FIL-QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI

Magistrat Dr. Monica Vella LL.D., M.Jur.

Kumpilazzjoni Nru. 313/2020

Il-Pulizija
(Spettur Jonathan Ransley)

Vs

Harouna Sow

Illum, 4 ta' Dicembru, 2020

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra:

"**Harouna Sow**, detentur tal-passaport Senegalese A02411535

Nakkuzah talli b'diversi atti maghmulin minnhu, ukoll jekk fi zminijiet differenti, li kienu jiksru l-istess disposizzjoni tal-ligi u li gew maghmula b'rizoluzzjoni wahda u cioe' talli:

Nhar is-27 ta Gunju 2020 bejn il-11:15 ta' filghodu u l-11:30 ta' filghodu gewwa l-lokalita' ta' l-Msida:

1. Ikkaguna lil Samuel Gouder ta' 67 sena griehi hfief skont kif certifikati minn Dr M.G. Grech numru ta' registrazzjoni 4425 tac-centru tas-sahha tal-Gzira;

2. Ikkaguna lil Patrick Cesare griehi hfief skont kif certifikati minn Dr. M.G. Grech numru ta' registrazzjoni 4425 tac-centru tas-sahha tal-Gzira;

3. Ikkaguna lil Speranza Cauchi griehi hfief skont kif certifikati minn Dr. Marija Farrugia ta' l-isptar Mater Dei;

4. Volontarjament ksirt il-bon ordni jew il-paci pubblika b'ghajjat u storbju.

Il-Qorti hija mitluba sabiex tipprovdi ghas-sigurta' ta' Samuel Gouder, Patrick Cesare u Speranza Cauchi billi jigu applikati l-provedimenti tal-Artikolu 412C tal-Kap 9 tal-ligijiet ta' Malta;

Il-Qorti hija mitluba ukoll flimkien ma' hrug ta' ordni ta' protezzjoni tohrog ordni ta' trattament li jkun mehtieg fil-konfront ta' l-akkuzat Harouna Sow u dan ai termini 412D tal-Kapitolu 9 tal-ligijiet ta Malta."

Semghet ix-xhieda.

Rat il-kunsens ta' l-Avukat Generali sabiex il-kaz jigi trattat bi procedura sommarja a folio 17 tal-process.

Rat li fis-seduta ta' l-10 ta' Lulju, 2020 il-Qorti hatret lill-psikjatra George Debono sabiex jistabilixxi jekk l-imputat huwiex *fit to stand trial,* u dan fuq talba tal-Prosekuzzjoni, liema talba ma gietx opposta mid-Difiza.

Rat ir-rapport Psikjatriku ta' Dr. George Debono a folio 50 tal-process prezentat minnu fil-31 ta' Lulju, 2020

Rat ukoll ir-Rapport Psikjatriku ta' Dr. Joseph R. Saliba u Dr. David Cini a folio 121-125 tal-process.

Rat l-atti u d-dokumenti kollha.

Semghet it-trattazzjoni finali.

Ikkunsidrat:

Giet prezentata l-**istqarrija ta' l-imputat**[1] fejn fiha l-imputat spjega li jifhem li qieghed jiggieled ma' nies pero' ma jiftakarx kif u ghaliex iggieled. Mistoqsi jafx fejn jinsab Wembley Kiosk, ix-xhud spjega li jaf fejn jinsab u li fil-post in kwistjoni kellu glieda izda ma jafx ma' kemm nies kellu l-glieda. L-imputat ma ftakarx li beda jwaddab il-fliexken fit-triq.

L-Ispettur **Jonathan Ransley**[2] xehed nhar l-24 ta' Lulju, 2020 fejn spjega li fis-27 ta' Gunju ta' din is-sena u cioe' 2020 ghall-habta tal-hdax u nofs ta' filghodu, il-Pulizija ta' l-Imsida ircevew rapport illi kien hemm persuna li giet aggredita fi Triq Censu Farrugia l-Imsida u

