



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

**MAGISTRAT DR.
JACQUELINE PADOVANI**

Seduta tal-15 ta' April, 2011

Numru 242/2006

**PULIZIJA
SPETTUR DANIEL ZAMMIT
VS
STACY CHIRCOP**

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra Stacy Chircop bin il-mejjet Joseph u Philippa nee Spiteri, mwieled Attard fl-20 ta' Awwissu 1971, detentur tal-karta ta' identita` bin numru 395171M u residenti gewwa F1 5 Blk 7, Triq Enrico Mizzi, Ta' Xbiex fejn gie akkuzat:

Talli fit-08 ta' Marzu 2006, ghal habta ta' 17:30 ta' wara nofsinhar, gewwa 105, Triq il-Flotta, Gzira, ghamel attentat ta' serq minn gewwa r-residenza ta' Salvatore Cali` ID.276124M, liema serq kien ikun aggravat bil-mezz, bil-valur u bil-lok u liema delitt ma giex esegwit minhabba xi haga accidentalj jew indipendenti mill-volonta` tieghu:

Kopja Informali ta' Sentenza

U aktar talli fl-istess data, hin, lok u cirkostanzi dahal f'dar fejn joqghod haddiehor wara li kien gie mwissi minnu li m'ghandux jidhol, jew dahal bil-mohbi tieghu, jew bi skuza falza jew b'qerq iehor;

U aktar talli fl-istess data, hin, lok u cirkostanzi hebb ghal Salvatore Cali`, anzjan ta' 81 sena, sabiex jingurjah, idejqu jew jaghmillu hsara;

U aktar talli fl-istess data, hin, lok u cirkostanzi voluntarjament kiser il-bon ordni jew il-paci pubblika b'ghajjat u glied;

U fl-ahharnett talli sar ricediv b'sentenzi tal-Qorti tal-Magistrati (Malta) liema sentenzi saru definittivi u ma jistghux jinbidlu.

Semghet ix-xhieda bil-gurament.

Rat il-kunsens tal-Avukat Generali a fol 32 u tal-imputat a fol 15 sabiex il-kaz jigi trattat bi procedura sommarja.

Semghet it-trattazzjoni tal-partijiet.

Ikkonsidrat:

Mix-xhieda ta' l-Ispettur Zammit irrizulta li fid-data, lok u hin indikat fic-citazzjoni, il-Pulizija irceviet rapport minn Salvatore Cali` li nfirmah li kienet dahlet persuna fil-bitha taghhom u kienet ipprovat tiftah il-bieb tal-bitha. Din il-persuna kellha tattoo f'idejha u f'ghonqha. L-Ispettur Zammit xehed li Cali` kien hareg mid-dar tieghu, mar fil-post taht kostruzzjoni li hu adjacenti (min-naha ta' wara) mad-dar taghhom u sab lir-ragel liebes tracksuit skura li kellu tattoo fuq idejh u f'ghonqu li mbuttah w telaq jigri.

Salvatore u Ines Cali` taw deskrizzjoni ta' l-imsemmija persuna: bejn hamsa u ghoxrin (25) u tletin (30) sena, bil-qara w xaghru qasira hafna, tattoo f'idejh u f'ghonqu. Illi b'informazzjoni anonima l-pulizija kienu waslu ghal imputat Stacy Chircop.

Saret *Identification Parade* taht is-supervizjoni tal-Magistrat Dr Antonio Mizzi fejn Inez Cali` m'gharfet lil hadd, izda Salvatore Cali` li kien iltaqa' persuna ftit wara dan l-incident gharaf lill-imputat f'din l-ID parade.

Fl-istqarrija tal-imputat Dok DZ a fol 26 et seq., l-imputat ghazel li ma jwiegeb ghal ebda domanda. L-okkorrenza giet ezebita bhala Dok DZ 1 fol 29.

Fl-okkorrenza jirrizulta illi Salvatore Cali` hareg mid-dar (wara l-attentat tas-serq) sabiex jara josservax persuna bid-deskrizzjoni li taghtu martu (ragel bi tracksuit u T-shirt skura b'tattoo fuq idu x-xellugija u f'ghonqu) ra persuna li tassomiljah, u kif resaq lejn din il-persuna, din il-persuna mbuttatu u telqet tigri.

