



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

**MAGISTRATE DR.
JACQUELINE PADOVANI**

Sitting of the 30 th July, 2010

Number 686/2006

**POLICE
INSPECTOR THERESE SCIBERRAS
VS
OMMISSIS X**

The Court,

Having seen the charges brought against the accused Omissis X , Omissis years, son of Omissis X1 u Omissis X2, born in Omissis (Omissis), on the Omissis, residing at Omissis, having passport number Omissis.

And charged with having:

a). In June, 2006, in St. Paul's Bay and/or in other localities on these Islands, by several acts committed by him even in different times, that constitute violation of the

same provisions of Law and committed in pursuant of the same design by lewd acts defiled a minor, i.e. Ommissis A of Ommissis years, being a Maltese National and this in violation of Article 203 of Chapter 9 of the Laws of Malta;

b). With having in the same place, time and circumstances, committed any violent indecent assault on Ommissis A of Ommissis years, being a Maltese citizen, and this in violation of Article 207 of Chapter 9 of the Laws of Malta;

c). With having in the same place, time and circumstances, committed an offence against decency or moral in a public place or in a place exposed to the public and this in violation of Article 209 of Chapter 9 of the Laws of Malta;

d). With having during the year of 2004, in St.Paul's Bay or in other localities in these Islands by several acts committed by him at different times which constitute a violation of the same provisions of Law and committed in persuance of the same design, by lewd acts, defiled a minor, i.e. Ommissis B of Maltese Nationality, Ommissis years of age, when he had been charged with her care and this in violation of Article 203 of Chapter 9 of the Laws of Malta;

e). With having in the same place, time and circumstances committed in a violent indecent assault on Ommissis B of Maltese Nationality, Ommissis years of age when he had been charged with her care and this in violation of Article 207 of Chapter 9 of the Laws of Malta;

f). Charged in July 2006 in Qawra, with having committed an offence against decency or morals or by any act committed in a public place or a place exposed to the public and this in violation of Article 209 of Chapter 9 of the Laws of Malta;

Having heard the evidence tendered on oath;

Informal Copy of Judgement

Having seen all documents exhibited and the record of the proceedings;

Having seen the Articles cited by the Attorney General under which Articles this Court may pronounce guilt with respect to the accused (at page 123);

Having seen the note in the record of the proceedings of the 6th of December 2006, where the accused registered no objection to be adjudicated by this Court (at page 136);

Having heard the oral submissions of the parties;

Having seen the note of submissions of the Commissioner of the Police dated 19th November 2008;

Having seen the note of submissions of the accused Ommissis X of the 17th December 2008;

Having seen the note of further submission of the accused Ommissis X of the 4th of February 2009;

Deliberates:

Ommissis C, produced by the prosecution, stated on oath that she had had a relationship and was living with, the accused for the preceeding two years. She said that she had a Ommissis year old girl by the name of Ommissis B. The case started when her daughter's friend Ommissis A told her (Ommissis C) that the accused had made a pass at her ("ittantaha").

Ommissis C declared that Ommissis A was the same age as her daughter Ommissis B. Ommissis C had a serious talk with Ommissis A enjoining her to say the truth. Having heard Ommissis A, Ommissis C told her that she was ready to file a Police report on the matter. In fact she went to a Police Station to file the report. The Inspector told

Ommissis C that he was also going to speak to Ommissis B since Ommissis A had spoken to her about the matter. Ommissis C stated that it was during this investigation, that she found out that the accused had also made a pass on her daughter Ommissis B. Ommissis C stated that with regards to her own daughter, it transpired that during a stormy wintry night, Ommissis B had woken up in the middle of the night and asked her to sleep with her and the accused. The accused had no objection and she allowed it:

*“U middhera sa kemm jiena mort sal-
‘bathroom’, jiena t-tifla kienet bejnietna fin-nofs, neزالha l-
‘pygama’ plus l-‘underwear’ u beda jaghmel il-parti tieghu
maghha.”*

Ommissis B pulled her underpants up and the accused started to masturbate. Ommissis C informed the Court that she had never had any doubts on the accused since that she knew that he was a father of two daughters and therefore thought that she could trust him. Ommissis C stated that according to her daughter Ommissis B this happened between August and September of 2004.