[1] A folio 15-16 tal-process
[2] A folio 32-35 tal-process

persuni ohra aggrediti fi Triq il-Wied l-Imsida. Spjega li l-Pulizija tad-distrett marru fuq il-post flimkien ma' dawk tal-RIU u zammew persuna ta' karnaggjon skur li giet indikata mill-vittmi. Zied jghid li s-surgenta 256 kellmet tlieta minn nies: kellmet lil Speranza Cauchi fejn qalet li kienet miexja minn Censu Farrugia Street Imsida u waqt li kienet mixja, innutat lill-imputat, li inizjalment kienu mexjin f'direzzjoni opposta, jimxi warajha. Kien ghalhekk li hi qasmet it-triq izda l-imputat qasam warajha, mar fuqha u taha daqqa ta' ras f'wiccha u b'konsegwenza t'hekk intilfet minn sensiha u waqghet ma' l-art. It-tieni persuna li s-surgenta 256 kellmet kien Samuel Gouder li spjegalha li kien qieghed jiehu xi haga mill-Wembley Kiosk li qieghed fi Triq il-Wied l-Imsida u waqt li kien hemm, gie dan l-istess persuna, gholla l-mejda u attakkah. It-tielet persuna li l-Pulizija kellmu kien lil Patrick Cesare fejn infurmahom li waqt li kien ghaddej minn Censu Farrugia Street ra l-incident tal-Wembley Kiosk isehh, ra lilll-istess persuna ha jmur jattakka lill-persuna ohra u mar izommu.

L-Ispettur kompla jispjega li minn dak li qallhom l-imputat, hu kien joqghod Chally Guest House l-Imsida li tinsab fejn l-Wembley Kiosk ukoll u mill-passaport li kien hemm fil-kamra tieghu rrizulta li huwa Harouna Sow bin-numru tal-passaport ta' Senegal A02411535.

Spjega li peress li l-pulizija nfurmawh li kien daqsxejn suspettuz, issuspettaw li seta' kien taht l-effett ta' xi drogi u ghalhekk tahom struzzjonijiet biex inizzluh l-Isptar Mater Dei sabiex jiccekkjawh u jkellmu lis-sezzjoni psikjatrika biex jkun *cleared* miz-zewg nahat. Huwa zied jghid li din hija procedura normali li ssir.

Kompla li aktar tard matul il-gurnata l-imputat gie ammess Mount Carmel Hospital u fis-sitta ta' Lulju 2020 ircieva telefonata mit-tabib ta' Mount Carmel fejn staqsih x'ha jsir minnu u nfurmah li ghandu

bzonn *long term cure*. Spjega li t-tabib kien qallu li dak il-hin l-imputat kien psychotic izda fit-8 ta' Lulju 2020, l-istess xhud kien infurmat li ha jigi *discharged*. Kompla jispjega li ghalhekk ordna l-arrest tieghu u gie mitkellem fid-9 ta' Lulju 2020 waqt liema huwa kien irrifjuta d-dritt moghti lilu ta' l-avukat u ghadda biex jghidlu li ma kien jiftakar xejn mill-incident u li din kienet l-ewwel darba li esperjenza xi haga hekk. L-Ispettur zied li l-imputat qallu li kien qisu qed jhossu tiela' fl-arja filwaqt li qallu li Alla tieghu u cioe' Muhammed ta' l-Islam ried hekk u gie mressaq quddiem il-Qorti il-gurnata ta' wara.

Xehed **Dr. George Debono**[3] fil-31 ta' Lulju, 2020 fejn spjega li hu ra lill-imputat fil-Facilta' Korrettiva ta' Kordin u a kuntrarju ta' dak li kkonkludew tobba ohra u cioe' li waqt ir-reat dan "kien mignun", "kien qieghed ibati minn attack ta' mania", hu spjega li meta rah hu sabu *fit to stand trial* filwaqt li kompla li wiehed irid iqis il-kultura u r-religjon ghax s-sintomi jkunu differenti, u ghalhekk kkonkluda li waqt l-incident kien *acute mania*. Zied li l-imputat qatt ma kellu xejn qabel izda gie infurmat mill-imputat stess li meta kien l-Italja kien hass xi haga simili pero' ma zviluppax *f'acute mania*.

It-tabib Debono spjega li "*meta jkunu acutely manic huma jkollhom amnesia, ma jiftakrux x'jaghmlu u x'ma jaghmlux. Fil-fatt hu qed jghid li ma jafx. Difficli bil-lingwa, jigifieri mhux imbilli qal jitkellem bl-Ingliz u bit-Taljan, jien kellimtu bit-tnejn u trid tirrepeti ghax ma jifhimx. Meta staqsejtu jekk jahsibx li hu Alla l-ewwel qalli iva ghax ma fehmnix imbaghad meta bdejt nirrepeti qalli, "Le ma tarax! Jien mhux Alla!" jigifieri hu jhawwad fil-lingwi pero' kemm kien il-habs jiekol tajjeb, jorqod tajjeb minghajr problemi. Mhux qed jiehu l-medicini, ma riedhomx u ma kienx problema. Jigifieri he was ok. Still nahseb li ghal xi zmien, wiehed irid jara kif ser tisvolgi din ghax tista'*

