħidila biex tmur l-isptar izda ohta dejjem kienet tirrifjuta, *"Ma riedet lil hadd, dik anki semplici dgharsa kienet tughgaha dgharsa kont nghidila ha nigi mieghek imorru ghand id-dentist tieghi, le jien naqlagha kienet sejra hekk u taqlaghha hi ghax kienet tibża mit-tobba"*[22] Ix-xhud kompliet tistqarr illi cemplet lil ambulanza ghax rat lil ohta magħkusa. Ma setghetx tikkonstata x'kien hemm

[16] Fol.158
[17] Fol 158-159
[18] Fol.160
[19] Fol.161
[20] Fol.163
[21] Fol.163-164
[22] Fol 164

tahtha.[23] Ix-xhud izzid li meta kienet tkellem lil ohta permezz tat-telefone din kienet dejjem tibki ghax kienet bla sahha u la felhet tqum mis-sodda u lanqas toqghod fuq saqqajha *"Tibki ghax kienet tkun migugha hafna…"*.[24] In kontro-ezami tikkonferma li l-imputati ta' spiss kienu jghidu lill-ommhom biex imorru l-isptar izda hi kienet tirrifjuta.

Illi l-imputat **Stanley Chircop**[25] xehed illi fil-passat ommu kienet tmur l-isptar darba fix-xahar sabiex ommu tinghata id-*drip* biex jissahhah l-ghadam. Sar *lift* id-dar u missieru xtara vann biex ikun jista jġorra bil-*wheelchair*.[26] Ix-xhud jirrakonta kif darba sab lil ommu tibki minħabba illi kien cemplilha il-professur u qalilha li mhux ser joperawha u li kienet sa tibqa f'*wheelchair*. Minn dak inhar ma rieditx taf bi sptarijiet.[27] Kien iheggigha biex tiehu l-kura l-isptar izda kien kollu ta' xejn ghax ommu kellha rasha iebsa u kien biss ghax ma kienitx f'sensiha li rnexxilhom johduha l-isptar.

Mistoqsi mill-qorti dwar il-hmieg li nstab taht ommu, fejn anke nstabu sulfarini tahtha, jghid: *"Meta ahna anke biex indawruwwha gieli ghidnilha ahna ejja ha nippruvaw indawwruk u tgahmel naqra kuragg tghidilna ejja nippruvaw, imorru biex imissuha, le taqbad tghajjat, ghajjat kbir anka n-nies barra jahsbu li qed naghmlula xi haga u f'daqqa wahda tghidilna le. Ma stajna naghmlu xejn, xejn ma stajna naghmlu.*

[23] Fol.165
[24] Fol.166
[25] Fol 196-204
[26] Fol.196-197
[27] Fol.197

Jien, jie nitlob lil bambin li nqum filghodu jghidli huduni l-isptar halli nkunu nistghu nbiddlu s-saqqu, nbiddlu l-affarijiet. Ma stajniex niccaqalqu, ma setax ticcaqlaq mis-sodda. Ma riditx ticcaqalqilna min gos-sodda. …. Li kien hemm tahta jien ma nafx ezatt x'kien hemm tahtha ghax qed nghidlek konna mmorru biex indawwruwha u ma tħalliniex …..L-ghajjat, l-ghajjat li konna nisimghu d-dar ahna kienet mugugha ma ntihiex tort jigifieri, ma kinitx taghmlu apposta jew minn jeddha imma ahna ma stajna naghmlu xejn…..".[28] Il-kundizzjoni fragili taghha tkompli tidher meta binha stess jghid li **ma kienitx tiflah izomm sigarett** meta din kienet *chain smoker*. Ghalhekk kien iqqabadulha hu sabiex hi tiehu zewg nifsijiet u jkomplieh hu.[29]

Il-Qorti tistaqsi: tenut kont li ma kienitx tiflah izzomm sigarett – fejn intqal li zewgha u binha kienu jzommulha s-sigarett peress li *"Ma setghet taqbad xejn anke idejha marru"*[30] - kif spiccat bis-sulfarini tahtha??

In kontro-ezami jghid li l-episodju meta qatghet qalbha minn sptarijiet kien sehh aktar minn sena qabel, ghalkemm **kienet ilha f'dik il-posizzjoni ta' fragilita` minghajr ma tinghata ebda kura**.[31] Hi ma kienitx ticcaqlaq mis-sodda *"taghmillek gurnata fl-istess posizzjoni, ippruvajna kif ghidtlek indawwruha kemm il-darba u l-ghajjat li kienet tgahjjat kien ikollna nieqfu"*[32] Jammetti li li qatt ma ra lil

---

[28] Fol.198
[29] Fol.199
[30] Fol.207- per Salvatore Chircop
[31] Fol.199
[32] Fol.200

ommu tiehu l-medicina *"Qatt ma rajtha tohodha hi jew ittihilha missieri…Jiena fil-hin li kienet tiehu l-medicina ma kontx inkun hemm."*[33] Jghid li *carers* ma kienux ingabu izda kienet tmur kugintu, Bernice Said, darba f'gimgha biex tahsilha izda mbghad ommu kienet bdiet itiha kedded biex tinhasel u l-hasil ma kienx issir kif suppost *"jaghmlu nofs xoghol"*.[34]

Illi dan jiskontra bil-qawwa meta jigi mfakkar li l-isptar sabu kullana li kienet giet *embedded* fil-gilda t'ghonqa bil-hmieg li kellha fuqha!

Illi l-imputat **Salvatore Chircop**[35] ir-ragel ta Serafina, xehed illi hekk kif martu spiccat ma tistax timxi fil-wheelchair huwa kien xtara vann sabiex ikun jista' jittrasportaha u ghamilha kamra tal-banju vicin il-kamra tas-sodda.[36] Medicina kien itihilha hu ghax kellu lista bil-hinijiet ghax ***"Ma setghet taqbad xejn anke idejha marru".***[37] Ma rahx lill-martu tiggrava ghax fi kliemu *"gravi dejjem ghalija jien…Ghalija dejjem gravi. Konna nghidulha mur l-Isptar ha jaghmlulek xi haga ghax ahna ma nistghux naghmlulek xejn"*[38] Ghalhekk gie mistoqsi dwar dak li mpedieh milli jcempel ghall-ghajnuna: *"Hi ghax ma stajtx naghmilha u allahares ghax ghalxejn kienu jigu ghax jekk tghid le le."* pero` jammetti li fl-ahhar mill-ahhar ittiehdet *"Haduha imma b'emergenza"* u dan wara li jiddikjara li kien

[33] Fol.203
[34] Fol.200-202
[35] Fol 205-215
[36] Fol.205
[37] Fol.207
[38] Ibid.

hu li cempel ghall-ambulanza *"Ghax cempiltilhom biex jigu ghax bezzghatni dak il-hin."*[39]

Illi hawnhekk ghalkemm Salvatore jipprova jaghti l-impressjoni li kien hu li sejjah ghall-ambulanza, dan ma ssib kontradizzjoni meta jigi mfakkar li ohtha xehdet li kienet hi li cemplet ghall-ambulanza u li ghamlet dan meta ratha li *"Cempilt ghall-ambulanza jien"*[40] peress li *"ma kinitx f'sensiha"*.[41] Mill-banda l-ohra nurse St. John tghin li n-neputija ta' Serfaina cemplet ghall-ambulanza u anke rikbet maghha lejn l-isptar.[42] Ghalhekk kien biss grazzi ghall-ohtha w n-neputija li Serafina ttiehdet l-isptar. Zewgha u binha li kienu jghixu maghha ma hadu l-ebda inizzjattiva biex ommhom tinghata l-kura; minflok hallewha titmermer u tinhakem minn hmieg, dud u insetti.

Dwar in-nuqqas ta' igene u l-hmieg li nstab tahtha f'soddtha u senjatament is-sulfarini li kienu nstabu tahtha, Salvatore jaghmel dikjarazzjoni li tistona bil-qawwa ma dak li kien ghadu kemm xehed u cioe` meta qal li martu ma kellha l-ebda sahha f'idejha *"Ma setghet taqbad xejn anke idejha marru"*.[43] Stranament issa jghid li kienet hi li kienet tipprova tqabbad is-sigaretti u kienet hi li s-sulfarini thallihom hi stess fuq is-sodda. Iqumu xi mistoqsijiet - mela ghaliex ma tahx kaz jara li tinzamm fi stat t'indafa jekk kellha

---

[39] Fol.208
[40] Fol.162
[41] Fol.161
[42] Fol.146
[43] Fol.207

dan il-vizzju? U jekk din ma kienitx ticcaqlaq minn fuq is-sodda, ghaliex hallew sigaretti u sulfarini *within reach* meta kienu jafu li l-kundizzjoni taghha ma kienitx tippermettiela tpejjep minghajr ghajnuna? Certament dikjarazzjoni li ma ghandiex mis-sewwa:

Xhud: Ghax gieli jppruvat tqabadt sigarett u ma jaqbdilhiex u nqabdtu wiehed ahna niehu giex nifsijiet u tiehu nifs hi.
Qorti: Imma ma nahsibx umbaghad titfghu s-sulfarina fuq il-lozor u thalliha torqodt fuqhom.
Xhud: Hi stess.
Qorti: Hi stess. Mela kienet tiflah idejha.
Xhud: Tipprova, tipprova.
Qorti: Kont tnehhihom.
Xhud: Mela…Kemm il-darba mhux kemm kien hemm bzonn[44]

