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

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

Seduta Distrett San Ġiljan

Il-Pulizija

-vs-
Dishan Darmanin, detentur tal-Karta tal-Identità nru. 117196M;
Omissis,
Omissis 1

Kaz. Nru. 835/23

Illum, 7 ta' Ottubru, 2024

Il-Qorti,

Rat l-imputazzjonijiet miġjuba fil-konfront tal-imputati **Dishan Darmanin, Omissis u Omissis 1;**

Nhar 17.09.2022 għall-ħabta ta' 04:40hrs ġewwa Triq Elija Zammit, San Ġiljan u f'dawn il-Gżejjer Maltin:

1. Volontarjament qalu kliem oxxen li jikkonsisti f'dagħa fil-pubbliku.
2. Insulentaw, heddew jew inġurjaw bi kliem jew b'mod ieħor lil Ndubisi Chukunyere.
3. Volontarjament kisru il-bon ordni jew il-paċi pubblika b'għajjat u storbju.

4. Għamlu inġurji jew theddid mhux imsemmijin band` oħra fil-Kodiċi kriminali jew, jekk kienu ipprovokati, inġurjaw b'mod li ħarġu l-barra mil-limiti tal-provokazzjoni.
5. Ħebbew għal Ndubisi Chukunyere u kkaġunawlu offiża ta' natura ħafifa skont kif iċċertifikat minn Dr. Michaela Farrugia, Med no. 4890.

Il-Qorti ġiet mitluba sabiex f'każ ta' ħtija tipprovdi għas-sigurtà' ta' Ndubisi Chukunyere skont l-Artikolu 383 tal-kodiċi Kriminali.

Illi din il-kawża ġiet assenjata lil din il-Qorti kif preseduta fl-"Assenjazzjonijiet ta' Kawża" mogħti mis-S.T.O. Prim Imħallef Mark Chetcuti fit-2 ta' Frar, 2024;

Illi l-ewwel seduta minn din il-Qorti kif preseduta saret fid-9 ta' Lulju, 2024;

Rat l-atti w id-dokumenti kollha;

Semgħet ix-xhieda;

Semgħet it-trattazzjoni finali tal-partijiet;

Ikkunsidrat,

Illi **Matthew Ikeehukwu Nwaokenye** xehed li kemm hu kif ukoll l-parte leża ġew aggrediti meta l-imputat kien qal biss *"hello"* lil tfajla:

"The witness:	*I say respectfully we stay outside and we saw this lady,*
The Court:	*Outside the Gentlemen's Club, yes,*
The witness:	*We saw this lady walk past and my friend say hello to her. And the next thing the men there they … … on him, say, "Why are you talking to her?!" The next thing they start hitting him, I try to separate them, one of them came behind me and grabbed my hand.*
The Court:	*And before you said that it was Dishan who was aggressive first towards Chukunyere.*
The witness:	*Chukenyere.*
The Court:	*And then you went to separate them,*
The witness:	*I was going to separate them, but someone came behind me,*
The Court:	*someone came behind you at that point and grabbed you from your neck.*
The witness:	*And grabbed me from my neck.*
The Court:	*All right. And you are absolutely sure that all Mr Chukunyere said was, "Hello!"*
The witness:	*Was "Hello!" … … … just said "Hello!" and that is it.*
Pros:	*At what time was this?*

The witness:	*I think it should be around, if I am not mistaken, something to five or after four. Because I remember then the clock, the business close by four, we were outside…*
Pros:	*And would I be correct to say that it was Mr Chukunyere who first hit one of the gentlemen here?*
The witness:	*No, no, no, no! He did not hit any of them.*
Pros:	*You confirm that under oath.*
The witness:	*He did not hit any of them."*

Melissa Maimour Mentor Diawara xehdet kif fil-lejl in kwistjoni, hi kienet mal-familja tal-imputat ġewwa Paceville u kif għaddiet minn quddiem Ndubisi Chukunyere, il-parti leża:

The witness:	*I passed, he was looking at me like with an insistent look at first…*
The Court:	*With an insistent look.*
The witness:	*Yes. And then he made a comment about my posterior…something about my … … and everything… About grab my ass..... I then when I ask him like "What did you say!" and everything, he like blew me a kiss and… He blew me a kiss. ..... He was trying to find like … … provocation, I do not know what he was trying to do, but I was with my boyfriend, so…*
The Court:	*Of course. And then?*
The witness:	*So then it is how it starts because … … I went to Dishan to tell him what happened, ...[Dishan] went to spoke to him and the guy starts swearing and getting aggressive and that is how it started.*
The Court:	*Who started the fight, so?*
The witness:	*I do not remember but I know that –*
The Court:	*No, but you said… who was talking aggressive?*
The witness:	*The guy.*
The Court:	*The guy, when Dishan went on to him, the guy was aggressive?*
The witness:	*Yes, and he was swearing then in Maltese … …*
The Court:	*Sorry?*
The witness:	*He was swearing even in Maltese, you know, he is a black guy like me and he was, kind of provocation.*
The Court:	*He was swearing in Maltese.*
The witness:	*Yes.*
The Court:	*What was he saying?*
The witness:	*I do not remember.*
The Court:	*You do not remember, all right. Ok. Any questions?*
Pros:	*So Melissa, do you remember who hit who first, who was the one to hit someone first?*
The witness:	*I do not remember but for me the guy start swearing and when they try to approach him he made the first… that is how I saw the things. I do not know exactly.*
The Court:	*So when Dishan tried to approach him, what did you say?*
The witness:	*When Dishan tried to approach him, they were talking, when the guy start to getting aggressive, Dishan tried to approach him and the guy*

