



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

**MAGISTRATE DR.
JACQUELINE PADOVANI**

Sitting of the 15 th April, 2009

Number. 230/2008

POLICE
INSPECTOR RAYMOND AQUILINA
INSPECTOR MELVYN CAMILLERI
VS
JUMMAH MOHAMMED AKA
ABDALLAH DANGANOMA OMAR

The Court,

Having seen the charges brought against the accused Jummah Mohammed Aka, 27 years, son of Mohammed and Maria nee' (unknown), born in Filenge, Niger on the 17th of March 1980, resides at 'Neptune Court' Flat 3 Qawra Point, Qawra and holder of Immigration Card number 05JJ-016. Abdallah Danganoma Omar of 21 years, son of Abdallah Omar and Aisha nee' (unknown), born in Zididin, Niger on the 1st of January 1987, residing at 113, 'Sunshine Flats', Flat 2, Sir Luigi Preziosi Street, St. Paul's Bay and holder of Immigration Card number 05LL-016

Jummah Mohammed Aka charged with having, in St. Paul's Bay, on February 2008 and in previous months:

- 1) By violence had carnal knowledge on the minor *Ommissis A* of *ommissis* years of age;
- 2) Furthermore in the same place, time and circumstances, without an order issued by a competent authority according to Law and apart from places within which the Law allows private citizens to arrest the accused, arrested, held and sequestered the same *Ommissis A*, against her will and this as a means to force her to do something that offends the honor of her sex;

Furthermore Jummah Mohammed Aka and Abdallah Danganoma Omar together are charged with having on the same day, place, time and circumstances by diverse acts committed by the accused, even at different times, which violate the same disposition or the same Articles of Law or were made under one resolution:

- 3). By lewd acts defiled *Ommissis A*, a minor of *ommissis* (*ommissis*) years of age which offence was effected by fraudulent means or deceit practiced by them.
- 4). Furthermore, at the same time place and circumstances, by any other means mentioned in Article 203(1), they excited, helped or facilitated the corruption of *Ommissis A*, minor of *ommissis* (*ommissis*) years of age.
- 5). In the same place time and circumstances, attempted violent indecent assault on the same minor *Ommissis A*.

The Court is hereby requested to issue a protection order in terms of Article 412C Chapter 9 of the Laws of Malta during these Court proceedings and when passing judgment.

The Court was further requested to provide for the security of *Ommissis A* and her family, in terms of Article 383 et seq. of the Chapter 9 of the Laws of Malta.

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 proceedings whereby this Court after accused explicit request ordered the proceedings to be conducted in English language.

Having seen the note in the record of the proceedings that this case was being heard simultaneously with the proceedings *Police vs. Daniel Chernaeva et;*

Having heard the oral submissions of the parties;

Having seen the note of observations of the prosecution;

Deliberates:

From the evidence tendered by the Prosecuting Officer Inspector Melvin Camilleri, the same Inspector exhibited Dok.MCX1 (at page 11 and 12) and Dok.MCX2 (at page 17 till 21) which consists of Jummah Mohammed Aka's statements, and Dok.MCX3 which consists of Abdallah Danganoma Omar's statement.

Omissis B (at page 23 et seq.) confirmed Dok.MC i.e. the report she filed with the Police regarding her missing daughter *Omissis A*, *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.

Melissa Xuereb (at page 26) Child Protection Services, confirmed that she was present while interviewing the minor *Omissis A* who was very reluctant to say what had happened. She confirmed that the minor preferred to give a written account and exhibited Dok.DV at page 30.

Daniela Sciberras (at page 31 et seq.) Social Worker with the Child's Protection Services, stated that the child was very reluctant about talking about the incident and stated that the child decided to write down her story and confirmed Dok.DV. Sciberras stated that following the written account of the events she questioned *Omissis A* 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.

