



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

**MAGISTRAT DR.  
JOSEPH CASSAR**

Seduta tad-29 ta' Mejju, 2003

Numru 497/1999

**Il-Pulizija**  
(Spettur Carmelo Bartolo/ Spettur Simon Galea)

**vs**

**Joseph sive Josef Dimech**

Il-Qorti,

Rat l-akkuzi migjuba kontra l-imsemmi Joseph sive Josef Dimech ta' 29 sena, iben Carmelo' u Connie nee' Camilleri, imwieled Pieta'nhar it-8 ta' Settembru 1969 u li joqghod 301, Triq San Giljan B'Kara, u li ghandu l-karta ta' l-identita bin-numru 377469 (M)

Talli

Nhar il-15 ta' Lulju 1999 ghal habta tal-hamsa neqsin kwart ta' fil-ghaxija waqt li kien f'Birkirkara, dolozament,

## Kopja Informali ta' Sentenza

bil-hsieb li jaghmel delitt, u cioe' li joqtol lil Francis Cuschieri minn B'kara. Jew li jqieggedlu l-hajja tieghu f'periklu car, wera dan il-hsieb b'atti esterni u ta bidu ghall-esekuzzjoni ta' dan id-delitt, billi permezz ta' arma tan-nar ( senter tal-marka Fabram bin-numru tas-serje 462751) spara tir fid-direzzjoni tal-imsemmi Francis Cuschieri, u kkagunalu feriti ta' natura hafifa skond ma ccertifika Dr. Jonathan Joslin MD. Ta' l-Isptar San Luqa, liema delitt ma giex esegwit minhabba xi haga accidental i u ndipendenti mill-volonta tieghu;

Kif ukoll talli fl-istess data, lok, hin, u cirkostanzi, u fi bnadi ohra f'dawn il-Gzejjer u fix-xhur ta' qabel din id-data, kellu fil-pussess u/jew that il-kontroll tieghu arma tan-nar u munizzjon barra minn fond jew post li jaghmel mieghu, kif ukoll zamm u garr l-istess arma li hija arma regolari kif ukoll munizzjon minghajr licenzja tal-Kummissarju tal-Pulizija rinnovata ghas-sena kurrenti.

U aktar talli fl-istess data, lok hin u cirkostanzi spara arma tan-nar f'post abitat, ghaldaqstant f'distanza ta' anqas minn mitejn metru minn post abitat b'perikolu ghal min seta kien ghaddej.

Kif ukoll talli nhar il-15 ta' Lulju 1999 matul ix-xhur ta' qabel, f'dawn il-Gzejjer, kellu fil-pussess tieghu arma tan-nar u cioe' senter tal-marka "Luigi Franchi" bin-numru tas-serje AHO 6653 minghajr licenza tal-Kummissarju tal-Pulizija rinnovata ghas-sena kurrenti;

U aktar talli fl-istess data, lok, hin u cirkostanzi, fil-hin li kien qiegged jaghmel delitt kontra il-persuna ( u cioe' tentattiv ta' omicidju voluntarju) kontra l-persuna t' l-imsemmi Francis Cuschieri minn B'Kara, kellu fuq il-persuna tieghu arma tan-nar u munizzjon;

U aktar talli fl-istess data, lok, hin, u cirkostanzi, volontarjament hassar, ghamel hsara, jew gharraq hwejjeg haddiehor, mobbli jew immobbli, liema hsara li ma tiskorrix l-valur ta' hamsin lira Maltija, saret ghad-detriment ta' Deborah Harvey minn B'Kara;

Kopja Informali ta' Sentenza

U aktar talli fl-istess data, lok, hin u cirkostanzi, kiser volontarjament il-bon ordni jew il-kwiet tal-pubbliku.

Rat in-nota ta' l-Avukat Generali tat-18 ta' Dicembru 2000.

Rat li fis-seduta tas-16 ta' Jannar 2003 l-akkuzat ma oggezzjonax li l-kaz tieghu jigi ttrattat bi procedura sommarja.

