



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.
JACQUELINE PADOVANI**

Sitting of the 15th April, 2009

Number. 235/2008

COURTS OF MAGISTRATES (MALTA)
AS COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR JACQUELINE PADOVANI LL.D. LL.M.
(IMLI)
SITTING OF THE 15TH APRIL 2009

POLICE
INSPECTOR RAYMOND AQUILINA
INSPECTOR MELVYN CAMILLERI
VS
DANIEL CHERNAEVA
STOYAN STOYANOV
JESSICA VELLA

The Court,

Having seen the charges brought against the accused Daniel Chernaeva, 20 years, s/o Stoyan and Desislava nee' Kirilova born at Sliven, Bulgaria on the 27/09/1987 and resides at 'Dione' Flat 4 Hgejjeg Street, Bugibba, and

4A Sava Dobroplodni Street, Sliven, Bulgaria ID Card Number Bulgaria No. 8709275800 which expires on 07/12/2015; Stoyan Stoyanov, 20 years, s/o Ivanov and Margarita nee' Stoyanova, born at Elena, Bulgaria on the 11/10 1987 and resides at 'Dione' Flat 4 Hgejjeg Street, Bugibba, holder of Bulgaria No. 8710111444 which expires on the 04/08/2009; Jessica Vella, 19 years, d/o Mario and Theresa nee' Sammut born at Pieta' on the 18th August 1988 and resides at 'Darvell', Triq Ta' Masrija, Mellieha and holder of ID Card No. 381488(M).

And are charged with having on these Islands on the night between 16th and 17th March 2008, inside the premises 'Dione Apartments' Flat 4 Hgejjeg Street, Bugibba;

- 1) By lewd acts corrupted minor *Ommissis* of *ommissis* years old (*ommissis*);
- 2) Also, at the same time, place, date and circumstances, by means other than those mentioned in Article 203 (1), excited, instigated or facilitated the corruption of the said minor *Ommissis*;
- 3) And also, at the same time, place, date and circumstances committed violent indecent assault on the same minor *Ommissis*.

It is also being humbly requested, if it is appropriate, to provide security of *Ommissis* and her family, instantly applies the provisions of Article 412C of Chapter 9 of the Laws of Malta and applies the protection order under the conditions order by the Honorable Court;

It is also humbly requested; if it is appropriate, to provide security of *Ommissis* and her family in terms of Article 383 et sequitur of Chapter 9 of the Laws of Malta;

Therefore, after submitting the Court respective identity Cards of the accused and the birth certificates of Jessica Vella, it is requested that this case be dealt with according to the law.

Having heard the evidence tendered on oath;

Having seen the articles of Law listed by the Attorney General under which this Court may find the accused guilty or otherwise;

Having seen the note in the record of the proceedings of the 7th October 2008 where the accused found no objections to their being adjudicated by this Court;

Having seen the note in the record of the procedures whereby this case was being heard simultaneously with the proceedings Police vs. Jummah Mohammed Aka et.

Having seen the record of the proceedings;

Having heard the oral submissions of the parties;

Having seen the note of observation of the prosecution;

Deliberates:

From the evidence tendered by the Prosecuting Officer Inspector Melvin Camilleri, the same Inspector exhibited a Police Report Dok.MC regarding a missing person and Dok.MC1, Dok.MC2 and Dok.MC3 being the three statements of the accused.

Lynn Vella, at page 59, confirmed Dok.MC i.e. the report she filed with the Police regarding her missing daughter *Ommissis*, *ommissis* years of age. She confirmed that she found her daughter on the following Monday in a public playground in Mellieha and confirmed her decision to continue with the criminal proceedings against the accused.

Daniela Sciberras, Social Worker with the Child's Protection Services, stated that the child was very reluctant to talk about the incident and said that the child decided to write down her story and exhibited Dok.DV. Sciberras stated that, following the written account of the events, she questioned *Ommissis* as to whether she was given any money for the sexual acts she was involved in,

to which she replied in the negative. She confirmed that the events happened after Christmas.