[3] A folio 46-49 tal-process

tkun attack darba ta' mania li tigri specjalment f'certu kulturi, anqas tkun propja mania imma tkun aktar hysteria imma tkun tidher qisu genn. Xorta jaghmlu hmerijiet. Issa dan l-ahhar erbat ijiem kien bla medicini. Baqa' tajjeb. Jorqod hemm, inkwiet ta' xejn. Meta kellimtu jien good eye contact, kien edukat hafna. Qisu haruf kien. Qal li jhobbhom lin-nies u qatt ma jrid ma jiggieled, ma jafx x'gara. Hu qalli li l-ewwel qalbu bdiet thabbat hafna. Li veru tigri f'mania. Imbaghad spluzjoni go mohhu. Hu dan l-ahhar kien qieghed jiffissa ftit fuq ir-religjon taghhom u f'daqqa wahda gie spirat hu li issa tghallimha sew."

Mistoqsi jekk jista' jerga' jaghtih dan l-attakk, it-tabib Debono spjega li ladarba esperjenzaha, jista' jerga' jesperjenzaha filwaqt li kompla jispjega li attakk ta' *mania* f'Malti jiehu mill-anqas 45 gurnata biex jibda jsir ahjar. Spjega li fil-prezent ma huwiex perikoluz izda issuggerixxa follow-up fl-isptar jew Mount Carmel.

Il-Qorti tinnota li fir-rapport, Dr. George Debono rrapporta s-segwenti:

"Waqt l-ezami wera mgieba tajba, kien lucidu u orjentat tajjeb, kif ukoll kien kalm u kompost matul is-seduta. L-ezami sar bil-lingwa Ingliza mhallta mat-Taljan, izda xorta kienet difficli ghax ma kienx daqshekk intiz fil-lingwi daqs kemm kien wiehed jahseb. Infatti bosta drabi kellu jigi mistoqsi kemm-il darba biex jifhem. Il-memorja tieghu kienet tajba u ma kelux allucinazzjonijiet, izda kellu evidenza ta' deluzjonijiet religjuzi. Hu stqarr li ghal xi zmien qabel l-incident kien qed ihossu aktar migbud lejn ir-religjon minn qabel. Fil-gurnata tal-incident hu hass qalbu thabbat hafna u wara ftit bhal spluzjoni f'mohhu u dak il-hin hassu b'sahhtu hafna li kien qed ihossu Alla. Hu kellu eccitament kbir, izda ma setax jispjega ezatt x'kien qed jigrilu imma

hass il-prezenza t'Alla. Min dak iz-zmien l'hawn qed jitlob hames darbiet kuljum u stqarr illi qed jifhem ir-religjon ahjar.

...

Fis-27/06/2020 l-imputat kien involut fi glieda u wara li gie arrestat, intbaghat l-emergenza ta Mater Dei u wara fl-isptar Monte Karmeli, fejn ghamel xi zmien. Fir-rapport taghhom deher il-fatt li kien qed ibati min psikozi akuta u kellu bzonn il-kura. Dakinhar kellu eccitament qawwi u mgieba mhux normali. Wara li gie fil-Facilita' Korrettiva ta' Kordin irrifjuta l-medicina ghaliex qal li mohhu qieghed tajjeb issa. Waqt iz-zmien hawnhekk, hu ma weriex imgieba hazina, il-burdata tieghu kienet normali u kien jorqod u jiekol tajjeb u ma kellux problem ma' l-istaff.

...

Mill-ezami tieghi kkonkludejt illi waqt l-incident vera kien qed isofri minn attakk ta' genn (Acute Mania), izda bhalissa mhux qed juri ebda sinjali ta' "mania" hlief forsi deluzzjonijiet religjuzi, illi peress illi mhumiex akkumpanjati b'sintomi ohra ta' "mania" jistghu ikunu "over valued ideas" jew "delusional like ideas", li aktarx ikunu ibbazati fuq ir-religjon u l-kultura nvoluta u jistghu ikunu spjegati hekk. Barra minhekk, kien jaf x'inhu tajjeb u hazin. Qal li jixtieq jitlob skuza lil min wegga' ghaliex qatt ma ried jaghmel hsara lil hadd u baqa' jinsisti li ma kienx jaf x'qed jaghmel. Deher ukoll li ma jafx tajjeb il-proceduri tal-qorti, izda dan huwa minhabba l-injoranza u diffikulta' ta' komunikazzjoni milli minn mard mentali."