Omissis A (at page 40 et seq.) in the course of a lengthy video conference, said that she had had a quarrel with her mother because she had not been allowed to go out that evening so she ran away from home and went to Fuego Bugibba with Jessica Vella. They met Jeffrey and slept overnight at his flat in Bugibba. *Omissis A* stated that Jessica and Jeffrey had sexual intercourse. She said that they mullied around in Bugibba during the day and in the evening they went to Freeze Nightclub and met Daniel Chernaeva and Stoyan Stoyanov. Later on, they went to Chernaeva's apartment where Jessica Vella had sexual intercourse with Chernaeva (pg 43) and gave a detailed account of the events of that evening. *Omissis A* (at page 60) explained that she had previous sexual intercourse with Jummah, a young man whom she met whilst she was in the company of Sasha Bonello. *Omissis A* explained that Sasha was infatuated with a

young man by the name of Bello. So they went to Bello's flat. There they also met Jummah. *Omissis A* said that Bello and Sasha were quarrelling and went inside a bedroom and Jummah picked up a conversation with *Omissis A*. Jummah walked to another bedroom and started kissing *Omissis A*. (At page 62) *Omissis A* said she told him to stop and pushed him off however Jummah closed the door and locked it. She said that he pushed her, continued kissing her and started to undress her. *Omissis A* stated that she tried to resist and tried to push him off but he held her down from the breast (page 63). He threw her on the bed, undressed, took off her clothes, she tried to retrieve them, but he still managed to undress her and penetrated her.

Omissis A said that she told him that she did not want to have sex with him several times but to no avail. *Omissis A* said she did not scream or shout because Sasha was with Bello.

Omissis A said that she also swore at him. *Omissis A* stated that this incident happened a little before Christmas. She said that this was her first sexual experience and though she had previous boyfriends she did not do anything other than kiss them. *Omissis A* (at page 71) said that she could not get out of the bedroom because Jummah had locked the door even put the key in his jeans. She said that she bled for a day after this incident.

Omissis A, with some reluctance, admitted that whilst in the company of Sasha, she also had sexual intercourse with a certain Mohammed who refused to let her out of the flat before she had sexual intercourse with him.

Omissis A said that after her experience with Jummah whilst she was in Chris's flat she met Omar who picked up a conversation with her. He then led her to his bedroom, told her he loved her and started necking her. She pushed him away but he led her to the bed, undressed her and penetrated her.

Omissis A explained to the Court how she met Jessica and Sasha and that in spite of her parents' warnings, she went ahead and kept their company.

Omissis A said that, on Jessica's suggestion, she had taken and used her mother's credit card to withdraw money for her sustenance.

In her written account, Dok.DV, *Omissis A* wrote that Sasha had introduced Jummah to her at the Bugibba Piazza and that some time before Christmas, whilst in Chris's flat with Sasha had met Jummah again. She said she was not attracted to Jummah. Some time later Sasha had asked *Omissis A* to accompany her to a flat in Bugibba so that Sasha could meet Bello. Bello lived with Jummah. Whilst Sasha and Bello were arguing and quarrelling, Jummah chatted *Omissis A* up and led her to his bedroom where he started to undress *Omissis A*. *Omissis A* wrote that she resisted Jummah who continued undressing her. She had managed, in fact, to put her jeans on again, however Jummah locked the bedroom door. *Omissis A* started to hit Jummah but this was ineffectual. He held her hands, continued undressing her and penetrated her. She said that at this stage she was swearing at him, told him to stop several times but he still carried on. *Omissis A* wrote that Jummah was not wearing a condom at any stage.

In her written account of the experience with Omar, *Omissis A* stated that she had also met him at Chris's flat when in the company of Sasha Bonello. She said that Omar had asked her into the bedroom where he started necking her on the bed. *Omissis A* said she let him have a full sexual intercourse because she was reluctant to tell him no.

Inspector Raymond Aquilina (at page 91 et seq.) confirmed Dok.MC2 and Dok.MC3, the two statements of the accused and confirming that he was duly confirmed according to Law.

Jummah said that he tried to have sexual intercourse with *Ommissis A*, tried to penetrate her but found her too narrow and stopped because he could not 'get in'. He confirmed that he tried to, and continued to try but did not succeed (page 98).

In his statement Dok.MCX1, Jummah stated that he tried to penetrate her but he stopped. In Dok.MCX2, Jummah, "I wanted to get in, I could not get in and I stopped". (page 20) He stated that she wanted to have sex with her (page 21).

Inspector Raymond Aquilina stated (at page 95), that *Ommissis A* told him 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, *Ommissis A* 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, *Ommissis A* 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 161, *Ommissis A* 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 state that she was fifteen (15) so that they could be together.

