MALTA

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

MAGISTRAT DR.
EDWINA GRIMA

Seduta ta' l-4 ta' Mejju, 2011

Numru. 924/2009

Il-Pulizija
(Spettur Pierre Micallef Grimaud)

Vs

Simon Azzopardi ta' 26 sena, bin missier mhux maghruf u Sonia (Vincenza) Azzopardi, imwieled il-Pieta' fit-23 ta' April 1985 u joqghod 17, Flat 1, Triq l-Ibjar, Valletta, detentur tal-karta ta'l-identita' bin-numru 0277985(M)

Il-Qorti,

Rat l-imputazzjoni migjuba kontra l-imputat Simon Azzopardi li permezz taghha huwa gie akkuzat talli fit-08 ta' Settembru 2009 ghal habta tan-12:30 AM fi Triq Marsamxett, Valletta bil-hsieb li jaghmel delitt wera dana il-hsieb b'atti esterni u ta bidu ghall-esekuzzjoni ta' dana id-delitt, u cioe' attentat ta' offiza gravi fuq il-persuna ta'

Christine Emily Vella Casao, liema delitt ma giex ezegwit minhabba li waqaf minn rajh milli jikkonsma d-delitt;

Akkuzat ukoll talli fl-istess jum, lok, hin u cirkostanzi ikkaguna hsara fil-gisem jew fis-sahha u cioe’ offiza ta’ natura hafifa fuq Christine Emily Vella Casao;
Akkuzat ukoll talli fl-istess jum, hin, lok u cirkostanzi, bl-imgieba tieghu ikkaguna lil istess Christine Emily Vella Casao, biza li ser tintuza vjolenza kontriha meta kien jaf jew missu kien jaf li l-imgieba tieghu ser tikkaguna lil Christine Emily Vella Casao hekk tibza kull darba minn dawk l-okkazzjonijet

U aktar talli fl-istess jum, hin, lok u cirkostanzi gab ruhu b’mod li ta fastidju lil Christine Emily Vella Casao u/jew b’mod li kien jaf jew imissu kien jaf li dan kien ta fastidju ghal Christine Emily Vella Casao

U aktar talli fl-istess jum, hin, lok u cirkostanzi ingurja u/jew hedded lil Christine Emily Vella Casao;

U aktar talli fl-istess jum, hin, lok u cirkostanzi hebb ghal Christine Emily Vella Casao sabiex jingurjaha, idejjaqha u/jew jghamilha hsara

Rat id-dokumenti esebieti.

Rat il-kunsens ta’l-Avukat Generali tad-09 ta’ Settembru 2009 sabiex dana il-kaz jigi itrattat bil-procedura sommarja.

Semghet il-provi.

Ikkunsidrat,

Illi mil-provi akkwizti f’dana il-process jirrizulta illi bejn l-imputat u il-parti leza kien hemm relazzjoni intima li minnha twieldu zewgt itfal. Madanakollu din r-relazzjoni kienet sfaxxat xi ftit granet qabel ma sehh l-incident mertu ta’ dina l-kawza. Jidher illi fil-jum in kwistjoni l-imputat kien jinstab fuq is-sur tal-Belt jixrob ma’ xi hbieb meta lemah il-pram tat-tfal tieghu u haseb ghalhekk li t-tfal kienu

qeghdin hemm ma' xi nies ohra. Beda jibghat xi messaggi lil parti leza izda dina ma wegbitux u minflok ghazlet li tinzel tikkonfrontah. Meta waslet hemm, beda argument bejniethom u jirrizulta illi l-imputat refa' idejh fuq l-parti leza u ikkagunalha xi feriti hfief. Vella Casao madanakollu tallega illi l-imputat beda jipprova jifgaha u anke beda jipprova jitfaghha mis-sur ghal isfel. Izda jidher illi b'dana ma reditx tfisser li ried jitfaghha ghal isfel ghax fil-verita kien hemm cint baxx u l-imputat imbuttaha minn dana ic-cint ghal isfel in-naha tat-triq[1]. L-parti leza tikkontendi illi ghalkemm kien hemm diversi nies hemmhekk fosthom shabha izda hadd ma intervjena sabiex jaqbez ghaliha. Inoltre hija telqghet minn fuq il-post u kien biss meta l-imputat baqa' jibaghtilha il-messaggi fuq it-telefon cellulari taghha illi hija iddecidiet li taghmel rapport lill-pulizija.

