



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn dsatax (19) ta' Ottubru 2015

Rikors Numru 46/11 FDP

Julia Farrugia
(288277M)

vs

Daphne Caruana Galizia
(450664M)

Il-Qorti:-

Rat ir-rikors promotur ippresentat fis-16 ta' Frar 2011 fejn ir-rikorrenti, filwaqt illi ghamlet referenza ghall diversi kitbiet u kummenti ta' l-intimata ppubblikati fuq il-blog taghha intitolat "*Daphne Caruana Galizia's Notebook: Running Commentary*" li taghha hija l-awtrici, editrici u pubblikatrici u li hija pubblikata fis-sit elettroniku www.daphnecaruanagalizia.com, talbet lill-Qorti tiddikjara illi tali kitbiet kienu malafamanti u libelluzi fi-konfront taghha billi attackkat l-integrita' u reputazzjoni taghha, sija personali kif ukoll professjonali, u ghalhekk tikkundanna lill-intimata thallas id-danni.

Rat il-blogs minnha msemmija, ossija is-segwent i blogs:

- "**300 camels for one cow**" ippubblikat fid 9 ta' Frar 2010,
- "**Does anyone have a large rainproof condom for Charlon Gouder?**" ippubblikat fit 8 ta' Marzu 2010,
- "**The Chairman of the Institute of Maltese Journalists can't speak to me because he's in Geneva**" ippubblikat fit 3 ta' Marzu 2010,
- "**Oh, and had I told you?**" ippubblikat fis 7 ta' Frar 2011,
- "**Oh, and had I told you? Julia Farrugia, editor of Savoieur Balzan's Illum is Il-Bottom's daughter – Karmenu Vella's driver and the man implicated in court testimony as having shot at PN clubs with a submachine gun**" ippubblikat fis 7 ta' Frar 2011,
- "**Gejja xi intervista fuq TX, jaqaw?**" ippubblikat fis 7 ta' Frar 2011
- "**Don't look at this if you want to sleep well tonight**" ippubbliakt fis 7 ta' Frar 2011

- **“Ganni l-Pupa, Julia Farrugia’s father, Karmenu Vella’s ministerial car, a sub machine gun, and what Joseph Muscat’s shadow foreign minister refused to say in Court”** ippubblikat fid 9 ta’ Frar 2011
- **“Not from a Christmas cracker – somebody sent it in”** ippubblikat fit 13 ta’ Frar 2011
- **“This is so weird”** ippubblikat fil 15 ta’ Frar 2011
- **“Ronnie Pellegrini keeps clothes in his closet”** ippubblikat fis 6 ta’ Marzu 2010
- **“Ah, but three years ago Saviour wasn’t a Mintoffian”** ippubblikat fl-14 ta’ Frar 2011.

Rat ir-risposta ta’ l-intimata ippresentat fit 28 ta’ Marzu 2011 fejn eccepiet, fuq bazi preliminari, illi hija ma hijiex l-editrici u mhix responsabbli għall-kitba ta’ terzi filwaqt illi fuq il-meritu saħqet illi dak illi hija qalet kien ‘fair comment’ dwar fatti li huma sostanzjalment korretti.

Semghet ix-xhieda ta’ **Julia Farrugia** mogħtija fl-14 ta’ Ottubru 2011 u rat il-blogs ulterjuri esebiti mir-rikorrenti u li dwarhom kienet qed tilmenta, ossija:

- **“The charming tale of the magistrate who shagged a man while his wife was having a baby”** ippubblikat fid 29 ta’ Jannar 2010
- **“Goodnight. Sleep tight”** ippubblikat fil 15 ta’ Marzu 2010

Semghet ix-xhieda ta’ Julia Farrugia mogħtija fl-14 ta’ Novembru 2011 fejn esebiet serje ta’ artikoli illi deħru fil-gazzetti lokali in konnessjoni mal-kumpilazzjoni ta’ Nicholas Ellul, magħruf bhala ‘*ic-Caqwes*’ fejn kien qed jigi akkuzat illi kien qatel lill-Raymond Caruana fil-Kazin Nazzjonalista tal-Gudja fil 5 ta’ Dicembru 1986, f’liema artikoli giet irrappurtata ix-xhieda ta’ diversi persuni, fosthom Karmenu Farrugia, missier ir-rikorrenti.