Ommissis gave her testimony via video conference. She stated that it was not the first time that she ran away from home and that this usually happened on weekends. However she had also run away from home during the week, after her private lessons when she was still in her school uniform. During the night in question, *Ommissis* stated that she was wearing a pair of trousers and a top and that Jummah Mohamed Omar and Daniel never asked her age but that she, of her own volition, had told them that she was fifteen. *Ommissis* confirmed that she met Omar Abdullah Danganoma Omar only once when she went to the flat even though she had seen him afterwards when she was shopping. She confirmed that she never returned to Omar's apartment. At page 67, *Ommissis* stated that she did not know that Omar and Jummah were friends and that they lived in the same apartment so that when she went to Omar's flat she was not expecting to meet Jummah. *Ommissis* stated that when she went to the flat in question she found Bello and Jummah and that she had been accompanied by Sasha Bonello. Apart from the above mentioned, there was also Chris and three other people. *Ommissis* stated that after the incident she had sent Omar a Valentine card which had been written for her by Sasha and hand delivered by her (Sasha). *Ommissis* stated that this was done as a prank and that even though, in the light of what had happened, *Ommissis* did not believe it was a good idea to send the card, however she was afraid of losing Sasha as a friend and therefore did not stand up to her. In fact *Ommissis* stated that she was with Sasha when Sasha had bought the card. *Ommissis* said that Sasha introduced her to Hakim and that she met him in Hakim's flat. *Ommissis* stated that subsequent to the incident, she had also met Omar when she was in Hakim's flat. However she did not speak to Omar. *Ommissis* stated that it was untrue that Hakim refused to speak to Sasha and herself and that it was Hakim that first addressed Sasha. However she (*Ommissis*) refused to talk to him and left the flat. At page 79, *Ommissis* stated that when

the incident with Omar took place she was in the company of Sasha and Abigail. *Ommisis* confirmed that when she was in Chris's room there were three other persons outside in the living room whom she did not know.

Ommisis confirmed that the sexual acts between Omar and herself included full sexual intercourse. *Ommisis* said that Omar did not wear a condom before he had sexual intercourse with her, that she had a bruise on her breast. She said, at page 85, that this incident lasted for about half an hour. Asked for the reason why she and Sasha frequented foreign friends, *Ommisis* stated that Chris used to tell Sasha to meet them. *Ommisis* stated that she had full sexual intercourse with Jummah and that he did not wear a condom. She stated that Jummah had taken off her trousers then her top, he had then removed her bra and she had told him that she did not want to have sex with him. She had pushed him off, Jummah had pushed her back, he had thrown her on the bed and took off her trousers. Jummah had locked the door with a key and put the key in his jeans. When he threw her on the bed he held her down from her breasts.

At page 95, *Ommisis* stated that after the incident she had seen Jummah at Bugibba bus terminal, he had called her but she refused to talk to him. At page 97, *Ommisis* stated that she was allowed into the 'Freeze Night Club' without any problems and that nobody had asked for her Identity Card. She has similarly gone into 'Havana' and 'Fuego' several times without any problems. She would go to these night clubs with Jessica and Sasha. At page 100, *Ommisis* stated that she used to drink Vodka orange in these night clubs, about five (5) Vodka drinks in one evening at any of these night clubs and that even though she was *ommissis* (*ommissis*) years of age nobody had asked her of her Identity Card. At page 101, *Ommisis* stated that she had told Daniel Chernaeva that she was fifteen (15) and this on Jessica Vella insistence. She said that Jessica Vella was infatuated with Stoyan Stoyanov and that Jessica told her to say that she was fifteen (15) so that they could be together. At page 103, *Ommisis* stated that apart from Jummah Mohammed Aka (known