Madanakollu mix-xhieda ta' Vella Casao in kontro-ezami jidher illi r-relazzjoni ta' bejnha u bejn l-imputat tjiebet, incidenti ohra ma kienx hemm u fil-fatt iddikjarat illi xtaqet tirrinunjza ghall-azzjoni kriminali fil-konfront ta'l-imputat.[2]

Illi l-akkuza ewlenija f'dana il-process kriminali huwa ta' tentattiv ta' offiza volontarja gravi fuq il-persuna ta' Vella Casao. F'sentenza moghtija mill-Qorti ta'l-Appelli Kriminali, il-Pulizija vs Emanuel Zammit, deciza fit-30 ta' Marzu 1998, gie deciz:

"Il-ligi taghna, ghall-fini tar-reat ta' offiza volontarja fuq il-persuna, hi mehtiega l-intenzjoni generika li wiehed jaghmel hsara. Jekk l-intenzjoni ta' l-agent tkun li jaghmel hsara, zghira kemm hi zghira dik il-hsara li jkollu f'mohhu li jaghmel, hu jrid iwiegeb ghal konsegwenzi kollha li effetivament jirrizultaw bhala konsegwenza diretta ta'l-ghemil tieghu" Il-Professur Mamo ighid: **"To constitute the crime of willful bodily harm, the injury must have been caused intentionally. But the intention required is merely the *animus nocendi*, the generic intent to cause harm, without**

[1] Ara rapport a fol.13
[2] Ara xhieda a fol.39 u 40

requiring necessarily the actual intention to do the particular kind of bodily harm which, in fact, ensues.”

Il-Qorti tosserva madanakollu illi peress illi f’dana it-tip ta’ reat, kif gie sottolinjat huwa bizzejjed illi l-intenzjoni tkun wahda generika, allura fost l-awturi hemm diskordju dwar jekk jistax ikun hemm tentattiv ta’ offiza gravi. Dwar dana jitkellem ukoll il-Professur Mamo fejn ighid: **“the principle that in the crime of bodily harm a generic intention to injure is sufficient, the offender being answerable for the harm which has actually ensued, gives rise to the doubt whether a charge of attempt is legally possible.”** (Notes on Criminal Law), izda imbaghad izid **“Looking at the classification of offences as made by the Law, it is not difficult to imagine certain circumstances in which, having regard to the means used by the offender and his mode of action, one may be certain of his intention to produce one rather than the other of the effects therein mentioned. Should there still remain a doubt as to the gravity of the result aimed at by the offender, the principle will naturally apply *in dubbio pro reo*.”**

Illi ukoll f’sentenza moghtija mill-Qorti ta’l-Appelli Kriminali fil-kawza fl-ismijiet Ir-Repubblika vs Domenic Briffa deciza fis-16 ta’ Ottubru 2003, il-Qorti iccitat lill-awtur Francesco Antolisei fit-tul u ikkonkludiet: **“Din il-Qorti tara li dana il-bran jaqbel anke mad-dottrina li dejjem giet accetatat mill-Qrati ta’ Gustizzja Kriminali taghna, u cioe’ li jista’ ikollok tentattiv ta’ offiza gravi jew tentattiv ta’ offiza gravissima, purche’ jigi pruvat li l-agent kellu l-intenzjoni specifika li jikkaguna xi wahda min dawk il-konsegwenzi li jikkaratterizzaw l-offiza gravi jew l-offiza gravissima skond il-kaz”.**

Illi ghar-rigward tat-tentattiv tar-reat in dizamina, dana wisq inqas jista’ jirrizulta. Fil-fatt il-Professur Mamo fin-noti tieghu isostni illi bosta awturi u guristi taljani huma tal-fehma illi ir-reat ta’ tentattiv ta’ offiza volontarja qatt ma tista’ tirnexxi u dana peress illi huwa kwazi impossibli illi jigi ippruvat il-grad ta’ hsara illi jkun ser jigi ikkagunat fuq il-vittma a priori.

Illi fi kwalunkwe kaz, kif diga inghad, l-prosekuzjoni ma irnexxiliex tipprova illi l-imputat seta' kellu xi intenzjoni generika illi jikkaguna xi offiza gravi fuq il-vittma. Fil-fatt mill-provi prodotti ma jirrizultax illi l-imputat kellu l-*animus nocendi* u cioe' xi intenzjoni generika li jikkaguna ferita gravi fuq il-persuna ta' Vella Casao. Jidher illi fil-fatt huwa ma bediex iqis l-azzjonijiet tieghu meta ikkonfrontatu u fis-sahna tal-mument hebb ghaliha u spiccaw gew fl-idejn.

L-istess ma jistax jinghad ghat-tieni akkuza u cioe' dik prevista fl-artikolu 221 tal-Kapitolu 9 u cioe' l-akkuza ta' offiza ta' natura hafifa. L-imputat stess jammetti illi huwa refa' idejh fuq Vella Casao u ikkagunalha xi griehi. Madanakollu peress illi dana ir-reat jirrikjedi il-kwerela tal-parti offiza u kif diga inghad iktar 'il fuq il-parti leza irrinunzjat ghall-azzjoni kriminali, kwindi dina l-Qorti ma tistax hlief tiddikjara l-procediment ezawrit. L-istess jista' jinghad fir-rigward tal-hames u is-sitt akkuzi peress illi dawn huma ta' natura kontravenzjonali u jinhtieg il-kwerela tal-parti offiza sabiex tirnexxi l-azzjoni.