Rat blogs ulterjuri esebiti mir-rikorrenti u li inkitbu mill-intimata wara il-proceduri odjerni, ossija:

- **“Don’t make yourself even more ridiculous, Julia Farrugia”** ippubblikat fis 16 ta’ Frar 2011,
- **“Did Julia live with il-Botom and her mother or not? I’m a bit concerned about saying ‘her father’ because apparently that’s libel”** ippubblikat fis 16 ta’ Frar 2011.
- **“Gird your loins, Saviour and Roger”** ippubblikat fis 17 ta’ Frar 2011.

Semghet ix-xhieda ulterjuri tar-rikorrenti mogħtija fis 6 ta’ Frar 2012.

Semghet ix-xhieda ta’ **Daphne Caruana Galizia** mogħtija fit 2 ta’ Novmebru 2012.

Rat illi fit 2 ta’ Novembru 2012 ir-rikorrenti iddikjara illi ma kellux aktar provi x’jippresenta.

Semghet ix-xhieda ta’ Daphne Caruana Galizia mogħtija fis 17 ta’ Gunju 2013.

Semghet ix-xhieda ulterjuri ta’ Daphne Caruana Galizia mogħtija fis 7 ta’ Frar 2014.

Semghet ix-xhieda in kontro ezami ta’ Daphne Caruana Galizia mogħtija fis 6 ta’ Novembru 2014.

Rat illi fis 6 ta’ Novembru 2014 il-partijiet iddikjaraw illi ma kellhomx aktar provi x’jippresentaw.

Rat is-sottomissjonijiet tar-rikorrenti ippresentat fl-4 ta’ Frar 2015.

Rat is-sottomissjonijiet ta’ l-intimata ippresentati fill-11 ta’ Mejju 2015.

Rat illi fil 11 ta' Mejju 2015 il-Qorti ddiferiet il-kawza ghas-sentenza.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi r-rikorrenti Julia Farrugia, meta l-artikoli u kummenti minnha ilmentati kienu gew ippubblikati, kienet gurnalista w editur tal-gazzetta Illum kif ukoll kienet precedentement gurnalista tal-One TV, u ghalhekk ghandha titqies bhala persuna pubblika soggetta ghall-kritika fil-pubbliku, ghalkemm f'livell anqas minn dik permessa ghall-persuna politika.

Jirrizulta wkoll, mill-provi prodotti, illi l-intimata Daphne Caruana Galizia hija sid tal-website 'www.daphnecaruanagalizia.com', li fiha hija tikteb u tippubblika artikoli, ghal liema artikolu terzi persuni jistghu liberament jikkummentaw, liema kummenti huma, kif ammettiet l-istess intimata, fil-kontroll ta' l-intimata, illi tista taccetta jew tnehhi kull kumment illi jsir.

Jirrizulta illi f'sensiela ta' artikoli miktuba bejn Frar 2010 sa meta giet ppresentata l-kawza odjerna, ir-rikorrenti kienet soggetta ghall-diversi kummenti u allegazzjonijiet illi dwarhom r-rikorrenti hassitha malafamanti u li ghalhekk niedet il-proceduri odjerni. Uhud mill-kummenti illi dwarhom ir-rikorrenti tilmenta huma s-segwenti:

“Three hundred camels? It doesn't seem like a fair swap for one cow.” – fol 2

“It's not hot looks that are required to edit a newspaper. It's brains.” – fol 3

“ Julia Farrugia ta' Saviour Balzan and the Institute of Maltese Journalists went to SO much trouble to raise money for that camera, taking her clothes off on Comino in winter, that we wouldn't want it to get ruined now, would we?” – fol 4

“I can twist that Malcolm round my little finger. Oh, and please don't ask who shot Raymond Caruana.” – fol 9

“My daddy was Karmenu Vella's driver and they say he used a sub-machine gun to shoot at Nationalist Party clubs in December 1986 but I don't believe them and thats why I went to work for Super One until Saviour Balzan and Roger de Giorgio gave me a job at the Labour Party's unofficial English-language newspaper.” – fol 17

“Ma' x'biki. Il-tifla tad-driver ta' Karmenu Vella tintervista l-Colonna tal-Partit (Reno Calleja) ghall-gazzetta ta' Saviour Balzan u Roger de Giorgio.” – fol 19