Xehed **Samuel Gouder**[4] nhar il-31 ta' Lulju, 2020 fejn spjega li huwa kien qieghed jiehu drink ma' mejda gewwa l-Imsida u ghadda l-imputat li tella' jdejh u beda jghajjat "*Allah u akbar. Allah u akbar"*, dar fuqu, kisser il-mejda, qabad it-tazza li minnha kien qieghed jixrob ix-xhud u tah daqqa biha fil-genb ta' ghonqu fuq in-naha tal-lemin tieghu, tant li kawza tad-daqqa kellu qisu tbengil ahmar. Tenna li sussegwentament rah diehel f'guesthouse ta' Stivala u rega' hareg wara ftit. Ix-xhud kompla jghid li wara ftit sekondi ra mara niezla kollha demm li bdiet tghidlu *"Ara x'ghamilli," Ara x'ghamilli!"*. Tenna li lill-imputat qatt ma rah, bezzghu hafna taht li qal li *"Bellahni. Filghaxija anqas irqadt ghax dan li kieku kellu sikkina mhux qieghed hawn"*. Mistoqsi mid-Difiza jekk hux lest li jahfirlu, ix-xhud qal *"Ma nistax nahfirlu zgur", "Dan seta' qatilni"*.

.

Nhar il-31 ta' Lulju, 2020 xehdet **Speranza Cauchi**[5] fejn spjegat li nhar is-27 ta' Gunju, 2020 hi marret tixtri pakkett sigaretti u hekk kif kienet niezla lura lejn id-dar, rat lill-imputat niezel gewwa Triq Censu Farrugia, fl-Imsida u beda jghajjat xi haga li ma tafx x'inhi izda tiftakar li semghat il-kelma '*Alla'*. Kompliet li l-imputat taha daqqa u intilfet minn sensiha. Mistoqsija x'daqqa taghha, hija qalet "*Ma nafx. Bdew jghidu li daqqa ta' ras tani. Ma nafx ghax [ghaddew] seconds. Qatt ma rajt bniedem hekk jien*" filwaqt li ziedet li lill-imputat la qatt ratu u lanqas tafu. Hija marret tirrapporta l-ghassa u wara ittiehdet bl-ambulanza l-isptar.

Nhar il-31 ta' Lulju 2020 xehed ukoll **Patrick Cesare**[6] li spjega li dak inhar hu kien ghaddejj bil-karozza mill-Imsida u ra lill-imputat jaghti daqqa lil Speranza Cauchi u telaq jigri. Kompla jghid li l-imputat kien

---

[4] A folio 51-53 tal-process
[5] A folio 54-57 tal-process
[6] A folio 64-67 tal-process

sejjer fuq mara ohra anzjana izda waqqfu, ghamel ghalih u gew fl-idejn tant li sofra griehi u kellu jmur il-polyclinic.

WPS 256 Lyanne Sant[7] xehdet li fis-27 ta' Gunju 2020 ghal habta tal-hdax u nofs ta' filghodu l-Ghassa ta' l-Imsida gew infurmati li kien hemm persuna ta' karnaggjon skur li kien ghadu kemm hebb ghal mara go Triq Censu Farrugia kif ukoll nies ohra go Triq il-Wied. Spjegat li huma cemplu ghall-assistenza tal-RIU li marru jassistuhom fuq il-post kif ukoll ambulanza ghal wahda mill-vittmi certu Speranza Cauchi li kellha demm fuq wiccha u anka fuq il-hwejjeg taghha. Kompliet li minn investigazzjoni li ghamlu rrizulta li kien hemm zewg vittmi ohra certu Samuel Gouder u Patrick Cesare; Samuel Gouder kien qed jiehu te' l-Wembly Kiosk gewwa Triq il-Wied l-Imsida ma' xi nies ohra u l-imputat mar fuqhom u minghajr ebda raguni, ghollilhom il-mejda u beda jagredixxi xi nies hemm hekk ukoll. Tenniet li sussegwentament gie arrestat immedjatament mill-pulizija tal-RIU u ttiehed gewwa l-ghassa ta' l-Imsida. Qalet li Speranza Cauchi kienet qalitilha li qalghet daqqa ta' ras go wiccha mill-imputat filwaqt li kompliet li kienu it-3 vittmi li identifikawh. Ix-xhud prezentat zewg filmati ta' CCTV cameras li gabru minn Triq Censu Farrugia fejn fihom l-imputat jidher jigri u jaghmel atti u mossi mhux normali fit-triq.

Ix-xhud spjegat li waqt li kienu qieghdin jippruvaw jikkomunikaw ma' l-imputat, dan ta' l-ahhar "*beda jaghmel tratti mhux normali, beda jghajjat go l-ghassa, beda jsabbat rasu mat-tarag ta' l-ghassa ta' l-Imsida. Kelli inhalli zewg pulizija mieghu ukoll biex ma jkomplix jwegga' lilu nnifsu" … "Beda jghid kliem pero' ahna ma bdejnix nifhmuh ghax mhux fil-lingwa Maltija u lanqas fil-lingwa Ingliza*".

