



IN THE CRIMINAL COURT

**Hon. Madame Justice Dr. Consuelo Scerri Herrera LL.D. Dip Matr., (Can),
Ph.D.**

Bill of Indictment: 2/2023/1

The Republic of Malta

Vs

Sarath Babu Kongadan

Today, the 13th February 2025.

The Court,

Having seen the charges brought against **SARATH BABU KONGADAN**, of thirty-one (31) years of age, sone of Suress-Babu and Beena, born in India on the third (3rd) March of the year one thousand nine hundred and ninety one (1991) and residing at 321, Flat 2, Mdina Road, Qormi, having ID card number **207694A**, the Attorney General, in the name of the Repubblic of Malta, states:

FIRST COUNT

The facts constituting the offence:-

That in or around the month of May of the year two thousand and nineteen (2019), the accused, Sarath Babu Kongadan, began working in Malta as a driver. His brief also included trasporting children to and from school on the school van. Soraya Galdes, a

minor, who was fifteen at the time, was on one of his assigned driving routes and he would drive her back home from school.

That a few weeks after he began working as a school van driver, the accused Sarath Babu Kongadan, contacted the minor, Soraya Galdes, on a social media application. Initially, the accused would simply 'like' videos posted by the minor. Eventually, in August two thousand and nineteen (2019) the accused Sarath Babu Kongadan, started messaging Soraya Galdes asking to meet her and asking her to teach him how to swim. Subsequently, after receiving a number of messages to this effect, the minor Soraya Galdes agreed to meet the accused in order to teach him how to swim, and a meeting was arranged for the twenty fourth (24) day of August two thousand and nineteen (2019).

That on the twenty-fourth (24th) day of August of the year two thousand and nineteen (2019), Soraya Galdes met the accused Sarath Babu Kongadan at a beach in Malta, near Mellieha Bay (Ghadira). Soraya Galdes went for a swim and the accused, Sarath Babu Kongadan, followed. While they were swimming, the accused Sarath Babu Kongadan, started touching Soraya Galdes and abruptly inserted his finger in her vagina and went on to finger her and penetrate her vagina without her consent. The accused Sarath Babu Kongadan began kissing the minor Soraya Galdes on her lips, on her vagina and on her neck. The accused then removed the minor's bikini bottom in order to place his mouth on her vagina. The minor, Soraya Galdes, did not consent to any of this.

That the minor and the accused came out of the water and shortly after, went back in for a swim, where eventually the accused Sarath Babu Kongadan resumed fingering Soraya Galdes, penetrating her vagina with his finger, without her consent.

The consequences:-

That in light of the aforementioned, the accused, Sarath Babu Kongadan, rendered himself guilty of defiling Soraya Galdes, a minor below the age of sixteen (16), by several lewd acts committed by him, even if at different times, in violation of the same provision of law and in pursuance of the same criminal design, in the Maltese islands, between July and August of the year two thousand and nineteen (2019).m

The criminal charge:-

For this reason, and in view of the aforementioned facts and circumstances as indicated in this count of the bill of indictment, the Attorney General in the name of the Republic of Malta accuses the said Sarath Babu Kongadan of defiling Soraya Galdes, a minor below the age of sixteen (16), by several lewd acts committed by him, even at different times, in violation of the same provision of law and in pursuance of the same criminal design, in the Maltese islands, between July and August of the year two thousand and nineteen (2019).

The punishment demanded:-

Consequently, the Attorney General demands that the accused Sarath Babu Kongadan is proceeded against according to law and sentenced to imprisonment for a term from four (4) to twelve (12) years as stipulated in articles 17, 18, 31, 203(1), 383, 384, 385, 412C and 533 of the Criminal Code, Chapter 9 of the Laws of Malta and article 6 of the Protection of Minors (Registration) Act, Chapter 518 of the Laws of Malta, or to any other punishment applicable according to the declaration of guilt of the accused.

SECOND COUNT

The facts constituting the offence:-

That during the same period and in the same circumstances as indicated in the first count of this indictment, i.e. between July and August of the year two thousand and nineteen (2019), on the Maltese Islands and on several occasions, the accused Sarath Babu Kongadan participated in sexual activities with Soraya Galdes, a person under the age of sixteen (16).