“Kif ma jisthux? Then they have the nerve to enter a high-visibility job in the political media, instead of burying themselves somewhere. And we're supposed to read articles about politics and politicians written by it-tifla tal-Botom and take them seriously?” (kumment miktub minn persuna illi indika lilu nnifsu bhala 'Kukkudrill') – fol 22

“Then she has no right to call herself a journalist for this profession calls for meticulous research and incisive reporting” (kumment miktub minn persuna illi indikat lilha nnifisha bhala 'Hot mama') – fol 23

“You would think that anyone with such a stench of violent history in her family would shut up and keep a low profile” (kumment miktub minn persuna illi indika lilu nnifsu bhala 'Rover') – fol 24

“Does bottom mean anything in Maltese to you, Troy? I know a person with the nickname “Bottom”. His surname is Farrugia, juli like Julia. He was a good friend of a man who passed away and who was suspected of Raymond Caruana’s murder.” (kumment miktub minn persuna li indikat lilha nnifisha bhala ‘Riya’) – fol 60

Jirrizulta illi, kif taccenna fis-sottomissjonijiet taghha, ir-rikorrenti

“tpingi jew thalli lil min ipingi lir-rikorrenti bhala persuna mmorali, bla dekor, u inkapaci li tkun f’relazzjoni stabbli; sahsitra jigi insinwat u/jew iddikjarat illi r-rikorrenti hija prostituta, bitch, cow, li tinza jew li nezzghet hwejjigha fil-pubbliku jew li tghix hajja simili ghall-karattru fittizju Bridget Jones.”

Jirrizulta inkontestat illi r-rikorrenti hija bint Karmenu Farrugia illi kien, fil-proceduri fuq imsemmija illi kienu qed jittiehdu kontra Nicholas Ellul maghruf bhala ‘ic-Caqwes’, issemma minn Ganni Psaila, maghruf bhala l-Pupa, bhala l-persuna illi spara t-tir li qatel lill-Raymond Caruana.

Jirrizulta illi, kif accennat l-intimata fin-nota ta’ sottomissjonijiet taghha, hija bdiet tikkritika lir-rikorrenti ghax l-intimata:

“hasset il-htiega illi ghandha tikkritika lir-rikorrenti dwar il-fatt illi ma ddikjaratx il-conflict of interest taghha meta, bhala gurnalista u editrici ta’ gazetta, jigu ppubblikati artikoli illi ghandhom x’jaqsmu mal-kaz, ir-rikorrenti ma ddikjaratx tali conflict of interest u l-esponenti hasset il-htiega illi tizvela tali konflitt.”

Jirrizulta illi l-intimata tinsisti illi kummenti relatati ma’ missier ir-rikorrenti kienu intizi ghal missier ir-rikorrenti u, semmai, kellu jkun missier ir-rikorrenti li jniedi l-proceduri odjerni.

Ikkunsidrat

Jirrizulta illi d-difizi illi l-intimata ressqet fil-kawza odjerna kienu principalment tnejn – li hi mhix editrici u mhix responsabbli ghall-kitba ta’ terzi, u li l-kitba taghha kien jammonta ghall-fair comment.

Id-difiza li hi ma hijiex l-editrici u mhix responsabbli ghall-kitba ta’ terzi

Jirrizulta ammess mill-intimata stess meta xehdet fit 2 ta’ Novembru 2014, illi hija sid il-website ‘www.daphnecaruanagalizia.com’ u hija l-awtur u publisher tal-blogs illi jinkitbu fuqu.

Jirrizulta ammess ukoll mill-intimata fl-istess xhieda illi hija l-amministratur ta’ tali sit u, bhala amministratur, kellha l-kontroll illi taccetta kif ukoll tnehi kummenti illi jkunu maghmulha minn terzi u li jidhru wara il-blog taghha.

