MALTA

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

**MAGISTRAT DR.
EDWINA GRIMA**

Seduta tal-15 ta' Settembru, 2011

Numru. 37/2008

**Il-Pulizija
(Supretendent Antonello Grech)**

Vs

Adelina Cini ta' 63 sena, bint John Mary Agius u Ursula nee' Cassar, imwielda Zebbug, Ghawdex u residenti 62, Triq il-Madonna tac-Ciccri, Zebbug, Ghawdex, detentrici tal-karta tal-identita' bin-numru 18148(G)

Il-Qorti;

Rat l-akkuza kontra 'l hawn fuq imsemmija Adelina Cini li giet akkuzata talli fiz-Zebbug nhar il-21 ta' Gunju 2006 ghal habta ta' nofs in-nhar, volontarjament hassret, ghamlet hsara jew gharrqet hwejjeg haddiehor mobbli jew immobbli liema hsara tammonta ghal iktar minn 1165euro ghad-dannu ta' dviersi persuni.

Ukoll talli fl-istess data, lok u hin volontarjament tat in-nar lil ghalqa ta' dwieli, qatgha mhawla b'sigar, munzelli jew gemgha ohra ta' qmugh, qoton jew prodott iehor utili, jew materjal iehor, ikun li jkun, sew jekk ikunu maqlugha jew mahsuda kemm jekk ikunu ghadhom imqabbdin mal-art bi ksur ta'l-artikolu 319 tal-Kodici Kriminali.

Rat id-dokumenti;

Rat in-nota ta' rinviju ghall-gudizzju tal-Avukat Generali tal-15 ta' Dicembru 2008;

Semghet illi l-imputata ma kelliex oggezzjoni illi l-kaz jigi trattat u deciz minn dina l-Qorti bil-procedura sommarja;

Semghet il-provi;

Semghet trattazzjoni;

Ikkunsidrat:

Illi l-imputata tinsab akkuzata bir-reat tal-hruq doluz u hsara volontarja meta allegatament hija tat in-nar lir-raba li tinsab fiz-zona maghrufa bhala Tal-Hluq, limiti taz-Zebbug, Ghawdex. Jidher illi fil-21 ta' Gunju 2006 sehh hruq estensiv fl-eghlieqi gewwa z-Zebbug tant illi diversi bdiewa rrapurtaw li sofrew xi hsara fil-prodott taghhom, fosthom balel tat-tiben, sigar tal-frott u anke f'xi bejtiet tan-nahal.[1] Illi xi granet wara li sehh dana l-hruq sar rapport mal-pulizija fejn giet identifikata persuna li setghet kellha xi konnessjoni mal-istess u kwindi minn hawn nibet is-suspett illi dana l-hruq seta' kien wiehed doluz. Dana sehh meta zewg xhieda okulari u cioe' Victoria u Michael Saliba li joqghdu fil-vicinanzi sostnew illi huma raw lill-imputata qed tqabbad l-ghalqa taghhom. Minn hemm imbaghad in-nar infirex ghall-eghlieqi li jinsabu fil-vicinanzi tant illi kellhom jissejhu l-pumpiera mid-Dipartiment tal-Protezzjoni Civili sabiex in-nirien jigu ikkontrollati u ma

[1] Ara rapporti Dokumenti AS1, AS2 u AS3 a fols. 13 et seq. tal-process u ix-xhieda tal-PS1346 Anton Schembri a fol.9 et.seq.

