



Fil-Qorti tal-Magistrati (Malta)

Bhala Qorti ta' Gudikatura Kriminali

Magistrat Dr. Nadine Lia

B.A; LL.M (Kent); LL.D, Barrister at Law (England & Wales)

Kaz Numru: 711/2022

Il-Pulizija

(Spettur Audrey Micallef)

vs.

Rita Tanti nee' Catania

Illum it-13 ta' Lulju 2023

Il Qorti rat li tressqet **Rita Tanti** ta' 54 sena, bint Anthony Catania u Josephine nee' Calleja, imwielda nhar 1- 24 ta' Gunju 1968 gewwa Attard u residenti gewwa Villa Catania, Vjal l-Indipendenza, Mosta u detentrici ta' karta ta' l-identita' bin-numru: **0281768M**

Akkuzata talli nhar il- 11 ta' Mejju 2022 u fil-granet u fix-xhur ta' qabel, f' diversi hinijiet u f' diversi postijiet gewwa dawn il-Gzejjer, b' diversi atti magħmulin fi zminijiet differenti izda li jiksru l-istess dispozizzjoni tal-liġi u li kienu magħmula b' rizzoluzzjoni wahda

1. Ikkagunat lil zewgha u cioe' **Renato Tanti**, fastidju ghal iktar minn darba meta gabet ruhha b'mod li messha kienet taf li kienet qed tkun tali
2. Ikkagunat lil zewgha u cioe' **Renato Tanti**, fastidju ghal iktar minn darba meta gabet ruhha b'mod li messha kienet taf li kienet qed tkun tali u li tali ta' fastidju sar b'mod li tammonta ghal segwiment ta' persuna bil-mohbi

Il-Qorti hija mitluba f'kaz ta' htija, biex tipprovdi ghall-persuna ta **Renato Tanti** u l-familjari tieghu jew sabiex jinzamm il-bon ordni pubbliku, flimkien mal-piena applikabbli ghar-reat, torbot lil **Rita Tanti** b'obbligazzjoni taghha nnifisha taht penali ta' somma ta' flus li tigi iffissata mill-Qorti billi tapplika l-Artikoli 383 et seq tal-Kap 9 tal-ligijiet ta' Malta, ghal zmien li thoss xieraq.

Il-Qorti hija gentilment mitluba li f'kaz ta' htija, minbarra li tinfliggi l-piena stabbiliti mill-ligi, tordna lill-imsemmija **Rita Tanti** sabiex thallas l-spejjez li ghandhom x'jaqsmu mal-hatra tal-esperti, jekk ikun il-kaz, kif provdut fil-Artikolu 533 tal-Kap 9 tal-ligijiet ta' Malta.

Rat li meta sar l-ezami tal-imputata nhar il-24 ta' Jannar 2023 hi wiegeb li mhix hatja.¹

Rat il-kunsens ta' l-Avukat Generali sabiex il-kaz jigi trattat bi procedura sommarja skont l-artikolu 370(4) tal-Kodici Kriminali.²

Rat illi l-prosekuzzjoni ghalqet il-provi taghha nhar is-7 ta' Marzu 2023.³

Rat illi d-difiza ghalqet il-provi taghha waqt l-istess udjenza.

¹ Folio 22 u 24 ta' l-atti processwali

² Folio 3 ta' l-atti processwali

³ Folio 72 ta' l-atti processwali

Semghet is-sottomissjonijiet tal-partijiet.

Rat it-traskrizzjonijiet tax-xhieda u hadet konjizzjoni tad-dokumenti kollha pprezentati, hadet konjizzjoni tax-xhieda prodotti fliet l-atti kollha tal-kawza;

Rat l-atti kollha

Rat illi l-kawza thalliet ghal-lum ghas-sentenza.

Ikkunsidrat

Fatti fil-qosor

Illi dan il-kaz irrizulta meta gie rrapportat nhar il-11 ta' Meju 2022 minn Renato Tanti theddid u insulti li kien qed jircievi minn martu l-imputata kif ukoll telefonati kontinwi li ma jaqtaw qatt.

Ikkunsidrat

Provi imressqa

Il-prosekuzzjoni esebit l-okkorenza bin-numru tar-referenza GHQ/GBDV/585/2022 li sar fil-11 ta' Meju 2022 ghar-rigward incident li beda mis-7 ta' Meju 2022 sal-11 ta' Meju 2022. Gie esebit ukoll l-okkorenza bin-numru tar-referenza GHQ/GBDV/528/2022 li sar fis-27 ta' April 2022.

Il-prosekuzzjoni esebiet ukoll dokumenti li juru skambju ta' telefonati bejn l-imputata u l-parte civile.⁴ Gie esebiet ukoll ritratt⁵ kif ukoll l-istqarrija ta' l-imputata⁶ u d-dritt taghha dwar il-jedd tal-parir legali.⁷

⁴ Dok AM1, Folio 33-64 ta' l-atti processwali

⁵ Dok AM2, Folio 65 ta' l-atti processwali

⁶ Dok AM5, Folio 68-71 ta' l-atti processwali

⁷ Dok AM4, Folio 67 ta' l-atti processwali

Mill-istqarrija ta' l-imputat jirrizulta li kemm hi u l-allegat vittma ghandhom diversi kwistjonijiet relatati man-negozju ta' bejniethom apparti s-separazzjoni li ghaddejin minnha li minnu mhix qed issib kooperazzjoni.