<u>Jirrizulta li ma kienx jaghti kaz ghall-hmieg li thalliet tistrieh fuqu</u>. Kompla li kien huwa li kien jaghtiha il-medicina u li huwa qatt ma kien cempel ghat tabib ghax li kieku ghamel hekk zgur il-mara tieghu kienet tkeccieh,[45] sahansitra jammetti li **lanqas l-medicina ma baqghet tiehu** *"Qatghet qalba ghal kollox.* ***La pilloli ma riedet tiehu mbghad"***.[46] Jghid ukoll illi carer ma kienx gab u dan ghar raguni illi fi kliemu stess *"Carer ma kienx hemm ahna…Kien hemm jien carer maghha."*[47] Minkejja li jghid li hu kien qed jaghti servizz ta'

[44] Fol.209
[45] Fol.210
[46] Fol.211
[47] Fol.211

carer lill-martu **jammetti li ma zammiex fi stat ta' igene fejn lanqas lozor ma kienu jitbiddlu**:

Xhud: Kien hemm jien Carer maghha. Jien anka biex taghmel pipi ntellghaha fuq il-wheelchair wahdi wahdi ghax dak il-hin ma jkolli lil hadd u ndahhalha.
Pros: Meta kontu tgholluha, tgholliha fuq il-wheelchair kont tara x'hemm tahtha?
Xhud: Kif?
Pros: Kont ticcekja x'hemm fuq is-sodda?
Xhud: Mela le.
Qorti: U x'kien ikun hemm?
Xhud: Xi tridu jkun hemm xejn, il-forma taghha.
Pros: Jigifieri skont inti ma kien ikun hemm xejn mhux normali tahtha.
Xhud: Le xejn.
Qorti: Kemm kontu tbiddluhomlha ta' spiss il-lozor?
Xhud: Meta kienet b'sahhitha iktar.
Qorti: Le, le meta fl-ahhar xhur, l-ahhar xahar suq.
Xhud: Ma tantx stajna……Hi ma riditniex imissuha mbaghad. Fl-ahhar ftit.[48]

Salvatore jixhed li martu kienet qatghet qalbha u hu hass li ma kellux jikkuntrarjaha. Kienet tinhasel minn Bernice Said kull nhar ta' Sibt ghalkemm ma jiftakarx meta kienet l-ahhar darba li din

[48] Fol.211-212

haslitha qabel il-mewt taghha.[49] Mistoqsi mill-abbli difensur kellux rizorsi finanzjarji sabiex igib *carer* ghall-martu jghid *"le"*.[50]

Kien precizament ghalhekk li fin-nuqqas li jhallas ghall-kura ta' martu gewwa daru, waqa' l-obbligu fuqu li din tinghata l-kura dovuta permezz ta' rizorsi pubblici. Ma kien hemm xejn li waqqfu milli jirregistra ghall-ghajnuna ta' *carers* provduti mill-Istat kemm il-darba ghazel li ma jirrikoverax lill-martu fl-isptar fejn setghet tinghata kura u tigi allevata mill-ugigh li tant jaghmel riferenza ghalih fix-xhieda tieghu; fuq domanda tal-qorti dwar dan jghid:

Avukat: L-ahhar mistoqsija. Bhala Carer kellek inti ghax semmejt Carer inti fix-xhieda tieghek, kellek rizorsi x'taffordja?
Xhud: Mhux semmejtha.
Avukat: Semmietilek u int ghidt le. Kellek rizorsi biex taffordja Carer int dak iz-zmien? Flus kellek, flus biex tonfoq perezempju elf u mitejn Ewro (€1200) fix-xahar?
Xhud: Wahda minnhom ma riedet lil hadd hi. Hi ma riedet lil hadd.
Qorti: Hi ma riedet lil hadd. Issa jekk inti m'ghandekx mezzi.
Xhud: Ehe.
Qorti: Ma stajtx titlob li l-Gvern jipprovdilek wahda? Dottore you ask it and know it's coming.
Xhud: Jekk ma riedet lil hadd.
Qorti: Jigifieri inti mhux ghax ma kelliex mezzi ghax ma riedet lil hadd.
Xhud: Ukoll l-iktar.".[51]

[49] Fol.213
[50] Fol.214

Xehedet ukoll **Bernice Said**[52] in-neputija ta' Serafina Chircop, fejn spjegat illi meta kienet izghar kienet tkun kuljum ghand zijitha izda meta bdiet tahdem kienet tmur darba fil-gimgha biss. Tixhed li l-akkuzati kienu dejjem ikunu ma Serafina Chircop madanakollu kien wasal zmien fejn hija kienet tirrifjuta l-ghajnuna ghax kienet tkun mugugha wisq. Ix xhud tghid ukoll illi hija kemm il-darba kienet tghidila biex imorru l-isptar ma dan kollhu hija kienet tirrifjuta u kienet tiggieled maghha.[53] Bernice tishaq li s-sodda dejjem nadifa kienet tkun ghalkemm -

Xhud:….l-bed sheets meta jien kont nigi biex anke nnaddafha meta spiccat fis-sodda ma stajtx innaddafha sew ghax anke sempliciment incaqalqilha jdejha minn hawn ghal hawn, l-ugiegh li kienet tibki….. fl-ahhar forsi kellha la maltija qisha qatgha tas-sodda, hemmekk forsi kelha tikka zghira qisu materja, l-bqija s-sodda dejjem nadifa ta kienet tkun.
Qorti: Is-sodda dejjem nadifa?
Xhud: Mela[54]*……. hi lanqas biss riedet thallini incaqlaqha…. Ma kinetx 100 per cent nadifa kif tkun is-soltu, s-sodda, le ma kinetx hekk.".*[55]

Dak li kkonstataw il-paramedici malli wasslu fuq il-post flimkien mas-Surgent Vella jizmentixxi d-dikjarazzjoni ta' Bernice Said. Zijitha kienet ilha ma tinzamm nadifa u mahsula ghall-xhur biex sahansitra **partijiet ta' gisimgha ittieklu, sabu kullana li wehhlet**

[51] Fol.214-215
[52] Fol 217-223
[53] Ibid.
[54] Fol.219
[55] Fol.222

ma ghonqa, gembha iccatja u wehel mal-lozor inkallati li thalliet fuqhom mimlija sulfarini w insetti.

Illi **Stephen Chircop**, iben Serafina, semma kif missieru kien ghamel zmien twil jiehu hsieb ommu, jahsilha u jikkuraha u kif meta kienet saret taf li ser tibqa' f'*wheelchair* webset rasha u irrifjutat li ssirilha operazzjoni.[56] Qal li kien icempel lil ommu kuljum ma dan kollhu ma kienx imur jaraha ta spiss. Huwa jghid illi meta kien ikellem lil ommu din qatt ma gergret fuq kif qed tiġi mizmuma izda kienet tilmenta dwar l-ugigh. Kien imur jaraha qisu darba kull tliett xhur u kellimha l-ahhar darba madwar gimgha qabel ma mietet fejn hi kelmitu b'mod normali.[57] Ma kienx jaf bil-kundizzjoni li nstabet fiha u meta mietet it-tobba qalulu biss li qalbha kienet ghajjiet.[58]

Ghalhekk fid-dawl ta' dawn il-provi jemergu s-segwenti dettalji u konsegwentement numru ta' konkluzzjonijiet:

i. Is-sinjura Chircop instabet fi stat fejn ma kienitx *receptive,* katatonika, fejn ma kienitx *conscious,* <u>tkellimha ma tirrispondikx, thares fil-vojt</u>;[59] dan jixhdu s-Surgent Vella kif ukoll in-nurse St. John. **Altru li ma kienitx f'posizzjoni taghti struzzjonijiet jew direttivi!;**

---

[56] Fol.224
[57] Fol.224-225
[58] Fol.226-227
[59] Fol.144-145

ii. Dwar il-hmieg li nstab li kienet mitluqa fuqu, fuq lozor bid-demm li kien swied, hmieg u sahansitra insetti u sulfarini, jixhduh kull minn kellu l-ewwel kuntatt maghha u cioe` l-istess Surgent Vella,in-nurse St. John kif ukoll it-tobba Spiteri u Grech. Is-surgent Vella nnutat l-istat tal-lozor f'dettal *"Kien hemm demm u ishu likwidu fuq is-sodda li kien ilu niexef";*[60]

iii. Kienet miksija *bedsores* evidenza li ma kienitx tiddawwar kif kien mistenni; gisimha gerha wahda[61] tant li spiccat b'genb iccatjat li sahansitra baqa' mwahhal mal-lizar[62];

iv. Kienet qed issoffri minn *scalds*, hrug tant li l-area affettwata kienet it-tul ta' zaqqa;

v. "Kellha *l-hipbone litterlament tidher ghax il-gilda kienet ittieklet mid-dud"*[63]*;*

vi. Kienet mahmuga u deher kemm kienet ilha ma tinhasel meta gie nnutat li f'ghonqa kellha ***"kullana madwar ghonqa li kienet imdeffsa gol-gilda bil-hmieg li kellha"***.[64]*;*

vii. Tant kienet mahmuga u fi stat hazin bil-griehi li kienet miksija bihom, li malli n-nurses u t-tobba hassluha hareg hafna demm izda anke insetti li bdew itiru meta tnehha il-lizar li kienet

[60] Fol.23
[61] Fol.145
[62] Fol.145
[63] Fol.23
[64] Fol.23

instabet fuqu u li bih ingarret lejn l-isptar, liema lizar kif inghad kien spicca mwahhal ma' genbha!;

viii. Instabet issofri minn ksur kemm gdid kif ukoll qadim; dan jerga` jigi kkonstat mill-espert mediku forensiku li jasal jattribwieh ghal waqa' mis-sodda jew *rough handling*;

ix. Illi l-imputati kienu rrispettaw ix-xewqa tal-mejta meta ma kienux insistew maghha li tara tabib jew tittiehed l-isptar.

x. Ma kienux l-imputati li cemplu ghall-ambulanza.