jaslux sar-residenzi li kien hemm fl-inhawi. Illi abbazi ta’ dana r-rapport, ghalhekk is-Surgent 1346 gustament hass li kellu jinforma lis-superjuri tieghu sabiex jinbdew l-investigazzjonijiet. Jidher madanakollu illi l-ebda investigazzjoni ma saret. L-ebda inkjesta magisterjali ma giet maghmula u dana tenut kont tal-estensjoni tal-hruq u l-hsara li setghet giet ikkagjonata. Inoltre ghalkemm giet indikata l-persuna tal-imputata bhala l-persuna suspettata li ikkomettiet dana d-delitt, l-ebda investigazzjoni ulterjuri ma saret fil-konfront taghha. Jidher illi l-imputata qatt ma giet mitkellma mill-pulizija a tempo vergine u lanqas ma saru xi tfittxijiet kemm fuq il-post ghal xi materjal li seta’ kien il-kagun tan-nirien u lanqas ghand l-imputata sabiex jigi stabbilit jekk hija setax kellha xi involviment fil-kummissjoni ta’ dana r-reat. Kwindi jidher illi l-ufficjal investigattiv u cioe’ l-ufficjal prosekutur f’dina l-kawza ma ha l-ebda passi ulterjuri (fil-fatt lanqas biss jixhed fil-kawza sabiex jispjega f’hiex kienu jikkonsistu l-investigazzjonijiet tieghu), sakemm sentejn wara gew istitwiti dawn il-proceduri kriminali fil-konfront tal-imputata u dana abbazi biss ta’ dak li stqarru zewg xhieda okulari, persuni li jidher illi kellhom xi disgwid mal-imputata fiz-zmien ta’ dana l-incident. Dina l-Qorti ghalhekk trid tara jekk abbazi ta’ dawn il-provi fjakki tistax tasal sabiex issib lill-imputata hatja tar-reati li dwarhom tinsab akkuzata. Illi jigi ribadit illi fil-kamp penali l-provi jridu jkunu tali illi jwasslu lill-gudikant ghal konviciment morali lil hinn minn kull dubbju dettat mir-raguni dwar ir-reita’ tal-imputata.

Illi kif diga inghad l-unika prova li tipponta subajgha lejn l-imputata hija x-xhieda ta’ Michael u Victoria Saliba. Illi b’mod ewlieni hija x-xhieda ta’ Victoria Saliba li tista titfa xi forma ta’ htija fuq l-imputata meta hija tispjega dak li allegatament ghamlet l-imputata. Victoria Saliba tixhed u tghid illi hija kienet fuq il-bejt tad-dar taghha meta lemhet lill-imputat niezla minn passagg wara d-dar taghhom fejn hemmhekk hemm ir-raba taghhom. Tghid illi Cini kienet liebsa kappell tac-carruta kulur abjad, kellha flixkun f’idejha. Ratha diehla gewwa l-ghalqa taghhom, bdiet ixxerred xi likwidu mill-flixkun li kellha f’idejha ghal fuq ir-raba. Tghid illi f’dak iz-zmien ir-raba taghhom ma kinitx

qed tinhadem. Imbaghad tghid illi rat lill-imputata thares madwarha u wara ghamlet moviment b'idejha qisha qed titfa' xi haga fuq il-haxix. Minn fejn kienet hi ma setghetx tara x'tefghet. Hekk kif ghamlet dana l-moviment rat dahna tielgha u rat in-nar jinfirex f'sekonda. Hija qalghet il-hwejjeg minn fuq il-bejt u f'dana l-mument ghajtet lil zewgha li kien ghadu kemm wasal mix-xoghol. Zewgha Michael tela' fuq il-bejt hdejha u beda jghajjat lill-imputata u jghidilha l-kliem "qabbadtu, qabbadtu." Hawnhekk hija osservat lill-imputata thares lejhom, imbaghad marret tistahba wara l-haxix. Ghalhekk hija nizlet, harrget mid-dar u marret hdejn l-imputata u bdiet takkuzaha li kienet qabbdet in-nar fl-eghlieqi. Hawnhekk l-imputata wegbitha u qaltilha illi hija ma kienet ghamlet xejn hazin ghaliex kienet qed tqabbad hwejjigha u mhux hwejjighom.[2]

