MALTA

QORTI TAL-MAGISTRATI (MALTA)

BHALA QORTI TA' GUDIKATURA KRIMINALI

MAGISTRAT DR.

EDWINA GRIMA

Seduta tas-6 ta' Marzu, 2014

Numru. 277/2012

Il-**Pulizija**

(Spettur Roderick Agius)

Vs

Daniel Lanzon, iben Alexander Lanzon u Carmen nee' Cefai imwieled fit-30.09.1985 u li joqghod, Dar Frate Jocoba, Triq Wied iz-Ziju, Marsaskala detentur tal-karta tal-identita 567485M

Il-Qorti,

Rat l-akkuza migjuba fil-konfront tal-imputat li gie akkuzat talli fl-1 ta’ Awissu 2011 u t-30 ta’ Ottubru 2011 f’dawn il-Gzejjer b’mezzi kontra l-ligi ghamel uzu ta’ ismijiet foloz u billi inqed a b’qerq iehor, ingann, jew billi wera haga b’ohra sabiex igieghel titwemmen l-ezistenza ta’ krediti immaginarji ghamel qligh bi hsara ta’ Ambasajer Angesom ID: 0038000A u Solomon Ghebremedhin ID: 0044069A.

Akkuzat ukoll talli: fl-istess lok, hin u cirkustanzi xjentament laqa’ ghandu flus li kien mehuda b’qerq, jew xjentement dahal biex imexxi fi qliegh bi ksur tal-art 334(a)(b) tal-Kap 9 tal-Ligijiet ta’ Malta.

Akkuzat ukoll li diversi atti maghmulin minnu, ukoll jekk fi zminijiet differenti, kienu jiksru l-istess dispozizzjoni tal-ligi u gew maghmulha b’rizoluzzjoni wahda u li dawn l-atti ghalhekk jitqiesu bhala reat wiehed imsejjah kontinwat.

Akkuzat ukoll talli fl-istess hin, lik u cirkostanzi kkommetta reat fil-perjodu operattiv ta’ erba’ snin ta’ sentenzi sospiza mghotija mill-Magistrat Dr. Antonio Vella LL.D, fejn gie ordna mill-Magistrat Dr. Edwina Grima LL.D. nhar it-13 ta’ April 2010 li dan il-perjodu ghandu jerga jibda jiddekorri.

Finalment gie akkuzat talli fl-istess dati, hin, lok u cirkostanzi rrenda ruhu recidiv ai termini tal-artikoli 49, 50 tal-Kap 9 tal-Ligijiet ta’ Malta wra li huwa gia gie misjub hati permezz ta’ diversi sentenzi moghtija mill-Qrati ta’ Malta, liema sentenzi saru definittivi u ma jistghux jigu mibdula.

Rat id-dokumenti esebiti;

Rat il-kunses tal-Avukat Generali sabiex din il-kawza tigi trattata bil-procedura sommarja;

Semghet il-provi;

Semghet l-eccezzjoni tad-demenzja sollevata mid-difiza a tenur tal-artikolu 33(a) tal-Kapitolu 9 tal-Ligijiet ta' Malta.

Semghet it-trattazzjoni;

Ikkunsidrat;

Illi fis-seduta tat-23 ta' Mejju, 2013, id-difiza issollevat l-eccezzjoni tad-demenzja u dan a tenur tal-artikolu 33(a) tal-Kapitolu 9 tal-Ligijiet ta' Malta.

Illi esposizzjoni eccellenti tal-ligi in tema ta' demenza ghall-finijiet ta' l-Artikolu 33(a) tal-Kodici Kriminali saret f'sentenza moghtija mill-Qorti ta'l-Appell Kriminali (sede superjuri) fl-4 ta' Marzu 2010 fis-sentenza Ir-Repubblika ta' Malta vs Anthony Schembri fejn saret referenza ghal dak li qalet din il-Qorti ta'l-Appell (diversament komposta) fis-sentenza taghha **Ir-Repubblika ta' Malta v. David Norbert Schembri** tal-25 ta' Settembru 2008:

"Kif inhu risaput, l-espressjoni "stat ta' genn" fil-paragrafu (a) ta' l-Artikolu 33 tal-Kodici Kriminali

ghandha sinjifikat legali li mhux necessarjament jattalja ruhu ma' dak li fil-medicina jew fil-psikjatrija jitqies bhala "genn". Kif jispjegaw l-awturi Jones u Christie fil-ktieb taghhom *Criminal Law* : "'*It is important to emphasise at the outset that insanity is a purely legal concept. It is not a clinical term derived from psychiatry or psychology. Insanity is not synonymous with any medical conception of mental disorder*.'

"Fi kliem iehor, persuna tista' tkun marida mentalment fil-mument li tkun ghamlet l-att ta' kommissjoni jew ommissjoni li jammonta ghall-element materjali tar-reat, izda dan ma jfissirx necessarjament li dik il-persuna kienet fi "stat ta' genn" ghall-finijiet ta' l-imsemmi Artikolu 33(a), cioe` tali li tkun ezenti minn responsabbilta` kriminali. Biex ikun hemm l-istat ta' genn li jezenta mir-responsabbilta` kriminali jrid jirrizulta (imqar fuq bazi ta' probabbilita`, meta d-demenza tkun giet eccemita mill-akkuzat jew imputat u allura l-piz ikun fuqu biex jipprova l-fatt li l-akkuzat jew imputat kien qed ibati minn marda tal-mohh li minhabba fiha, fil-mument ta'l-att ta' kommissjoni jew ommissjoni, huwa kien priv (i) jew mill-kapacita` li jifhem in-natura u l-kwalita` ta' dak l-att li qed jaghmel, jew (ii) mill-kapacita` li jifhem li dak li qed jaghmel hu hazin, jew (iii) mill-kapacita` li jaghzel jekk jaghmilx jew le dak l-att. Marda tal-mohh – *disease of the mind* bl-Ingliz – mhux necesarjament tkun patologija lokalizzata fil-mohh – *in the brain*. Kif jispjega Lord Diplock fil-kaz ta' *Sullivan* [1984] AC 156, u b'referenza ghall-M'Naghten Rules – regoli, li wiehed m'ghandux jinsa, jirreferu biss ghall-kapacita` *di intendere*, mentri l-ligi taghna tikkunsidra wkoll jekk kienx hemm il-kapacita` *di volere:* –

