Qorti tal-Magistrati (Malta)
Bhala Qorti ta' Gudikatura Kriminali

Magistrat Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

Illum, 9 ta' Marzu, 2016

Il- Pulizija
(Spt. Saviour Baldacchino)

-vs-

Ahmed Ali, li hu identifikat bin-numru MM 96/2002

Kaz Nru. 692/2013

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat Ahmed Ali Kasab talli:

Gewwa l-Imsida fit-22 ta' Gunju, 2013,

1) Bl-imgieba tieghu ikkaguna lil Amy Grech biza li ser tintuza vjolenza kontriha, meta hu kien jaf li dik l-imgieba tieghu se tikkagunalha biza;
2) Gab ruhu b'tali mod li ta fastidju lil persuna ta' Amy Grech b'mod li kien jaf jew kien imissu jkun jaf li dan kien ta' fastidju ghaliha;
3) Ukoll talli attakka jew ghamel rezistenza bi vjolenza jew b'hebb ta' xorta li ma titqiesx vjolenza pubblika kontra PC 442 Neil G. Caruana u ta' WPS 325 V. Buontempo li huma membri fil-Korp tal-Pulizija u cioe' kienu inkarigati minn servizz pubbliku filwaqt li kienu qed jagixxu fl-ezekuzzjoni ta' dak is-servizz;
4) Talli ghex hajja ta' ghazz u vagabundagg;
5) Ukoll talli meta ma kellu ebda xorta ta' beni u ma kellux mezzi ohra biex jghix, ma ppruvax li hu fittex li jahdem xi arti jew sengha jew li jaghmel xi haga;
6) Ukoll talli volontarjament kiser il-bon ordni u l-kwiet pubbliku;

7) Ukoll talli ma obdiex l-ordnijiet legittimi tal-Pulizija;
8) Ukoll talli rrifjuta jaghti jew ta falz lill-ufficjal tal-Pulizija jew lil wiehed iehor inkarigat minn servizz pubbliku waqt li kien qed jaghmel id-dmirijiet tieghu, ismu, kunjomu, fejn joqghod u partikularitajiet ohra;
9) Ukoll talli rrenda ruhu recidiv b'diversi sentenzi mghotija lilu fil-Qrati ta' Malta, liema sentenzi gew decizi u ma jistghux jigu mhassra, mnaqqsa jew mibdula.

Rat il-kunsens ta' l-Avukat Generali sabiex dan il-kaz jigi trattat bi procedura sommarja u li l-imputat ma kellux oggezzjoni li l-kaz jigi trattat bi procedura sommarja.

Semghet ix-xhieda.

Rat l-atti u d-dokumenti kollha.

Semghet it-trattazzjoni finali.

Ikkunsidrat:

Illi dan il-kaz jirrigwarda minuri li waqt li kienet miexja fit-triq bil-kelb taghha, spiccat segwita mill-imputat li ghall-bidu beda miexi warajha u sussegwentement gera ghal warajha. Wara li kien sar rapport l-Ghassa tal-Pulizija l-Msida, dan kien intlemah u gie arrestat mil-Pulizija fejn ma kien xejn kowoperattiv, beda jinsulenta u joffendi lill-Pulizija filwaqt li ma obdiex l-ordnijiet li gew moghtija lilu.

Il-Qorti semghet lil Espert Psikjatra Dr Joseph Cassar kif ukoll lill-psikjatra Dr Joseph Spiteri.

Illi l-espert Dr Joseph Cassar jirrelata li l-imputat kien ibati minn <u>*Shizotypal Disorder*</u> u jsoffri minn <u>*acute adjustment reaction*</u> u <u>*psychosocial dysfunction*</u>. Ghalkemm il-livell konjittiv tieghu huwa normali, l-imputat ghandu *psychomotor agitation* filwaqt li hu suxxettibli ghal allucinazzjonijiet awditorji. L-espert psikjatriku jikkonkludi li l-imputat ma ghandux *insight* u ghalhekk <u>ma jistax jippartecipa fil-proceduri li qed issiru</u> fil-konfront tieghu ghalkemm jifhem x'inhu jigri, hekk kif jifhem l-akkuzi u sahansittra jichad li saru. Jghid li l-imputat ma jkunx f'posizzjoni li jgharraf il-gravita` tal-ghemil tieghu. Meta milqut mill-psikozi ma jkollux kontroll ta' dak li qed jaghmel, ma jkunx f'posizzjoni jevalwa l-konsegwenzi ta' ghemilu. Dr Cassar jaghti rendikont tal-istorja medika tal-imputat fejn jidher li l-kundizzjoni hija persistenti u taghti lok ghall-episodji sahansitra ta' *"relapsed psychotic*

episode with bizarre abnormal behaviour, gross self-neglect".[1] L-espert psikjatriku ddettermina li l-imputat ikollu deluzjonijiet paranoici li jwassluh biex ikun aggressiv.