Illi d-difiza tal-imputati hi li huma qaghdu ghar-rieda ta' Serafina – li kif inghad instabet minghajr *consciousness* u lanqas kienet tirrejagixxi meta giet mitkellem, thares fil-vojt, ma twegibx, Antonella St. John iddeskrivita bhala li ratha ticcassa *"tirrispondi ghal painful stimuli biss , jigifieri* ***jekk tghitilha ma ticcaqlaqx , jekk tipprova tghajtilha ma tiftahx ghajneha"***[65]. Ix-xhieda in difeza wkoll semmew li minn zmien ghal zmien l-imputati kienu jghidu lil Serafina sabiex tiehu kura izda din kienet tirrifjuta. Madanakollu lkoll jaqblu li Serafina kienet tkun migugha hafna. Dwar ix-xhieda ta' Bernice difficli titwemmen fl-intjier taghha. Ma jistghax ikun minnu li kienet tmur ta' spiss tahsilha ghar-ragunijiet u l-fatti li rrizultaw dwar il-kundizzjoni li nstabet fiha! Li kieku vera kif tghid possibbli ma rathomx il-*bedsores* li ksew gisimha? Ma ratx gemb

[65] Fol.144-145

zijitha ccatjat mal-lizar? Ma ratx harqa daqshekk kbira li estendiet ghat-tul zaqqa?

Illi tenut kont tad-difiza tal-imputati u cioe` li ma tawhiex kura medika w lanqas sejjhu ghall-ghajnuna peress li qaghdu ghar-rieda ta' Serafina, anke jekk ghall-grazzja tal-argument dawn ghandhom jigu emnuti, ghandu jigi sottolinejat li fir-reat tal-involontarju ma taghmilx differenza ghaliex l-imputat ikun ghamel dak li ghamel. Il-mottiv hu ghal kollox irrilevanti. In-nuqqas tieghu hu li **jkun negligenti f'ghemilu billi ma pprevediex dak li kien prevedibbli**.

Illi mill-provi prodotti l-Qorti tqis li Salvatore u Stanley **abdikaw mid-dover taghhom versu Serafina, abdikaw mid-*"duty of care"* li erogaw ghalihom infushom meta ddecidew izommuha d-dar minghajr ma tinghata kura medika u/jew kura professjonali permezz ta' *carers/nurses*. Naqqsu milli jipprevedu l-konsegwenzi tal-inazzjoni taghhom.**

Evidentement ma kienux kapaci jiehdu hsiebha u traskurawha. Prova cjara tat-traskuragini taghhom lejha kienu **l-kwantita` u l-intensita` tal-griehi li thalliet tinkesa bihom, l-insetti li thallew jitrabbew tahtha, il-ksur li gisimha ndika li soffriet u li ma giex trattat, il-hruq li kienet qed issoffri meta tigi mitmugha, il-mankanza assoluta ta' ndafa deskritt bhala *"inkallat"*[66] li thalliet titbiel u tiddeterjoraha fih minn jum ghal l-iehor Serafina**. Kienu tassew negligenti u non-kuranti f'ghemilhom; ghemil nieqes ghall-

[66] Fol.22-23

kollox minn dik id-diligenza w prudenza li l-gurisprudenza tirreferina ghaliha.

Fil-fatt huma l-imputati stess li jammettu li kienu rrejalizzaw li Serafina ma baqghetx ta' idejhom; madanakollu ma ghamlu xejn biex jevitaw il-konsegwenzi prevedibbli li l-mankanzi taghhom li jaghtuha kura, kien ser iwassal indubbjament ghalihom. Stanley jghid: "*nitlob lil bambin li nqum filghodu jghidli huduni l-isptar halli nkunu nistghu nbiddlu s-saqqu, nbiddlu l-affarijiet. Ma stajniex niccaqalqu, ma setax ticcaqlaq mis-sodda. …ghax qed nghidlek konna mmorru biex indawwruwha u ma tħalliniex …..L-ghajjat, l-ghajjat li konna nisimghu d-dar ahna kienet mugugha ma ntihiex tort jigifieri, ma kinitx taghmlu apposta jew minn jeddha imma ahna ma stajna naghmlu xejn*"[67]………. *taghmillek gurnata fl-istess posizzjoni, ippruvajna kif ghidtlek indawwruha kemm il-darba u l-ghajjat li kienet tghajjat kien ikollna nieqfu*".[68] L-istess xhud li ammetta quddiem il-Qorti li ma kienx jaf ommu kienitx tiehu xi medicina.[69] Ghalih dmiru kien li jghina tpejjep "*Tghidli ibni ghamilli pjacir qabadt sigarett tini zewg nifsijiet minnu ghax lanqas izzomm sigarett ma kienet*"[70].

Zewgha, Salvatore wkoll jammetti li ma kienx jaghti medicina lill-martu ghax skond hu "*Qatghet qalba ghal kollox. La pilloli ma riedet tiehu mbghad*".[71]. Wera' bic-cjar li kien konsapevoli tal-kundizzjoni

[67] Fol.198
[68] Fol.200
[69] "*Qatt ma rajtha tohodha hi jew ittihilha missieri…Jiena fil-hin li kienet tiehu l-medicina ma kontx inkun hemm.*"- *fol.203*
[70] Fol.199
[71] Fol.211

xejn tajba ta' martu izda ma ghamel xejn biex jara li din tigi ameljorata: *"Ma setghet taqbad xejn anke idejha marru*[72] *........gravi dejjem ghalija jien...Ghalija dejjem gravi. Konna nghidulha mur l-Isptar ha jaghmlulek xi haga ghax ahna ma nistghux naghmlulek xejn".*[73] Jirrikonoxxi li thalliet b'lozor mahmugin u li s-saqqu kien ha l-forma taghha;[74] madanakollu lanqas dan ma kien bizzejjed biex igghelu jcempel ghall-ambulanza sabiex fejn ma wassalx hu, jasslu professjonisti fil-qasam tas-sahha bhall-tobba, nurses jew carers!

Rizultanzi Patologici u Forensici

Illi **Dr. Ali Safraz,** l-espert patologu, fir-rapport tieghu tal-awtopsja jinnota numru ta' dettalji li jimpingu fuq il-mertu li ghandha tiddeciedi dwaru din il-qorti: *"[S]he had no history of heart disease or diabetes mellitus. She did not suffer from hypertension...* ***She is in a poor state of hygene...multiple bed sores over the left shoulder, left iliac fossa, left buttock, right knee and right buttock....*** *.the valves of the heart are normal...The death of this elderly female is certified provisionally as being due* ***to cardiorespiratory failure caused by***

[72] Fol.207
[73] Ibid.
[74] Fol.212: *Pros: Kont ticcekja x'hemm fuq is-sodda? ...*
Xhud: Xi tridu jkun hemm xejn, il-forma taghha. ...
Pros: Jigifieri skont inti ma kien ikun hemm xejn mhux normali tahtha.
Xhud: Le xejn.
Qorti: Kemm kontu tbiddluhomlha ta' spiss il-lozor?
Xhud: Meta kienet b'sahhitha iktar.
Qorti: Le, le meta fl-ahhar xhur, l-ahhar xahar suq.
Xhud: Ma tantx stajna... ...Hi ma riditniex imissuha mbaghad. Fl-ahhar ftit.

malnutrition."[75] Meta jixhed fil-mori ta' dawn il-proceduri l-abbli espert ikompli jispjega l-konstatazzjonijiet u r-rizultanzi tieghu u senjatament fejn jiddeskrivi lil Serafina bhala *"emaciated corpse"*:

Witness: The findings were that this was an emaciated corpse and eventually with this logical examination I found out that she had pneumonia.

Court: When you said emaciated corpse what do you mean?

Witness: ***Purely, poor state of health, poor hygene….and she had bedsores on the shoulders and on the left eye..left buttocks, right knee and right buttocks***.

Court: And the actual cause of death was it pneumonia?

Witness: Yes

Court: Was it in anyway related to these observations?

Witness: Yes

Court: How? How pneumonia to bedsores, how is it?

Witness: Well bed sores can be infected and secondly it shows that the patient is mostly bedridden, not even turned around properly and that causes stasis prompt to infections and you get pneumonia and of course a poor state of health or nutrition…

Court: So there was also poor state of nutrition

Witness: Yes

Court:And what about you mentioned hygiene, how is hygiene in any way related to?

Witness: ***Just neglect***

Court: And could lack of hygene have precipitated the other causes …

[75] Fol.65

Witness: No but she was I mean, she must been bedridden, not moving not turned around because you get pressure sores because you're lying there.

Court: On your back

Witness: ***On your back……That causes stasis and which is disposes to pneumonia.*** [76]

In kontro-ezami meta mistoqsi mill-abbli difensur jekk il-*bedsores* setghux jikkawzaw il-mewt ta' Serafina Chircop, Dr. Ali Safraz jerga' jkun kategoriku: ***"The cause of death is pneumonia. The pneumonia is precipitated by stayis [recte: stasis*** **u cioe`** nuqqas ta' cirkolazzjoni***], poor nutrition, poor hygiene and bedsores yes all this contribute to pneumonia…… Yes bed sores can cause pneumonia.".***[77]

Illi r-rizultanzi ta' Dr. Safraz issibu korroborazzjoni f'dak li kkonstata l-espert mediku forensiku Dr. Mario Scerri.