PS 16 Martin Cordina xehed illi huwa acceda fuq il-post in segwitu tat-telefonata tal-koppja anzjana Cali`. PS 16 xehed illi Inez Cali` kienet b'xokk kbir, u wara li rrakkontatlu dak kollu li rat, hu flimikien ma PC 485 investigaw il-bini tal-vicinanza u sabu li fi Triq Ponsomby kien hemm fond taht kostruzzjoni b'access liberu li minn cint ta' 8 filati tasal ghall-bitha tal-koppja Cali` (fol 33). PS 16 kkonferma dak li qallu Salvatore Cali`, dwar il-persuna li mbuttatu u harbet tigri. PS 16 sostna illi minn informazzjoni anonima, l-pulizija waslu ghal Stacy Chircop.

In kontro ezami PS 16 kkonferma li Salvatore Cali` ma kienx ra lill-halliel fil-bitha tiehu, li kien qaghad fuq d-deskrizzjoni li taghtu martu.

Inez Cali` ikkonfermat x-xhieda tal-Ufficjal Prosekutur u PC 16, kif semghet hoss u rat ragel fil-bitha, iggranfat mal-hajt, kif ghajtet lir-ragel taghha, kif hareg jara jsibux, u kif hija segwiet lir-ragel taghha.

Inez Cali` xehdet li dan ir-ragel kien liebes trasksuit blue, b'faxxa bajda u kellu tattoo f'ghonqu u f'idejh. Hija kkonfermat illi *identification parade* hija kienet

Kopja Informali ta' Sentenza

ikkonfondiet u ma setghetx tkun certa izda quddiem il-Qorti ddikjarat illi kienet qet taghraf lill-imputat (ara fol 37).

In kontro ezami, l-kwerelanti xehdet illi hija gharfet lill-persuna li rat f'Ponsomy Street wara l-incident.

Salvatore Cali` a fol 40 ikkonferma illi wara l-incident, martu tat deskrizzjoni tar-ragel li kien qabez fil-bitha taghhom, u ghalhekk kien iddecieda li jara mnejn kien dahal. Illi huwa qaghad fil-kantuniera ta' Karlo Mchet Street, u ra ragel li jixbah d-deskrizzjoni li tat martu diehel ghat-tieni darba f'post taht kostruzzjoni, Cali` ddecieda li jghajjatlu u staqsiet ghaliex halla l-post miftuh. F'dan il-mument waslet martu li qaltlu li dak kien ir-ragel li dahal ghandhom. Dan ir-ragel beda jghidilha biex 'tmur torqod' u fil-pront "qala' idejh" u mbuttah u beda jkellmu hazin.

Il-kwerelant Salvatore Cali` gharaf lill-imputat (fol 42).

In kontro ezami Salvatore Cali` xehed illi huwa ma rax lill-imputat f'daru.

A fol 50 PC 404 Paul Camilleri ezebixxa Z1 – Z8 ritratti tar-residenza tal-konjugi Cali`.

PC 1188 Paul Cassar kkonferma l-istqarrija ta' l-imputat Dok DZ.

Is-Supretendent Alexandra Mamo a fol 87 et seq. xehdet dwar incident li sehh fil-kuridur tal-qorti li gara in segwitu tas-seduta ta' 21 ta' Marzu 2006.

L-Ispettur Raymond Aquilina xehed illi fit-8 ta' Marzu 2006 kien qed jaghmel osservazzjonijiet f'Rocky Bar Marsa meta dahal l-imputat, xtara birra, beda jghajjat u gie msikket mill-pulizija. Dan gara ghal habta tat-3.30pm – 3.45pm. Innega li kien dam maghhom sal-5pm – 5.30pm.

Raymond Sammut a fol 91 et seq. iddikjara li kellu proprjeta` taht kostruzzjoni f'Ponsomy Street' Gzira. Ikkonferma li ma kienx jaf lill-imputat u li qatt ma

Kopja Informali ta' Sentenza

ingaggjah biex jaghmillu xi xoghol. Lanqas ma tah permess li jidhol fil-proprjeta` tieghu.