WPC 89 Mariella Spiteri (at page 102) confirmed Dok.MCX2.

Martin Vella (at page 108) father of the minor *Ommissis A*, 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 112) informed the Court that he had been given instructions to arrest Abdallah Danganoma Omar.

WPC 280 Louise Camilleri (at page 117 et seq.) stated that when the minor *Ommissis A* was eventually found, she spoke to her in the presence of her mother at Qawra Police Station. *Ommissis A* 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 A* 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 A* 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 120) stated that she spoke to *Ommissis A* in the presence of her mother and confirmed the evidence given by Inspector Raymond Aquilina.

WPS 246 Diane Cassar (at page 127 et seq.) confirmed her presence during her interview of *Ommissis A* with the Police and confirmed Inspector Raymond Aquilina's evidence.

PS 656 Adrian Lia (at page 136) exhibited Dok.PSX and confirmed that he was instructed by Inspector Aquilina and Camilleri to arrest the accused.

Inspector Raymond Aquilina (at page 139) exhibited Dok.RAZ2 and Dok.RAZ3, Identity Cards of both Daniel Chernaeva and Stoyan Stoyanov.

Inspector Raymond Aquilina exhibited Dok.RAZ1, Birth Certificate of *Ommissis A* and Dok.RAZ being a sketch of

Daniel Chernaeva's and Stoyan Stoyanov's flat and bedroom.

PC 656 Adrian Lia (at page 136 et seq.) confirmed that he affected the sketch Dok.RAZ of the layout of the flat of the accused.

In his testimony, Abdallah Danganoma Omar (known as Omar), stated that one Sunday evening two girls, *Ommissis A* and Sasha, came into his flat and sat on either side of him. Omar stated that he decided to go to his bedroom to relax. Omar stated that at due time he was alone with the girls. He said that the girls came in with a friend of his, Idris (known as Chris) and the girls asked him whether he had a girlfriend to which he replied in the affirmative. Sasha told him that *Ommissis A* was interested in him. Omar stated that he again told the girls that he had a girlfriend. Omar said that the girls left his bedroom and after some time, *Ommissis A* returned to his room and started acting amorously and posing in front of the mirror. She then came over to Omar and started to caress him. Omar at this stage states that he was relaxed, sitting on his bed. Omar stated that *Ommissis A* started to kiss him. She had taken off her top and remained in her bra with her three-quarter trousers whilst he was with his boxer shorts. Omar stated that even though *Ommissis A* was skinny she was not a child. (see page 173)

Omar stated that after this, *Ommissis A* started kissing him, took off all her clothes, and they had sexual intercourse. *Ommissis A* wanted to sleep after that and he (Omar) started cooking some food. He said that *Ommissis A* left after 1:30p.m.

Omar stated that he saw *Ommissis A* a couple of times after this sexual intercourse. He stated that he saw her in a balcony of a flat in the company of a black man. Thereafter he was asked for direction by two girls and when he was accompanying them there, he saw *Ommissis A* who got angry and threw water at him and used foul language in his regard. In fact he found her waiting for him when he went back to his apartment where

Omissis A became hysterical and abusive. Some days later he went to his friend Hakim's flat and found *Omissis A* there. He said he saw *Omissis A* in the company of several men. Omar stated he left Hakim's flat after fifteen (15) minutes, however *Omissis A* followed him to his flat, threw stones at him. Omar stated he stayed in his flat and did not react to her. After thirty (30) minutes; he heard the door ring and on opening he found *Omissis A* and two of her friends. There, they forcefully entered the flat and threatened him with something that would regret for the rest of his life. He also stated that she started to *sms* him, with endearments telling him she did not want to lose him. He said that she *sms* him from January to Valentine's Day. (see page 181)

Omar stated that he lost his mobile. He did not file a report to the Police. Omar could not even remember his mobile number. Omar also confirmed that he did not file a Police report when the three girls entered his flat and threatened him.

Some time later he found out that the Police were looking for him so he took his documents and went to the Police Station where he was arrested.

Omar insisted (at page 189) that *Omissis A* wanted and needed to have sex with him.

He said that he had known Jummah for about four (4) months.

Regarding her age, Omar stated that *Omissis A* was not a child and that she used to go to Havana. She wanted to have sex with him.

Jummah (at page 199 et seq.) stated that he knew *Omissis A* in December, about three and a half (3½) months before he got arrested.