as Jummah) and Abdullah Danganoma Omar (known as Omar) and then subsequently with Daniel, she had no sexual experience with other men. At page 103, *Ommisis* stated that when she and Jessica Vella went to Daniel Chernaeva's flat she was held from her waist and was escorted inside by force. In fact, both *Ommisis* and Jessica began to be afraid. Asked why they did not flee at that moment in time, *Ommisis* stated that they were afraid and that Daniel and Stoyan were behind them. At page 105, *Ommisis* stated that her fear started when she was walking to her flat but that Jessica Vella was afraid only when she was forcibly taken inside the flat. *Ommisis* stated that Jessica and herself were pushed inside the common entrance door of the block of flats. Once inside the bedroom of the apartment *Ommisis* stated that Daniel Chernaeva did not use any force, in fact *Ommisis* stated that it was Daniel and herself who first started making out, that Daniel started removing her clothing and that no force was used at all at this stage. *Ommisis* stated that when her clothes were being removed by Daniel she tried to pull them back up and that he removed them again, went on top of her and at this stage she could not resist because he was too heavy for her. *Ommisis* said that she hurt when Daniel Chernaeva penetrated her but when she tried to push him off, his response was a deeper penetration. At page 110, *Ommisis* stated that the sexual encounter lasted for about half an hour. At page 111 et seq. *Ommisis* stated that she had known Jessica Vella for ten (10) years and that they started hanging out together for the last two (2) months prior to the incident. *Ommisis* stated that she and Jessica did not discuss their boyfriends. At page 116, *Ommisis* stated that in spite of having consumed five (5) Vodkas and orange she only felt a little dizzy and that Jessica Vella had gone to buy the drinks at the counter and that she had paid her for them. She stated that Daniel and Stoyan had bought them a couple of bottles of beer and that she had not touched it because she disliked beer.

At page 117, *Ommisis* insisted that in spite of the alcohol that she had imbibed, she knew what she was doing. At page 118, *Ommisis* stated that Daniel and Stoyan had

given them false names (Tonio and Steve respectively) and that she only found out the real names at the Police Headquarters. At page 121, *Ommissis* stated that on the night when she had sexual intercourse with Daniel Chernaeva she was wearing a skirt which was made of *denim*. At page 121 and 122, *Ommissis* identified the accused.

Inspector Raymond Aquilina, at page 126, stated that on the 16th March, 2008 Lyn Ann Vella lodged a missing person report regarding her *ommissis* (*ommissis*) year old daughter, *Ommissis*, at the Qawra Police Station. The Police immediately initiated investigations to trace the whereabouts of the minor who had been missing since the fifteenth (15th). In fact the minor was found at the Mellieha playing fields on Monday the 17th of March. The Police interviewed the minor who stated that she had always been in the company of Jessica Vella during her two day stint. She explained to the Police that on the 15th of March she and Jessica had gone to Bugibba Square, went into 'Fuego' and at night slept in the residence of a certain Jeffrey with whom Jessica had sexual intercourse. *Ommissis* stated that on that night she had no sexual adventures. On Sunday the 16th of March, whilst roaming around Bugibba, they met Daniel Chernaeva and Stoyan Stoyanov and had a drink together. Later on *Ommissis* stated that they went to Daniel and Stoyan's apartment and slept there. *Ommissis* told the Police that she had sexual intercourse with Daniel Chernaeva and that she saw Jessica Vella having sexual intercourse Stoyan Stoyanov because both couples spent the night in the same bedroom. *Ommissis* stated that apart from having full sexual intercourse with Daniel, she was forced to practice oral sex on the same Daniel Chernaeva. In the course of her interview with the Police, *Ommissis* stated that she had had three (3) sexual experiences prior to this with (3) African Nationals that is Jummah, Mohammed and Omar. She stated to the Police (at page 128) that her first sexual experience was with Jummah who had forced her to have sexual intercourse in his apartment, that this was a painful experience and that she had started to bleed. *Ommissis* told the Prosecuting Officer that Jummah

had never used contraceptives. *Ommissis* told to the Police, in an ambivalent manner, that even though she did not want to have sexual intercourse with Abdullah Danganoma Omar she ended up having sexual intercourse with him. She stated that the sexual intercourse was not forcibly performed on her. Inspector Aquilina stated that *Ommissis* also explained to the Police that she had sexual intercourse with Mohammed who however is still at large.

Inspector Raymond Aquilina confirmed Dok.MC2 and Dok.MC3, statements of the accused. Inspector Aquilina declared that Stoyan Stoyanov explained how he and Daniel had met Jessica Vella and *Ommissis* who had later accompanied them to their apartment. Stoyan stated that he had sexual intercourse with Jessica, whilst *Ommissis* was in the same room with Daniel Chernaeva. Stoyan declared that this was done with the lights out and that he could not tell what *Ommissis* and Daniel had done during the night. Stoyan told the Police that Daniel Chernaeva had told him subsequently that *Ommissis* had performed oral sex on Daniel and that Daniel had shown Stoyan his genitalia. Inspector Aquilina stated that the statement was effected with the assistance of an interpreter.