[7] A folio 87-93 tal-process

Kompliet tghid li sabiex jiddentifikaw lill-imputat, hi baghtet lil PC 470, PC 376 u PC 1176 gewwa Charlie's Guest House fejn hu qal li jabita u gew infurmati li kien joqghod wahdu fil-kamra number 5B fejn fl-istess kamra instab il-passaport tieghu u ttiehed ghal aktar investigazzjonijiet. Spjegat li minnu hadet ismu, u dettaji ohra inkluz passaport numbru AO 2411535

Charisse Boffa[8] fil-kapacita' taghha ta' ufficjal tal-Probation giet assenjata dan il-kaz fis-17 t'Awwissu 2020 u l-ewwel komunikazzjoni li kellha ma' l-imputat kien biss ftit jiem wara permezz tat-telephone li dak iz-zmien kien jinstab fil-Facilita' Korrettiva ta' Kordin u pruvat tispjegalu r-rwol taghha izda minhabba l-*language barrier* ma rnexxiliex. Kien ghalhekk li kkomunikat ma' l-awtoritajiet tal-habs u ghamlet appuntament ghal Skype session fil-31 t'Awwissu 2020, liema session giet iffissata sabiex jkun jaf min hi izda din is-session ma setghetx issir ghax kien gie trasferit fil-Forensic Unit fejn kien qieghed jsirlu *psychiatric assessment* u kien qieghdin jistennew rapport mill-psikologa Roberta Holland filwaqt li ziedet li qieghed taht il-kura ta' Dr. David Cini u taht il-konsulent Dr Joseph Saliba. Hija spjegat li l-attitudni ta' l-imputat gewwa l-Forensic Unit hija wahda tajba, qed ikun kooperattiv ma' l-istaff u mal-prigunieri ohrajn hemm hekk. Kompliet tghid li regghet ghamlet tentattiv iehor sabiex tkellmu permezz tat-telephone peress li ma tistax tmur fizikament minhabba s-sitwazzjoni tal-COVID-19, pero' ma tantx setghetx tiehu informazzjoni mill-ftit li kellimitu.

Fl-1 ta' Ottubru, 2020 Charisse Boffa[9] kompliet tixhed fejn spjegat li mis-27 ta' Settembru, 2020 hija kkomunikat mal-psikjatri li ghadhom qed jaraw lill-imputat fejn spjegawlha d-diagnosis ta' l-istess u li l-

[8] A folio 102-105 tal-process
[9] A folio 107-109 tal-process

medication qieghed ikun responsive ghaliha, liema medicina ghadu bzonnha on a long term basis u cioe' ghal circa sentejn. Madanakollu spjegat li bhala co-operation tieghu, l-andament tieghu hija wahda tajba tant li l-psikjatri qieghdin jissugerixxu li jigi transferred go acute unit gewwa Mount Carmel sabiex ikompli jkun hemm observation pero' l-kura tkun naqra iktar holistic minn fejn qieghed.

Il-Probation Officer spjegat li hi kkomunikat ma' ohtu u ma' tnejn minn shabu biex tiehu naqra iktar feedback fuq il-hajja tieghu qabel ma wettaq dan l-allegat reat. Ohtu spjegat illi fil-familja tieghu ma kien hemm l-ebda problema ta' sahha mentali, f'pajjizhom kellhom trobbija tajba fis-Senegal u gejjin minn familja religjuza. Iz-zewg shabu wkoll ikkonfermaw li huwa persuna mhux aggressiv u rrimarkaw li ricentament missieru miet allura dan seta' jikkaguna ukoll certu diffikultajiet u l-fatt li kien tilef ix-xoghol minhabba l-COVID 19. Il-Probation Officer tenniet li din l-informazzjoni kien spjegahilha l-imputat stess ukoll bl-ghajnuna ta' l-interpretu lil psikjatri li qed jsegwuh gewwa Mount Carmel.

Fit-13 ta' Ottubru, 2020 il-Probation Officer, Charisse Boffa[10], xehdet li mill-ahhar xhieda taghha ma kienx hemm zviluppi filwaqt li kompliet li baqghet tikkomunika ma' ohtu u habib ta' l-imputat gablu xi dokumenti inkluz karta ta' l-identita' Taljana u l-Permesso di Soggiorno tieghu fl-Italja.