In cross-examination, Ommissis C stated that she was married and had a daughter and was separated from her husband. Ommissis C stated that during the two year relationship with the accused it was true that they used to argue, regularly at least once a week and that there were occasions where he actually had been physically aggressive in her regard. Ommissis C denied the allegation that she used to tell the accused that she would ensure that he was thrown out of Malta. Ommissis C stated that she had never any such authority or power to do anything of the sort.

Ommissis D at page 20, the mother of Ommissis A, informed the Court that the children had come home and told her that they needed to go to the Police Station to file a report because a man of Ommissis Nationality had sexually assaulted Ommissis A. At page 21, she stated that her daughter Ommissis A told her:

“Li baghatha tixtri kartoncina u hi u sejra l-hanut, x’hin wasslet f’certu triq mar warajha u hatafha minn qadtha u pprova rrossa mieghu, certu rass, insomma sesswali hux, certu att sesswali minn fuq il-hwejjeg.”

Ommissis A, (at page 22) Ommissis years of age, informed the Court that a man by the name of Ommissis XX, with a Ommissis Nationality, (who was the partner of a friend of her mother: “Ommissis C”) had sent her to buy a sheet of cardboard and whilst she went he had followed her. He had then put his hand on her shoulder, let it travel down to her waist and rested it on her posterior. He had then, held her closely by the hips and started to move backwards and forwards. During this motion he was breathing heavily.

In cross examination, Ommissis A stated that she had been in the pjazza in Ommissis at around two o’clock in the afternoon (14:00hrs) when this person had told her to go and buy a piece of cardboard. Ommissis A stated that during this incident she did not cry out because she was afraid and that the whole incident was over in a matter of seconds. Asked whether she smoked cigarettes, in spite of her age, Ommissis A stated that sometimes she took a couple of drags. She said that it was not true that Ommissis X had forbidden her from talking to Ommissis B because she was encouraging Ommissis B to smoke.

Asked whether she had ever dated any boyfriends, Ommissis A said that she had never had a boyfriend and that she had never kissed any young man, even though she went out in mixed company. Ommissis A was asked who had instructed her to file a police report, she stated that a friend of her, a certain Ommissis E who works with Ommissis X in the Henna Tattoo Stall, told her to file a police report and this due to the fact that Ommissis E had said that Ommissis X had also made a pass at her. Ommissis A said that she only talked to Ommissis E about this matter once. Ommissis A stated that she had

spoken to Ommissis X before this incident and he had always appeared to be courteous, however after this incident she never spoke to him again. Ommissis A (at page 33) stated that she had filed the police report approximately a month after the incident. Ommissis A stated that Ommissis E had told her that he stopped the car and had exposed his genitals in her presence (Ommissis E 's). Ommissis A stated that her friend Ommissis B had also told her about an incident regarding Ommissis X when she was. Ommissis A stated that Ommissis B had told her a little before she had spoken to Ommissis E .

Ommissis B (at page 36) stated that she was Ommissis years of age and that she was a friend of Ommissis A. She said that her father had not lived with her mother and herself for the preceeding four years. She declared that her mother had a partner who lived with her by the name of Ommissis X for the preceeding two years. Ommissis B, in her testimony, stated that she had had a quarrel with Ommissis A over a CD and during this quarrel, Ommissis A had told her that if she didn't return the CD, she was going to the Police to file a report regarding Ommissis X because he had made a sexual pass at her sister. Indeed Ommissis A's sister had gone to Ommissis B's house for the CD. Subsequently Ommissis A returned to Ommissis B's house and had spoken to her mother (Ommissis C) regarding the incident. Later on, during the evening, Ommissis B stated that she went out with Ommissis A and there she met Ommissis E and her boyfriend, who had quarrelled with Ommissis X over the hawker's stall and it was then that Ommissis E had asked her about the incident between Ommissis X and Ommissis A and had told her to go and make a police report. In fact, Ommissis E took both of them in her car to the Police Station.