That a few weeks after the accused started working as a school van driver, the accused Sarath Babu Kongadan made contact with the minor Soraya Galdes on a social media application. Initially, the accused Sarath Babu Kongadan, would 'like' videos published by the minor Soraya Galdes. That, eventually, during the month of August of the year two thousand and nineteen (2019) the accused Sarath Babu Kongadan started messaging Soraya Galdes asking her to meet him to teach him how to swim. Subsequently, after a number of messages to this effect, the minor Soraya Galdes agreed to meet the accused to teach him how to swim, and a meeting was arranged for the twenty-fourth (24) day of August of the year two thousand and nineteen (2019).

That on the twenty-fourth (24) day of August of the year two thousand and nineteen (2019) Soraya Galdes met the accused Sarath Babu Kongadan on a beach in Malta, near Mellieha Bay (Ghadira). Soraya Galdes went for a swim and the accused, Sarath Babu Kongadan, followed. While they were swimming, the accused Sarath Babu Kongadan, started to touching Soraya Galdes and abruptly inserted his finger in her vagina and went on to finger her and penetrate her vagina without her consent. The accused Sarath Babu Kongadan began kissing the minor Soraya Galdes on her lips, on her vagina and on her neck. The accused then removed the minor's bikini bottom in order

to place his mouth on her vagina. All this took place without the consent of the minor, Soraya Galdes.

That the minor and the accused came out of the water and shortly after, went back in for a swim, where eventually the accused Sarath Babu Kongadan resumed fingering Soraya Gales, penetrating her vagina with his finger, without her consent.

The consequences:-

That in view of the aforementioned, the accused, Sarath Babu Kongadan, rendered himself guilty of participating in sexual activities with Soraya Galdes, a minor below the age of sixteen (16), by several acts committed by him, even if at different times, in violation of the same provision of law and in pursuance of the same criminal design, in the Maltese Islands, between July and August of the year two thousand and nineteen (2019).

The criminal charge:-

For this reason, and in view of the aforementioned facts and circumstances as indicated in this count of the bill of indictment, the Attorney General in the name of the Republic of Malta accuses the said Sarath Babu Kongadan of participating in sexual activities with Soraya Galdes, a minor below the age of sixteen (16), by several acts committed by him, even at different times, in violation of the same provision of law and in pursuance of the same criminal design, in the Maltese Islands, between July and August of the year two thousand and nineteen (2019).

The punishment demanded:-

Consequently, the Attorney General demands that the accused Sarath Babu Kongadan is proceeded against according to law and sentenced to imprisonment for a term from five (5) to twenty (20) years as stipulated in articles 17, 18, 31, 204C(1), 383, 384, 385, 412C and 533 of the Criminal Code, Chapter 9 of the Laws of Malta and article 6 of the Protection of Minors (Registration) Act, Chapter 518 of the Laws of Malta, or to any other punishment applicable according to law according to the declaration of guilt of the accused.

THIRD COUNT

The facts of the offence: -

That during the same period and in the same circumstances as indicated in the first count of this indictment, i.e. between July and August of the year two thousand and nineteen (2019), on the Maltese Islands and on several occasions, the accused Sarath Babu Kongadan engaged in non-consensual carnal connection, that is to say, vaginal penetration of a sexual nature, by any bodily part of the accused on the body of the minor Soraya Galdes.

That a few weeks after the accused started working as a school van driver, the accused Sarath Babu Kongadan made contact with the minor Soraya Galdes on a social media application. Initially, the accused Sarath Babu Kongadan, would 'like' videos published by the minor Soraya Galdes. That, eventually, in the month of August of the year two thousand and nineteen (2019) the accused Sarath Babu Kongadan started messaging Soraya Galdes asking her to meet to teach him how to swim. Subsequently, after a number of messages to this effect, the minor Soraya Galdes agreed to meet the

accused to teach him how to swim, and a meeting was arranged for the twenty-fourth (24) day of August of the year two thousand and nineteen (2019).