In his statement Daniel denied that he had sexual relations with *Ommissis* and denied that he forced the same to practice oral sex on him. He further denied that he had exposed his genitalia to Stoyan and said it was only a joke between men. Daniel Chernaeva told the Police that he and *Ommissis* had only kissed and then slept. He did not know what Stoyan and Jessica were doing as he was not facing them.

In her statement, Jessica Vella told the Police that she was in the company of *Ommissis*, whom she had known for years and that she has also knew her parents very well. She stated that she did not appreciate her responsibility towards the minor. She stated that she had sexual intercourse with Stoyan Stoyanov, that she could not tell precisely what *Ommissis* and Daniel Chernaeva did but believed that they had sexual intercourse. At page

134, Inspector Aquilina stated that *Ommissis* and Jessica were forced inside the common entrance but that from there on they followed the accused to their apartment. He said that *Ommissis* told him:

“That she had no alternative but to stay together with Jessica Vella because it was dark, it was late in the evening and she had nowhere to go.” (at page 134)

WPC 89 Mariella Spiteri confirmed the voluntariness of the statement Dok.MCX2.

Martin Vella (at page 143) father of the minor *Ommissis*, confirmed the report lodged regarding his missing daughter. He stated that he tried to contacting her on her mobile but that somebody else answered and cut the line. He informed the Court that he went out looking for her; to no avail and that eventually she was found some days later.

PS1229 Antoine Cilia (at page 147) informed the Court that he had been given instructions to arrest Abdullah Danganoma Omar.

WPC 280 Louise Camilleri stated that when the minor *Ommissis* was eventually found, she spoke to her in the presence of her mother at Qawra Police Station. *Ommissis* stated that she had met Daniel and Stoyan while she was with the company of Jessica Vella and that she had slept in their apartment on the night of the 16th. *Ommissis* stated that she had met Stoyan and Daniel at a pub called ‘Miracles’ and that she accompanied Jessica to the accused’s apartment where Jessica had sexual relations with Stoyan whilst *Ommissis* had the same with Daniel whilst they were all in the same room.

WPC 280 Camilleri confirmed the statement released by Daniel Chernaeva and by Jessica Vella.

WPC 293 Michelle Camilleri (at page 155) stated that she spoke to *Ommissis* in the presence of her mother and

confirmed the evidence given by Inspector Raymond Aquilina.

WPS 246 Diane Cassar (at page 167) confirmed her presence during her interview of *Ommissis* with the Police and confirmed Inspector Raymond Aquilina's evidence.

PC 1359 (at page 172) confirmed the statement released by Stoyan Stoyanov.

PS 656 Adrian Lia exhibited Dok.PSX and confirmed that he was instructed by Inspectors Aquilina and Camilleri to arrest the accused.

Inspector Raymond Aquilina (at page 180) exhibited Dok.RAZ2 and Dok.RAZ3, Identity Cards of both Daniel Chernaeva and Stoyan Stoyanov.

Inspector Raymond Aquilina (at page 187 and 188) exhibited Dok.RAZ1, Birth Certificate of *Ommissis* and Dok.RAZ being a sketch of Daniel Chernaeva's and Stoyan Stoyanov's flat and bedroom.

PC 656 Adrian Lia (at page 185 et seq.) confirmed that he effected the sketch Dok.RAZ of the layout of the flat of the accused.

Daniel Chernaeva gave his testimony on oath. He stated that on the night in question that is on the 16th March 2008 he and Stoyan went to Miracles Pub in Bugibba's Square where they saw two girls, got introduced to them and started chatting them up. Daniel stated that he stayed at the Miracles for about two to three hours during which they were talking to the girls and dancing with them and having some beer. Daniel stated that *Ommissis* had two beers, one at the Miracles Pub and another, later on, when they went to Freeze and Chernaeva said that the girls looked already drunk so they didn't offer more drinks. After they left Freeze, they decided to go to their apartment with the girls. Daniel Chernaeva (at page 195) was not sure whether this was Stoyan's idea or the girls'. When they arrived at the flat, Daniel Chernaeva went to speak to