Illi huwa interessanti ghalhekk dak li ighid il-Professur Mamo fin-noti tieghu meta minn ezami tal-gurisprudenza estera jikkonkludi:
"the right and wrong test as established by the MacNaughton rules is not the sole test of responsibility in all cases: it must be supplemented by the so called 'Irresistible Impulse' test: a person who knew he was committing an act which was morally wrong and prohibited by law may nevertheless be excused from responsibility if, by reason of his mental disease, he lacked the power of conscious volition and inhibition to resist the impulse to commit it."

Dr Joseph Spiteri xehed l-ewwel darba fl-24 ta' Lulju, 2013, u rrileva li l-imputat kien iddahhal l-Isptar Monte Carmeli fil-15 ta' Settembru, 2005, u minn dakinhar l'hawn kien dahal kemm il-darba jew taht treatment order ai termini tal-Mental Health Act jew taht observation order.[2] Zied li l-imputat kien jidhol fi stat ta' psikozi, kundizzjoni ta *paranoid schizophrenia*. Jghid li l-imputat ghandu propensita` li jaghmel atti serji u anke reati ohra; kien gera ghal fuq ir-runway hekk kif kien hemm ajruplan jaghmel it-*take off* u anke seraq tifla. Ftit qabel ma rega xehed nhar it-8 ta' Jannar, 2016, l-Psikjatra Spiteri kellu opportunita` jassisti seduta stante ghal episodju li hu jiddefinixxi bhala ezempju tal-psikozi li hu inflitt biha l-imputat. Skond Dr Spiteri meta jkun fi stat ta' psikozi, lanqas ikun *"fit to appear in Court".*[3] Dan ghaliex simili ghal dak li sehh nhar l-1 ta' Dicembru, 2015, quddiem din l-istess Qorti, l-imputat kien infexx jghajjat u kien *disruptive* hafna tant li ghadda hafna hin qabel ma seta jigi kkontrollat u eventwalment ikkalmat l-imputat. Skond ix-xhud, l-*outburst* li kien ghadu kemm assista ghaliha fil-presenza tal-Qorti kienet wahda tipika hafna ta' din il-kundizzjoni ta' psikozi li fil-fehma tax-xhud hija pjuttost gravi u tinhtieg attenzjoni.

Dak li trid tiddetermina issa din il-Qorti in vista tax-xhieda taz-zewg psikjatri hu jekk l-kundizzjoni li hu aflitt biha l-imputat twassalx sabiex l-imputat jitqies li kien fi stat ta' genn fit-termini tal-ligi?

Din il-Qorti ser taghmel riferenza ghas-sentenza studjata moghtija fil-kaz **Il-Pulizija vs. Fortun Farrugia**:[4]

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[1] Fol.38
[2] Fol.14
[3] Ibid.
[4] Qorti tal-Magistrati (Ghawdex) bhala Qorti ta' Gudikatura Kriminali, [27.02.2014]; kif ukoll Il-Pulzija vs. Mario Said [28.04.2011]

"Illi l-artikolu 33(a) tal-Kapitolu 9 ta' l-Ligijiet ta' Malta jghid testwalment:
"Kull persuna tkun ezenti minn responsabbilta' kriminali jekk fil-waqt tal-att jew tan-nuqqas kienet fi stat ta' genn."

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 tal-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 il-Qorti tal-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 eccepita 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) <u>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.</u> 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 rule , 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).'.....**

"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.'""

Ghalhekk din il-Qorti ghandha il-kompitu tistharreg jekk l-imputat fil-hin ta'l-kummissjoni tar-reat kienx 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, senjatament lill-Psikjatra Spiteri kif ukoll dak li din il-Qorti stess kellha l-opportunita` tesperjenza ghall-darba, darbtejn.