That on the twenty-fourth (24) day of August of the year two thousand and nineteen (2019) Soraya Galdes met the accused Sarath Babu Kongadan on a beach in Malta, near Mellieha Bay (Ghadira). Soraya Galdes went for a swim and the accused, Sarath Babu Kongadan, followed. While they were swimming, the accused Sarath Babu Kongadan, started touching Soraya Galdes and abruptly inserted his finger in her vagina and went to finger her and penetrate her vagina without her consent. The accused Sarath Babu Kongadan began kissing the minor Soraya Galdes on her lips, on her vagina and on her neck. The accused then removed the minor's bikini bottom in order to place his mouth on her vagina. All this took place without the consent of the minor, Soraya Galdes.

That the minor and the accused came out of the water and shortly after, went back in for a swim, where eventually the accused Sarath Babu Kongadan resumed fingering Soraya Galdes, penetrating her vagina with his finger, without her consent.

The consequences: -

That in view of the aforementioned, the accused Sarath Babu Kongadan, rendered himself guilty of engaging in non-consensual aggravated carnal connection, that is to say, vaginal penetration of a sexual nature, with any bodily part on the body of Soraya Galdes, a minor, between July and August of the year two thousand and nineteen (2019), in the Maltese islands, by means of several acts committed by himself, even if at different times, which constitute violations of the same provision of the law, and committed in pursuance of the same design; the said crime is aggravated in view of the fact that Soraya Galdes was minor when the rape was committed.

The criminal charge:-

For this reason, and in view of the aforementioned facts and circumstances as indicated in this count of the bill of indictment, the Attorney General in the name of the Republic of Malta accused the said Sarath Babu Kongadan of engaging in non-consensual aggravated carnal connection, that is to say, vaginal penetration of a sexual nature, with any bodily part on the body of Soraya Galdes, a minor, by several acts committed by him even if at different times, in violation of the same provision of the law and in pursuance of the same criminal design, in the Maltese Islands, between July and August of the year two thousand and nineteen (2019); provided that the crime is aggravated on account of the fact that Soraya Galdes was a minor when the rape was committed.

The punishment demanded:-

Consequently, the Attorney General demands that the accused Sarath Babu Kongadan is proceeded against according to law and sentenced to imprisonment for a term from seven (7) to forty (40) years, as stipulated in article 17, 18, 31, 198(1), 202(g), 383, 384, 385, 412C and 533 of the Criminal Code, Chapter 9 of the Laws of Malta and article 6 of the Protection of Minors (Registration) Act, Chapter 518 of the Laws of Malta, or to any other punishment applicable according to law, according to the finding of guilt.

FOURT COUNT

The facts constituting the offence:-

That during the same period and in the same circumstances as indicated in the first count of this indictment i.e. between July and August of the year two thousand and nineteen (2019), on the Maltese islands and on several occasions, the accused Sarath

Babu Kongadan committed an offence against decency or morals, by any act committed in a public place or in a place exposed to the public.

That on the twenty-fourth (24) day of August of the year two thousand and nineteen (2019) Soraya Galdes met the accused Sarath Babu Kongadan on a beach in Malta, near Mellieha Bay (Ghadira). Soraya Galdes went for a swim and the accused, Sarath Babu Kongadan, followed. While they were swimming, the accused Sarath Babu Kongadan, started touching Soraya Galdes and abruptly inserted his finger in her vagina and went on to finger her and penetrate her vagina without her consent. The accused Sarath Babu Kongadan began kissing the minor Soraya Galdes on her lips, on her vagina and on her neck. The accused then removed the minor's bikini bottom in order to place his mouth on her vagina. The minor, Soraya Galdes, did not consent to any of this.

That the minor and the accused came out of the water shortly after that, went back in for a swim, where eventually the accused Sarath Babu Kongadan resumed fingering Soraya Galdes, penetrating her vagina with his finger, without her consent.

The consequences:-

That in view of the aforementioned, the accused Sarath Babu Kongadan, rendered himself guilty of committing an offence against decency or morals, by any act committed in a public place or in a place exposed to the public, between July and August of the year two thousand and nineteen (2019), in the Maltese Islands, by means of several acts committed by himself, even if at different times, which constitute violations of the same provision of the law, and committed in pursuance of the same design.

The criminal charge:-

For this reason, and in view of the aforementioned facts and circumstances as indicated in this count of the bill of indictment, the Attorney General in the name of the Republic of Malta accuses the said Sarath Babu Kongadan of committing an offense against decency or morals, by any act committed in a public place or in a place exposed to the public, between July and August of the year two thousand and nineteen (2019), in the Maltese islands by means of several acts committed by himself, even if at different times, which constitute violations of the same provision of the law, and committed in pursuance of the same design.