Ommissis B stated that she had never had a quarrel with Ommissis X. However there was an incident that had happened two years previously, when she was Ommissis years old. She had woken up one stormy evening and, because she was afraid of thunderstorms, she had asked her mother to sleep in her bed. She had slept on the outer

part of the bed with her mother in the middle and Ommissis X on the other side. When her mother had gone to the bathroom, Ommissis X had put down her underpants and had rubbed his genitals with her back side. He had then turned and started to masturbate. He only stopped when her mother came in the room. However her mother had seen nothing of the incident. During this incident Ommissis X had placed his hands on her Ommissis B's hips.

In cross-examination, Ommissis B stated that in the beginning the relationship between Ommissis X and her mother was good, however after that they used to argue and sometimes it used to end up in a physical fight. Ommissis B stated that it was Ommissis X who used to get physical first. Asked whether she had ever heard her mother say that she would get the police to throw Ommissis X out of Malta, Ommissis B stated that she had never heard words to this effect spoken by her mother.

Inspector Josric Mifsud (at page 44) stated that during his detention, the accused, Ommissis X , had made several telephone calls to Ommissis C and to her daughter Ommissis B. So much so that he had to call the authorities of Corradino Facilities in order to prohibit all contact with the witnesses. At page 61, Inspector Josric Mifsud, exhibited the birth certificate of Ommissis B and the birth certificate of Ommissis A as Dok.XJM1 and Dok.XJM.

Ommissis E (at page 101) stated that she used to work in Ommissis as a tattoo artist and she had been taught her trade by the accused and his partner Ommissis C. She identified the accused as Ommissis X , known to her as Ommissis XX. She stated that her boyfriend was a good friend of the accused and therefore they had started to going out together as a foursome. She stated that during one of these outings, whilst her partner was momentarily absent, the accused had followed her and started to flatter her excessively however the next morning he had excused himself and had stated that he has been drunk. Ommissis E also mentioned an incident where she was

returning home and she met the accused very close to her house and he asked her whether she wanted any photocopies of some tattoos that he had in his possession, so she approached his car and got inside it. Ommissis E says that the accused had left the car opened to make her feel a little more secure in view of the incident that had happened previously. She stated that he had put his hands on her thighs and then started to undo the belt of his trousers and the top button of his trousers and that it was at this moment that she ran out of the car. Ommissis E stated that she had not yet told her boyfriend about the incident. The accused met her and asked her if she had seen his genitals and told her that he was much better endowed than her boyfriend. After this she had no option but to tell her boyfriend. Ommissis E had also mentioned a couple of other incidents where the accused had rubbed himself against her.

In cross-examination, Ommissis E stated that during the four days following the incident, and prior to her going to the Police Station, the accused had tried to pick quarrels with her in her line of work in the manners explained at page 110.

Ommissis E stated that she had known Ommissis C as long as she had known the accused i.e. about a year. Ommissis E stated that she had informed Ommissis C about the incident she had with the accused and she had done so because she knew she had a young daughter and she was afraid that the same would happen to her daughter.

In her second testimony, Ommissis E (at page 137) stated that she was still on good terms with Ommissis C but that she did not go out with Ommissis C anymore, nor did she talk about the case to her.

The accused, Ommissis X (at page 172 et seq.) stated that he had met Ommissis C in September 2005 when he was a tattoo artist in the streets of Paceville. He said that she took him home that same night and they started to live together two weeks later. Ommissis X stated that two