Il-Qorti, f’dana l-istadju, taghmel referenza ghad-decizjoni moghtija mill-Grand Chamber tal-Qorti Europea ghad-Drittijiet tal-Bniedem fl-ismijiet **Delfi AS vs Estonia** deciza fis 16 ta’ Gunju 2015 fejn il-Qorti ikkunsidrat difiza simili imressqa mis-socjeta Delfi, li tiggstixxi sit ta’ internet fejn jidhru stejjer u jsiru l-kummenti dwarhom, u fejn din il-Qorti qalet is-segwenti:

The Court notes at the outset that user-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression. That is undisputed and has been recognised by the Court on previous occasions (see Ahmet

Yildirim v. Turkey, no. 3111/10, § 48, ECHR 2012, and Times Newspapers Ltd (nos. 1 and 2) v. the United Kingdom, nos. 3002/03 and 23676/03, § 27, ECHR 2009). However, alongside these benefits, certain dangers may also arise. Defamatory and other types of clearly unlawful speech, including hate speech and speech inciting violence, can be disseminated like never before, worldwide, in a matter of seconds, and sometimes remain persistently available online.

Tkompli tghid l-istess Qorti:

... because of the nature of Internet media, it cannot reasonably be required of a portal operator to edit comments before publishing them in the same manner as applies for a printed media publication. While the publisher [of a printed media publication] is, through editing, the initiator of the publication of a comment, on the Internet portal the initiator of publication is the writer of the comment, who makes it accessible to the general public through the portal.

Ghalhekk, il-Qorti tikkontendi illi

.... because of the particular nature of the Internet, the “duties and responsibilities” that are to be conferred on an Internet news portal for the purposes of Article 10 may differ to some degree from those of a traditional publisher, as regards third-party content.

Madanakollu, il-Qorti tasal ghall-konkluzjoni illi

The Court accordingly finds that, as a professional publisher, the applicant company should have been familiar with the legislation and case-law, and could also have sought legal advice the Court considers that the applicant company was in a position to assess the risks related to its activities and that it must have been able to foresee, to a reasonable degree, the consequences which these could entail.

L-istess Qorti tghaddi biex taghmel is-segwentu osservazzjoni

*“.... the Court has emphasised the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, particularly as regards the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298; *De Haes and Gijssels v. Belgium*, 24 February 1997, § 37, Reports 1997-I; and *Bladet Tromsø and Stensaas v. Norway [GC]*, no. 21980/93, § 58, ECHR 1999-III). Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 38, Series A no. 313, and *Bladet Tromsø and Stensaas*, cited above, § 59). The limits of permissible criticism are narrower in relation to a private citizen than in relation to politicians or governments (see, for example, *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236; *Incal v. Turkey*, 9 June 1998, § 54, Reports 1998-IV; and *Tammer v. Estonia*, no. 41205/98, § 62, ECHR 2001-I).*

133. Moreover, the Court has previously held that in the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public’s access to news and facilitating the

dissemination of information in general (see Ahmet Yildirim, cited above, § 48, and Times Newspapers Ltd, cited above, § 27). At the same time, the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press (see Editorial Board of Pravoye Delo and Shtekel, cited above, § 63).

134. In considering the “duties and responsibilities” of a journalist, the potential impact of the medium concerned is an important factor and it is commonly acknowledged that the audiovisual media often have a much more immediate and powerful effect than the print media (see Purcell and Others v. Ireland, no. 15404/89, Commission decision of 16 April 1991, Decisions and Reports 70, p. 262). The methods of objective and balanced reporting may vary considerably, depending among other things on the media in question (see Jersild, cited above, § 31).

Eventwalment, dwar id-difiza mressqa minn Delphi illi hija ma hijex responsabbli ghall-kummenti ta' terzi, bhalma del resto tghid l-intimata, il-Grand Chamber taghmel is-segweni konkluzjoni:

Based on the concrete assessment of the above aspects, taking into account the reasoning of the Supreme Court in the present case, in particular the extreme nature of the comments in question, the fact that the comments were posted in reaction to an article published by the applicant company on its professionally managed news portal run on a commercial basis, the insufficiency of the measures taken by the applicant company to remove without delay after publication comments amounting to hate speech and speech inciting violence and to ensure a realistic prospect of the authors of such comments being held liable, and the moderate sanction imposed on the applicant company, the Court finds that the domestic courts' imposition of liability on the applicant company was based on relevant and sufficient grounds, having regard to the margin of appreciation afforded to the respondent State. Therefore, the measure did not constitute a disproportionate restriction on the applicant company's right to freedom of expression.