The punishment demanded:-

Consequently, the Attorney General demands that the accused Sarath Babu Kongadan is proceeded against according to law and sentenced to imprisonment for a term not exceeding nine (9) months and to a fine (multa) of one thousand, one hundred and forty six euro and sixty-nine euro cent (€1,146.69), as stipulated in articles 11, 17, 18, 31, 209, 383, 384, 385, 412C and 533 of the Criminal Code, Chapter 9 of the Laws of Malta, or to any other punishment applicable according to the declaration of guilt of the accused.

FIFTH COUNT

The facts constituting the offence:-

That during the same period and in the same circumstances as indicated in the first count of this indictment, i.e. between July and August of the year two thousand and nineteen (2019), on the Maltese islands and on several occasions, by means of information and communication technologies, the accused Sarath Babu Kongadan

proposed to meet Soraya Galdes, a minor, with the intention of participating in sexual activities with her, which proposal was followed by material acts that led to the meaning.

That on the twenty-fourth (24) day of August of the year two thousand and nineteen (2019) Soraya Galdes met the accused Sarath Babu Kongadan on a beach in Malta, near Mellieha Bay (Ghadira). Soraya Galdes went for a swim and the accused Sarath Babu Kongadan , started touching Soraya Galdes and abruptly inserted his finger in her vagina and went on to finger her and penetrate her vagina without her consent. The accused Sarath Babu Kongadan began kissing the minor Soraya Galdes on her lips, on her vagina and on her neck. The accused then removed the minor's bikini bottom in order to place his mouth on her vagina. All this took place without the consent of the minor, Soraya Galdes.

That the minor and the accused came out of the water and shortly after, went back in for a swim, where eventually the accused Sarath Babu Kongadan resumed fingering Soraya Galdes, penetrating her vagina with his finger, without her consent.

The consequences:-

That in view of the aforementioned, the accused Sarath Babu Kongadan, rendered himself guilty of proposing to meet Soraya Galdes, a person under the age of sixteen (16), by means of information and communication technologies, for the purpose of committing a crime in violation of article 204C of Chapter 9 of the Laws of Malta, namely to participate in sexual activities with Soraya Galdes, a person under the age of sixteen (16) years, which proposal was followed by material acts which led to the meeting taking place.

The criminal charge:-

For this reason, and in view of the aforementioned facts and circumstances as indicated in this count if the bill of indictment, the Attorney General in the name of the Republic of Malta accuses the said Sarath Babu Kongadan of proposing to meet Soraya Galdes, a minor, by means of information and communication technologies, for the purpose of committing a crime in violation of article 204C of Chapter 9 of the Laws of Malta, namely to participate in sexual activities with Soraya Galdes, a minor under the age of sixteen (16), which proposal was followed by material acts which led to the meeting which took place in the Maltese islands between July and August of the year two thousand and nineteen (2019).

The punishment demanded:-

Consequently, the Attorney General demands that the accused Sarath Babu Kongadan is proceeded against according to law and sentenced to imprisonment for a term form three (3) years to six (6) years according to the provisions of articles 17, 18, 31, 208AA(1), 204C, 383, 384, 385, 412C and 533 of the Criminal Code (Chap. 9 of the Laws of Malta) or to any other punishment applicable according to the declaration of guilt of the accused.

Having seen the note of pleas raised by the accused by means of a note of reply filed in the registry of this honourable court on the 3rd July 2023 wherein he stated the following.

1. *Firstly regarding the second count.*

The accused is raising the violation of the Convention of Human Rights regarding Article 204C of the Criminal Code. This matter has already been raised through a reference and

*the two cases are pending before Madame Judge Miriam Hayman in the cases **Police Insepctor John Spiteri vs Khlef** and **Police Inspector John Spiteri vs Clayton Farrugia***

Reference is made to the judgment given by this Honourable Court wherein in the case of Deniro , this court in its judgment reproduced the debate of parliament and in actual fact the Attourney General at the time declared that they could not specify exacty the constitutive elements of the offence. Added to this, this court when presiding as in the Magistrates Court had a similar case and commented that there was no definition in the law as to what what constitutes the offence under Article 204C of the Criminal Code. Consequently, that the charge and that should not be allowed to proceed as it would violate his consitutional conventional rights under article 7 which is about the certainty of the law.