Dr. David Cini[11] xehed nhar it-13 ta' Ottubru, 2020 fejn ghamel referenza ghar-rapport redatt u prezentat minnu u spjega li hu u Dr. Joseph R. Saliba waslu ghas-segwenti konkluzjonijiet:

[10] A folio 111-112 tal-process
[11] A folio 114-120 tal-process

"There is good reason to consider that the time of the alleged act Mr. Sow may have lacked mens rea due to florid psychotic state requiring subsequent admission to Mount Carmel Hospital and anti-psychotic treatment as per report attached. As per law recommendations independent Court expert should be appointed to assess mens rea at the time of the act.

In any case it is important for the Court to ensure that he does continue to receive treatment under the appropriate provisions of the law depending on whether or not he is finally found responsible for the alleged offence. International recommendations stipulate a minimum duration of anti-psychotic treatment which he is at present taking for a period of two years, and that he is to remain engaged in psychiatric services"

Dr. Cini rrakomanda li l-imputat jibqa jiehu l-medication u fin-nuqqas, hemm possibilita' li jerga' jkollu episodju iehor u ghalhekk kkonkluda li "From our end another possible recommendation is that he is given a probation treatment under article 412D with the main recommendation that he remains on psychiatric treatment for a minimum of two years and that he remains engaged in psychiatric services".

Ikkunsidrat:

Illi l-imputat gie akkuzat talli ikkawza griehi ta' natura hafifa fuq tliet persuni u talli kisser il-bon ordni u l-paci pubblika.

Illi wara li fliet l-atti tal-kaz, id-dokumentazzjoni kollha kif ukoll ix-xhieda tal-vitmi tirrileva li mill-provi kollha migjuba mill-Prosekuzzjoni f'dan il-kaz irrizulta minghajr ebda dubju dettat mir-raguni li l-imputat aggredixxa u wegga' lill-vittmi. Dan jirrizulta kemm

mix-xhieda tal-vittmi izda ukoll minn xhud okkulari li ra lill-imputat jaggredixxi lil wahda mill-vittmi u li kien sejjer fuq ohrajn izda lahaq zammu.

Illi kien proprju tul it-trattazzjoni tal-kawza li d-Difiza issollevat l-eccezzjoni ta' l-insanita' fil-mument tar-reat. Il-Qorti taqbel mal-Prosekuzzjoni in kwantu d-Difiza kellha tissolleva din l-eccezzjoni proprju fil-bidu tal-proceduri quddiem din il-Qorti. Madanakollu, l-Qorti tirrileva li kienet il-Prosekuzzjoni stess li talbet il-hatriet ta' esperti sabiex jezaminaw lill-imputat. In oltre, l-Qorti hija obbligata li filwaqt li tipprotegi lill-pubbliku b'mod shih, tara li ssir gustizzja xierqa.

Ghalhekk il-Qorti ser tghaddi sabiex tezamina jekk l-imputat kienx fi stat ta' genn fil-mument tar-reat. L-artikolu 33 tal-Kapitolu 9 tal-Ligijiet ta' Malta jistipula s-segwenti;

Kull persuna tkun eżenti minn responsabbiltà kriminali jekk fil-waqt tal-att jew tan-nuqqas-
(a) kienet fi stat ta' ġenn; jew
(b) kienet imġiegħla b'forza barranija li ma setatx tirreżisti għaliha.

Fin-noti tiegħu **Sir Anthony Mamo** jgħid illi:

"It will be observed at once that our law has not bound itself by any specific 'a priori' test of responsibility in insanity. It has refrained from any attempt to define the conditions under which a man can plead mental unsoundness as an excuse for wrongdoing, wisely leaving each case to be decided in the light of its particular circumstances, usually with the assistance of medical experts ... our law imposes no 'a priori test'. The question, when it arises, is one of fact: it has, that is to say,

to be decided whether the defendant had a mental disease and, if so, whether it was of such a character and degree, as to take away the capacity to know the nature of his act and to help doing it. ***There must be the two constituent elements of legal responsibility in the commission of every crime:***

(1) capacity of intellectual discrimination; and

(2) freedom of will. [12]

If it is true, as a matter of fact, that mental disease can so affect the mind as to subvert the freedom of the will, and thereby destroy the power of the victim to choose between the right and the wrong, although he perceives it, a person so affected is not responsible criminally for an act done under the influence of such controlling disease. The question whether it be true in fact that insanity may have this effect of subverting the will is one of fact: it is a scientific one for experts and the truth of their testimony concerning the existence of such disease is in each case a question for the jury. And that scientists assert the existence of such disease we have already seen. Mandsley ('Responsibility in Mental Diseases', 4th Edition, p.110) writes: "The nature of a crime involves two elements: first the knowledge of its being an act contrary to law, and, secondly, the will to do or to forbear doing it. There are insane persons who, having the former are deprived by their disease of the latter: who may know an act to be unlawful but may be impelled to do it by a conviction or an impulse which they have not the will or the power to resist." Our Law, therefore, recognises insanity as an excuse not only when it deprives the victim of his power of distinguishing the physical and moral nature and quality of the act charged as an offence but also when it deprives him of his faculty of choice so as to exclude a free determination of his will in relation to that act. Insanity thus embraces all forms of disease of the mind, the

[12] Emfasi tal-Qorti.

word 'mind' being used as a general name for the combined operations of intellect and volition."