Din il-Qorti thoss illi s-sentenza fuq citata hija cara bizzejjed biex jigi dikjarat illi, ghalkemm amministratur ta' sit elettroniku ghandu responsabbiltajiet ftit differenti minn dik ta' editor ta' gazzetta stampata, stante illi editur ta' gazzetta stampata jista jara l-kummenti qabel ma jigu ppubblikati filwaqt illi amministratur ta' sit elettroniku jista jara il-kummenti biss la darba jidhru fuq is-sit tieghu, l-obbligi w responsabbiltajiet ta' l-amministratur isiru bhal dawn ta' editur ta' gazzetta stampata la darba il-kumment ikun stampat u jkun accessibbli ghall-kummenti ta' terzi. Di fatti, f'tali stadju, f'kaz illi jitqiegħed xi kumment illi, b'xi mod, jista jitqies bhala offensiv jew malafamanti fil-konfront ta' terzi, l-amministratur ghandu jiehu l-passi kollha mehtiega sabiex inehhi tali kummenti minn fuq tali sit, sabiex il-hsara tigi minimizzata. F'kaz illi tali azzjoni ma ssehxi, ir-responsabbilta' ta' l-amministratur tiehu xejra differenti u l-amministratur ikun qiegħed jqis il-kummenti ta' terzi bhala kummenti tieghu u ghalhekk ghandu jitqies responsabli għal tali kummenti daqslikieku għamilhom hu.

Jirrizulta, fil-kaz odjern, illi tali kummenti ma' tnehhewx u baqghu hemmhekk, għal anqas, sakemm inbdew il-proceduri odjerni.

Għalhekk l-ewwel eccezzjoni imressqa mill-intimata ma tregix.

Il-kitba tagħha tammonta għall-fair comment.

It-tieni difiza mressqa mill-intimata kienet illi dak minnha miktub kif jammonta għall-‘fair comment’ kif protett mill-Ligi Maltija u Ewropeja.

Dwar tali difiza, **Gatley on Libel and Slander** jghid is-segwentii:

To succeed in a defence of fair comment the defendant must show that the words are comment, and not a statement of fact. He must also show that there is a basis of fact for the comment, contained or referred to in the matter complained of. Finally, he must show that the comment is on a matter of public interest, one which has expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern. If, however, the plaintiff can show that the comment was not made honestly or was actuated by malice, he will defeat the plea.

Il-Qorti tosserva illi huwa fatt magħruf li d-“difiza” tal-“fair comment” dejjem kienet intiza sabiex tohloq bilanc bejn id-dritt tal-liberta’ ta’ l-espressjoni u dritt li hu daqstant importanti, ossija dak li individwu jiproteggi r-reputazzjoni tajba tiegħu.

Di fatti, kif ingħad minn Lord Justice Scott fil- kawza **Lyon v. Daily Telegraph**:

The right of fair comment is one of the fundamental rights of free speech and writing which are so dear to the British nation, and it is of vital importance to the rule of law on which we depend for our personal freedom.

Fil-kawza **Dr Louis Galea vs Etienne St John u Felix Agius** deciza fit 30 ta’ April 2015, intqal illi:

dwar l-aspett tad-difiza tal-kumment gust ilu zmien jingħad mill-Qrati tagħna li, biex id-difiza tal-kumment gust tkun tghodd, jehtieg li min jistrieħ fuqha jseħħlu juri li (a) l-kumment kien imsejjes fuq fatt li jkun issemma fil-pubblikazzjoni li minnha jitressaq l-ilment; (b) il-fatt imsemmi jrid ikun sostanzjalment minnu; (c) il-kumment irid jintwera li jkun gustifikabbli jew misthoqq; (d) il-kumment irid ikun tali li jikkwalifika bħala kritika u mhux zebliħ, tghajir jew insolenza; u (e) irid jagħti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta’ dik il-fehma ma saritx b’hażen jew bil-ħsieb preċiż li jwegġa’ lil dak li jkun.