weeks after he had been living with Ommissis C, her ex-husband had rang the door bell at about midnight and Ommissis C asked him to stay in Ommissis B's room until he left. At that time Ommissis B's was Ommissis years old. Later he found out that it had not in fact been her ex-husband and what in fact had happened was that she was having sex with an ex-boyfriend. Ommissis X stated that Ommissis C's premises was a studio-flat, consisting of one bedroom and a kitchen. He said that he used to sleep with Ommissis C in the bedroom whilst Ommissis B used to sleep in the kitchen on a sofa bed. Ommissis X stated that Ommissis C was about five to six years older than him and that he had slept with her on the first date. After that she had gone to look for him every day in Paceville and within two weeks he was living in her house. After the incident of the ex-boyfriend, Ommissis X stated that he had left Ommissis C, however she came looking for him at his place of work, a few days later. Her face had been covered with bruises and she told him that she had left the man she was living with. Thereafter, they met again and Ommissis X stated that he went back to live with Ommissis C. As time went by, Ommissis X stated that he started to feel that Ommissis C was restricting his freedom too much and she did not let him go out with his friends. At page 178, Ommissis X stated that he had a very good relationship with Ommissis B and he was always giving her good advice about life in general and about her relationship with her father and that he never did any of the things that had been alleged against him. The accused stated that in the beginning of the relationship, Ommissis C had been helpful when his Visa had been cancelled and he had been given a letter of recommendation by Ommissis C, stating that he was a very good father to her daughter. However when a subsequent renewal of Visa came up, Ommissis X stated that Ommissis C had started to blackmail him and said that she was going to get him thrown out of Malta. Ommissis X stated that in May 2006 he tried to leave Ommissis C and, in fact, he rented out a flat in Sliema. However Ommissis C found the whereabouts of the flat and kept coming to his flat, begging him to return home. At page 180, Ommissis X stated that the authorities had

cancelled his permit and that Ommissis C had given him a good letter of recommendation and so he had to stay with her, presumably until the Visa was re-issued. After that with every argument, Ommissis C would tell him that she could get his Visa cancelled. Ommissis X stated that Ommissis C had introduced him a friend of hers, a certain PC1529 Emanuel Barbara. Ommissis X therefore felt constrained to become a police informer so as to be able to get his Visa. Ommissis X stated that Ommissis C was very jealous of him with always threatening and blackmailing him. Two weeks prior to his arrest, he had left Ommissis C however she had followed him to Ommissis Square and told him that the Police were going to pick him up. A little while later, Ommissis E approached him and asked whether she could work as a hawker from his site. At first he refused her but he allowed to stay for an hour or so since he needed time to go and pack his things. Ommissis X stated that after he packed some of his belongings from Ommissis C's house, together with some papers, he and Ommissis C went to Mellieha Bay to talk things over and it was then that Ommissis C received a message from Ommissis E stated that she had told her boyfriend everything, that he kept a knife and that he was going to come to Ommissis Square to kill the accused. Ommissis C showed him the message and urged him to keep away from Ommissis 's Square because Ommissis E 's boyfriend was going to cause him a lot of problems.

With regards to Ommissis A, Ommissis X stated that she was Ommissis B's friend and that the week before he got arrested he saw Ommissis A sitting on a boy and smoking, so he told Ommissis C that he did not like Ommissis A's behaviour and thought that it could be of a bad influence on Ommissis B. In fact, Ommissis C upbraided Ommissis B about Ommissis A's behaviour.

With regards to Ommissis E, Ommissis X stated that he was introduced to her through Ommissis C and that she started to work part time with him for approximately one month before he got arrested. He said that she had learnt the tattoo technique very quickly and that she wanted to open a stall of her own. In fact, this is what she did.

Ommissis X denies all allegations made by Ommissis A and Ommissis E. He stated that Ommissis E was on drugs, that she was a drug addict and Ommissis C knew this. Ommissis X stated that Ommissis E was lying and that she only fabricated the whole incident to be able to take his place on Ommissis Square.

With reference to Ommissis B, Ommissis X stated that he could not understand how the allegations could be regarded as true for she did not go to the Police for an entire two years period. At page 189, Ommissis X denies all three incidents.