Illi fir-relazzjoni minn tieghu, esebita fl-inkjesta magisterjali, l-espert mediku forensiku **Dr. Mario Scerri**, wara li ha konjizzjoni tal-*clinical notes* u tal-*medical file* ta' Serafina Chircop, ghamel numru t'osservazzjonijiet li jimpingu direttament fuq il-konsiderazzjonijiet ta' din il-Qorti dwar jekk kienx hemm negligenza jew traskuragni da parti ta' terzi li kkontribwiet ghall-mewt ta' mara ta' 64 sena. Dr. Scerri jsemmi li Chircop "*kellha qtugh*

[76] Fol.182-184
[77] Fol.185

ta' nifs u kellha numru ta' pressure sores…..kien hemm frattura tas-surgical neck tal-humerus tal-lemin u spiral fracture tas-shaft tal-femur tax-xellug…..dawn il-fratturi setghu kienu mhux daqshekk ricenti".

Ikompli jispjega d-diversi griehi fuq gisimha li **difficliment jitwemmen li min kellu l-kura u/jew il-kustodja taghha qatt ma nnutahom**.

Il-Qorti taqbel pjenament ma din l-osservazzjoni w ghalhekk ma ghandha l-ebda dubbju li l-azzjonijiet tal-imputati kienu dawk ta' **traskuragini kbira** u liema bhala.

Dr. Scerri isemmi numru kbir ta' <u>*excoriations* (brixx/*abrasions*) fuq in-naha tax-xellug tal-wicc, fuq l-aspett laterali tad-driegh tax-xellug u fuq l-aspett laterali tat-tarf ta' fuq tal-id ix-xellugija, u fuq il-mohh. Il-pala tal-id ix-xellugija kienet minfuha</u>, *"**fuq is-sider kien hemm area ta' scalds**…u liema area kienet tipprocedi sa fuq is-suprapubic region…..kien hemm numru ta' bengil ta' kulur vjola….".*[78] L-espert ikkonkluda li l-*excoriations* kienu kollha rizultat ta' <u>*pressure* eccessiv fuq il-wicc</u> **minhabba nuqqas ta' dawrien fis-sodda, l-ulceri kienu pressure sores rizultat ta' nuqqas ta' movimenti fis-sodda**. *"Illi Serafina Chircop **kienet definittivament mitluqa u ma kienitx qed tircevi l-ghajnuna u l-attenzjoni li kienet tehtieg**…Illi l-area tal-<u>iscalds deskritta fuq iz-zaqq ..saret minn **carcir ta' likwidu jahraq**….[il-ksur] jistghu ikunu kompatibbli ma waqgha minn fuq is-sodda jew ma handling bil-goff</u>…**kellha bzonn l-ghajnuna, ntelqet***

[78] Fol.76-84 <u>u 93</u>

f'sodda minghajr ma tbiddlulha l-hwejjeg, minghajr ma giet mahsula u minghajr ma tbiddlu l-lozor li fuqhom kienet... iddahhlet l-Isptar Mater Dei f'kondizzjoni tant fragili illi din ma rpiljatx u eventwalment mietet *fit-tqasima tal-kura ntensiva".*[79] Dwar il-hruq li kienu jidru minn sidirha l-isfel issir riferenza ghal dak li xehed l-ex Spettur Bonello meta jghid *"meta [Salvatore] kien ikun qed jitmaghha s-soppa ma kinitx tkun kapaci tibla` bizzejjed u* ***kien jaqa` fuq sidirha u kienet tinharaq.*** *Jigifieri minn hemmhekk kien irrizulta ghalfejn kellha xi hruq fuq sidirha.".*[80]

Ir-ritratti formanti parti mir-relazzjoni tal-espert Scerri jindikaw l-*area* mdaqqsa sew tal-*scald* ossia tal-**harqa li kienet testendi minn taht sidirha sa taht zaqqha**.[81] Juru mara mitlufha minn sensiha,[82] u mhux id-dittatur li jiddekrivuha qrabatha f'posizzjoni tiddetta jew taghti struzzjonijiet dwar sahhitha!

Dawn ir-ritratti huma prova cjara ta' kif Serafina spiccat gozz ghadam, kif jiddeskriviha bi precizjoni **Dr. Safraz meta jiddefiniha bhala an *"emaciated corpse".***[83]

Kieku l-imputati kienu diligenti u prudenti, **bilfors setghu jipprevedu x'kien ser ikunu l-konsegwenzi** jekk Serafina tithalla f'dak l-istat, li fil-fatt thalliet tghix l-ahhar jiem ta' hajjitha fih.

---

[79] Fol.95-96
[80] Fol.187-188
[81] Fol.76-77
[82] Fol.73-75
[83] Fol.182

Illi issa li gew kkunsidrati l-provi, il-Qorti ser l-ewwel tghaddi biex tikkunsidra l-gurisprudenza dwar ir-reat ravvizat bl-artikolu 225 tal-Kodici Kriminali, dak tal-omicidju involontarju.

Gurisprudenza – Artikolu 225, Kodici Kriminali

Issir riferenza ghas-sentenza tal-Qorti tal-Appell Kriminali **Il-Pulizija vs Dorianne Camilleri**:[84]

Fil-fatt artikolu 225 jitkellem fuq "*nuqqas ta' hsieb, traskuraggni, nuqqas ta' hila fl-arti jew professjoni tieghu u nuqqas ta' tharis ta' regolamenti*" ......

Fid-dottrina u l-gurisprudenza kontinentali jezistu zewg teoriji partikolari dwar il-kuncett ta' negligenza: it-teorija oggettiva u dik suggettiva. L-ezami ghat-teorija oggettiva mhux wiehed li hu mmirat biex jistabilixxi jekk il-persuna ipprevedietx jew setghetx tipprevedi dak l-incident partikolari tal-kaz izda jekk l-agir ta' dik il-persuna jaqax taht l-obbligu ragjonevoli ta' attenzjoni li kull persuna fis-socjeta` hija prezunta li ghandu jkollha f' cirkostanza partikolari. Min-naha l-ohra t-teorija suggettiva tenfasizza fuq kemm wiehed ikun vigilanti bil-limitazzjonijiet tieghu personali f' dak il-kaz partikolari.

Ghalkemm il-legislatur naqas milli jaghti spjegazzjoni tat-termini "nuqqas ta' hsieb u traskuragni", madanakollu l-Qrati taghna dejjem interpretaw dawn it-termini bhala nuqqas ta' attenzjoni u ta' tehid ta' prekawzjonijiet li kienu mistennija f' cirkostanza partikolari. Tali interpretazzjoni taghmel sens hafna iktar meta tikkunsidra li l-Kodici taghna huwa bbazzat fuq il-Kodici Taljan tal-1889 fejn l-ezami ta' negligenza huwa wiehed suggettiv.

[84] Per Onor. Imhallef Edwina Grima, Deciza 28.02.2018

Di piu' il-gurista Sir Anthony Mamo, fin-Noti tieghu, jistipula illi ghalkemm il-legislatur jonqos milli jaghti definizzjoni ta' dawn it-termini pero' "**it is clear that by them the law means generally the absence of such care and precautions as it was the duty of the defendant to take in the circumstances.**" Il-Professur Mamo kompli jsostni li **"the essence of negligence is made to consist in the "possibility of foreseeing" the event which has not been foreseen".**[85]

Din hija t-tezi li dejjem giet accettata mill-Qrati taghna. Fis-sentenza tal-Qorti tal-Appell Kriminali fl-ismijiet ' **Il-Pulizija vs Richard Grech'**[86] gie deciz li l-kuncett ta' traskuragni jimplika **"certa non-kuranza, certu abbandun kemm intellettiv kif ukoll materjali."** Ghaldaqstant skond l-insenjament tal-gurisprudenza nostrana, li llum il-gurnata hija ormai wahda palesi, sabiex l-appellanti setghet tinsab hatja li saqet b' nuqqas ta' hsieb jew bi traskuragni, kien jehtieg li tali hsara tkun preveddibli, ghalkemm mhux prevista.

Fis-sentenza tal-Qorti Kriminali fl-ismijiet ' **Pulizija vs Perit Louis Portelli'**[87] gie stipulat li:

"Hu mehtieg ghall-kostituzzjoni tar-reat involontarju skond l-art. 239 [illum 225] tal-Kodici Penali illi tirrikorri kondotta volontarja negligenti – konsistenti generikament f' nuqqas ta' hsieb ("imprudenza"), traskuragni ("negligenza"), jew nuqqas ta' hila ("imperizia") fl-arti jew professjoni jew konsistenti specifikatament f' nuqqas ta' tharis tar-regolamenti – li tkun segwita b' ness ta' kawzalita' minn event dannuz involontarju.

Ghandu jigi premess illi, ghall-accertament tal-htija minhabba f' kondotta negligenti, ghandu jsir il-konfront tal- kondotta effettivament adoperata ma' dik ta' persuna li s-sapjenza rumana identifikat mal-"bonus pater familias", dik il-kondotta, cioe, illi fil-kaz konkret kienet tigi wzata minn persuna ta' intelligenza, diligenza u sensibilita' normali: kriterju li filwaqt li jservi ta' gwida oggettiva ghall- gudikant, ihallih fl-istess hin liberu li jivvaluta d-diligenza tal-kaz konkret. "La diligenza del buon padre di famiglia costituisce un criterio abbastanza indeterminato per lasciare al giudice gran liberta' di valutazione." (Giorgi, Teoria delle Obbligazioni, II, 27, p. 46)"

---

[85] Lectures in Criminal Law, Volume 1
[86] Deciza nhar il-21 ta' Marzu, 1996 per Onor. Imhallef V. DeGaetano
[87] Deciza nhar l-4 ta' Frar, 1961 per Onor. Imhallef J. Flores

Fis-sentenza moghtija mill-Qorti tal-Appell Kriminali fil-11 t' Ottubru 2012 fl-ismijiet : **Il-Pulizija v Peter Stroud**[88], il-Qorti ccitat dak illi qal Archbold fil-*' Criminal Pleading, Evidence and Practice*':

"Where death results in consequence of a negligent act, it would seem that, to create criminal responsibility, the degree of negligence must be so gross as to amount to recklessness. . . Probably, of all the epithets that can be applied "reckless" most nearly covers the case ... but whatever epithet be used, and whether an epithet be used or not, in order to establish criminal responsibility, the facts must be such that . . . the negligence of the prisoner went beyond a matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the state and conduct deserving punishment..."