Il-Qorti taghmel referenza ghas-sentenza moghtija mill-**Qorti ta' l-Appell Kriminali (Sede superjuri)** fl-4 ta' Marzu 2010 fis-sentenza **Ir-Repubblika ta' Malta vs Anthony Schembri** fejn saret referenza ghal dak li qalet din il-Qorti ta' l-Appell (diversament komposta) fis-sentenza taghha **Ir-Repubblika ta' Malta v. David Norbert Schembri** tal-25 ta' Settembru 2008:

"Kif inhu risaput, l-espressjoni "stat ta' genn" fil-paragrafu (a) ta' l-Artikolu 33 tal-Kodici Kriminali ghandha sinjifikat legali li mhux necessarjament jattalja ruhu ma' dak li fil-medicina jew fil-psikjatrija jitqies bhala "genn". Kif jispjegaw l-awturi Jones u Christie fil-ktieb taghhom Criminal Law: "'It is important to emphasise at the outset that insanity is a purely legal concept. It is not a clinical term derived from psychiatry or psychology. Insanity is not synonymous with any medical conception of mental disorder.'

"Fi kliem iehor, persuna tista' tkun marida mentalment fil-mument li tkun ghamlet l-att ta' kommissjoni jew ommissjoni li jammonta ghall-element materjali tar-reat, izda dan ma jfissirx necessarjament li dik il-persuna kienet fi "stat ta' genn" ghall-finijiet ta' l-imsemmi Artikolu 33(a), cioe` tali li tkun ezenti minn responsabbilta` kriminali. Biex ikun hemm l-istat ta' genn li jezenta mir-responsabbilta` kriminali jrid jirrizulta (imqar fuq bazi ta' probabbilita`, meta d-demenza tkun giet eccepita mill-akkuzat jew imputat u allura l-piz ikun fuqu biex jipprova l-fatt li l-akkuzat jew imputat kien qed ibaghti minn marda tal-mohh li minhabba fiha, fil-mument ta' l-att ta' kommissjoni jew ommissjoni, huwa kien priv (i) jew mill-kapacita` li jifhem in-natura u l-kwalita` ta' dak l-att li qed jaghmel, jew (ii) mill-kapacita` li jifhem li dak li qed

jaghmel hu hazin, jew (iii) mill-kapacita` li jaghzel jekk jaghmilx jew le dak l-att. Marda tal-mohh – disease of the mind bl-Ingliz – mhux necesarjament tkun patologija lokalizzata fil-mohh – in the brain. Kif jispjega Lord Diplock fil-kaz ta' Sullivan [1984] AC 156, u b'referenza ghall-M'Naghten Rules – regoli, li wiehed m'ghandux jinsa, jirreferu biss ghall-kapacita` di intendere, mentri l-ligi taghna tikkunsidra wkoll jekk kienx hemm il-kapacita` di volere: –

"'The nomenclature adopted by the medical profession may change from time to time…But the meaning of the expression 'disease of the mind' as the cause of 'a defect of reason' remains unchanged for the purpose of the application of the M'Naghten rules…'mind' in the M'Naghten rules is used in the ordinary sense of the mental faculties of reason, memory and understanding. If the effect of a disease is to impair these faculties so severely as to have either of the consequences referred to in the latter part of the rules, it matters not whether the pathology of the impairment is organic, as in epilepsy, or functional, or whether the impairment itself is permanent or is transient and intermittent, provided that it subsisted at the time of commission of the act.'

"U kif spjegat aktar fi Blackstone's Criminal Practice 2008:

"'It can also be seen that to a large extent, whether something is a disease of the mind depends on the consequences it produces – impairment of the faculties of reason, memory and understanding. The disease certainly need not be one primarily located in the brain if it produces the relevant consequences there. Thus arteriosclerosis (hardening of the arteries) causing temporary loss of consciousness is a disease of the mind for these purposes even though it is of physical rather than mental origin…However not every cause of an impairment

of these mental faculties is a disease of the mind. A disease is something internal to the accused and so: 'A malfunctioning of the mind of transitory effect caused by the application to the body of some external factor such as violence, drugs, including anaesthetics, alcohol and hypnotic influences cannot fairly be said to be due to disease' (per Lawton LJ in Quick QB 910 at p. 922, emphasis added).'