In cross-examination Ommissis X stated that when he started to live with Ommissis C they were living in one bedroom pent house in Ommissis and he stayed there for a year.^a After that, they moved to Ommissis Court in Ommissis which was a three bedroom flat. Ommissis X stated that the incident where Ommissis C had sex with an ex-boyfriend, took place in the Ommissis studio-flat and that **he slept in the only bedroom there was in this flat**. He said that when the man came in the middle of the night Ommissis X was having sex with Ommissis C in the kitchen on the sofa bed. After having explained to the accused the inconsistency with his previous testimony as to where this incident took place, Ommissis X reiterated that Ommissis C and her ex-boyfriend had sex in the kitchen and he was asked to go and sleep with Ommissis B in the only bedroom that there was in the flat. Asked to state why Ommissis B, Ommissis E and Ommissis A should have made such report to the Police, Ommissis X stated that he did not know, but the only thing that he could say was that he did not do it. At page 222, Ommissis X stated that when he was asked to go to the Police Station, Ommissis E and Ommissis A were outside the Police Station together with (*her boyfriend*). Indeed Ommissis E was urging Ommissis A to cry. The accused stated that he was first informed by the Police that there was something wrong with his Visa. It was only afterwards that the charges made by Ommissis A, Ommissis E and

Ommissis B were made known to him. Ommissis X (at page 225) stated that he never touched Ommissis B and if he had done so she would not had kept this a secret for two years, that it was impossible to do what had been alleged because Ommissis B was sleeping at the other side of the bed and the bed squeaked when anyone moved. He stated that when he had spoken to Inspector Josric Mifsud, the same Inspector Mifsud told him that he believed his version. He said that he was a family man and had two daughters and **had he done what had been alleged he would have committed suicide.**

In cross-examination, the accused stated that he had been arrested because of this case and not because of his Visa. He added that the matter of the Visa was only brought up when the question was being discussed in Court in the sense that this Visa had only three days to expire and therefore the Police had brought this matter up in Court in relation to the Bail proceedings. He stated that whilst he was in jail, he never made any phone calls to anybody else except Ommissis C and his relatives in America and Canada. He stated that Ommissis C had taken over twenty-two thousand pounds from him and that there was a police report on this matter.

PS59 Jason Spiteri exhibited a police report Dok.PSX (at page 277) regarding allegations of theft on the part of Ommissis C which report was brought by Ommissis X . In the same report (at page 284 and 285) Ommissis C give a full explanation of all allegations made and returned the few belongings of Ommissis X in the police position.

Dr. Joseph Spiteri informed the Court that the accused had been suffering from acute stress with multi-passive symptoms and that he had made serious suicide gestures and had to be treated accordingly at Mount. Carmel Hospital (vide page 294-298).

Deliberates:

This Court shall examine the procedural claim of the accused in his note of submissions (at page 330) that no official complaint was exhibited in the record of the proceedings and the prosecution failed to exhibit the police report and statements of the two minor girls.

It is this Court's considered opinion that there is ample evidence that Ommissis C, Ommissis B , Ommissis A and Ommissis E went to the Police Station to file a police report. Furthermore, Ommissis C confirmed the report on behalf of her minor daughter Ommissis B, in Court, according to Law. Similarly, Ommissis D confirmed her report in Court on behalf of her minor daughter Ommissis A , in terms of Law. The Court therefore finds no basis in a defence's exception.

Furthermore the minor girls gave evidence viva voce before the Court and in such case, the prosecution is prohibited at Law from exhibiting any statement of a witness, be it a minor or otherwise.

Deliberates:

From evidence adduced in this case, it is this Court considered opinion, after an indepth examination, that the three girls' separate testimony i.e. Ommissis B , Ommissis A and Ommissis E are credible and reliable and this in spite of the accused's tremendous efforts to discredit all three with his wild and completely gratuitous assertions, in an effort to bismirch their reputation. The accused, indeed, in the same fashion, tried to discredit Ommissis C's reputation as a mother in the same wild manner without bringing a shred of evidence to support his claimes.

A thorough examination of Ommissis X 's testimony leaves this Court with only grave inconsistencies, wild and gratuitous accusations and conspiracy theories. Indeed the accused Ommissis X , in his defense against the allegations made by Ommissis B , stated that two weeks after he started to live with Ommissis C an ex-boyfriend

came to visit in the middle of the night and that Ommissis C had asked Ommissis X to stay in the bedroom and sleep in the same bed with Ommissis B whilst she was supposedly having sex in the kitchen with this ex-boyfriend (see page 172 and 173). However (at page 175) Ommissis X stated that Ommissis B usually slept in the kitchen. At page 192, Ommissis X stated that Ommissis B was sleeping in the double bedroom when this man came in the middle of the night (see page 192 and 193).