Issir riferenza ukoll ghas-sentenza fl-ismijiet **Il-Pulizija vs Ludwig Micallef**:[89]

…. fil-materja tal-kolpuz hemm necessarjament l-element t'attivita diretta ghal xi fini partikolari, li minhabba nuqqas ta' certu prekawzjoni jistghu jigu lezi jew danneggjati jew impregudikati l-interessi ta' terzi. Il-konnotat karetteristiku tal-kulpa huwa l-prevedibilta' tal-event dannuz, li kondotta llegali ta' xi hadd tista' ggib. Din hija l-kulpa normali jew l-hekk imsejha 'colpa incosciente' a differenza minn dik imsejha 'colpa cosciente', li hija l-kulpa bl-element fiha tal-previst tal-akkadut.

Hemm diversi forom ta' kodotta kolpuza derivanti minn att ta' negligenza, imprudenza, imperizja u non ossevanza tal-ligijiet, regolamenti, ordnijiet u simili.

L-imprudenza tigi mill-agir ta' xi hadd minghajr ma jiehu l-opportuni kawteli.

In-negligenza tigi mid-disattenzjoni u disakkuratezza tal-agent fil-kondotta tieghu.

---

[88] Per Onor. Imhallef M. Mallia

[89] Deciza mill-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali fis-17 ta' Awwissu, 2010, Nru 753/2006 per Onor. Magistrat Dr. Consuelo-Pilar Scerri Herrera. Il-konsiderazzjonijiet legali maghmula minn din il-Qorti gew abbracciati fis-sentenzi tal-istess Qorti, diversament preseduta fil-kawzi fl-ismijiet **Il-Pulizija vs Edward Bonnici** (27.010.2016), u **Il-Pulizija vs Rudolph Gatt** (03.02.2016), it-tnejn per Onor. Magistrat Dr. Josette Demicoli.

L-imperizja hija l-forma specifika tal-kulpa professjonali cioe' kif jghid **Manzini**:- "L-inettitudine e insuficienza professionale generale o specifica, nota all' agente di cui egli vuole non tener conto".

Il-kulpa tista' tkun dovuta wkoll ghal non osservanza tal-ligijiet, regolamenti, odnijiet u simili bhal ma huma l-assjem ta' regoli predisposti mill-Ordinanza tat-Traffiku –Kap 65, il-High Way Code – Motor Vegicle Regulations – bl-iskop li jigu evitati l-possibiltajiet ta' hsara u dannu lil terzi.

Il-Qorti hi ghalhekk sejra tezamina bir-reqqa x'inhuma l-ingredjenti tar-reat principali in ezami, u cioe' ta' dak kontemplat fl-**Artikolu 225 tal-Kap. 9,** u cioe' tar-reat li bih gie akkuzat l-imputat, u cioe' omicidju involontarju. L-**artikolu 225 tal-Kap 9** jiddisponi s-segwenti:

"Kull minn b'nuqqas ta' hsieb, bi traskuragni jew b'nuqqas ta' hila fl-arti jew professjoni tieghu, jew b'nuqqas ta' tharis tar-regolamenti, jikkaguna l-mewt ta' xi hadd …"

Issa ghalhekk, wiehed irid jifli l-elementi li jikkostitwixxu dan r-reat, li huma bazikament tlieta u cioe:-

1. b'nuqqas ta' hsieb, bi traskuragni, jew b'nuqqas ta' hila fl-arti jew professjoni tieghu jew b'nuqqas ta' tharis tar-regolamenti ;
2. kkaguna l-mewt ;
3. fuq persuna.

Fis-sentenza moghtija mill-Qorti tal-Appelli Kriminali nhar il-21 ta' Marzu 1996 fl-ismijiet **il-Pulizija vs Richard Grech** dik il-Qorti sostniet is-segwenti:-

"Huwa mehtieg ghal kostituzzjoni tar-reat involontarju skond l-artikolu 225 tal-Kodici Penali, li tirrikorri kondotta volontarja, negligenti – konsistenti generikament f'nuqqas ta' hsieb, imprudenza fl-arti jew fil-professjoni, jew konsistenti specifikament f'nuqqas ta' tharis ta' regolamenti, li tkun segwita b'ness ta' kawzalita' minn event dannuz involontarju. Ghandu jigi premess li ghal accertament tal-htija minhabba f'kondotta effettivament adegwata ma' dik ta' persuna li s-sapienza umana identifikat mal- bonus pater familias, dik il-kondotta cioe' fil-kaz konfet, kienet tigi uzata minn persuna ta' intelligenza, diligenza u sensibilita normali, kriterju dan

li filwaqt li jservi ta' gwida objettiva ghal gudikant, jhallieh fl-istess hin, liberu li jivvaluta d-diligenza tal-kaz konkret."….

Fil-kawza fl-ismijiet **Il-Pulizija v Leonard Grech** deciza mill-Qorti tal-Appell Kriminali nhar il-hamsa ta' Settembru, 1990, il-Qorti dahlet fid-dettal dwar in-natura tal-kolpa f'dawn il-kawzi. In succint fuq skorta ta' awturi u gurisprudenza, t-trepod tal-kolpa gie definit bhala:

1. la volontarieta dell'atto;
2 la mancata previsione dell'effetto nocivo;
u
3 la possibilita di prevedere.

Bhala konkluzzjoni tad-definizzjoni li din il-Qorti trid taghti lit-terminologija culpa, ghalhekk jibqa' dejjem li l-element taghha huwa volontarjeta' tal-att, in-nuqqas ta' previzjoni tal-effetti dannuzi ta' dak l-att u l-possibilta' ta' previzjoni ta' dawk l-effetti dannuzi. Jekk l-effetti dannuzi ma kienux prevedibbli, hlief b'diligenza straordinarja li l-ligi ma tesigix u li semmai tista' ggib culpa levissima li ma hiex inkriminabbli, ma hemmx htija. (vide **Il-Pulizija vs John Vella** deciza nhar il-15 ta' Dicembru 1958 mill-Qorti ta' l-Appelli Kriminali).
[sottolinejar tal-Qorti]

F'din id-definizzjoni ta' *culpa* tinkwadra perfettament il-kondotta tal-imputati.

Issir riferenza wkoll ghas-sentenza fl-ismijiet **Il-Pulizija vs Aaron Camilleri et**:[90]

"Kif inghad fis-sentenza **Il-Pulizija vs Saverina sive Rini Borg et**, deciza mill-Qorti tal-Appell Kriminali fil-31 ta' Lulju 1998, "Skond l-Artikolu 225 tal-Kodici Kriminali, sabiex jirrizulta d-delitt ta' omicidju involontarju, hemm bzonn li tirrikorri kondotta volontarja negligenti, konsistenti

[90] Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali, Onor. Magistrat Dr Natasha Galea Sciberras, 25.04.2014, Kump. Nru 609/1993

generikament f'nuqqas ta' hsieb (imprudenza), negligenza jew traskuragni, jew ta' hila (imperizja) fl-arti jew professjoni, jew konsistenti specifikatament fin-nuqqas ta' osservanza tal-ligijiet, regolamenti, ordnijiet u simili, li tkun segwita b'ness ta' kawzalita`, minn akkadut dannuz involontarju".

Il-gurist **Francesco Carrara** jghid hekk dwar il-culpa, "… il tripode sul quale si aside la colpa sara` sempre questo - 1° volontarieta` dell'atto - 2° mancata previsione dell'effetto nocivo - 3° possibilita` di prevedere."[91]

Bl-istess mod, il-**Professur Anthony J. Mamo**, fin-noti tieghu, jghid hekk:

"In these definitions the essence of negligence is made to consist in the "possibility of foreseeing" the event which has not been foreseen. The agent who caused the event complained of, did not intend or desire it, but could have foreseen it as a consequence of his act if he only had minded: so his negligence lies in his failure to foresee that which is foreseeable".[92]

[sottolinejar tal-Qorti]

U fis-sentenza fuq citata, gie ritenut hekk dwar il-kondotta kolpuza:

"… kondotta kolpuza hija definita bhala kondotta volontarja li tikkaguna event dannuz, mhux volut, izda prevedibbli, li seta' jigi evitat bl-uzu ta' attenzjoni jew prudenza fi grad ta' persuna normali".

Hemm diversi forom ta' kondotta kolpuza derivanti minn att ta' negligenza, imprudenza, imperizja u non ossevanza tal-ligijiet, regolamenti, ordnijiet u simili.