Zewgha Michael Saliba jikkonferma fis-sustanza x-xhieda ta' martu ghalkemm ighid illi huwa ma kienx prezenti ghall-ewwel parti tal-incident. Ghalhekk huwa ma rax lill-imputata qed tqabbad in-nar. Fil-fatt ighid illi meta wasal id-dar in-nirien kienu diga bdew jaqbdu. Kif wasal id-dar tela' fuq il-bejt sabiex jara n-nirien minn fejn kienu gejjien u martu irrakontatlu dak li kienet rat. Ghalhekk ittawwal ghal barra u ra lill-imputata hierga minn gor-raba u beda ighajtilha u jghidilha "qabbadtu, qabbadtu". Huwa ma jiftakarx x'kienet liebsa l-imputata, izda jiftakar li kienet liebsa beritta tac-carruta bil-pizz dawra mejt mieghu. Ighid illi ra lill-imputata tistahba wara hajt filwaqt illi martu nizlet u marret tfittixha. Hekk kif semaghhom jitkellmu bejniethom, huwa nizel minn fuq il-bejt u qal lill-imputata: "qabbadtli hwejjgi" u hi wegibtu illi kienet qabbdet hwejjigha u mhux hwejjgu. Hu wegibha u qalilha "qabbadt hwejjigna u hwejjeg in-nies". Wara dana hija telqghet minn fuq il-post.[3]

Mix-xhieda ta' dawn it-tnejn minn nies jirrizulta li kien hemm certa animosita bejnhom u l-imputata u dana minhabba xi kwistjonijiet fuq passaggi fir-raba taghhom, tant illi anke kien hemm kawza pendenti bejniethom

[2] Ara xhieda ta' Victoria Saliba a fols 29 et seq.
[3] Ara xhieda ta' Michael Saliba a fol. 42. et seq.

quddiem il-qorti civili. Illi dana tistqarru l-imputata stess fix-xhieda taghha meta tikkontendi illi l-konjugi Saliba ivvintaw dina l-istorja fuqha u dana bhala vendikazzjoni. L-imputata fil-fatt tichad kategorikament illi hija tat in-nar lir-raba in kwistjoni, ghalkemm ma tichadx illi bhala stat ta' fatt fil-jum u l-hin indikat fl-akkuza hija kienet tinsab fir-raba' taghha li tinsab vicin dik ta' Saliba. Tghid illi ghalkemm ir-raba jiehu hsiebha binha madanakollu hija spiss taghtih daqqa t'id minhabba li ghandha l-esperjenza fil-biedja u dakinhar nizlet fir-raba taghhom peress illi kellhom suspett illi kien hemm xi fniek jew grieden qed jieklulhom iz-zerriegha tal-bettiegh li kienu ghadhom kemm zerghu. Tibqa' tichad madanakollu l-involviment taghha. Tikkontendi illi l-konjugi Saliba ma setghux rawha tqabbad in-nar peress illi hija u niezla lejn ir-raba taghha hija ghaddiet minn quddiem id-dar taghhom u osservat illi hadd minnhom ma kien hemm. Dana tista' tikkonfermah issostni peress illi l-karozza taghhom ma kenitx vicin id-dar u l-bieb ta' barra kien maghluq u mhux fuq il-purtiera tan-nylon kif solitu jkun meta jkunu hemm. Tikkonferma illi hija kellmet lil Victoria Saliba fejn din bdiet tallega illi kienet qabbdet in-nar hi, izda tichad li qaltilha diskors fis-sens illi kienet qabbdet hwejjigha. Issostni illi ma' Saliba baqghet tinnega l-involviment taghha. Tikkontendi illi hija u Victoria Saliba spiss jitlewmu u tghid illi dakinhar nizlet appozitament biex tiggieled maghha u sahansitra nizlet bi xkupa ghaliha. Dakinhar l-imputata tikkonferma illi kienet liebsa berritta f'rasha, izda ma kienet qed iggorr xejn f'idejha. Issostni illi f'xi hin semghet lill-konjugi Saliba jaslu d-dar peress illi semghethom isabbtu l-bibien tal-Mini Minor taghhom. Imbaghad tghid illi Victoria Saliba telghet fuq il-bejt fejn rat in-nar u bdiet tghajjat maghha li hija kienet qabbditu hi.[4]

Illi dina hija l-unika verzjoni li taghti l-imputata dwar dak li sehh. Kif diga inghad hija qatt ma giet mitkellma mill-pulizija *a tempo vergine* u lanqas ma jidher illi ittiehditilha xi stqarrija.