Furthermore, in his testimony, Ommissis X stated that if he had indeed committed the acts that were alleged against him he would have committed suicide. It is curious to note that at page 326, in the oral submissions of the defence, during his detention in pending trial Ommissis X made suicide gestures: *“Which were pretty serious. He tries to hang himself and it was only for a few minutes that he was eventually saved.”* This attempted suicide was corroborated by the accused’s pshyciatrist Dr. Joseph Spiteri (at page 297 et seq.)

Apart from this the accused testified and accused the Police of a conspiracy in that they arrested him only on the pretext of his Visa, alleging further Police collusion with Ommissis C. It was only in cross examination that the accused was constrained to admit that the Police had in fact arrested him and informed him of the allegations made by the two minor girls and a young female adult on the day of his arrest.

Moreover the accused testified that Ommissis C stole twenty-two thousand Maltese Liri (Lm22,000) whilst he was in detention and that he had filed a Police report to that effect. The Court examined Document PSX (at page 277-285) which is a detailed Police report outlining the accused’s claim as well as Ommissis C’s response to the same. The Court found that the allegations made by the accused do not in fact exceed ten thousand Maltese Liri (Lm10,000) and took into consideration the note filed by Ommissis C (at page 157). This is a fair example of the accused’s exaggerated accusations. Furthermore the accused claimed that Ommissis E filed a fictitious report

so as to be able to occupy his site as a hawker at the Ommissis Square. It transpires from the evidence that Ommissis E no longer works and was at the time of her testimony registering for work (vide page 111).

The defence in the note of submissions (at page 320 till 322) reiterate that the contents of the girls' reports were in fact fictitious and that the police report was indeed a false one, made only with the intent of harming Ommissis X and putting him out of business. In the light of the evidence given above the Court certainly cannot uphold such gratuitous claims.

Indeed the version proffered by the accused stands alone, denuded from any other corroborative evidence. This Court would have expected, in view of the accused's serious allegations on Ommissis C's reputation as a mother and as a woman, to have heard a long line of witnesses testifying on her debauched nature and negligent or non-existent parental skills. The evidence in this case shows that the defence did not produce a single witness to this effect.

Deliberates:

The evidents adduced in this case indicates only that the three girls and Ommissis C talked to each other and found out that Ommissis A and Ommissis E both went through a similar experiences at the hands of the accused and this prompted Ommissis B to externalize her own experience of the accused which she had kept to herself - as indeed happens with most victims of sexual abuse - for two years. It was this last episode that prompted Ommissis E to urge the girls to report.

Deliberates:

The accused, Ommissis X is accused with defilement of minors, violent indecent assault, offending public decency

in terms of Articles 203, 207 and 209 of Chapter 9 of the Laws of Malta:

“203. (1). 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). if the offence is committed on a person who has not completed the age of twelve years, or with violence;

(b). if the offence is committed by means of threats or deceit;

(c). if the offence is committed by any ascendant by consanguinity or affinity, or by the adoptive father or mother, or by the tutor of the minor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the minor.”

Deliberates:

Indeed, in the judgment **The Police vs Thomas Wiffen**, decided by the Court of Criminal Appeal on the 8th January 1996:

‘For the completed offence and apart from the formal element of the offence, there must be the lewd act (atto di libidine) and the actual defilement. The lewd act may be committed either on the person or in the presence of the minor. All acts which, either by their very nature or of the circumstances in which they are performed, either are directed to the indulgence of the sexual appetite, either of

the agent or of the victim, and are capable of arousing sexual interest of the victim, are lewd acts for the purposes of the offence in question.'

The duration of these acts is immaterial for the notion of a lewd act (ibid at page 150 Volume LXXX 1996 part 4):

*'For the subsistence of the crime, it is not necessary that the defilement shall be immediate. The very young age of the person with whom the lewd acts have been committed does not rule out the crime if the remembrance of such acts is calculated to cause a defilement. **Indeed, according to our Law, if the victim is under twelve years of age, that is, a reason for aggravating the crime.'** (notes on the Criminal Law per Sir Anthony Mamo at page 226).*

There is no doubt that exposing one's genitalia, undressing a omissis year old child, and rubbing one's genitalia with the denuded posterior of the said child, classifies as a lewd act in terms of Article 203. There can equally be no doubt that the action of masturbating in the presence of a minor similarly falls in the category of a lewd act; both acts being serious enough to corrupt a Ommisis year old girl on whom there is no shred of evidence of any previous sexual adventures.