Gie pprezentat il-process verbal Dok MDF (fol 93).

L-Ispettur Daniel Zammit esebixxa zewg sentenzi Dok XDZ u XDZ 1. Id-difiza fil-verbal a fol 95 ezemat lill-prosekuzzjoni mix-xhieda tal-identita` fil-konfront taz-zewg sentenzi u l-imputat accetta s-sentenzi esebiti bhala mghoddija in gudikat fil-konfront tieghu.

Raymond Galea xehed li l-imputat dahal fi programm ghal rihabilitazzjoni kontra d-droga mas-Sedqa f'Ottubru 2007 u l-imputat kien mar tajjeb ferm fil-hdax-il xahar li ghamel fil-programm.

Jack Grech xehed li ma kellux records li juru t-tattoos tal-imputat.

PS 516 Alfio Borg ezebixxa r-ritratti tat-tattoos tal-imputat Chircop Dok RAB 1 – 15.

L-Ispettur Daniel Zammit a fol 145 et seq gie muri r-ritratti formanti parti mill-*identification parade* u li kkonferma illi l-bicca l-kbira tal-persuni li hadu sehem fil-parade, kienu membri tal-pulizija.

Victoria Scicluna a fol 148 kkonfermat il-progress li ghamel l-imputat u qalet li l-imputat kien fi fl-istadju ta' re-entry.

Ikkunsidrat:

Il-kaz in ezami huwa mibni f'interita` tieghu fuq xhieda ta' identita` tal-imputat mill-kwerelanti – ma hemm ebda xhieda korroborattiva ohra; ma hemm ebda impront digitali, footprints, fibres etc x'jallacja lill-imputat mar-reat li bih jinstab mixli ghajr ix-xhieda tal-konjugi Cali`.

Ix-xhieda ta' Inez Cali` tipprezenta diversi diffikultajiet. F'xhieda inizjali taghha tiddikjara illi hija rat lill-halliel biss

minn wara u rat hwejgu. Hija tghid li dan kellu tattoo f'idu u f'ghonqu – bla ma taghti deskrizzjoni ta' dawn it-tattoos.

Illi mir-ritratti li ha PS 516 Alfio Borg jirrizulta illi t-tattoos f'"idejn" l-imputat kienu infatti f'dirghajh bejn l-*elbow* u l-ispalla u ghalhekk Inez Cali` ma setgħet qatt rathom minn taht T Shirt u tracksuit.

Il-Qorti tinstab imhassba b'mod partikolari għal fatt li Inez Cali` ma għarfix lill-imputat fil-kors tal-*Identification Parade* pero` dehret certissima fix-xhieda tagħha quddiem din il-Qorti.

Bl-istess manjiera, l-Qorti ma tistax ma tkunx kawta għall-fatt illi Salvatore Cali` li fl-ID parade deher cert mill-indentifikazzjoni tal-imputat (kif deher cert anki quddiem din il-Qorti). Dan jasserixxi illi huwa ra lill-imputat almenu 10 minuti wara d-dhul tal-halliel fil-proprjeta` tagħhom. Illi l-istess osservazzjoni dwar t-tattoos f'dirghajn l-imputtat, tapplika għax-xhieda ta' Salvatore Cali`.

Illi **Cross and Tapper** "On Evidence" 8th Edition a fol 787 jghidu s-segwenti meta jkun qed jitrattaw d-diffikultajiet fl-indentifikazzjoni tal-persuna akkuzata:

"The reasons for such difficulty are apparent. A very substantial psychological literature has demonstrated that the processes involved are riddled with weaknesses, from initial perception to eventual recall. Articulation is particularly difficult, and suggestibility, both in the sense of accepting externally inspired suggestions and in applying internal preconceptions, is high. These defects are compounded by the inability of conventional cross-examination to reveal their weaknesses. Identification is a largely internal and isolated process so, unlike other evidence, it resists probing based upon its coherence with the rest of the surrounding evidence. It is also usually sincerely believed in by the witness, and the witness's view is more likely to be reinforced than to be weakened by the passage of time and by challenge. The courts are generally reluctant to allow

challenge to evidence based upon abstract or theoretical studies divorced from the facts of the instant case, and in this context have refused to admit evidence designed to show the general weakness of evidence of identification. The cumulative effect of these factors is to reduce the probative value of the evidence while at the same time increasing its prejudicial effect, given that in this context prejudice connotes adducing evidence which the jury is likely to credit more than is warranted”.