[4] Ara xhieda ta'l-imputata a fol.59 tal-process

Illi Carmel Vella huwa l-uniku xhud li jghid li ra persuna fl-inhawi dakinhar li tqabbad in-nar. Issostni illi huwa kien qieghed fuq is-setah in-naha ta' wara tar-residenza tieghu meta ra persuna li kienet liebsa kappell kulur abjad, izda ma jafx jekk dina l-persuna kinitx mara jew ragel. Din il-persuna raha miexja fid-direzzjoni l-opposta minn fejn kien qed jaqbad in-nar. Ighid li n-nar wasal kwazi sa taht id-dar tieghu, izda l-pumpiera waslu ezatt fil-hin u tfew in-nar. Illi meta jaghti l-verzjoni tieghu lill-pulizija *a tempo vergine* madanakollu Vella isostni illi din il-persuna fil-fatt kienet mara u anke jaghti deskrizzjoni ta' dak li kienet liebsa u cioe' jghid illi kienet liebsa kappell abjad u qalziet jew xorts. Ighid lill-pulizija illi madanakollu huwa ma gharafx lil dina l-mara.[5] Illi xorta wahda dina x-xhieda ma tistax titfa' wisq dawl billi ghalkemm Vella jsostni illi ra persuna qed tigri ma jfissirx illi dina il-persuna qabbdet xi nar.

Illi x-xhieda l-ohra ma jitfghux wisq dawl fuq dana l-incident u jixhdu biss fuq il-hsara li sofrew fir-raba taghhom minhabba n-nirien. Illi l-Qorti ghalhekk trid tistrieh biss b'mod ewlieni fuq ix-xhieda ta' Victoria Saliba li hija l-uniku xhud okulari li allegatament rat lill-imputata taghti n-nar lill-eghlieqi. Dana billi Michael Saliba wasal wara li kien beda l-hruq, u Carmel Vella ghalkemm jikkonferma illi l-unika persuna li ra fl-akwati kienet persuna liebsa kappell abjad madanakollu ma jgharafx min kienet dina l-persuna.

Illi r-regoli illi tfasslu f'kawza R vs Turnbull fl-Ingilterra, ghalkemm ma jikkostitwixxu l-ebda regola taht il-ligi Maltija, madanakollu huma linji gwida fil-kaz tal-identifikazzjoni tal-persuna akkuzata. Illi dana gie wkoll sottolinjat f'sentenza moghtija mill-Qorti tal-Appelli Kriminali fl-ismijiet Il-Pulizija vs Stephen Zammit (deciza 16 ta' Lulju 1998) fejn il-Qorti tat esposizzjoni tar-regoli Turnbull fid-decizjoni taghha:

"*First, whenever the case against an accused depends wholly or substantially on the correctness of one or more*

[5] Ara xhieda ta' Carmel Vella a fol.40 u 41 u rapport Dokument AS2 a fol.18.

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 this 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? Had the witness ever seen the accused before? 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? If in any case, whether it is being dealt with summarily or on indictment, the prosecution have reason to believe that there is such a material discrepancy they should supply the accused or his legal advisers with particulars of the description the police were first given. In all cases if the accused asks to be given particulars of such descriptions, the prosecution should supply them. Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence.

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.