her sister and her boyfriend, offered the girls something to drink and eat and brought four (4) beers into the bedroom. One of the beers got spilt by mistake so the boys had a beer each whilst the girls shared the beer. They chatted for about half an hour. Daniel Chernaeva stated that whilst they were at the pubs, *Ommissis* was behaving well and she showed Daniel that she liked him and she was kissing him and dancing with him and hugging him (see page 196). Daniel Chernaeva stated that when they went into the bedroom, Stoyan and Jessica sat on one bed whilst he and *Ommissis* sat on another bed in the same room. Daniel Chernaeva stated that *Ommissis* put on some music and Jessica suggested that they should switch the lights off. Daniel stated that at this stage, *Ommissis* was kissing him and hugging him. Daniel Chernaeva (at page 199) stated that at one point in time *Ommissis* told him that she was tired, he asked her what the matter was and she just repeated that she was tired so she turned the other way and went to sleep. The next morning they woke up, found the girls still in the bedroom and they wanted to stay on. Daniel Chernaeva stated that *Ommissis* was wearing a skirt and a top where he was in jeans and with a shirt. Chernaeva stated that *Ommissis* did not remove any clothing during the night and that she put on a shirt because she was feeling cold. He did not remove any clothing either. The next morning Chernaeva got up early as he had an appointment to attend to, so he left with the girls at around ten to seven (6:50a.m.). Daniel Chernaeva stated that he heard the evidence given by *Ommissis* and half of her evidence was untrue. He stated that *Ommissis* had told him she was sixteen (16) and that she and Jessica were sisters. Daniel Chernaeva stated that *Ommissis* had also said on oath that she had slept with him and that this was untrue and that *Ommissis* had also stated that she had never been with any other men but that he had seen her with several different men. Daniel Chernaeva stated that the following morning, *Ommissis* and Jessica did not want to leave, they wanted to stay on because they wanted to sleep longer. He also said that the girls slept with them overnight because there were no buses and they did not have any money for a taxi. He also said that Jessica had phoned up her mother to tell her that

she was sleeping at a friend's house. Daniel Chernaeva stated that whilst he was at the night clubs Miracles and Freeze he did not in any way resist *Ommissis*. Daniel Chernaeva (at page 201) stated that after they switched off the lights he went to the bathroom to wash himself. He denied going to the bathroom to dispose of his condom stating that he was in his jeans and had not taken them off all night. Daniel Chernaeva confirmed the statement that he released to the Police, barring a necessary clarification regarding the episode of his going to the bathroom. He clarified that he had decided to go and wash and change his underwear, that he took off his trousers and remained in his boxers shorts and that he went into the bathroom with an extra pair of pants, however he did not get into the bathroom because his sister's boyfriend was occupying the bathroom.

Stoyan Stoyanov (at page 206) stated on oath that Daniel and himself had gone to Miracles that night in question and that they saw Jessica and *Ommissis* sitting on a bench outside. The girls started to wave at them. The first time it happened they did not pay much attention. When the girls waved again, the two boys decided to go up and get to know them. After that they decided to go to the night club Freeze which was close by. Stoyan stated that whilst they were at Freeze, they were drinking, talking and having a good time. Stoyan said that Daniel and himself ran out of money and could not buy any more drinks and that the girls had no money and so they decided to go back to their apartment. When they got inside the apartment, the two girls and Stoyan went into the bedroom, whilst Daniel followed them there sometime later. Stoyan Stoyanov stated that he offered the girls some refreshments and something to eat and they refused, but that Daniel brought four (4) beers. Stoyan stated that he took one beer and Daniel took another and the girls shared one, because the fourth one (4th) was knocked over and broke on the floor. They listened to some music and that some point in time Jessica's mobile started to ring, it was her mother. Daniel stated that Jessica chatted with her mother for some time and that Jessica told him that they were going to sleep overnight at

their apartment. Stoyan stated that they continued chatting for a little while and then they decided to switch off the lights. He stated that Jessica and himself had sex but that he did not know what was happening on the other bed since they were in the dark with the music on. After this, the girls started to talk in Maltese so they decided to switch on the lights again. Stoyan stated that he went into the bathroom at some point in time and then he slept. Following the morning, Daniel had to go out early and he also had to go out because he was applying for a job on that day so he escorted the girls out of the flat. Stoyan stated that he had asked the girls their age and Jessica had told him she was nineteen (19) and *Ommisis* said that she was sixteen (16). Stoyan stated that when they had switched on the lights again the girls were talking in Maltese and that at no point in time did *Ommisis* look scared or uncomfortable. In spite of her small stature, Stoyan stated that *Ommisis* had told him that she was sixteen (16) and that he believed her and that he felt very upset and uncomfortable when he found out, later on, that she was only *ommissis* (*ommissis*). He stated categorically that at no time did they have any suspicion regarding her age.