L-imprudenza tekwivali ghal "un atto inconsiderato e rischioso" maghmul b' "leggerezza" jew "sconsideratezza"[93] u kif jghid **Antolisei**, "L'imprudenza e` propriamente l'avventatezza,

---

[91] **Carrara F.**, "Programma Del Corso Di Diritto Criminale", Vol. I (Parte Generale), p. 88.
[92] **Prof. Sir A. J. Mamo**, Lectures in Criminal Law, p. 67
[93] Dizionario Zingarelli, (2002) "Vocabalorio della Lingua Italiana", **Nicola Zingarelli** (Edizzjoni 12, Gunju

l'insufficiente ponderazione ed implica sempre una scarsa considerazione per gli interessi altrui".[94] U kif insibu fin-**Novissimo Digesto Italiano**, "Si comporta con imprudenza che tiene una condotta positive dalla quale occorreva astenersi perche` capace di cagionare un determinate evento di danno o di pericolo, o che e` stata compiuta in modo non adatto, cosi` da essere, pericolosa per l'altrui diritto penalmente tutelato. E`, quindi, una forma di avventatezza, un agire senza cautela."[95] Bl-istess mod, fissentenza fl-ismijiet Il-Pulizija vs Saverina sive Rini Borg et, fuq citata inghad illi "L-imprudenza tigi mill-agir ta' xi hadd minghajr ma jiehu l-opportuni kawteli".

In-negligenza tigi mid-disattenzjoni u disakkuratezza tal-agent fil-kondotta tieghu, fil-waqt illi "l-imperizja hija l-forma specifika tal-kulpa professjonali cioe`, kif jghid il-**Manzini**: inettitudine e insufficienza professionale, generale e specifica, nota all'agente, di cui egli vuole non tener conto".[96]

Skond l-imsemmija sentenza, "**Il-kulpa tista' tkun dovuta wkoll ghal nonosservanza tal-ligijiet, regolamenti, ordnijiet u simili, bhal ma huma l-assjem ta' regoli predisposti mill-awtorita` pubblika dwar xi attivita` determinata u specifika bl-iskop li jigi evitat il-possibilita` ta' hsara u dannu lil terzi, cjoe`, dawk li jkollhom l-element tal-prevenzjoni." Il-kulpa tista' tkun dovuta wkoll ghalhekk ghal non ossevanza tal-ligijiet u regolamenti bhal ma huma l-assjem ta' regoli predisposti mill-Ordinanza tat-Traffiku (Kap. 65 tal-Ligijiet ta' Malta) u l-High Way Code – Motor Vegicle Regulations, fost regoli ohrajn**.
[emfazi tal-Qorti]

Dwar id-diligenza rikjesta fil-kamp kriminali, il-**Professur Anthony Mamo** jghid illi "The amount of prudence or care which the law actually demands is that which is reasonable in the circumstances of the particular case. This obligation to use reasonable care is very commonly expressed by reference to the conduct of a 'reasonable man' or of an 'ordinarily prudent man', meaning thereby a reasonable prudent man: "negligence", it has been said, "is the omitting to do something that a reasonable man would do, or the doing something that a reasonable man

---

2001).
[94] **Antolisei F.**, "Manuale di Diritto Penale: Parte Generale", Edizzjoni 15 (Giuffre`, 2000), p. 366.
[95] Novissimo Digesto Italiano, Vol. III, p. 548.
[96] **Il-Pulizija vs Saverina sive Rine Borg**, fuq citata

would not do" ... What amounts to reasonable care depends entirely on the circumstances of the particular case as known to the person (**Carrara,** Programma, § 87n.) whose conduct is the subject of enquiry. Whether in those circumstances, as so known to him, he used due care – whether he acted as a reasonably prudent man – is in general a mere question of fact as to which no legal rules can be laid down.""[97]

Illi fil-kaz in dezamina l-imputati qed jigu akkuzati li bl-ommissjoni tagħhom naqqsu li jassiguraw li Serafina Chircop tingħata l-għajnuna kollha li kienet teħtieg, u dan meta kienu jghixu fl-istess dar u kienu inkarigaw rwiehom bil-kura taghha. Zewgha, Salvatore Chircop jghid *"Kien hemm jien carer maghha"*[98] filwaqt li binha Stanley jixhed li kien jipprova jiehu hsieb ommu *"Meta ahna anke biex indawruwwha gieli ghidnilha ahna ejja ha nippruvaw indawwruk … ……ghax qed nghidlek konna mmorru biex indawwruwha u ma tħalliniex..".*[99]

Ghalhekk imiss jigi kkunsidrat jekk fid-dawl tal-provi migbura jekk l-imputati zvolgewx dak id-dover li assumew ghalihom nfushom – id-*duty of care,* kuncett li gja saret riferenza ghalih aktar il-fuq.

Illi fid-decizjoni tal-Qorti Kostituzzjonali **Concetta Decelis u Jason Decelis v. Il-Ministru tal-Gustizzja u l-Intern et** gie kkunsidrat:[100]

---

[97] Lectures in Criminal Law (First Year), p. 71.
[98] Fol 211
[99] Fol.198
[100] Per Onor. Imhallef -Agent President Geoffrey Valenzia, Onor. Imhallef Giannino Caruana Demajo u Onor. Imhallef Tonio Mallia; Seduta tat-2 ta' Mejju, 2011; Appell Civili Numru. 3/2009/1

Skont l-appellanti l-Qorti tal-Appell Kriminali f'dan il-kaz applikat il-kuncett ta' *duty of care* meta fil-fatt dan il-kuncett huwa estraneju ghad-dritt Malti.

Illi minn ezami tal-atti processwali ma jirrizultax pero` li l-Qorti Kriminali jew il-Qorti tal-Appell Kriminali fil-fatt iddecidew li skont il-Kodici Kriminali l-appellanti kellhom *a legal duty of care* lejn Rachel Bowdler. Il-principju legali huwa li persuna ma tistax tinsab hatja kriminalment ghall-atti ta' ommissjoni, imma tista' tkun hekk responsabbili meta jkun hemm 'a duty of care'. Meta l-Qorti Kriminali ezaminat il-fatti tal-kaz u l-ligi li fuqha l-appellanti gew akkuzati hi sabet li ghalkemm l-appellanti ma kellhomx *a legal duty of care* huma minn rajhom assumew dak l-obbligu u ghalhekk la darba huma assumew dak id-*duty of care*, allura l-agir taghhom kien suggett ghal-ligi kriminali.

L-istess haga ddecidiet il-Qorti tal-Appell Kriminali. Ma kienx kaz li l-ligi obbligat lill-appellanti li jiehdu hsieb Rachel Bowdler, imma kienu huma stess li assumew dak l-obbligu. F'dak il-lejl Rachel Bowdler kienet taht il-kontroll taghhom u kienet tiddependi kompletament u esklussivament fuqhom. Izda minhabba l-interessi taghhom l-appellanti hallewha bla assistenza medika apposita sakemm mietet. Dan ma kienx kaz ta' *ommissione di soccorso*, lanqas ma kien kaz ta' zball jew ta' negligenza imma ta' decizjoni konxja ta' dak li riedu jaghmlu u cioe` li ma jsejhux ghall-assistenza medika biex ma jigux involuti mill-gdid mal-pulizija.

Ghalhekk fil-fehma ta' din il-Qorti l-Qorti tal-Appell Kriminali ma dahhlet ebda kuncett estraneu ta' *duty of care* fil-ligi taghna.

L-appellanti inoltre jikkontendu illi anke kieku dan il-kuncett ta' *duty of care* kien applikabbili u legalment fondat, l-interpretazzjoni tal-Qorti tal-Appell Kriminali estendiet l-applikazzjoni ta' dan il-kuncett, mill-kamp ta' *manslaughter* ossija omicidju involontarju ghall-kamp tal-omicidju volontarju u dan kien jammonta ghal interpretazzjoni estensiva u wiesa.

Kif gia` nghad, f'dan il-kaz il-Qorti tal-Appell Kriminali ma holqot ebda reat gdid ta' omicidju volontarju a bazi ta' nuqqas t'osservanza tad-*duty of care.* Lanqas ma introduciet b'analogija mil-Ligi Ingliza l-kuncett li wassal ghal *manslaughter* taht il-Ligi Maltija. Illi meta l-Qorti kkunsidrat li l-appellanti assumew *id-duty of care* ma jfissirx li dan l-obbligu jaqa' biss fl-isfera tal-involontarju, billi d-*duty of care* li assumew jigi nieqes kemm fejn ikun hemm negligenza, u aktar u aktar fejn ikun hemm 'recklessness' jew 'indifferenza' ghal konsegwenzi u dan billi din l-

indifferenza hija appuntu l-oppost tad-*duty of care*. Ghalhekk wiehed ma jibqax jitkellem dwar kulpa imma dwar dolo[101] kif spjegat fit-tieni forma tal-Artikolu 211 tal-Kap. 9…..
[sottolinejar tal-Qorti]

Illi fis-sentenza tal-Qorti tal-Appell Kriminali fl-ismijiet **Ir-Repubblika ta' Malta vs Omissis, Concetta Decelis, Jason Louis Paul Decelis** inghad: [102]

Issa, ma tidher li hemm l-ebda kontestazzjoni dwar il-fatt li s-sejbien ta' htija f'dan il-kaz hija ta' omicidju volontarju *per via di* ommissjoni taht it-tieni forma kontemplata fl-artikolu 211 tal-Kap. 9 tal-Ligijiet ta' Malta, cioe` fejn l-intenzjoni hi dik li tqieghed il-hajja ta' persuna f'perikolu car, dik l-intenzjoni li nirreferu ghaliha bhala intenzjoni pozittiva indiretta. Bhalma jghid il-Prof. Sir Anthony Mamo[103]: *"The knowledge that the act is likely to kill, or the recklessness whether death, clearly foreseen as probable, shall ensue or not, is properly treated by the law on the same footing as the positive intention to kill."* U bhalma jispjega Gerald Gordon fil-ktieb tieghu **The Criminal Law of Scotland** fil-kuntest tal-kuncett ta' *"recklessness"* (li fil-ligi Skocciza *"is advertent and involves foresight of the risk"*[104] u li ghalhekk hu tista' tghid identiku ghall-kuncett taghna ta' intenzjoni pozittiva indiretta[105]):

"When the reasonable man is used as a test of subjective recklessness the position is that if the reasonable man would have foreseen the risk, it will be accepted as a fact that the accused foresaw it, unless there is strong evidence to the contrary. But if the accused can show that in fact he did not foresee the risk, then it is illogical to characterise him as reckless on the ground that a reasonable man would have foreseen it. As Hall[106] says, *'In the determination of these*

---

[101] Fil-kaz tal-Conti Ugolino, (li ghalih saret referenza fir-rikors tal-appell) kien hemm *legal duty to care*, u nonostante dan instab hati ta' omicidju volontarju u mhux involontarju

[102] Per STO Prim Imħallef Vincent De Geatano, Onor Imħallef David Scicluna, Onor Imħallef Joseph R. Micallef ; Deciza 25 ta' Settembru 2008.