"'The nomenclature adopted by the medical profession may change from time to time…But the meaning of the expression 'disease of the mind' as the cause of 'a defect of reason' remains unchanged for the purpose of the application of the M'Naghten rules…'mind' in the M'Naghten rules is used in the ordinary sense of the mental faculties of reason, memory and understanding. If the effect of a disease is to impair these faculties so severely as to have either of the consequences referred to in the latter part of the rules , it matters not whether the aetiology of the impairment is organic, as in epilepsy, or functional, or whether the impairment itself is permanent or is transient and intermittent, provided that it subsisted at the time of commission of the act.'

"U kif spjegat aktar fi *Blackstone's Criminal Practice 2008*:

“*‘It can also be seen that to a large extent, whether something is a disease of the mind depends on the consequences it produces – impairment of the faculties of reason, memory and understanding. The disease certainly need not be one primarily located in the brain if it produces the relevant consequences there. Thus arteriosclerosis (hardening of the arteries) causing temporary loss of consciousness is a disease of the mind for these purposes even though it is of physical rather than mental origin…However not every cause of an impairment of these mental faculties is a disease of the mind. A disease is something internal to the accused and so*: *‘A malfunctioning of the mind of transitory effect caused by the application to the body of some external factor such as violence, drugs, including anaesthetics, alcohol and hypnotic influences cannot fairly be said to be due to disease’*(per Lawton LJ in *Quick* QB 910 at p. 922, emphasis added).’

“L-istess jista’ jinghad fil-kaz ta’ dipendenza, ankewahda qawwija, fuq drogi – tali dipendenza fiha nnifisha ma tammontax ghal marda tal-mohh ghall-finijiet ta’ l-Artikolu 33(a) imsemmi.

“Biex din il-Qorti tikkonkludi fuq dan l-aspett ser tikkwota minn dak li wiehed isib fl-appunti tal-Professur Sir Anthony Mamo:

“‘The question [of insanity], when it arises, is one of fact: it has, that is to say, to be decided whether the defendant had a mental disease and, if so, whether it was of such a character and degree as to take away the capacity to know the nature of his act or to help doing it.’”

Illi maghmula dina l-esposizzjoni legali dina l-Qorti ghalhekk ghandha il-kompitu tistharreg jekk l-imputat fil-hin ta’l-kummissjoni tar-reat kien inkapaci “di intendere e di volere” u dana abbazi ta’ dak li jikkonkludi l-espert psikjatriku u anke fid-dawl tal-provi mismugha f’dina il-kawza.

Illi l-Qorti innotat li Dr. Joseph Vella Baldacchino bhala espert psikjatriku li ikkonkluda li l-imputat ibati minn *Anti Social Personality Disorder* izda mhuwiex qed ibati minn xi forma ta' genn.

Illi d-difiza izda ipprezentat x-xhieda ta' Dr. Joseph Spiteri mghotija quddiem din il-Qorti kif diversament preseduta fit-18/09/2013 fejn dan il-psikjatra, li hu l-psikjatra kuranti tal-imputat, xehed illi l-imputat ibati minn *Borderline Personality Disorder* fejn ikollu episodji fejn anke jsir psikotiku u jinqata' il-kuntatt mar-realt. Din l-imgieba hija "unpredictable" u jista' ikun ta' periklu ghalih u ghas-socjeta u kwindi jinhtieg illi jkun imrazzan u ikkontrollat b'kura medika kontinwa.

Abbazi ta'din id-dijanjosi, li sa certu punt hija wkoll ikkonfermata mill-espert nominat minn din il-Qorti u anke ikonfermata minn xhieda li xehdu senjalatament dik ta' George Busuttil, il-Qorti tifhem illi l-kundizzjoni tal-imputat tista' tigi ikkontrollata izda mhux imfejqa.

Fid-dawl ta' dawn il-konsiderazzjonijiet, il-Qorti ghalhekk wara li rat l-artikolu 33(a) tal-Kapitolu 9 tal-Ligijiet ta' Malta, qed tilqa' l-eccezzjoni sollevata mid-difiza, tiddikjara illi l-imputat huwa ezenti minn kull responabilita kriminali peress illi fil-waqt tal-kummissjoni tar-reati addebitati lilu huwa kien fi stat ta' genn.

Ghaldaqstant il-Qorti wara li rat l-artikolu 623 tal-Kapitolu 9 tal-Ligijiet ta' Malta qeghda tordna illi l-imputat jinzamm that kustodja fl-Isptar Monte Karmeli u hemmhekk jibqa' taht kustodja u mizmum skond id-disposizzjonijiet tat-Taqsima IV tal-Att Dwar is-Sahha Mentali, Kapitolu 262 tal-Ligijiet ta' Malta u dana that il-kura ta' Dr. Joseph Spiteri.

Il-Qorti tordna li kopja ta' din is-sentenza tintbaghat lit-Tabib Supretendent tal-Isptar Monte Karmeli.

< Sentenza Finali >

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