Illi f'dana l-kaz ma hemm l-ebda dubbju illi kienet il-persuna tal-akkuzata li kienet prezenti fl-istess hin u fuq il-post fejn tqabbdu n-nirien. Dana tikkonfermah l-imputata stess fejn hija tammetti illi kienet qieghda fir-raba taghha ticcekkja z-zerriegha tal-bettiegh. Tikkonferma li kienet liebsa beritta kif isostnu l-konjugi Saliba u Carmel Vella. Madanakollu filwaqt illi Victoria Saliba issostni illi rat lill-imputat tqabbad in-nar, l-imputata dana tichdu. Inoltre ghalkemm il-konjugi Saliba jsostnu illi l-imputata ammettiet maghhom illi kienet hija li qabbdet in-nar, madanakollu l-imputata tichad illi qaltilhom dana d-diskors. Illi l-Qorti issibha kemmxejn stramba ukoll kif ghalkemm il-konjugi Saliba jsostnu illi l-imputata tat in-nar lir-raba taghhom madanakollu huma ma ghamlu l-ebda rapport lill-pulizija dwar dana. Kien biss sebat ijiem wara u cioe' fit-28 ta' Gunju 2006 illi l-pulizija gew infurmati b'dan. Fil-fatt kien Carmel Cefai (u mhux Saliba) li informa lil PS1346 illi kien gie avvicinat mill-konjugi Saliba u qalulu illi kienu raw lil Adelina Cini taghti n-nar lill-ghalqa taghhom. Kien biss fit-03 ta' Lulju, imbaghad, kwazi hmistax-il gurnata wara illi huma jaghtu l-verzjoni taghhom lill-pulizija. Illi jidher illi n-nar infirex f'distanzi konsiderevoli u kien piuttost estensiv, izda xorta wahda l-konjugi Saliba ma hassewx illi kellhom jirrapurtaw dak illi kienu raw lill-pulizija. Inoltre ma hemmx dubbju illi bejn l-imputata u l-konjugi Saliba kien hemm certu animosita' tant illi jidher illi dina ma kinitx l-ewwel darba illi huma kienu tlewmu bejniethom.

Il-Qorti ghalhekk tinsab rinffaccjata b'zewg verzjonijiet kompletament konfliggenti li ghandhom bhala sfond ic-cirkostanzi hawn fuq sottolinjati. Provi ohra fl-atti ma hemmx li jistghu jitfghu xi dawl fuq dana l-incident. Kif diga inghad l-investigazzjonijiet mill-pulizija huma piuttost skarsi. Fil-fatt mir-rapporti esebiti ma jidhirx illi l-pulizija kienet qed titratta dan in-nar bhala wiehed doluz u kien

biss gimgha wara illi gew infurmati illi n-nar seta' tqabbad mill-imputata. Jidher madanakollu illi wara dina l-informazzjoni xorta wahda ma sarux xi investigazzjonijiet, interrogazzjonijiet jew tfitxijiet li setghu jitfghu iktar dawl. Jidher illi l-pulizija lanqas accedew fuq il-post. Lanqas ma gie stabbilit il-post ezatt minn fejn seta' tqabbad in-nar. Kif lanqas ma saru tfittxijiet fl-inhawi sabiex jigi stabbilit kif seta tqabbad in-nar u cioe' jekk hux permezz ta' xi materjal likwidu u inflammabbli jew jekk kienx hemm xi materjal iehor fuq il-post bhal carruta, hgieg jew affarijiet ohra li setghu jwasslu sabiex jabqad in-nar. Di piu' lanqas saru xi tfittxijiet fuq il-persuna tal-imputata sabiex jigi stabbilit jekk hija kelliex xi materjal li setghet tqabbad xi nar bih. L-uniku tfittxija li saret jidher li ghamilha Michael Saliba li fir-rapport li jaghti lill-pulizija jghid illi l-ghada mar sabiex jara jsibx il-flixkun li martu tikkontendi li rat f'idejn Cini, izda jghid illi ma sab xejn. Inoltre mistoqsi mill-Qorti jekk Cini kellhiex xi riha partikolari fuqha meta nizel ikellimha jghid illi ma jafx. Ghaldaqstant hemm dubbju serju dettat mir-raguni dwar dak li verament sehh u ghalkemm l-imputata, li kienet prezenti fuq il-post, ma taghti l-ebda spjegazzjoni dwar kif seta' tqabbad in-nar madanakollu hija tibqa' tichad illi qabbditu hi. Il-grad tal-prova li jinhtegilha taghmel l-imputata huwa inqas minn dak illi trid tressaq il-prosekuzzjoni, billi d-difiza trid biss tipprova sal-grad tal-probbabli illi dak illi qed tikkontendi huwa minnu.

Ghaldaqstant fid-dawl ta' dawn ir-rizultanzi processwali l-Qorti ma tistax hlief tillibera lill-imputata mill-akkuzi migjuba fil-konfront taghha minhabba kunflitt fil-provi.

< Sentenza Finali >

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