Semghet ix-xhieda bil-gurament;

Rat l-atti u d-dokumenti kollha;

Semghet t-trattazzjoni tal-prosekuzzjoni u tad-difiza;

Rat in-nota ta' l-avukat difensur u ta' l-ufficcjal prosekutur;

Ikkonsidrat,

1. Mix-xhieda moghtija u mill-istqarrijiet li inghataw skond il-ligi jirrizulta li fil-15 ta' Lulju 1999 wara nof in-nhar, Frans Cuschieri iltaqa ma' Paul Kavanagh li kellu jaghtih ghaxar liri Maltija (LM10) prezz ta' droga. Dawn gew fl-idejn. Kavanagh kellu xi griehi zghar u tqatta l-flok ta' Cuschieri. Kavanagh mar sab kenn ghand l-akkuzat li hu habib tieghu u jigi minnu. L-akkuzat u Kavanagh marru ghand Cuschieri fejn tlewwmu bil-kliem, imbaghad telqu. Jista' jkun li wara Cuschieri mar wara l-bieb ta' l-akkuzat u zgassah billi kien dgħajfef. Hemmhekk l-akkuzat qabad senter, tefa fih skartocc wiehed u flimkien ma' Kavanagh mar wara Cuschieri li kien telaq u spara fuqu. Cuschieri seta kellhu xi hadida fil-karrozza imma f'li gara la deheret u wisq anqas intuzat. Wara l-isparatura l-akkuzat mar id-dar flimkien ma' Kavanagh u halla s-senter hemm. Tkellmu u l-akkuzat mar l-Ghassa jirraporta x'gara. Wara mess is-senter ix-xhud Pace. Cuschieri garrab feriti hfief.

L-akkuzat uza s-senter tal-marka Luigi Franchi bin-numru tas-serje AH06653 f'post abitat, wara li kkargah bi skartocc. Ghal dik is-sena l-licenzja ma thallsitx.

Kopja Informali ta' Sentenza

Ma gewx ikkawzati hsarat fil-propjeta tax-xhud Harvey kif xehdet hijha stess.

2. Inkiser il-bon ordni imma din il-kontravvenzjoni (338 (d) (d) ) hi aassorbita fid-delitt principali.

Fin-nota tieghu tat-18 ta' Dicembru 2000 l-Avukat Generali deherlu li mill-Kumpilazzjoni tista' tinstab htija taht l-artikoli li gejjin

Art 41 (1) (a) tal-Kapitolu 9:- Fuq it-tentattiv ta' reat

(1) kull minn bil-hsieb li jaghmel delitt juri dan il-hsieb b'atti esterni u jaghti bidu ghall-esekuzzjoni tad-delitt, jehel, meta jinstab hati, barra minn meta il-ligi tghid espressament xort'ohra,

(a) jekk id-delitt ma jkunx gie esegwit minhabba xi haga accidentali u indipendenti mill-volonta tal-hati, l-piena stabbilita ghad-delitt ikkunssmat imnaqqsa grad jew zewg gradi.

3. L-abli difensur ta' l-akkuzat issottometta 'inter alia' "illi bl-ebda mod ma jirrizulta attentat ta' feriti gravi anke minhabba in-non idonjeta' ta' l-arma uzata." Fin-noti tieghu Sir Anthony Mamo (Vol. 1 'Criminal Attempts') fisser li:-

*"..... the inefficiency of the means in order to exclude criminal liability, must be absolute. Carrara thus makes out the distinction between absolute inefficiency and relative inefficiency, including in the better term the inefficiency or inadequacy or defectiveness of the means. The inefficiency is said to be relative (idoneita' relattiva) when the means were not in themselves capable of completing the intended crime owing to the particular conditions of the person or things against whom or upon which the criminal action was directed, or owing to the exceptional circumstances surrounding the fact, but could well have and could complete that crime if they had been or were used against another person or upon another thing, or if they were accompanied by different circumstances.*

*On the contrary, the inefficiency is said to be absolute, when the means used could in no circumstances injure*