Ikkunsidrat,

Illi l-imputat jinsab akkuzat ukoll bir-reat tal-fastidju u ta'l-hekk imsejjah "harassement" bil-vjolenza kif previst fl-artikolu 251A u 251B tal-Kapitolu 9. Illi f'sentenza moghtija mill-Qorti ta'l-Appell Kriminali fl-ismijiet il-Pulizija vs Raymond Parnis (per Prim'Inhallef Vincent DeGaetano 24/04/2009), il-Qorti tat definizzjoni ezawrjenti ta' dak li jikkostitwixxi il-*harassement* taht dina id-disposizzjoni tal-ligi. Il-Qorti ta'l-Appell fis-sentenza taghha fil-fatt tissottolinja l-fatt illi l-kelma "imgieba" fit-test tal-ligi timplika "a course of conduct" u mhux xi incident wiehed izolat. Il-Qorti tistqarr:

" **… illi dawn l-affarijiet kollha li sehhew fil-kuntest ta' incident wiehed – ma jistghu qatt jammontaw ghar-reat kontemplat fl-Artikolu 251B imsemmi. Dan ir-reat gie evidentement ispirat mill-Artikolu 4(1) tal-**

Protection from Harassment Act, 1997* tal-Ingilterra, liema artikolu jipprovdi testwalment hekk: *"A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions."* L-Artikolu 251B taghna – u hawn il-Qorti ser tuza t-test Ingliz proprju biex wiehed ikun jista' jara x-xebh u fejn saru t-tibdiliet – jipprovdi, fis-subartikolu (1) tieghu, hekk:** *"A person whose course of conduct causes another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in sub-article (1) of article 222 shall be guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions…"* **. Il-kliem "on each of those occasions***" huma indikattivi li l-att materjali ma jistax isehh f'okkazjoni wahda izda jrid ikun hemm ghall-anqas zewg okkazjonijiet – proprju kif jinghad fil-matrici Ingliza, "*on at least two occasions*". Ghal xi ragunu – fil-fehma ta' din il-Qorti kompletament illogika – il-kliem "***on at least two occasions***" thallew barra"**. Fi kliem l-edituri ta' **Blackstone's Criminal Practice, 2008** :

"*How separate the two occasions must remains to be seen. The nature of stalking, the activity which primarily created the need for the new offences, might mean that the occasions are likely to be on separate days, although it may be possible to differentiate activities on one day where they can be viewed as not being continuous. The further apart the incidents, the less likely it is that they will be regarded as a course of conduct…It was recognised, however that circumstances can be conceived 'where incidents, as far apart as a year, could constitute a course of conduct'. The type of incidents would be those intended to occur on an annual event such as a religious festival or a birthday…*"

Din il-Qorti mhix ser tipprova taghti definizzjoni ezawrienti ta' x'jammonta ghal "*course of conduct*" ghall-fini tal-imsemmi Artikolu 251B(1) – u anqas ma hi ser tipprova telenka kazijiet, anke jekk biss bhala forma ta' ezempju, li jammontaw jew ma jammontawx ghal tali "imgieba", haga li trid tigi deciza minn kaz ghal kaz skond ic-cirkostanzi u bl-applikazzjoni ta' doza qawwija ta' saggezza min-naha tal-gudikant. Dak li qed jigi deciz f'din il-kawza hu biss li incident wiehed (u, *per di piu`*, ta' minuti) ma jammontax ghal "*course of conduct*" ghall-finijiet tal-Artikolu 251B(1). Inoltre huwa evidenti li l-vjolenza kontemplata fl-imsemmi artikolu hija dik li talvolta tista' tigi perpetrata fil-futur u mhux dik li effettivament tkun giet kommessa. Il-vjolenza effettivament kommessa tigi punita taht disposizzjonijiet ohra tal-ligi."

Illi minn dina l-esposizzjoni legali ma hemmx dubbju illi dana ir-reat li jinsab akkuzat bih l-imputat fit-tielet u ir-raba imputazzjonijiet ma jistax jissussisti. Dana ghaliex ma giex ippruvat illi kien hemm xi *course of conduct* da parti tieghu fil-konfront ta' Vella Casao, izda certament u minghajr l-icken dubbju kienet okkazzjoni unika. Kwindi dawn iz-zewg akkuzi qatt ma jistghu jirrizultaw ippruvati u l-imputat ser jigi illiberat minnhom.

Ghaldaqstant il-Qorti filwaqt li tillibera lill-imputat mill-ewwel, it-tielet u ir-raba akkuzi migjuba fil-konfront tieghu, tiddikjara l-procediment ezawrit fir-rigward tat-tieni, l-hames u is-sitt imputazzjonijiet minhabba rinunzja mill-parti leza.

< Sentenza Finali >

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