The Court needs to specify, at this stage, that it agrees with the defence only as far as paragraph six at page 331 of the note of submissions in that Ommissis B was **over** twelve years of age when the incident happened.

In spite of the issues brought up in the note of submissions of the defence, to the effect that the accused cannot be found guilty in terms of Article 203(1)(c) since Ommissis C was responsible for the care and custody of Ommissis B, this Court cannot but reject this submission. The fact that the accused was living with Ommissis C and Ommissis B "as a family," anchors the aggravation to this crime. At the cost of sounding superflous, it needs to be

said that the lewd acts, above mentioned, were facilitated precisely because of the familial relations and living arrangements of the accused with Ommissis C and Ommissis B . Neither can the Court uphold the defence's submission regarding the fact that Ommissis B had pretended to be asleep and that the accused believed her to be so asleep. The Court finds this submission rather contradictory since it has been the accused's claim that he never touched the girl. This Court believes that the accused was well aware of the child's fear and her attempt at pretence.

The accused stands charged with the offence of the corruption of minors with regards to Ommissis A as well as with the lesser crimes of violent indecent assault and offending public decency.

It is this Court's considered opinion that the facts of the case with regards to Ommissis A fall fairly and squarely within the parameters intended by the legislator in Articles 207 and 209 which state:

“207. Whosoever shall be guilty of any violent indecent assault which does not, in itself, constitute any of the crimes, either completed or attempted, referred to in the preceding Articles of this sub-title, shall, on conviction, be liable to imprisonment for a term from three months to one year:

Provided that in the cases referred to in Article 202, the punishment shall be increased by one degree.”

“209. Whosoever, except in the cases referred to in the preceding Articles of this sub-title or in any other provision of law, shall commit an offence against decency or morals, by any act committed in a public place or in a place exposed to the public, shall, on conviction, be liable to imprisonment for a term not exceeding three months and to a fine (multa).”

Indeed Ommissis A's testimony i.e. where the accused laid his hands on her posterior, held her from the hips, trusting backwards and forwards, for a few seconds, qualifies solely as a violent indecent assault. In reality, these indecent acts were committed on a public road which is the reason why the accused was indicted with Article 209. The punishment for the offence under Article 209, however, is absorbed in the offence of violent indecent assault, according to Law.

It is this Court's opinion, with reference to the first charge brought against the accused, that these indecent acts on a Ommissis year old which lasted but a few moments, in the absence of graver obscenity or nudity, do not elicit or merit the harsher penalties of Article 203.

With regards to Ommissis E, the facts according to the testimony, similarly show that the exposure of one's genitalia in a car, on a public road, in daytime, classifies under Article 209. However, in the absence, as indeed Ommissis E stated in her evidence, of any assault on the part of the accused, the charge of violent indecent assault against Ommissis E cannot stand.

For these reasons, the Court finds the accused, Ommissis X , not guilty of the first (1) charge brought against him and acquits him of the same; guilty of the second (2) charge with the third (3) charge absorbed for the purpose of punishment in the second (2) charge; guilty of the fourth (4) charge without the aggravation of age; not guilty of the fifth (5) charge which is subsidiary to the fourth (4) and the Court acquits him of the same; guilty of the sixth (6) charge and after having seen Articles 17, 18, 203(1)(c), 207 and 209 of Chapter 9 of the Laws of Malta, condemns the accused to three years and six months imprisonment from which the period that the accused spent in detention is to be deducted in terms of Law.

This punishment is being accorded after the Court took in consideration the criminal record of the accused and the fact that this case involves two minor girls and a young female adult, and the fact that in the realms of lewd acts,

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all things being considered, the acts committed on these three females where of a more minor nature.

< Final Judgement >

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