Jessica Vella (at page 211) stated that she was in the company of *Ommisis* they had gone to a night club in Bugibba called Miracles where *Ommisis* had eyed the two accused and encouraged her to go and talk to them. Jessica stated that she refused at first. Then she decided to buy some drinks and one of the accused came after them and started to talk to them. After some time he asked them whether they intended to stay at the Miracles or go on to Freeze and they decided to go together to Freeze. Jessica Vella stated that they had three (3) beers each at Miracles and one beer each at Freeze. Jessica stated that it was *Ommisis*'s idea to go with them to their flat, that she was reluctant and then decided to go with her. Once they arrived at the flat they were offered some beer but she refused. They put on some music and went into the bedroom. Jessica Vella confirmed that when they were in the flat with the boys, Daniel's sister was present, together with her boyfriend. Jessica said that

subsequently she had sexual intercourse with Stoyan but she did not know exactly what *Ommissis* and Daniel were doing. She stated that even though *Ommissis* and herself were speaking in Maltese and *Ommissis* had told her that she had sexual intercourse with Daniel, Jessica stated she could not be sure of this because it was dark and she had not seen anything. Asked whether she had heard *Ommissis* cry out in anger or pain or making any resistance whatsoever, Jessica Vella stated that she did not hear anything because there was the music on. *Ommissis* stated that at no point in time did she hear *Ommissis* saying that she was afraid, that she wanted to leave or that she was being assaulted. Neither did she appear worried or perturbed. In fact the following morning she did not want to return home even though Jessica went back home, in fact *Ommissis* was found on the swings in the playground in Mellieha. Jessica stated that it was *Ommissis's* idea to go to the apartment with the boys. Asked whether she advised *Ommissis* to return home that evening rather than stay at the apartment of the boys, Jessica Vella stated that it was *Ommissis's* idea in the first place to stay overnight and that she was not going to order her to do anything. Jessica Vella stated that *Ommissis* had told her that she had sexual intercourse with Daniel, however Jessica did not believe *Ommissis* and this was because *Ommissis* sometimes lied. Jessica Vella stated that after she had sexual intercourse they switched on the lights and *Ommissis* was still wearing her skirt and vest.

Deliberates:

From the above it is amply obvious that *Ommissis* is a *ommissis* year old who cannot wait to become an adult. In the company of other youths, she emulates their behavior in a yearning desire to be accepted, fearing rejecting of her friend Jessica.

Article 203A of Chapter 9 states that:

“Whosoever, by any means other than those mentioned in article 203(1), instigates, encourages or facilitates the defilement of a minor of either sex, shall, on conviction be liable to imprisonment for a term not exceeding two years and the provisions of article 203(2) and (3) shall, mutatis mutandis, apply to an offence under this article:

Provided that the offence shall be punishable with imprisonment for a term not exceeding four years in any of the cases referred to in the proviso to article 203(1).”

From the evidence adduced in this case there is no doubt that sexual intercourse enacted by Jessica and Stoyan in the same bedroom, in a bed perhaps a meter away from where the *ommissis* (*ommissis*) year old minor lay with Daniel Chernaeva, had a severe effect on *Ommissis*.

In spite of the fact that *Ommissis* at *ommissis* (*ommissis*) had already experienced three (3) sexual traumas with three (3) different African men (with Jummah, Mohammed and to a lesser extent with Omar) the very act of seeing and hearing two adult engaging in casual carnal conjunction, necessarily leaves a corrosive, corrupting influence.

In fact, in the case in question the sexual spectacle had an even worse significant effect in that it undetermined any resistance *Ommissis* proffered to the sexual advances of Daniel Chernaeva.