Illi Dr. Joseph Spiteri jixhed li kien ilu jsegwi lill-imputat sa mis-sena 2005. Dan hu fattur importanti ferm peress illi kif inghad fis-sentenza hawn fuq iccitata:
"Bhalma jghidu Timothy Jones u Michael Christie, b'referenza ghal-ligi sostantiva u procedurali Skocciza in materja ta' eccezzjoni ta' demenza fil-kamp penali, u li hi simili hafna ghal dik taghna:
"The issue as to whether the accused's reason was alienated in relation to the crime in question is one for the jury to determine in the light of the evidence and their common sense. In Lord Strachan's terms, 'it is to be judged on the ordinary rules on which men act in daily life.' The jurors are the arbiters of insanity. They can take account of any medical evidence given by expert witnesses, but such evidence is not conclusive. The significance of medical evidence is severely limited by the fact that insanity is a legal rather than a medical concept. Further, a medical witness can only speculate as to the accused's state of mind at the time of the crime, since the information upon which his judgment is based will have been obtained subsequent to the crime being committed."

Illi Dr Joseph Spiteri kellu l-opportunita' isegwi lill-imputat ghal certu tul ta' zmien u li ghalhekk seta' jasal ghad-dijanjosi tieghu mhux biss mill-aspett mediku izda ukoll minn dak kollu fattwalment ikkonstata minnu meta kien ikun ma' l-imputat.

L-espert mahtur minn dina l-Qorti jikkonkludi kif gej fir-rapport tieghu a fol 41: *"Barra minn hekk jidher li ghandu psikozi li hija relatata. Ghaldaqstant ghalkemm jifhem l-akkuzi migjuba quddiemu u jichad kollox, dan ma jfissirx li waqt l-allegat* ***incident ma setax ma kienx qed jirrispondi ghal sintomi ta' psikozi interni li allura wassluh fi stat ta' genn****. Is-Sur Ahmed ma ghandux insight u ghalhekk ma jistax jippartecipa fil-proceduri li qed issiru fil-konfront tieghu."*
Din id-dianjozi tinkwadra perfettament ma dak li jixhed Dr Spiteri meta jghid li tali episodji generalment issehhu meta *"...inti b'xi mod jew iehor*

tarousja l-emozzjonijiet tieghu.....li jigri hu li jinterpreta mod kif jidhirlu hu u jirreagixxi ghaliha....fid-definition ta' schizotypal, hija li hu qisu jghix f'dinja ghalih....". Dr Spiteri juri it-thassib tieghu ghal-fatt li din il-kundizzjoni tista tompli tiggrava aktar. Fl-ahhar tax-xhieda tieghu il-Psikjatra Spiteri huwa inekwivoku: *"din il-kundizzjoni hija kronika jigifieri l-hypo frontality tal-mohh li ahna nitkellmu fuqa hija kronaka. Pero` jiddispjacini nghid....dan mhux tajjeb fil-komunita`. Dan ghandu bzonn sorvelljanza kontinwa."*

Il-Qorti ghalhekk fid-dawl ta' dan kollu tasal ghal konkluzjoni illi dina il-kundizzjoni mentali tieghu tirrendieh inkapaci *di intendere e di volere*, fis-sens li trid il-ligi. Fuq kollox il-ligi stess permezz tal-emendi introdotti bl-Att III tal-2014 tippostula mhux biss l-ezzenzjoni mir-responsabbilta' penali f'tfal ta' inqas minn disa' snin izda sahanistra anke ghal tfal sal-erbatax-il sena perezz li jitqiesu *doli incapax* ghaliex hemm il-presunzjoni illi tfal zghar ma jistghux jitqiesu responsabbli ghall-agir taghhom. Il-Qorti tara illi l-imputat ukoll ma jistax jitqies responabbli ghal dak illi jaghmel u dana billi lanqas hu ma jista jifformula l-intenzjoni li jikkometti r-reati li taghhom jinsab akkuzat.

Fid-dawl ta' dawn il-konsiderazzjonijiet, il-Qorti ghalhekk, wara li rat l-artikolu 33(a) tal-Kapitolu 9 ta' l-Ligijiet ta' Malta, qed tilqa' l-eccezzjoni sollevata mid-difiza, tiddikjara illi l-imputat huwa ezenti minn kull responsabbilta kriminali.

Ghaldaqstant il-Qorti wara li rat l-artikoli 623 tal-Kapitolu 9 ta' l-Ligijiet ta' Malta qieghda tordna illi l-imputat jinzamm taht kustodja fl-isptar Monte Karmeli u hemmhekk jibqa taht kustodja u mizmum skond id-disposizzjonijiet tat-Taqsima VIII ta' l-Att Dwar is-Sahha Mentali, Kapitolu 525 ta' l-Ligijiet ta' Malta u dana taht il-kura tal-psikjatra Dr. Joseph Spiteri.

Il-Qorti tordna li kopja ta' dina is-sentenza tintbghat lit-Tabib Supretendent ta' l-Isptar Monte Karmeli.

Dr Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

Magistrat