He said he met *Omissis A* at Chris's (known as Idris) apartment. When Jummah left the apartment, he said that *Omissis A* followed him, said she wanted to go out with

him and asked for his mobile phone. He told her his number - 99882055.

She *smsed* him some time later and they decided to meet at Abdallah's flat. He was talking to *Ommissis A* and listened to some music and went inside one of the bedrooms of the flat to download some music on his mp3. *Ommissis A* followed him into the bedroom and started kissing and necking him. Then they had sexual relations on the bed.

"Ommissis A pushed me on the bed and asked if I had a condom."

He did not, but he opened the wardrobe and took a condom. Jummah (at page 208) stated that *Ommissis A* started to undress but had left her skirt on. Then he undressed, she touched his genitals. Then she practiced oral sex on him.

"After we started (after oral sex) I asked her her age and she tell me she was sixteen (16) years."

He said that *Ommissis A* was of normal stature nor too tall and not too short (at page 210). He said that *Ommissis A* sat on him and at this point in time someone opened the door and closed it again whilst they were having sexual intercourse - so he stopped (at page 211) and left the flat. Jummah said that *Ommissis A* messaged him and they met two days later in Valletta on *Ommissis A*'s suggestion. (at page 213) When he met her, he found out that *Ommissis A* was dating Omar. He said he saw *Ommissis A* with several men whilst in Bugibba, Marsascala and at Havana. He said that he met a friend of his who seemed to be dating *Ommissis A* and told another friend of his to pass on the message that *Ommissis A* was not the sort of girl he should be dating.

Thereafter *Ommissis A* stated to insult him with words (mentioned at page 218) together with insults also sent via *sms* for a month. He had deleted all these messages.

He stated that even though *Ommissis A* kept insulting him he suggested that they meet in Valletta. He did not report any of this to the Police. When he met *Ommissis A* at the Bus Terminus Bugibba, *Ommissis A* just told him that she could not stop insulting him (at page 226). He said that he went both to Kingsley and Abdullah's flat after his encounter with *Ommissis A* and found her there three (3) times.

Jumma confirmed his statements.

Asked whether he stopped during his sexual intercourse with *Ommissis A* because someone entered the room or whether he stopped because she was too narrow, Jumma stated that he was saying the truth before this Court and that he stopped because someone came into the room.

Asked whether *Ommissis A* practiced oral sex before sexual intercourse or whether they immediately had full sexual intercourse as declared in his statement, Jumma stated that the first assertion was the truth.

Deliberates:

From the evidence adduced in this case it is this Court's considered opinion that the evidence tendered in this case with regard to the accused largely depends on a matter of credibility or otherwise of the main witnesses, protagonists in this case.

The evidence tendered by the minor *Ommissis A* both with regard to her written account of the story Dok.DV as well as her lengthy testimony during the video conference heard by this Court illustrates the account of an *ommissis* year old girl in the company of young adults, attempting to but failing miserably to emulate a casual attitude to sex.

This minor child, wrote and told a vivid account of her absconding from home and staying out till the early hours of the morning in the company of her "friends" Jessica Vella and Sasha Bonello whose friendship she so

desperately required. The account of *Omissis A* is a stark simple account of a child being completely out of her depths, needy of the attention of the opposite sex but terrified to the point of paralysis when that attention turned into full blown sexual activity.

Omissis A's account of the events that took place during one of her stints of absconding from home during the period mentioned in the charges, is a consistent account where being accompanied by a friend Sasha Bonello and her boyfriend Chris, they met Jummah Mohammed Aka at a piazza in Bugibba. Sometime before Christmas, she met him again in Chris's flat when accompanied by Sasha. She said she was not attracted to Jummah and had at first refused to talk to him. Some time later Sasha encouraged her to go back to the same flat because she (Sasha) was infatuated with a certain Bello who lived with Jummah. Sasha and Bello started to argue and Jummah started chatting her up. Some time later he asked her to accompany him to his bedroom where Jummah started undressing her (*Omissis A*). *Omissis A* stated that she was not attracted to him and attempting to pull her clothing back to place, however, he continued undressing her. She said that she tried to get out of the room, but Jummah blocked the door and held it and started to push her. *Omissis A* stated that she started hitting him but it was useless and she had to surrender to his advances during the sexual intercourse. *Omissis A* stated that Jummah held her hands, took off her jeans and penetrated her. She started insulting him and asked him to stop but he continued anyway. *Omissis A* confirmed that she experienced pain and told Jummah that he was hurting her and said that Jummah had not wore a condom. She said that Jummah ejaculated on the bed.