With, reference to Jessica Vella, there is the added betrayal of friendship, the use or exploitation of a “friend” to achieve the satisfaction of sexual needs, which although may in no way translate into any legal wrong doing, further undermined the minor’s resistance to the advances of Daniel Chernaeva.

The Court will now address charges brought against Daniel Chernaeva.

In spite of Daniel Chernaeva's absolute denial in his statement to any sexual activity with the minor, and during the testimony preferred before this Court, there is no doubt in this Court's mind, that Daniel Chernaeva had sexual intercourse with *Ommissis* knowing that her consent was at best ambivalent, and that this was followed by oral sex with *Ommissis* on the night of the 16th March.

There is no doubt that Daniel Chernaeva forcefully ushered *Ommissis* in at the main entrance of the block of apartments and that he understood the reluctance of the minor when he started to undress her that he understood that she tried to retrieve her clothing to where they originally belonged, and that she resisted his advances by trying to push him off. In the words of *Ommissis* when she attempted to push him off, Daniel Chernaeva responded by penetrating her more deeply. Indeed this case presents a borderline argument for a case of rape, a charge which has not been levied at the accused precisely because there was insufficient proof to sustain carnal knowledge by violence.

It is almost superfluous to add at this juncture, that full sexual intercourse with a minor is a "lewd act" in terms of Article 203(1) of Chapter 9, and one capable of causing an indelible corruptive effect on this *ommissis* year old.

This Court however cannot find sufficient evidence to prove the sexual activity in question was accomplished by the use of **deceit** and **threats** in terms of the aggravating circumstances envisaged in Article 203 of Chapter 9 of the Laws of Malta.

There is absolutely no evidence, this Court finds, of any deceit at all, and though some force was used at the entrance of the block of apartment, and doing the sexual activity, *Ommissis* never mentioned any threats being uttered by any of the three accused.

This Court, having had the benefit of closely examining *Ommissis* during a long video conference, understands

that Daniel Chernaeva, or indeed anybody else, **could not have possibly believed** that *Ommissis* was fifteen (15) years old.

Indeed, *Ommissis*, was small for a *ommissis* (*ommissis*) year old at the time of the alleged incident and looked barely older than ten (10).

This Court understands that the sexual trauma experienced by *Ommissis* in this case, was not her first.

However, according to obtaining jurisprudence as is shown in the jurisprudence of the Maltese Courts, a previous corrupting sexual trauma is not a barr to subsequent prosecutions.

Indeed in the case of **Il-Pulizija vs. Lorenzo Baldacchino** decided on the 30th March 1963, the Criminal Court of Appeal (Per Judge William Harding) stated:

‘Il-persuna korrotta ghandha d-dritt illi ma tigix ulterjorment korrotta, u hadd ma ghandu d-dritt li impunement jispingiha aktar fit-triq tal-korruzzjoni, jew jimpedilha l-possibilita’ tar-rigenerazzjoni.’

Again in the case **Il-Pulizija vs Carmelo Grech** decided on the 18th June 1960 by the Criminal Court of Appeal (Per Judge William Harding), the Court reiterated that:

‘Il-Qrati ta’ Malta qatt ma abbraccjaw it-teorija, propunjata minn xi skritturi, illi r-reat ta’ korruzzjoni ma jeżistix meta l-minuri jkun ga totalement korrott. Huma dejjem irritenew illi anka l-minuri korrott ghandu d-dritt li ma jigix ulterjorment korrott, hu x’inhw l-istadju tal-korruzzjoni tieghu.’”

Therefore the Court finds Stoyan Stoyanov and Jessica Vella guilty of the second (2nd) charge brought against them not guilty of the first (1st) charge and third (3rd) charge brought against them which are alternative to the first (1st) and acquits them of the same and after having

seen Article 203A, 203(1) of Chapter 9 of the Laws of Malta, condemns the accused Stoyan Stoyanov and Jessica Vella a term of ten (10) months imprisonment and the Court finds Daniel Chernaeva guilty of the first (1st) charge, not guilty of the alternative second (2nd) and third (3rd) charges brought against him and after having seen Article 203 of the Chapter 9 of the Laws of Malta condemns him to a term of two (2) years imprisonment.

The time the accused spent in preventive arrest is to be deducted according to the recent amendments to the Law.

< Final Judgement >

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