*the right sought to be invaded whoever or whichever the person or thing against whom or upon which they were directed. By way of illustrating this distinction, Carrara gives the following examples a burglar wanted to break into a house by forcing open the door thereof, and he dreamed that he could do this by a fragile reed; a man with intent to poison his enemy administered to him some flour believing that it had the effect of a deadly poison, a person, intending to kill another by shooting, thought that he could accomplish his attempt by loading his firearm with a blank cartridge. In these and similar cases the efficiency of the means chosen is absolute, for whichever the door attempted to be broken open by means of that reed, or whoever the person, however weak, sought to be killed by means of that flour or that firearm, the achievement of the wrongful purpose was always impossible. But if instead of a reed the burglar has used an iron lever to which, however, the door, on account of its solidity, did not give way, or if the would be murderer had administered a truly poisonous substance which the strong physique of the intended victim resisted, or has fired the gun loaded with a bullet which, at the shorter distance, could have caused the death of the victim, then in all such cases the inefficiency of the means is not absolute but merely relative, because it is not inherent in the means themselves but arise out of the particular circumstances surrounding the fact.*

*Where the inefficiency of the means used is absolute, criminal liability for the attempt does not arise*

*Where the inefficiency of the means used is absolute, criminal liability for the attempt does not arise; and it does not make any difference that the agent may have firmly believed that he could carry out his designs by those means .....it is not the intention, however mischievous, that gives rise to liability, but the mischievous tendency of the overt act itself done in pursuance of such intention.”*

4. Dak li qed tissottometti d-difiza ma jistghax jigi accettat. Dan huwa kaz ta' 'idoneita' relattiva u mhux assoluta kif jirrizulta mix-xhieda ta' l-espert ballistiku (Vol 1, fol. 124).

5. Il-Qorti li semgħet ix-xhieda u flietha hi konvinta li l-akkuzat ried jikkaguna hsara fil-gisem ta' Cuschieri u dan mhux biex ibezzghu jew kif jghid hu 'jbezbizilu'. L-istqarrija ta' l-akkuzat hi cara bizzejjed. L-akkuzat "ried jagħmel wahda sewwa". Dan fortunatament għall-kullhadd ma garax.

6. In-nota ta' l-Avukat Generali tkompli hekk artikoli 214, 215, 216, 217, 218 tal-Kapitolu 9.

"214 –Kull minn, mingħajr il-hsieb li joqtol jew li jqiegħed il-hajja ta' haddiehor f'periklu car, jikkaguna hsara fil-gisem jew fis-sahha ta' persuna ohra, jew igibilha disordni f'mohha, ikun hati ta' offiza fuq il-persuna.

215. L-offiza fuq il-persuna tista' tkun gravi jew hafifa".

7. L-artikolu 216 jghid meta l-offiza tkun gravi u x'pieni jingħataw għaliha. Ta' warajh (artikolu 217) isemmi l-offiza gravi magħmula 'b'arma regolari'. Jissem mew offizi gravi ohra fuq il-persuna fl-artikolu 218.

8. artikolu 221 tal-Kapitolu 9

Dan l-artikolu jstabilixxi l-piena meta offiza fuq il-persuna ma ggibx il-konsegwenzi msemmija fl-artikolu ta' qabel u għalhekk 'titqies li hi hafifa'. Tizdied il-piena, fost oħrajn "jekk tigi magħmula b'arma regolari," mezz imsemmi fl-artikolu 217.

9. artikolu 325 isemmi l-pieni li jista' jehel minn b'certi mezzi jagħmel hsara jew igharraq volontarjament hwejjeg haddiehor. Isemmi wkoll il-kaz ta' meta 'delitt ikun skuzabbli minhabba provokazzjoni ingusta" u jidhol wkoll fuq hsara fi propjeta' pubblika.