Omissis A's account during the Court testimony is largely the same as her written account.

In contrast Jummah's account during his statements with the Police is inconsistent with the sequence of events that he recounted before this Court. In fact in the statement Dok.MCX1 he stated that these two girls came to his flat

and that one of them was chasing him. He said that this girl was "*Small, not much tall I don't know her age.*" He said that he tried to penetrate her sexually but that he stopped. That he didn't force her to have sex. In his second statement Dok.MCX2 (at page 18 et seq.) Jummah stated that he tried to have sex with *Ommissis A* but that her genitalae was small "*So I didn't get in,*" that he tried to penetrate "*But it was narrow and I tried to force but it did not get in her private part.*" He stated that he did not force her to have sex with him.

During his testimony for the Court, Jummah changed this account by stating that it was *Ommissis A* who took the initiative, pushed him on the bed, requested that he should put on a condom and that she practices oral sex on him and at this stage he asked for her age to which she replied that she was sixteen (16) and then they went on to have full sexual intercourse. At some stage somebody opened the door and they stopped the sexual activity. Asked about these vital discrepancies, Jummah replied that his account before the Court was the truthful one as opposed to the accounts that he gave to the Police. Furthermore in his statement Dok.MCX1 Jummah admitted that the girl was "*Small*" however in the testimony before this Court he repeatedly asserted that *Ommissis A* was of a normal stature. Apart from all this, the accused Jummah Mohammed Aka, told an account of several incidents in an attempt to throw a bad light on *Ommissis A* which were allegedly witnessed by a substantial number of his friends none of whom however gave evidence in this case. Apart from this Jummah Mohammed Aka recounted to the Court events of *Ommissis A's* behavior which seemed to be serious infringements of the Law and no Police Report was ever filed by the accused Jummah Mohammed Aka.

The Court, after having examined the Article 637, finds the testimony of Jummah Mohammed Aka to be devoid of credibility or semblance of the truth. Indeed, during his evidence, the Court was convinced that Jummah Mohammed Aka was actually improvising with his story as he went along.

The accused Jummah Mohammed Aka is accused under Article 198 of Chapter 9 of the Laws of Malta which provides:

“Whosoever shall, by violence, have carnal knowledge of a person of either sex, shall, on conviction, be liable to imprisonment for a term from three to nine years, with or without solitary confinement.”

It is this Court’s considered opinion that the accused Jummah Mohammed Aka understood that he was dealing with a very young girl, a girl of such small stature whose resistance (which included pushing him off, retrieving her clothing and hitting him) was completely ineffectual in view of Jummah Mohammed Aka’s stature and strength.

It is this Court’s understanding that Jummah Mohammed Aka understood that whilst *Omissis A* was not unwilling to participate in some kissing and necking he certainly understood that she did not want to have full sexual intercourse. Therefore the Court believes that the prosecution has proven beyond reasonable doubt that the sexual activity was conducted “by violence” in terms of Article 198 of Chapter 9 of the Laws of Malta.

According to Maltese jurisprudence it is sufficient for the purpose of Article 198 of Chapter 9 of the Laws of Malta to have some penetration, full penetration not being necessary. The evidence in this case is weighty and special regard needs to be put on Donna’s bleeding incident following the sexual activity. Therefore carnal knowledge by violence is proven according to Law.

With regard to the second charge brought against Jummah Mohammed Aka relating to illegal arrest under Article 86 of Chapter 9 of the Laws of Malta, this Court, on the parameters set out by the criminal court in the case *Police vs. Denis Pandolfino et. al.* decided on 19th October 2006 by Onor Dr. Joseph Galea Debono is of the opinion that the physical arrest of this minor and the locked enclosure of the same minor in Jummah’s bedroom, was

a means to achieve carnal knowledge of the minor by violence and do not constitute a separate offence.