Tali tagħlim huwa anke rifless f’gurisprudenza estera u, di fatti, fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliża fl 1 ta’ Dicembru 2010, Lord Phillips għamel is-segwentii konsiderazzjonijiet meta wiehed iqis id-difiza ta’ ‘fair comment’:

A subsidiary but important issue was what it was that a defendant had to prove in order to establish the defence of fair comment. Counsel for the plaintiff submitted that the defendant had to establish that: (i) the words complained of were comment; (ii) the comment was on facts; (iii) the facts commented on constituted a matter of public interest; (iv) the comment was objectively “fair”; that is the comment was one that was capable of being honestly founded on the facts to which it related, albeit by someone who was prejudiced and obstinate; (v) the comment represented the defendant’s honest opinion. If he discharged all these burdens, the defence could none the less be defeated by proof of malice on the part of the defendant, but the onus of proving malice lay on the plaintiff. Both the Court of Appeal and the House of Lords held that there was no

burden on the defendant to establish the fifth element. The defendant's honesty was assumed unless the plaintiff could disprove it by establishing malice.

Finalment, dwar il-kuncett ta' 'value judgment', il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, fil-kawza **Jerusalem vs Austria** (2003) EHRR 567, para 43, tghid is-segwenti:

... even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment may be excessive if it has no factual basis to support it .”

Jirrizulta car, ghalhekk, mill-provi fuq imressqa, illi hemm sabiex id-difiza ta' 'fair comment' u 'value judgment' tirnexxi, irid jigi ppruvat illi dak allegat huwa bbazat fuq fatti sostanzjalment veri.

Ikkunsidrat

Il-Qorti, f'dana l-stadju, taghmel referenza ghall-gurisprudenza lokali dwar kwistjoni simili hafna ghal dik meritu tal-kawza odjerna, ossija il-kawza **Nutar Mark Sammut vs Daphne Caruana Galizia**, deciza mill-Qorti tal-Appell (Sede Inferjuri) fid 9 ta' Jannar 2008, fejn dik il-Qorti, wara illi qieset il-gurisprudenza Ewropeja, fosthom dik fuq imsemmija, taghmel is-segwenti osservazzjonijiet dwar il-liberta' ta' l-espressjoni u l-limitazzjonijiet taghha:

Sa fejn hu maghruf ma jezisti ebda provvediment f' ebda ligi, kompriza l-Konvenzjoni Ewropeja, u l-ebda kazistika ta' dehen li tikkondona, taht l-iskuzanti ta' certu stil jew kitba, l-uzu, imqar b' cajta, minn xi artikolist, anke ta' kalibru, ta' kliem jew espressjonijiet offensivi sempliciment in omagg ghal manifestazzjoni libera tal-hsieb. Dan aktar u aktar fejn, bhal f' dan il-kaz, l-informazzjoni divulgata tal- fatt ut sic tinsab akkompanjata minn informazzjonijiet ohra kkummentati, bla ebda utilita` ghall-ahjar komprensjoni ta' l-informazzjoni jekk mhux biex tinferixxi b' mod ripunjanti fuq il-karattru ta' l-appellat, u l-ghazliet tal-prestazzjonijiet professjonali tieghu lil certu partit politiku.

Dik il-Qorti tkompli biex tikkwota l-Gatley "On Libel and Slander" fejn jghid:

“It is immaterial whether the imputation is conveyed by words of assertion or suggestion, or by words used in a declarative or interrogative form. A defendant is liable for insinuation as well as for explicit statement, for insinuation may be as defamatory as direct assertion and even more mischievous. The tendency and effect of the language, not its form, is the criterion. A defendant cannot defame and escape the consequences by any dexterity of style”.

Ikkunsidrat

Mill-provi kollha prodotti, jirrizulta ampjament ippruvat illi l-intimat, tul sensiela ta' artikoli minnha miktuba w lkoll ikkwotati u semmija mir-rikorrenti, ghaddiet insinwazzjonijiet u kummenti offensivi fil-konfront tar-rikorrenti, fejn, fost affarjiet, irrifirit ghaliha bhala "cow" u "bitch" kif ukoll insiwat illi hija prostituta u li tinza hwejjigha fil-pubbliku.