10. artikolu 338 (dd) jaqa' that il-kontravvenzjonijiet kontra l-ordni pubbliku:

"(dd) b'xi mod iehor mhux imsemmi band'ohra f'dan il-kodici, jikser volontarjament il-bon ordni jew il-kwiet pubbliku."

artikoli 3, 9, 19, 23, 26 u 27 tal-Kapitolu 66- Ordinanza Dwar l-Armi

Dawn l-artikoli huma dwar il-htiega ta' licenzja biex jinzammu jew biex jinzammu fuq il-persuna arma tan-nar

u munizzjon (artikolu 3) dwar dmirijiet ta' persuna li tigi fil-pussess ta' armi tan-nar (artikolu 9); dwar konfiska ta' arma tan-nar (artikolu 19), piena fil-kaz ta' ricediva (artikolu 23); dwar pussess ta' armi tan-nar waqt li qed isir delitt kontra l-persuna jew reati ohra msemmija fl-artikolu 26. Fl-ahharnett skond l-artikolu 27 m'humix applikabbli ghar-reati that din l-Ordinanza l-Att dwar il-Probation ta' hatjin u l-artikolu 21 tal-Kodici Kriminali.

11. “artikoli 22(2), 24(2), 33, 29,40 tal-Kapitolu 33-Ordinanza Dwar l-Esplossivi.”

a. L-artikolu 22(2) hi dwar regolamenti li jistgħa jagħmel il-Ministru responsabbli għall-Pulizija fejn għandu s-setgħa li ma jagħmilx applikabbli, jekk hekk jidhirlu, l-Att dwar il-probation tal-hatjin, jew l-Artikolu 21 tal-Kodici Kriminali.

b. L-artikolu 24(2) jgħid li

“Hadd ma jista' mingħajr licenzja tal-Pulizija, jispara armi tan-nar f'post abitat, jew fi qrib tiegħu, jew fil-portijiet:”

c. artikoli 33 u 29 dwar il-piena għall-ksur ta' l-artikoli 24 u 25.

d. Artikolu 40 jimponi il-konfiska tal-‘corpus delitti’ u jsemmi x'għandha tagħmel il-Qorti dwar esplossivi f'certi kazi.

Jirrizulta li l-akkuzat zamm arma tan-nar u munizzjon mingħajr il-licenzja tal-Kummissarju tal-Pulizija u uza l-arma tan-nar biex iwettaq delitt. Spara arma tan-nar fi sqaq qrib l-abitat biex iwettaq l-istess delitt.

Għar-ragunijiet fuq imsemmija l-Qorti ma ssibx lil-akkuzat hati tar-reati kontemplati fl-artikoli 218, 221 u 325 (b) tal-Kapitolu 9 tal-Ligijiet ta' Malta u tilliberah minnhom.

Issibu hati tar-reati kontemplati fl-artikoli 214, 216, 217, u 338 (dd) tal-Kapitolu 9 kif ukoll taht l-artikoli 3 u 26 tal-Kapitolu 66 taht l-artikolu 24 (2) u tal-Kapitolu 33 tal-Ligijiet ta' Malta.

Kopja Informali ta' Sentenza

Rat l-artikoli 41 (1) (a), 214, 215, 216, 217, 31, 20, 338 (d) (d), 23 tal-Kapitlu 9; l-artikoli 3, 9 19, 26 u 27 tal-Kapitolu 66; l-artikoli 22 (2), 24 (2), 33, 29, 40 tal-Kapitolu 33, l-artikolu 28 A tal-Kapitolu 9.

Ser tapplika l-ahhar imsemmi artikolu tal-Kapitolu 9 (28 A) stante il-kondotta nadifa ta' l-akkuzat. Tikkundannah sitt xhur prigunerija, liema sentenza m'ghandhiex tidhol fis-sehh hlief jekk l-akkuzat jaghmel reat iehor soggett ghal-prigunerija fi zmien sentejn (2) minn illum.

Il-Qorti qed tispjega lil-hati bi kliem car ir-responsabilita tieghu taht l-artikolu 28 B jekk huwa jikkometti matul il-perjodu operattiv reat li ghalih hemm piena ta' prigunerija.

Il-Qorti tordna l-konfiska tas-senter marka 'Luigi Franchi' bin-numru tas-serje AH 06653.

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