Illi di piu` fis-sentenza **Qorti tal-Appell II-Pulizija vs Stephen Zammit** deciza 16.7.1998 mill-Prim Imhalled Dr Vincent De Gaetano gie ritenut is-segwent:

“Kif fisser Chief Justice Miles fis-Supreme Court of the Australia Capital Territory fil-kawza Sharett vs Gill (1993) 65 A Crim R.44:

“..... I am unaware of any authority in this country or elsewhere that lays down a general principle that all eye-witness testimony is subject to weaknesses and dangers. It would be surprising if there were such a principle. Of course, everybody knows that everybody else has human failings with regard to such matters as observation, interpretation, recollection and articulateness and such failings are assumed to be taken into account in most cases by the tribunal of fact unless there is some particular need for the fact-finder to refer to or to be referred to some aspect of the case where such failings are relevant. The highest judicial authorities emphasise that in jury trials cases of disputed identification require express and precise reference to these human failings and this principle has been extended to trials without a jury. However, it is hard to imagine life where people are not able to act safely and sensibly upon their observations of what they see and hear, and even upon their identification of fellow human beings by such observations. The ability to distinguish one human being from another and to recognise a person as one previously encountered

are surely basic skills indispensable to social existence, and skills well acquired at an early age. What the lawyers call identification is essentially no different from what is generally known as recognition”;

Fi kliem iehor huwa biss f'certu kazijiet li tista' verament tqum il-kwistjoni ta' l-attendibilita` ta' *identification evidence*. Il-kaz klassiku fl-Ingilterra huwa dak ta' **Turnbull**(1977@0 QB224, fejn il-Qorti esprimiet ruhha hekk:

“First, whenever the case against the accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition, he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided that is done in clear terms the judge need not use any particular form of words.

Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example, by passing traffic or a press of people? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? ...

Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.

All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger," (ara Balckstone's Criminal Practice, 1991, pagna 1991; Archbold, 1997, pagni 1255-1256);

Fil-kaz in dizamina, naturalment, ma kienx hemm gurija; dan ifisser, izda, li l-Ewwel Qorti kellha tikkunsidra bir-regqa dawk ic-cirkostanzi kollha li kienu jistghu jiftghu xi dubju fuq l-attendibilita` tad-deposizzjoni ta' Mark Pace u ta' Carmen Magro, inkluz il-mod kif huma gew murija xi ritratti mill-pulizija u l-mod kif saret l-identification parade".

Fil-fehma ta' din il-Qorti, l-fatt illi Inez Cali` m'gharfitx lill-imputat fl-Identification parade izda gharfitu quddiem il-Qorti, il-fatt li z-zewg kwerelanti kienu jafu b'tattoos "fidejn" l-imputat meta dawn qatt ma setghu rawhom minhabba li hu kien liebes tracksuit bil-kmiem twal, il-fatt li ebda wiehed mill-kwerelanti ma taw deskrizzjoni ta' dawn it-tattoos, il-fatt li Inez Cali` rat l-'intruder', biss minn dahru; u l-fatt illi z-zewg kwerelanti raw lill-imputat ghaxar minuti wara l-incident, iddghajjed t-testimonjanza tal-identita` tal-imputat, u thasseb serjament lill-Qorti li certu ammont ta' *suggestibility* u *prompting* setgha gie prattikat fuq l-istess kwerelanti anzjani.

Dan kollu jwassal lill-din il-Qorti ghal konkluzjoni illi l-kwalita` tat-testimonjanza ta' identita` fil-kaz in ezami hija dgħajfa hafna u għalhekk l-incidenta ta' identifikazzjoni zbaljati hija għoli ferm.

Illi għal dawn il-motivi, il-Qorti ssib lill-imputat mhux hati tal-akkuzi kif dedotti u tilliberah.

Kopja Informali ta' Sentenza

< Sentenza Finali >

-----TMIEM-----