Jirrizulta ben ippruvat illi tul l-artikoli kollha, l-intimata tippersisti tirriferi ghar-rikorrenti bhala bint Karmenu Farrugia illi kien gie indikat minn xhud bhala il-persuna responsabbli tal-qtil politiku ta'

Raymond Caruana illi sehh fil 5 ta' Dicembru 1986, minkejja illi hija kienet ghadha tifla zghira, u tghaddi biex taghmel analogiji ripetuti bejnha u bejn missiera fejn sahanitra tallega illi "at least she's not going to use a submachine gun on me (I hope)." (fol 150)

Il-Qorti tosserva illi l-kummenti maghmulha mill-intimata ma jistghux jitqiesu bhala 'fair comment' ghax, fost affarjiet ohra, li tghid illi ghall anqas ma kienetx ser tuza s-submachine gun fuqha taghti x'tifhem lill qarrej ordinarju illi attwalment r-rikorrenti gia uzat is-submachine gun fuq ohrajn u l-intimata qiegdha tispera li ma hijiex ser tuzaha fuqha wkoll. Tali kummenti juru l- 'animus injuriandi' illi kellha l-akkuzata waqt illi kienet qed tikteb l-artikoli fejn tissemma r-rikorrenti.

Finalment, dwar danni, il-Qorti taghmel referenza ghal argumentazzjoni imressqa mill-Prim Istanza, kkonfermata fi stadju ta' appell fil-kawza '**Emanuel Cuschieri vs Daphne Caruana Galizia**' deciza fid 29 ta' Mejju 2015, fejn il-Prim Istanza kienet qalet:

"Illi għar-rigward tal-kumpens tad-danni mġarrba għandu jiġi osservat li l-liġi tagħti grad ta' diskrezzjoni dwar l-ammont li tista' tordna lill-parti diffamanti li thallas lill-parti libellata. Il-liġi tqiegħed biss ammont massimu li jista' jingħata. F'dan ir-rigward, jidher li l-kriterju għaqli li l- qorti għandha żzomm quddiem għajnejha huwa dak tas-sens ta' proporzjon li jqis il-fatt tal-ingurja, tal-gravità tagħha, tal-persuna (jew il-kariga) li lejha l-ingurja hija diretta, flimkien mal-pubbliku li dik l-ingurja tkun trid tilhaq;

Illi l-qorti qiegħda tqis, fost l-ohrajn, li l-fatti allegati mill-artikolista ma jirrizultawx pruvati, illi x-xiljiet ta' reati jew imġiba kriminuza tal-attur iġġib magħha sanzjonijiet min-naħa tal-awtoritajiet u stmerrija mill- qarrej tal-artiklu, u li l-artikolista mharrka ma wriet l-ebda soġġba għar- rimarki li għaddiet fil-konfront tal-attur;"

Il-Qorti tosserva wkoll illi konsiderazzjoni ohra illi ghandha tittiehed u li ma setghax jigi kkunsidrat mill-Prim Awla fil-kawza fuq imsemmija, hija l-fatt illi tali allegazzjonijiet ma sarux darba wahda biss izda saru regolarment, mhux anqas minn sittax-il darba, tul periodu twil u baqghu isiru regolarment sakemm il-kawza odjerna giet innieda.

Konkluzjoni

Il-Qorti

Wara illi rat il-provi kollha prodotti quddiemha,

Wara illi rat is-sottomissjonijiet ta' l-abbli difensuri tal-partijiet

Tghaddi biex taqta u tiddeciedi l-vertenza bejn il-partijiet billi

Tichad l-ecezzjonijiet kollha ta' l-intimati, u ghalhekk

Tilqa t-talbiet attrici kif dedotti u

Tiddikjara illi permezz ta' varji publikazzjonijiet bejn id-9 ta' Frar 2010 u is-16 ta' Frar 2011, kif jirrizulta aktar fid-detall aktar 'l fuq fid-decizjoni, l-intimata mmalafamat u illibellat lir-rikorrenti billi, fuq is-sit taghha www.daphnecaruanagalizia.com, ippubblikat kif ukoll ippermettiet lill-terzi

jippubblikaw kliem u allegazzjonijet illi attakkaw l-integrita' u reputazzjoni taghha, sija personali kif ukoll professjonali, u ghalhekk

Tikkundanna lill-intimata, in linea ta' danni a tenur ta' l-Artikolu 28 tal-Kap 248, ihallsu lir-rikorrenti is-somma ta' tlett elef Euro (€3,000).

Spejjez tal-proceduri odjerni ikunu kollha a kariku ta' l-intimata.

Imghax ikun dovut mid-data tas-sentenza sad-data tal-pagament effettiv.

Magistrat Francesco Depasquale

Marisa Bugeja