

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

Magistrat Dr. Claire L. Stafrace Zammit B.A. LL.D.

Il-Pulizija

[Spettur Trevor Micallef]

vs

Moustafa Hassanein Ibrahim

Kumpilazzjoni Numru: 284/2017

Illum, 26 ta' April, 2021

Il-Qorti,

Rat l-akkuzi migjuba kontra Moustafa Hassanein Ibrahim, detentur tal-karta tal-identita numru 73713(L) u detentur tal-passaport Malti numru 1253453:

Akkuzat talli, f'dawn il-gzejjer fit-03 ta' Lulju 2017 ghal habta tal-erbgħa u nofs ta' filghodu (04:30a.m.) f'Turgien Santa Rita, San Giljan u/jew fil-vicinanze:-

1. Minghajr il-hsieb li joqtol jew li jqieghed il-hajja fil-periklu car, ikkaguna ferita ta' natura gravi fil-gisem ta' Magnus Asskildt (Art 216 Kap 9 tal-Ligijiet ta' Malta);
2. Akkuzat aktar talli fl-istess data, lok, hin u cirkostanzi, volontarjament kiser l-bon ordni jew il-kwiet pubbliku, bl-ghajjat u bil-glied Art 338(dd) Kap. 9 tal-Kodici Kriminali);
3. Akkuzat aktar talli fl-istess data, lok, hin u cirkostanzi, hadem bhala agenzija ta' gwardjan privat jew bhala gwardjan privat jew hekk offra s-servizzi tieghu, minghajr ma kellu licenzja skont id-disposizzjonijiet tal-Kap 389.

Il-Qorti giet mitluba illi f'kaz ta' htija tiprovi għal garanzija ta' Magnus Asskildt skond artikolu 383 tal-Kap 9 tal-Ligijiet ta' Malta.

Rat l-ezami tal-imputat fejn huwa wiegeb mhux hatji tal-akkuzi kif dedotti kontrih;

Rat in-nota tal-Avukat Generali datata erbgha (4) ta' Lulju tas-sena elfejn u sbatax (2017) fejn ta l-kunsens tieghu sabiex din il-kawza tigi trattata bil-procedura sommarja;

Rat il-fedina tal-imputat li hija wahda netta;

Rat l-atti kollha tal-kawza inkluz il-provi prodotti u l-kunsens tal-Avukat Generali datat 4 ta' Lulju 2017 fejn inghata l-kunsens sabiex dawn il-proceduri jigu trattati b'mod sommarju;

Ikkunsidrat illi din il-kawza tittratta fuq allegat argument li nqala' f'Pacevilli bejn l-imputat u l-parte civile Magnus Asskildt u fejn huwa allegatament soffra griehi gravi.

Illi l-ewwelnett xehed il-parte civile Magnus Asskildt bil-lingwa Ingliza fejn dan spjega li kien mar jaghmel rapport l-ghassa ta' San Giljan li fid-*Diamond Club* f'Paceville sehh incident bejnu u l-imputat f'xi l-erbgha u nofs ta' filghodu. Huwa jghid illi hemmhekk nefaq hafna flus madwar erbgha mija u hamsin ewro (€450)

minhabba li ried zifna wahda minn zewg tfajliet. Huwa jghid illi gialadarba ma rrangax fuq il-prezz huwa ddecieda li jitlaq u waqaf jitkellem mal-imputat li kien gwardja f'dan il-klabb fejn huwa kien qed jargumenta fuq il-prezz ta' din iz-zifna. Huwa jghid li ghalhekk iddecieda li jehodlu ritratt u jghid li f'dan l-istadju l-imputat attackah billi tah daqqa f'wicc. Huwa jghid illi per konsegwenza ta' din id-daqqa huwa waqa' fl-art imbaghad mar l-isptar.

Fuq kontroezami tal-avukat difensur il-parte civile jghid illi huwa kien ilu Paceville minn xi t-tmienja ta' filghaxija fejn kien zar diversi stabbilimenti ohra fejn huwa dejjem kien qed jixrob alkohol konsistenti f'birer u *tequila*. Huwa jghid ukoll illi l-imputat ma kellu xejn x'jaqsam mal-iffissar tal-prezz taz-zifna.

Illi fuq diversi mistoqsijiet tal-avukat difensur il-parte civile ma setax iwiegeb ghalihom ghax ma kienx jiftakar. Fosthom dan jghid is-segwent:

“Lawyer: Am I also correct in stating that the argument about the price was an argument that you

were presenting inside the establishment not outside the establishment.

Witness: Well, I went to him as the guard outside the door, because I wanted to talk to him about it but we didn't agree so

Lawyer: Do you recall in stating that you did not agree because he was explaining to you that there is the Manager inside, to go and speak to the Manager inside. Do you remember these words?

Witness: No, I cannot remember that he said that.

Lawyer: Do you remember that he also told you that if you wish to go and report to the Police, you are free to go and report to the Police.

Witness: No, I don't think he said that.