[103]Notes on Criminal Law, p. 221.

[104] 6 Para. 7.45, p. 241; *"…negligence is inadvertent and involves an absence of such foresight."*

[105] Ara **Ir-Repubblika ta' Malta v. Salvatore sive Salvu Gauci**, 8 ta' Lulju 2004.

[106] **Hall, J.**, ***General Principles of Criminal Law*** 2nd ed., Indianapolis, 1960, p. 120.

questions, the introduction of the "reasonable man" is not a substitute for the defendant's awareness that his conduct increased the riskmof harm any more than it is a substitute for the determination of intention, where that is material. It is a method *used to determine those operative facts in the minds of normal persons'*.

"Since evidence of the accused's state of mind must normally consist of objective facts from which the jury will draw an inference as to his state of mind, the more careless the accused's behaviour the more likely it is that he will be regarded as reckless, since the more likely it will be that he foresaw the risk involved. A man who kills another by punching him on the jaw may be believed when he says that he did not foresee the risk of death; but a man who kills another by striking him on the skull with a hatchet will be hard put to it to persuade a jury that he did not realise that what he was doing might be fatal. In *Robertson and Donoghue* Lord Justice-Clerk Cooper directed the jury that "In judging whether…reckless indifference is present you would take into account the nature of the violence used, the condition of the victim when it was used, and the circumstances under which the assault was committed". All these are objective factors affecting the degree of the carelessness of what the accused did, viewed as something likely to cause death.

The jury proceed by way of syllogism to infer from these objective factors that the accused was subjectively reckless, and the major premise is that a reasonable man would have foreseen the risk. So they argue: all reasonable men would foresee the risk of death as a result of what the accused did; the accused is (*ex hypothesi*) a reasonable man; therefore the accused foresaw the risk."[107]

Biex jaslu ghall-konkluzjoni li hawn si trattava ta' omicidju volontarju, il-gurati kellhom ikunu konvinti moralment li (1) jew l-appellanti rat il-mewt bhala konsegwenza ta' ghemilha u riedet dik il-mewt ta' Bowdler, jew (2) li hija rat il-mewt bhala konsegwenza probabbli ta' ghemilha u ghalkemm ma riditx il-mewt hija xorta wahda ommettiet milli taghmel dawk l-atti li kienet taf li probabbilment kienu ser jiskansaw lil Bowdler mill-mewt.

Kif diga` nghad, il-kwistjoni hawn kienet jekk l-appellanti kellhiex l-intenzjoni pozittiva <u>indiretta</u> mehtiega skond it-tieni forma ta' omicidju volontarju.

---

[107] **Gerald Gordon**, *op. cit.* para. 7.53, pp. 245-246.

Jirrizulta mill-provi l-ewwelnett li l-appellanti volontarjament assumiet *"a duty of care"* ta' Rachel Bowdler…..

Jigifieri certament il-gurati setghu ragjonevolment jikkonkludu mhux biss li l-appellanti kienet volontarjament assumiet *a duty of care* izda wkoll li volontarjament ommettiet milli ssejjah ghajnuna medika nonostante li l-kondizzjoni ta' Rachel Bowdler kienet tidher aghar minn dik li kien ikun fiha t-tifel taghha……..

Mela aktar u aktar l-appellanti ma jmissha qatt iddecidiet li tiehu f'idejha r-responsabbilta` ghall-kura ta' Rachel Bowdler u kien indikat li ssejjah l-ghajnuna medika sabiex tezimi ruhha minn kull responsabbilta`……

Tajjeb hawn li ssir referenza ghal dak li jinghad mill-awturi Timothy H. Jones u Michael G. A. Christie fil-ktieb taghhom **Criminal Law** mis-serje **Greens Concise Scots Law**[108] dwar il-kuncett ta' *duty of care* jew *duty to act*:

*"There are also instances where the common law would probably impose a duty to act. This will be the case where an individual has undertaken to do something upon which the health and safety of others depends. Examples of this are the cases of **William Hardie**, where a charge of culpable homicide brought against an Inspector of Poor who had ignored the deceased's application for poor relief was held to be relevant, and an English case, **R. v. Instan**, where a fatal omission by a niece to provide food and medical attention for her invalid aunt resulted in a manslaughter (equivalent to culpable homicide) conviction. The crimes in these two examples were committed by failing to fulfil a legal duty. In **William Hardie** the legal duty was derived from a contract. The failure to act was not just a breach of contract with his employer, however, but provided the basis for a conviction: the duty of care also extended to members of the public he was paid to protect. In **Instan** the duty had been assumed voluntarily. This would seem to imply that if someone agreed to look after a neighbour's child and the child drowned in the bath while that child-minder was watching television, then a conviction for culpable homicide could ensue. This scenario could be analysed either in terms of a voluntary assumption of a duty of care or of a contractual obligation."*

108 **W. Green/Sweet & Maxwell**, Edinburgh 1996, p. 46.

U f' **Blackstone's Criminal Practice 2004** naqraw[109]:

"If a person voluntarily undertakes to care for another who is unable to care for himself as a result of age, illness or other infirmity, he may thereby incur a duty to discharge that undertaking, at least until such time as he hands it over to someone else. In ***Instan*** *[1893] 1 QB 450, D lived with her aunt, who was suddenly taken ill with gangrene in her leg and became unable either to feed herself or to call for help. D did not give her any food, nor did she call for medical help, even though she remained in the house and continued to eat her aunt's food. She was convicted of manslaughter. The principle laid down in* ***Instan*** *was applied and extended in* ***Stone*** *[1977] QB 354. Stone's sister, Fanny, came to live with him and his mistress, Dobinson. Fanny was suffering from anorexia, but was initially able to look after herself. Gradually, however, her condition deteriorated, until she became bed-ridden. She needed medical help, but none was summoned and she eventually died in squalor, covered in bed sores and filth. Stone and Dobinson were each convicted of her manslaughter and the Court of Appeal upheld their convictions.* ***Because they had taken Fanny into their home, they had assumed a duty of care for her and had been grossly negligent in the performance of that duty.***

The fact that Fanny was Stone's sister was merely incidental to this."
[sottolinejar u emfazi tal-Qorti]

Imbaghad f'**Archbold – Criminal Pleading, Evidence and Practice 2006**[110] jinghad dwar id-*duty of care*:

"The duty of care belongs more to the fields of contract and tort than to this work. However, the following should be noted.

"(a) It is in general for the judge to decide whether there is evidence capable of giving rise to a duty of care, and, if there is, it is for the judge to give the jury appropriate directions, but it is for the jury to decide, in the light of those directions, whether the defendant in fact owed the deceased a duty of care; but there might be exceptional cases where a duty of care obviously

[109] Para. A1.14 p. 9.
[110] p.1799 -1800, para. 19-111.

*existed, as between doctor and patient or where Parliament had imposed a statutory duty, and, in such cases, the judge could properly direct the jury as to the existence of the duty: **R. v. Willoughby** [2005] 1 Cr.App.R. 29, CA. See also **R. v. Khan and Khan, ante**, and **R. v. Sinclair**, 148 N.L.J. 1353, CA (978400/2/4 Yf).*

*"(b) A person may become liable for manslaughter by neglect of a positive duty arising from the nature of his occupation: **R. v. Lowe** (1850) 3 C. & K. 123 (an engineer in charge of the lift in a mine left it in the care of an ignorant boy); **R. v. Markus** (1864) 4 F. & F. 356 (a doctor absenting himself for the purpose of sport or some similar activity left unattended a patient whom he knew to be in a precarious condition); **R. v. Curtis** (1885) 15 Cox 746 (a local authority officer neglected to provide medical assistance to a destitute person). To hold that a person who supplied controlled drugs to another, owed the other a duty of care when the other, having consumed the drugs in his presence, was in obvious need of medical attention, would undoubtedly enlarge the class of persons to whom a duty of care was owed: **R. v. Khan and Khan, ante. Cf. R. v. Sinclair, ante**: whilst there is no authority holding that a medically unqualified person is under a duty to render assistance to a stranger or could come under such duty by virtue of the passage of time, a person who had been instrumental in his friend obtaining a fatal overdose of drugs, and who remained with him throughout the period of unconsciousness might come under such duty; and **R. v. Ruffell** [2003] 2 Cr.App.R.(S.) 53, CA: where the appellant, an experienced drug user, and the deceased, a friend who had been clean for some time, went to the appellant's family home, after an evening's drinking and there injected themselves with heroin, following which the deceased became ill, whereupon the appellant took steps to revive him, it had been open to the jury to find that the appellant had assumed a duty of care towards the deceased."……*

Minn dan kollu din il-Qorti tikkonkludi li ghalkemm certament l-appellanti ma riditx il-mewt ta' Rachel Bowdler hija kienet reckless dwar il-konsegwenzi ta' l-agir taghha, ossia l-ommissjoni voluta taghha li ssejjah minnufih l-ghajnuna medika bir-riskju rejali li dik l-ommissjoni taghha kienet twassal ghall-mewt ta' Bowdler, u dan ghall-motiv li ma riditx lil binha jerga' jkollu problemi mal-gustizzja…..