- 2. In the third count the criminal charge is not supportd by the facts as stated. The Criminal charge mentions non sexual penetration without her consnt. The fact that she is a minor does not automatically bring into effect that she did not giv her consent or did not participate volutnarily. Article 202 (G) only mentions an increase inpunishmnt but the crucial point s that there is no consent for the carnal knowledge.*
- 3. Regarding the fith count the plea being raised against Article 204(C) of Chapter 9 already referred to under the second count applies here. The participation in sexual activities does not pinpoint exactly the actus reus which constitutes the offence and consequently this cannot subsist*
- 4. Note regarding the evidence and witnsses.*

The defendant requersts that now that Soraya Galdes is no longer a minor that she gives evidence in court and be subjected to cross examiantion. The protection of the minor exists as long as that person remains a minor but now after 4 years she must be around 19 years of age. That protection does no longer exist.

Having seen the note of the sitting dated 20th July 2023 wherein the defence asked for an adjournment so that it may present a formal request for a constitutional reference.

The court took note of the application presented by the defence on the 14th July 2023 (fol. 59) of the acts of the proceedings before this court) wherein the defence *asked for a constitutional reference so that the plea may be decided before that court where the accused alleged that (a) there is no clear definition of the actus reus (b) that there is no proportionality with analogous sexual crimes and (c) and in the case of minors parents are excluded from deciding in the best interest of their child to promote or withdraw a complaint.*

The court saw the reply of the Attorney General presented in the registry of this court on the 28th of July 2023 wherein for the reasons mentioned in his reply objected to the reference being asked to be made by this court.

The court took note of its decree dated 31st October, 2023 wherein it rejected the applicant's request to order a constitutional reference and this due to the fact that his request is frivolous and vexatious.

The court took note of the verbal dated 5th March 2024 where the defence stated that it did not file an appeal from the judgement given by this court though presented an application before the Constitutional Court.

The Court took note of the note filed by the registrar of courts dated 20th June 2024 wherein he attached a copy of the judgement delivered by the Constitutional Court on the 17th June 2024 in the names **Republic of Malta vs Sarath Babu Kondagon** which declared the application of the accused as null .

Considers further,

The Court took note of what was stated by the Attorney General during the sitting of the 16th of January, 2025 in relation to the third plea raised by the accused and

declared that he has no objection to Soraiha Galdes giving evidence in court and consequently be subjected to cross examination however reserved the right to present an application requesting that such testimony is given by video- conferencing.

Considers further,

The court is abstaining from addressing the first and third plea of the accused as these were addressed in her judgment wherein she rejected such pleas and no appeal was presented by the accused from such judgment. Likewise this court does not need to entertain the fourth plea entitled '*evidence and witnesses*' once the Attourney General is in agreement with the accused and declared that he has no objection in Soraya Galdes giviung her evidence in court and being cross examined.

Therefore, the Court must address only the second plea of the defence in this judgment.

With regards to the second plea the defence is stating that the third count which the accused is charged with is not supported by the facts as stated. The criminal charge mentions non sexual penetration without her consent. The defence believes that since the alledged victim is a minor this does not automaticalluy bring into effect that she did not give her consent or did not participate voluntarily. Infact the defence goes on to say that Artice 202 (G) only mentions an increase in punishment but the crucial point is that there is no consent for the carnal connection.

In this charge the Attorney General is charging the accused of engaging in non consensual aggravated carnal conection, that is to say vaginal penetration of a sexual nature with any body part of the body of Soraya Galdes, a minor, by means of several acts even if committdd at different times in violation of the same provision of the law, namely Article 198 (1) of the Criminal Code.