	hit him. I do not know which one hit who first, I cannot be… No, I mean swearing maybe, but I do not speak, no I do not speak Maltese. ....
Defence:	*So how did you realize that was Mr Chukunyere was saying are actually swear words?*
The witness:	*Because I was living in Malta during three years, I know what is swearing like, … … … things like that.*
The Court:	*So he said that word, so he said the first one, all right, I got it; the second?*
The witness:	*I do not remember which word he used, that is why I do not want to state … …*
The Court:	*All right, all right, so you know a couple of swear words.*
The witness:	*Yes, that is what…*
Defence:	*No. Just one final question, Madam. You were saying that you do not recall what words were said.*
The witness:	*Yes.*
Defence:	*But then you recalled that Mr Chukunyere passed some comments about your behind.*
The witness:	*Yes.*
Defence:	*Which version is the real version?*
The Court:	*No, no, no! She said she does not remember what words were uttered as regards the swear words; we have to be very careful.... She said something on the lines that "grab your ass," something like that.*
Defence:	*After saying that she does not recall what words were said.*
The Court:	*Madam, before you said you do not exactly remember the words, the comment, Mr Chukunyere made about your posterior,*
The witness:	*yes,*
The Court:	*But the general drift of it, what was it?*
The witness:	*It was about my posterior, that is what I said.*
The Court:	*Yes, about your posterior. But what about your posterior? It looks like a peach? Jien naf!*
The witness:	*No, like he made a comment bigger about my posterior, like something about … or something like that, I do not remember. I know that what it was, now today I cannot tell you what I… I mean… I do not know…*
The Court:	*It is a comment about your posterior. People do not go down passing comments about posteriors! So I hope.*
Defence:	*Just one final question. When allegedly Mr Chukunyere said these words to you, were you walking with someone else or on your own?*
The Court:	*When he made this comment, you were with the rest of them or you were alone?*
The witness:	*I was with the rest of them.*
The Court:	*So you passed by… How close were you to Dishan and the others? Very close?*
The witness:	*I was walking a bit in the back, but yes I was close to them. .... Not that far, I mean I just walk to him, like I stop ask the guy, "What did you say?!" and I went back to Dishan, so I was with them, I was not alone.*

Il-Qorti eżaminat il-filmat esibit, Dok.CD, minn fejn jirriżulta li sa minn xi ħin wara l-04:20hrs jidher Chukunyere flimkien ma raġel iehor jitkellmu bi kwiethom fuq taraġ fi qrib ħafna ta Club. Fil-ħin li qattaw hemm diversi kienu l-individwi li waqfu jitkellmu magħhom. Meta saru 04:36:28 jidher grupp ġuvintur u tfajliet b'waħda liebsa shorts abjad miexja wara żewġt ġuvintur. Tidher idur lejn id-direzzjoni fejn hemm Chukunyere u sieħbu u sekondi wara dak li jidher hu Dishan Darmanin jagħti s-salt ghal fuq l-istess Chukunyere. Fl-istess ħin qed jiġi aggredit sieħeb Chukunyere, tant li Chukunyere jipprova jgħinu u jferqu minn ma Darmanin u sħabu. Ma jista' jibqa' ebda dubbju li kien Darmanin li aggredixxa lil Chukunyere (04:36hrs) fejn anke meta jaqa lura mal-art (04:37:11) jibqa' jaqla daqqiet ta sieq minn għand Darmanin li kien liebes shorts twil bajdani. Dan ikompli jballatlu sakemm jaslu l-pulizija (04:37:29) li kellhom jużaw forza biex jrażżnu lil Darmanin u sħabu.

Fid-dawl tal-provi miġjuba, issib li l-imputat tassew wettaq ġrieħi ta' natura ħafifa iżda ta' importanza żgħira fuq il-parte leża.

Għalhekk ġew pruvati t-tielet u l-ħames imputazzjonijiet. Fir-rigward tal-imputazzjonijiet l-oħra l-Qorti qed tillibera lill-imputat minnhom fuq nuqqas ta' provi.

Piena

Fir-rigward tal-piena l-Qorti qieset in-natura tal-imputazzjonijiet li qed issib ħtija dwarhom, taċ-ċirkostanzi tal-każ fejn jidher li l-imputat aggredixxa lil Chukunyere wara li ttantalu t-tfajla, ghalkemm dan ma jiskużaħx minn aġir selvaġġ li ma għandux postu f'soċjetà ċivilizzata fejn tirrenja l-liġi u fejn l-ordni pubblika għandha dejjem tiġi mħarsa. Dak li qed jimmillita favur li l-imputat ma jingħatax piena karċerarja hu unikament il-fatt li dan instab ħati ta' offiżi t'importanza żgħira. Madanakollu l-Qorti ser tapplika d-dispożizzjoni tal-Artikolu 15A tal-Kodiċi Kriminali.

Decide

Għaldaqstant wara li rat l-artikoli 17, 31, 214, 215, 221(3) u 338(dd) tal-Kodiċi Kriminali, filwaqt li ssib lill-imputat ħati tat-tielet u tal-ħames imputazzjoni, tilliberah mill-kumplament u tikkundannah għal **xahrejn priġunerija** li bl-applikazzjoni tal-artikolu 28A tal-Kodiċi Kriminali qed jiġu sospiżi ghal sena (1) millum.

Inoltre a tenur tal-Artikolu 15A tal-Kodiċi Kriminali qed tordna lill-imputat sabiex jikkumpensa lil Ndubisi Chukunyere fl-ammont ta' tlett mitt ewro (€300) għall-offiżi kaġunati minnu.

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

Ai termini tal-Artikolu 382A tal-Kodiċi Kriminali qed toħroġ Ordni ta' Trażżin fil-konfront tal-imputat a favur ta' Ndubisi Chukunyere ghal sena millum.

Donatella M. Frendo Dimech
Maġistrat