Ghalkemm huwa minnu li l-ligi kriminali ma tipprovdix testwalment ghal dak li huwa msejjah *a duty of care*, minn dak li ntqal qabel meta kien qieghed jigi trattat ir-rikors ta' Concetta Decelis u mis-siltiet citati aktar 'il fuq minn awturi esteri, m'hemm l-ebda dubju li l-ewwel Qorti

korrettement interpretat in-nuqqas volontarju ta' persuna li ghandha *a duty of care* li tipprovdi l-kura, ossia l-ghajnuna, rikjesta u liema nuqqas iwassal ghall-mewt ta' persuna, bhala nuqqas li jista' jkollu konsegwenzi penali.

Ghalhekk, fic-cirkostanzi rizultanti mill-provi u fid-dawl ta' dak li ntqal aktar qabel, din il-Qorti hi tal-fehma li l-gurati setghu ragjonevolment jikkonkludu li l-appellant Jason Decelis kien ukoll assuma *a duty of care*.

[sottolinejar tal-Qorti]

Illi fis-sentenza tal-Qorti Kriminali **Ir-Repubblika ta' Malta vs Sergii Nykytiuk**[111] l-akkuzat kien instab hati t'omicidju volontarju meta naqas milli jipprovdi ghajnuna, lill-martu li kienet waqghet gox-shaft tad-dar matrimonjali. Il-prosekuzzjoni argumentat b'success li l-akkuzat naqas milli jipprovdi id-*duty of care* dovut lil Liudmyla Nykktiuk liema obbligu kien naxxenti mir-relazzjoni taghhom ta' mizzewgin. **Sergii Nykytiuk** instab hati li abanduna lil martu fil-qiegh nett ta' dan ix-xaft u hallieha hemm wahidha fejn wara sieghat twal tbaghti b'ugieh kbir kawza tal-feriti li garbet, mietet.

Fil-fehma tal-Qorti meta Salvatore u Stanley ghazlu li Serafina ma tigix riferuta l-isptar, izda ddecidew li minkejja l-istat fragili li kienet fih jibqghu 'jiehdu hsiebha' huma f'darhom, huma assumew doza ferm akbar tad-*duty of care* li kellhom fuq persuna li kienet tghix maghhom; Salvatore Chircop tenna "*Kien hemm jien carer maghha*".[112] Aktar milli semplici residenta f'darhom din kienet

[111] Per Onor. Imhallef Michael Mallia; Deciza 26 t'Ottubru, 2011
[112] Fol.211

omm imputat wiehed u mart l-iehor. Altru` li kellhom *duty of care* lejn Serafina Chircop.

Jirrizulta ampjament ippruvat li minflok hadu hsieb Serafina, din thalliet fi stat inuman u xokkanti tbaghti minn ksur, hruq, griehi u fi stat inkallat.

Fid-dawl ta' dawn ir-rizultanzi tirrizulta manifestament l-*culpa.* Gie ampjament pruvat in-ness bejn l-kondotta tal-imputati u r-rizultat, u cioe` bejn it-traskuragini minn taghhom u l-mewt ta' Serafina Chircop. **L-agir tal-imputati kien wiehed volontarju li bla dubbju kkaguna l-att dannuz, li ghalkemm mhux volut, certament kien prevedibbli. Mietet b'*pneumonia* li giet ikkawzata mill-kundizzjoni fragili li spiccat fiha l-vittma, kundizzjoni pprecipitata minn nuqqas ta' kura, igene u mill-istat ta' sahha allarmanti li n-nuqqasijiet taghhom wassluha ghalih.**

Kienet it-traskuragini taghhom li wasslet ghall-mewt ta' Serafina Chircop. Kienet it-traskuragini taghhom li rriduciet lil Serafina vittma fi stat deskritt mit-tobba bhala "moribonda", ***"malnourished",* f' *"neglect"* u *"emaciated"*** - kwalunkwe aggettiv u/jew dettal iehor ikun superfluwu.[113] Kien f'dan l-istat li thalliet tiddeterjora ftit ftit, fejn mara minghajr *history* ta' *heart disease* sfat vittma ta' ***"cardiorespiratory failure due to malnutrition"***[114].

[113] Xhieda fol. 182; 'Emaciated' hu terminu biex jiddeskrivi *muscle wastage,* telf ta' piz u *dehydration li jirrendu persuna dghajjfa u minghajr sahha.*
[114] Fol.65

Illi l-espert Dr. Safraz hu kategoriku w inekwivoku: **il-mewt taghha kienet wahda dovuta ghan nuqqas t'igene, u dan minhabba li l-*bedsores* - li baqaw ma gewx ikkurati anzi thallew jaggravaw bin-nuqqas t'igene li thalliet tghix fih - ikkawzaw *stasis* (nuqqas ta' cirkolazzjoni) li interalia wassal sabiex Serafina tinhakem minn pneumonia**. Jidwi kliemu: "***The pneumonia is precipitated by stasis, poor nutrition, poor hygiene and bedsores yes all this contribute to pneumonia*****......** ***Yes bed sores can cause pneumonia."*****.**[115]

U min kien resposnabbli biex jara li Serafina ma tkunx soggetta ghall-hmieg, ma tithallisx issofri *bedsores* kawzati minn nuqqas ta' cirkolazzjoni, tigi kkurata w nutrita? Hadd ghajr l-imputati, zewgha u binha li jammettu li ma kienux kapaci iccaqqalquha w li ghazlu konxxjenzozament ihalluha f'dak l-istat pjetuz u dizuman li fl-ahhar mill-ahhar wassal ghall-mewt taghha.

Minn naha tieghu Dr. Mario Scerri kien daqstant iehor kategoriku u definittiv meta jafferma: "*Serafina Chircop* ***kienet definittivament mitluqa u ma kienitx qed tircevi l-ghajnuna u l-attenzjoni li kienet tehtieg****...Illi l-area tal-iscalds deskritta fuq iz-zaqq ..saret minn* ***carcir ta' likwidu jahraq****....[il-ksur] jistghu ikunu kompatibbli ma waqgha minn fuq is-sodda jew ma handling bil-goff...****kellha bzonn l-ghajnuna, ntelqet f'sodda minghajr ma tbiddlulha l-hwejjeg, minghajr ma giet mahsula u minghajr ma tbiddlu l-lozor li fuqhom kienet... iddahhlet l-Isptar Mater Dei f'kondizzjoni tant fragili illi***

[115] Fol.185

din ma rpiljatx u eventwalment mietet *fit-taqsima tal-kura ntensiva".*[116]

Altru ghalhekk li l-ewwel imputazzjoni giet ampjament ippruvata.

Illi dwar il-piena l-Qorti qiset in-natura tar-reat li huma akkuzati bih l-imputati, tal-fedina penali taghhom minn fejn jirrizulta li ma kienux xi *first-time offenders*. Ikkunsidrat ukoll ir-relazzjoni tal-vittma mal-imputati, u tac-cirkostanzi kollha tal-kaz. L-istat li thalliet tiddeterjora fih Serafina Chircop ma jista' jsib ebda skuza jew gustifikazzjoni. Mara ta' 64 sena spiccat tidher ta' mara ta' l-fuq minn 90 sena. Thalliet fi tbatija intortament, sforz traskuragini ta' dawk li tul hajjitha qisuha bhala *"il-pilastru tad-dar".*[117]

Gie kkunsidrat partikolarment il-fatt li n-nuqqas tagghom ma kienx dovut ghal xi incident izolat, izda l-kondotta traskurata u non-kuranti tagghhom kienet wahda mixfruxa fuq tul taz-zmien u mhux xi att izolat ta' negligenza. Din il-mara setghet tigi meghjuna ferm qabel li kieku ezercitaw id-diligenza u l-prudenza mistennija minnhom.

Ghalkemm mhix ser tigi imposta piena karcerarja, il-fatti specie tal-kaz jimmiltaw li tinghata piena ta'sentenza ta' prigunerija sospiza fil-massimu erogabbli.

---

[116] Fol.95-96
[117] Fol.188

Ghal dawn il-mottivi din il-Qorti wara li rat l-artikolu 225(1) tal-Kapitolu IX tal-Ligijiet ta' Malta, issib lill-imputati hatja tal-imputazzjoni migjuba fil-konfront taghhom u tikkundannahom ghal piena ta' sentejn prigunerija li bl-applikazzjoni ta' l-artikolu 28A tal-Kapitolu IX ta' l-Ligijiet ta' Malta qeghdin jigu sospizi ghal erba snin millum.

Il-Qorti spjegat lill-hatja l-konsegwenzi jekk jikkommettu reat iehor waqt il-perjodu operattiv ta' din is-sentenza.

Inoltre` bl-applikazzjoni ta' l-artikolu 533 tal-Kapitolu IX tal-Ligijiet ta' Malta qeghda tordna lill-hatja jhallsu bejniethom l-ammont ta' €732.83[118] rapprezentanti l-ispejjez peritali.

Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)
Magistrat

---

118 €366.42 kull wiehed