These pleas are based on the proviso of sub- article (5) of Article 449 of Chapter 9 of the laws of Malta which provides the following:—

(5) The want of jurisdiction of the court and the nullity of the indictment may also be raised by the court ex officio, either before the accused answers to the charge, or after the verdict of the jury: Provided, however, that, after the verdict of the jury, the indictment may only be annulled in either of the following cases:

- (a) if the indictment does not contain, in substance, a statement or description of the offence as stated or described in the law;***
- (b) if the fact stated in the indictment does not constitute, in substance, the offence stated or described in such indictment.***

In this regard the court makes reference to the judgment delivered by the court in the names **Ir-Repubblika ta' Malta vs Carmel Saliba**¹ also mentioned in the judgment delivered by this same court as presided in the names **Ir-Repubblika ta' Malta vs Deniro Magri**² which addressed this same plea and held the following:-

'9. Issa, biex tirnexxi eċċezzjoni bħal din jeħtieġ li jirrizulta li l-fatti kif deskritti fl-Att ta' Akkuża jew fil-Kap ta' l-Att ta' Akkuża li jkun qed jiġi impunjat ma jkunux jikkostitwixxu fis-sustanza r-reat li bih ikun qed jiġi addebitat l-akkużat f'dak l-att jew f'dak il-Kap (ara Appelli Kriminali Ir-Repubblika ta' Malta v. Aibrahim Bashir Ben Matue, 15 ta' Frar 1996; Ir-Repubblika ta' Malta v. Lawrence Gatt et, 22 ta' Mejju 2003; Ir-Repubblika ta' Malta v. Dominic Bonnici, 22 ta' April 2004). F'dawk is-sentenzi giet citata ġurisprudenza kopjuża ħafna fejn intqal ukoll li fl-eżami biex tara jekk il-fatti kif esposti humiex marbuta mal-parti akkużatorja, il-Qorti trid toqgħod fuq il-fatti kif miġjuba fl-Att ta' Akkuża u mhux fuq il-fatti kif jistgħu jirrizultaw mill-atti tal-istruttorja jew kif eventwalment jistgħu jirrizultaw fil-kors tal-ġuri.

¹ Decided by the Criminal Court of Appeal on the 2nd May , 2013

² Decided by the Criminal Court of Appeal on the 24th June 2024

10. Fis-sentenza fl-ismijiet Ir-Repubblika ta' Malta v. Frederick Joseph Grech mogħtija minn din il-Qorti diversament komposta fit 28 ta' Dicembru 2009 intqal dwar l-imsemmi paragrafu (b) tal-proviso tas-subartikolu (5) ta' l-artikolu 449:

"Jibda biex jingħad li l-paragrafu (b) aktar 'l fuq imsemmi jittellem dwar li l-fatt ma jkunx jikkostitwixxi "fis-sustanza" ir-reat li jkun gie addebitat lill-akkużat, u għalhekk jekk dak il fatt "fis-sustanza" – u mhux neċessarjament bl-użu ta' kliem preċiżi jew sacramentali – jammonta għar-reat dedott, ma jkun hemm ebda nullità tal-Att ta' Akkuża (jew ta' xi kap partikolari tiegħu skond il-każ). L-iskop kemm ta' din id disposizzjoni kif ukoll tal-paragrafu (a) tal-istess proviso tas-subartikolu (5) tal-Artikolu 449 hu li minn banda l-akkużat ikun jaf sew biex qed jiġi akkużat u għalhekk għal x'hiex irid jiddefendi ruħu, u, fit-tieni lok, li persuna, wara l-verdett tal ġurati – verdett li, fir-realtà, huwa dikjarazzjoni li ċerti fatti avveraw ruħhom – ma tiġix ikkundannata għal fatt li ma jammontax għal reat³."

Thus, as enunciated above the scope of the sub-sections (a) and (b) to the proviso of sub-article 5 of Article 449 is that the accused is aware of the offences he is being charged with so that he will be able to build his defence and so that after the verdict of the jurors which in reality is a declaration that certain facts took place the accused will not be condemned for something he was not accused of. As stated over and over again the narrative as dictated by the Attorney General in the Bill of Indictment is not binding and once it refers to a fact then such facts would have to be determined by the jurors, being the judges of facts thus this plea is being rejected. The fact that the Attorney General cited section 202 (G), he did this as an indication that there is an aggravation since the alleged victim was a minor during the alleged offence. It has

³ Enfasi ta din l Onorabbli Qorti

nothing to do as to whether there was consent or not forth coming. This is a matter of fact which has to be determined by the jurors during the celebration of the Jury.

Thus, the court is rejecting the only plea left to decide being the second plea and order the continuation of the case.

Dr Consuelo Scerri Herrera
Hon Madame Justice

Maria Grech
Deputy Registrar