"L-istess jista' jinghad fil-kaz ta' dipendenza, anke wahda qawwija, fuq drogi – tali dipendenza fiha nnifisha ma tammontax ghall-marda tal-mohh ghall-finijiet ta' l-Artikolu 33(a) imsemmi.

"Biex din il-Qorti tikkonkludi fuq dan l-aspett ser tikkwota minn dak li wiehed isib fl-appunti tal-Professur Sir Anthony Mamo:

"'The question [of insanity], when it arises, is one of fact: it has, that is to say, to be decided whether the defendant had a mental disease and, if so, whether it was of such a character and degree as to take away the capacity to know the nature of his act or to help doing it.'"

In vista ta' dan, din il-Qorti hija ghalhekk obbligata li tistharreg jekk l-imputat fil-hin tar-reat kien inkapaci "*di intendere e di volere*" u dana abbazi ta' dak li jikkonkludi l-espert psikjatriku u anke fid-dawl tal-provi mressqa f'din il-kawza,

Illi l-Qorti innotat li Dr. George Debono bhala espert psikjatriku kkonkluda li waqt "l-incident *vera kien qed isofri minn attakk ta' genn (Acute Mania)".* Dr. Debono kompla jghid li "*...izda bhalissa mhux qed juri ebda sinjali ta "mania" hlief forsi deluzjonijiet religjuzi, illi per se mhumiex akkumpanjati b'sintomi ohra ta' "mania" jistghu jkunu "over valued ideas" jew "delusional like ideas", li aktarx ikunu*

ibbazati fuq ir-religjon u l-kultura nvoluta u jistghu jkunu spjegati hekk. Barra minn hekk, kien jaf x'inhu tajjeb u hazin."

In oltre u skont ir-rapport psikjatriku ta' Dr. David Cini u Dr. Joseph R. Saliba: *"There is good reason to consider that the time of the alleged act Mr. Sow may have lacked mens rea due to florid psychotic state..."*u rrakkomandaw li l-imputat jinghata trattament ghal minimu ta' sentejn.

Fid-dawl ta' dan kollu, il-Qorti hija konvinta li dak il-hin tar-reat, l-imputat kien fi stat ta' genn u ghalhekk il-Qorti ssib illi l-imputat ma jistax jitqies responsabbli ghal dak illi jaghmel stante li fil-mument tal-kummissjoni tar-reat lanqas seta' jifformula l-intenzjoni li jikkommetti r-reati li jinsab akkuzat bihom.

Fid-dawl ta' dawn il-konsiderazzjonijiet, il-Qorti ghalhekk, wara li rat l-artikolu 33(a) tal-Kapitolu 9 tal-Ligijiet ta' Malta, qed tilqa' l-eccezzjoni sollevata mid-Difiza u tiddikjara illi l-imputat huwa ezenti minn kull responsabilita' kriminali peress illi fil-waqt tal-kummissjoni tar-reati addebitati lilu huwa kien fi stat ta' genn.

Decide:

Ghaldaqstant, il-Qorti wara li rat l-Artikoli 33(a), 525 u 623 tal-Kap. 9 tal-Liġijiet ta' Malta qegħda tillibera lill-imputat mill-akkuzi migjuba kontra tieghu u tiddikjara illi l-imputat huwa eżenti minn kull responsabilità kriminali peress illi fil-waqt tal-kummissjoni tar-reati addebitati lilu huwa kien fi stat ta' ġenn u għaldaqstant tordna li, ai termini ta' l-Art. 623(1) tal-Kap. 9 tal-Ligijiet ta' Malta, l-imputat jinżamm taħt kustodja fl-Isptar Monte Carmeli biex hemmhekk jinżamm skont id-dispożizzjonijiet tal-Kap. 525 tal-Liġijiet ta' Malta inkluż inter alia li l-imputat jibqa' soġġett li jinżamm bis-saħħa ta' din

l-ordni sakemm jinħeles mill-Qorti wara li tliet speċjalisti, li wieħed minnhom ikun l-ispeċjalista responsabbli, jippreżentaw rapport lil din il-Qorti li l-imputat jkun jista’ jiġi hekk meħlus.

Tordna notifika ta’ din id-deċiżjoni lill-Kummissarju għall-Promozzjoni tad-Drittijiet ta’ Persuni b’Diżordni Mentali.

Magistrat Dr. Monica Vella LL.D, M. Jur.

Angelo Buttigieg
Deputat Registratur