Lawyer: Neither. Do you also recall telling you that for example that there is a Manager who deals directly with the dancers? And whom you should present your arguments?

Witness: It was probably not the right person to present the argument,

Lawyer: Why do you conclude that it was not the right person to present the argument? Am I correct in stating that this was what he was trying to explain to you?

Witness: That might be

Lawyer: Don't tell me 'that might be.' Do you remember this or don't you remember this? Or is it also another part of the night that you do not remember?

Witness: We agreed that, we didn't agree and I was about to leave but I wanted a photograph of him.

Lawyer: But you agreed that you did not agree. Why weren't you agreeing? On what weren't you agreeing?

Witness: On the price and that he wasn't the right person to talk with

Lawyer: So he did tell you these words that I am telling you.

Witness: Sorry?

Lawyer: So he did tell you and explain this to you, he is not the right person to talk to, that there is a Manager inside who deals directly directly with the girls, that he is concerned with the lighting and the running of the bars, do you recall this conversation or don't you? Or don't you remember it at all?

Witness: Well I don't remember this conversation."

Fuq domandi ulterjuri tad-difiza, ix-xhud qal illi nghata daqqa wahda mhux diversi daqqiet kif hu miktub fir-rapport li kien ghamel hu stess ezatt wara l-incident.

Xehed ukoll it-tabib Dr. Christopher Micallef fejn kien it-tabib li ezamina l-parte civile f'Mater Dei u jghid illi dan kellu bzonn tliet punti fuq ghajnejh u ghalhekk il-ferita kienet gravi minhabba li hi fil-wicc.

Xehed PS 345 Mark Cremona li xehed li kien ha r-rapport dakinhar tal-incident u li mit-tfittxija tieghu barra l-post ma kienx hemm kameras tas-sigurta' li kienu qeghdin jahdmu.

Fuq domanda inkontroezami x-xhud ippreciza li kien ferm surpriz li persuna giet taghmel rapport kontra l-imputat ghaliex dan kien jafu sew peress li kien jahdem precedentement f'lukanda fid-distrett tieghu stess u wara gewwa dan il-klabb. Huwa jghid illi dan kien persuna li qatt ma kien ta l-ebda problema u ghalhekk ried jaccerta ruhu ma' xi kameras li l-parte civile kien qed jghid il-verita' izda sfortunatament ma kien hemm l-ebda kamera. Fil-fatt huwa kkonferma illi l-imputat f'xogholu kien dejjem ifittex l-ghajnuna tal-pulizija minflok johloq hu l-argument.

Xehed ukoll l-Ispettur Trevor Micallef li l-parte civile kien mar l-ghassa ta' San Giljan fejn kien ghamel rapport li xi sieghat ilu kien gie msawwat minn *Security Guard* ta' klabb li jismu *Diamonds*. Dan jghid illi wara li didentifikaw lill-imputat bhala dik il-persuna, arrestawh u nterrogawh u fil-fatt irrilaxxja stqarrija li giet immarkata bhala Dok. TM4.

Xehdet ukoll l-Ispettur Sarah Magri fejn din ikkonfermat wara tfittxija fis-sistema tal-pulizija illi l-imputat ghandu licenzja ta' gwardjan privat (security) sas-sena elfejn u tmintax jigifieri dan ghandu licenzja bazika (Dok SM1).

Finalment xehed l-imputat Hassanein Ibrahim Mustafa fejn dan jghid illi ilu Malta ghal dawn l-ahhar tlieta u ghoxrin sena u mizzewweg bit-tfal. Huwa jghid illi jahdem bhala *floor manager* gewwa dan il-klabb *Diamond* f'Paceville li dan spicca minn hemm fis-sena elfejn u tmintax (2018). Rigward dakinhar tal-incident huwa jghid is-segwent:

"E f'dak li gara dakinhar kien hemm dak il-persuna, kellu private, kien hallas u mar barra wara siegha, ghamel, ikkomplenja li ried il-flus lura u, u. . . ma giex tfajliet fil-

private . . . ikollhom private dance. . . Private dance jidhol ma' tfajla u joqoghdu fil-kamra. Hi tizfinlu u hu jiehu drink maghha special. E dik il-gurnata dahal . . . ma' tnejn. . . mbaghad he agree magghom li joqghod ma' zewg tfajliet ghal siegha u jhallas three hundred Euro ohra. . . Wara s-siegha, f'dik is-siegha kellu d-drinka e kemm joqghod, xorob three drink tequila. . . u kellu beer. . . Wara siegha li hallas ghal tieghu hareg jikkomplenja li jrid il-flus lurali ma hax is-servizz".