The accused Aka and Omar are also charged in terms of Article 203(1) of Chapter 9 of the Laws of Malta which provides:

“Whosoever, by lewd acts, defiles a minor of either sex, shall, on conviction, be liable to imprisonment for a term not exceeding three years, with or without solitary confinement:

Provided that the offence shall be punishable with imprisonment for a term from three to six years, with or without solitary confinement, in each of the following cases:

- a). omissis;*
- b). if the offence is committed by means of threats or deceit;*
- c). omissis.”*

With regard to Abdallah Danganoma Omar the written account contained in Dok.DV of *Omissis A* is one where the minor admits quite freely that she did not offer any resistance and that the sexual activity that happened between Abdallah Danganoma Omar and herself could have been interpreted as consensual.

The account reiterated by *Omissis A* during her video conference illustrates that she distinguishes between sexual relations with Omar as opposed to the others, as being gentler and at least devoid of pain and that she did not externalize her reluctance to have sex with him in any visible or tangible manner.

This Court believes, as previously stated, that the accused Omar understood that *Omissis A* was still a minor.

There is no doubt that the carnal knowledge by violence practiced by Jummah on *Ommisis A* was the minor's first traumatic sexual experience.

Indeed the Criminal Court of Appeal in the case *Republic of Malta vs Carmelo Spiteri*, decided on the 20th March 1989 held that carnal knowledge with violence was perhaps the ultimate lewd act in terms of Law:

“Fost l-atti ta’ libidini, għall-finijiet tar-reat ta’ korruzzjoni ta’ minorenni, hemm kompriz ilkongungiment karnali. L-artikolu 203 tal-Kodici Kriminali jirrikjedi fost affarjiet ohra li l-att ta’ libidini jkun effettivament ikkorrompa lill-minuri. Huwa minnu li jistghu jinghalqu kazijiet fejn is-suggett passiv tar-reat, minhabba hajja dedikata għall-laxxivja u għall-pjaciri sesswali, ikun fi stat ta’ travjament morali tant komplet li difficilment wiehed jista’ jimmagina kif jista’ jigi ulterjorment korrott; izda hu cert ukoll li esperjenza sesswali precedenti mhux necessarjament teskludi l-possibilita’ li jkun hemm korruzzjoni.”

(vide **Repubblika ta’ Malta vs. Carmelo Spiteri** per Crim. CRT. App. Decided on the 20th March 1989.)

According to Maltese Jurisprudence previous sexual activity on the part of a minor does not constitute a barr to or preclude prosecution. In fact in the Judgements ‘*Il-Pulizija vs. Lorenzo Baldacchino*’: decided on the 30th March 1963, the Criminal Court of Appeal (Per Judge William Harding) stated:

‘Il-persuna korrotta għandha d-dritt illi ma tigix ulterjorment korrotta, u hadd ma għandu 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 jezistix 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’inhu l-istadju tal-korruzzjoni tieghu.’”

There can be little doubt therefore that the sexual activities of the accused with the minor *Omissis A* were in fact lewd acts according to Maltese Law, capable of and in fact, having a corruptive affect on the minor. This corruptive impact is most severe with regard to Jummah Mohammed Aka in view of the fact that this was the first sexual experience of *Omissis A*, followed closely by the sexual activity of Abdallah Danganoma Omar. It is significant to add at this stage that the sexual activities with Daniel Chernaeva were subsequent to those with Jummah Mohammed Aka and Abdallah Danganoma Omar.

It is this Court’s considered opinion that the prosecution failed to prove beyond reasonable doubt the aggravation to the offence of defilement of minors by way of deceit or threats.

Therefore this Court finds the accused Jummah Mohammed Aka, guilty of the first (1st) and the third (3rd) charge brought against him without the aggravating circumstances of threats or deceit, not guilty of the second (2nd), fourth (4th) and fifth (5th) charges brought against him and acquits him of the same; the Court finds the accused Abdallah Danganoma Omar guilty of the third (3rd) charge brought against him, without the aggravating circumstances of deceit or threats, not guilty of the fourth (4th) and fifth (5th) charge brought against him and acquits him of the same and after having seen Articles 198 and

Informal Copy of Judgement

203 of the Chapter 9 of the Laws of Malta, condemns Jummah Mohammed Aka to a period of imprisonment of four (4) years and condemns Abdallah Danganoma Omar to a period of imprisonment of two (2) years.

< Final Judgement >

-----END-----