Il-prosekuzzjoni ressqet lil Renato Tanti sabiex jixhed b'mod volontarju waqt l-udjenza tal-24 ta' Jannar 2023 izda ghazel li ma jixhidx stante li din hija martu. Illi s-sur Tanti huwa l-unika xhud tal-prosekuzzjoni u l-allegat vittma.

Il-prosekuzzjoni ressqet lil Charmain Zammit bhala rapprezentanta ta' Epic Communucations Ltd li informazzjoni dwar dettalji tan-numri 99169169, 99440727 ghal perjodu ta' bejn 1 ta' April 2022 sa 30 ta' April 2022 kif ukoll call logs ghal perjodu 99440727.⁸

Ikkunsidrat

Principji Legali dwar il-fastidju

L-imputat tressqet tali wettqet fastidju skont l-artikolu 251A(1)(a)(b), 251H(a)(b), 251HA, 202(h)(v) u 251AA(1)(a)(b) tal-Kodici Kriminali.

Fir-rigward dak li jipprovdu dawn l-artikoli, il-Qorti taghmel referenza ghal-kaz **Il-Pulizija vs Raymond Parnis** fejn gie ritenut:

Dan kollu – u cioe` dawn l-affarijiet kollha li sehew fil-kuntast ta' incident wiehed – ma jistghu qatt jammontaw ghar-reat kontemplat fl-Artikolu 251B imsemmi. Dan ir-reat gie evidentement ispirat mill-Artikolu 4(1) tal-Protection from Harassment Act, 1997 tal-Ingilterra, liema artikolu jipprovi testwalment hekk: “A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an

⁸ Dok CZ1 u CZ1 Folio 75-78 ta' l-atti processwali

offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.” L-Artikolu 251B taghna – u hawn il-Qorti ser tuza t-test Ingliz proprju biex wiehed ikun jista’ jara x-xebh u fejn saru t-tibdiliet – jipprova, fis-subartikolu (1) tieghu, hekk: “A person whose course of conduct causes another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in sub-article (1) of article 222 shall be guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions...” (sottolinear ta’ din il-Qorti). Il-kliem “on each of those occasions” huma indikattivi li l-att materjali ma jistax isehh f’okkazoni wahda izda jrid ikun hemm ghall-anqas zewg okkazonijiet – proprju kif jinghad fil-matrici Ingliza, “on at least two occasions”. Ghal xi raguni – fil-fehma ta’ din il-Qorti kompletament illogika – il-kliem “on at least two occasions thallew barra”. Fi kliem l-edituri ta’ Blackstone’s Criminal Practice, 2008:

‘How separate the two occasions must be remains to be seen. The nature of stalking, the activity which primarily created the need for the new offences, might mean that the occasions are likely to be on separate days, although it may be possible to differentiate activities on one day where they can be viewed as not being continuous. The further apart the incidents, the less likely it is that they will be regarded as a course of conduct...It was recognised, however that circumstances can be conceived ‘where incidents, as far apart as a year, could constitute a course of conduct’. The type of incidents would be those intended to occur on an annual event such as a religious festival or a birthday...’

Skond Blackstone Criminal Practice:

D’s conduct must cause the complainant to fear that violence will be used against him; it is not sufficient for it to frighten the complainant as to what

might happen (Henley (2000) Crim LR 582; Caurti v DPP (2002) Crim LR 131). It is always a question of act (Caurti and R (Simon Howard) v DPP (2001) EWHC Admin 17) and, whilst it can sometimes be inferred from the evidence, there should, if possible, be direct evidence from the complainant (R vs DPP (2001) Crim LR 396; Cuarti)....the prosecution must prove that the conduct in question was targeted at an individual, that it was calculated to produce the consequences described in s 7 of the Act (alarming the person or causing the person distress) and that it was both oppressive and unreasonable (see Haque at (70)-(73))’⁹

Ikkunsidrat

Illi minn dak li rat, semghet u evalwat din il-Qorti ma jirrizultawx provi lil hinn minn kull dubju dettat mir-raguni li l-imputata tista tigi kkunsidrata hatja tar-reati li bihom hija mressqa.

Wara li l-Qorti gharblet il-provi kollha imressqa, tqis li mill-assjem tal-provi kif migbura u mressqa quddiem din il-Qorti tqis li l-provi tal-prosekuzzjoni u x-xhieda tal-prosekuzzjoni, fil-preponderanza tal-provi prodotti, il-Qorti hija konvinta li l-prosekuzzjoni ma rnexxilihies tipprova il-kaz taghha sal-grad rikjest f’proceduri penali fir-rigward l-imputazzjonijiet dedotta kontra l-imputata.

Decide

Ghaldaqstant il-Qorti wara li rat l-artikoli 251A(1)(a)(b), 251H(a)(b), 202(h)(v), 251AA(1)(a)(b), 251HA tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta’ Malta,

⁹ Blackstone Criminal Practice, 2015, Oxford, Section B2.186, p. 297

issib lil Rita Tanti **mhux hatja** ta' l-imputazzjonijiet dedotti kontriha u tilliberah minn kull htija u piena.

Moghtija illum nhar it-13 ta' Lulju 2023 fil-Qrati tal-Gustizzja, Valletta

Dr. Nadine Lia

Magistrat

Lorianne Spiteri

Deputat Registratur