Huwa jkompli jghid illi l-parte civile beda jallega li kienu serqulu l-flus li kellu fil-but u l-*visa card*. Huwa qallu sabiex jiftah il-kartiera sabiex jara jekk kinitx hemm u fil-fatt din kienet hemm. Meta fittxew fil-but tieghu sabu li kellu tliet mitt ewro (€300) kontanti u ghalhekk ppruvaw ifiehmuh li mhux veru kienu hadulu l-flus. Dan peress li kien hemm muzika gholja fil-klabb qallu biex johorgu barra halli jfiehmu ahjar u hekk gara. Dan jghid ukoll illi l-parte civile kien jidher vizibilment xurban u dan ghaliex kien ilu sieghat twal il-klabb jixrob u ghalhekk kien beda jsir aggressiv u beda jimbuttah. Meta l-imputat pprova jwaqqfu gie *security* iehor li jaf li jismu Daniel mill-Bulgarija u tah daqqa mbaghad dan telaq jigri. Ix-xhud finalment esebixxa l-kuntratt tal-impjeg tieghu mal-

klabb inkwistjoni li juri li kien jahdem bhala *floor manager* (Dok. MI1).

Semghet it-trattazzjoni tad-difiza u rat illi l-prosekuzzjoni rrimettiet ruhha ghall-provi.

Ikkunsidrat:

Illi fil-kaz in ezami l-Qorti hija konfrontata b'verzjonijiet kontrastanti. Min-naha wahda hemm il-verzjoni tal-parte civile, ragel li kien vizibilment fi stat ta' sokor, u li qed jghid illi l-imputat tah daqqa ta' ponn u min-naha l-oħra dik tal-imputat li jghid illi d-daqqa ta' ponn inghatat minn persuna oħra mhux minnu.

Illi konfrontata b'tali verzjonijiet kontrastanti l-Qorti ser tezamina l-kredibilita` tax-xhieda.

Illi jekk il-Qorti hija rinfaccjata b'zewg verzjonijiet konfliggenti l-prassi hija li ghandha tillibera stante li tali konflitt ghandu jmur a beneficju tal-imputat. Pero` l-Qorti tista' wkoll tezamina l-kredibilita` tax-xhieda kif gie deciz fil-kawza fl-ismijiet II-Pulizija

vs Graham Charles Ducker tal-Qorti tal-Appell Kriminali tad-19 ta' Mejju, 1997 fejn il-Qorti qalet is-segwent:

“It is true that conflicting evidence per se does not necessarily mean that whoever has to judge may not come to a conclusion of guilt. Whoever has to judge may, after consideration of all circumstances of the case, dismiss one version and accept as true the opposing one.”

Fil-kaz **Il-Pulizija vs Joseph Thorne** tad-9 ta' Lulju 2003 gie ritenut illi: *“mhux kull konflitt fil-provi ghandu awtomatikament iwassal ghal-liberazzjoni tal-persuna akkuzata. Imma l-Qorti, f'kaz ta' konflitt fil-provi, trid tevalwa l-provi skond il-kriterji enuncjati fl-artikolu 637 tal-Kodici Kriminali u tasal ghall-konkluzjoni dwar lil min trid temmen u f'hiex ser temmnu jew ma temmnux.”*

Fil-kawza **Amabile Cauchi vs Gianni Attard** tal-21 ta' Mejju 1955, il-Qorti tal-Appell Kriminali rriteniet illi: *“biex tezamina l-kredibbilita` tax-xhud, il-Qorti ghandha tezamina d-dettalji - ezami li ghandu jsir dejjem, imma li jakkwista importanza akbar meta hemm zewg xhieda principjanti, wahda tghid abjad u l-ohra tghid iswed. U fost il-kriterji tal-kredibbilita` hemm dak tad-*

deportament tax-xhud fl-isbarra tax-xhieda, u dak tal-konsistenza tax-xhieda mal-materjal l-iehor li jkollha quddiemha l-Qorti.”

Il-Qorti nnutat illi l-verzjoni tal-imputat hija wahda pjuttost kredibbli u minn dejjem kienet wahda kostanti. Illi inoltre' l-karattru tal-imputat kien ikkonfermat minn ufficjal tal-pulizija li xehed illi l-imputat qatt ma kien qajjem problemi qabel fis-snin li kien jafu jahdem fid-distrett ta' San Giljan u fil-fatt huwa dejjem kien jipprova jikkalma l-affarijiet milli jilhaq problema.

Illi min-naha l-ohra l-verzjoni tal-parte civile minn dejjem kienet wahda konfuza minn meta ghamel ir-rapport l-ghassa ta' San Giljan u anke meta ta l-verzjoni tieghu bil-gurament quddiem din il-Qorti.

Din il-Qorti ma hijiex ser tiddilunga fuq dan il-punt, huwa car illi l-verzjoni tal-imputat hija veritjiera u li ghandha mis-sewwa tant illi l-ufficjal prosekutur ma kellu l-ebda trattazzjoni x'jaghamel f'dawn il-proceduri.

Għal dawn il-motivi l-ebda wahda mill-akkuzi ma gew ippruvati u għalhekk qed tillibera lill-imputat **Moustafa Hassanein Ibrahim** mill-akkuzi kollha kif dedotti kontrih.

Ft./Dr. Claire L. Stafrace Zammit B.A. LL.D.
Magistrat

Benjamina Mifsud
Deputat Registratur