

Kopja Informali ta' Sentenza



**QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI**

**MAGISTRAT DR.
MIRIAM HAYMAN**

Seduta tat-23 ta' Frar, 2007

Numru 1017/2005

**The Police
(Insp. Louise Calleja)**

v

**Kingsley Wilcox 24 years, son of Frederick
and Alfreda nee Jumbo, b/a Nigeria on the
14 June 1981, residing at 56, Flat 1, Victor
Denaro Street, Msida and holder of
Passport number A 1639425**

The Court,

Has seen the charge against the above mentioned
Kingsley Wilcox charged:

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(1) with having during 2005, on these islands, by several acts committed by him ,even if at different times, which constitute violations of the same provision of the law, committed in pursuance of the same design:

(a) whilst knowing that he suffers from, or is afflicted by, any disease or condition as may be specified in accordance with subarticle (3) and in Legal Notice 137 of 2005, in any manner knowingly transmitted, communicated or passed on such disease or condition to Jennifer Muscat and Rodianne Petticrew not otherwise suffering from it or afflicted by it,

(b) with having, under the same circumstances transmitted, communicated or passed on the same disease to Jennifer Muscat and Rodianne Petticrew through imprudence, carelessness or through non-observance of any regulation by himself when he knew, or should have known that he suffers there from or is afflicted therby.

(2) And also charge him with having, in January 2005, by several acts, even if at different times, which constitute violations of the same provision of the law, and were committed in pursuance of the same design, by lewd acts, defiled Jennifer Muscat, then, still a minor.

Has seen the sections of the law remitted by the Attorney General with which Kingsely Wilcox is being accused:

(a) Sections 18, 244A(1), (2), 203(1), 17(b), 20, 23, 31 and 533 of the Criminal Code;

(b) Subarticle (3) of Legal Notice 137 of 2005;

Has seen the accused has given his consent for summary proceeding.

Has seen also the note in the record of the case dated 23rd February, 2007.

Considers

This case, one of an extremely delicate nature, regards the alleged spreading of the HIV virus by the accused to three females strongly participant in the case under examination. Charges have also been brought regarding an alleged defilement of minor at the hands of the accused with regards to one of the said females. Thus in order to examine whether Prosecution has proved the charges proffered it must be firstly established that accused was aware of the state of his health when he had sexual contact with the aforementioned females, as also his awareness with regards to the age of Jennifer Muscat when he had intimate relations with her.

For the purpose of the above premisses the Court deems fit to summarize the salient evidence tendered.

Jennifer Muscat tendered a lengthy evidence during the hearing of his case admitting that she had had sexual relationships with the accused on St Julian's beach, in his apartment and at the Bay Street Hotel. She also stated under oath that Wilcox was her first sexual partner thus explaining that on her first sexual intercourse she lost a lot of blood (a fol 20).

She was 17 at the time of this intimate encounter.

She also confirmed that with regards to the proceedings under examination, she desired their continuation (thus the complaint of the injured party today, that Jennifer is of age).

Jennifer Muscat also recalled that she met accused round about Christmas of 2004 and continued the relationship with him till about the end of January 2005. Muscat deposed about the physical ailments that afflicted her after the said relationships, thus she first suffered a vaginal infection, a subsequent skin infection and syphilis. Later on in the year 2005 she was addressed by her gynaecologist (Dr Isabelle Saliba) to the GU clinic. It was then that after two tests she resulted to be HIV positive. Premise must also be made here of the fact that the first

test to this effect conducted on Jennifer Muscat in February 2005 resulted in the negative.

Asked if Wilcox had ever informed her prior to having physical contact with her that he was HIV positive, or for that fact if he suffered from any other condition, she emphatically answered in the negative. Asked if during their sexual relationships, if Wilcox had used any form of contraception, condoms in particular, she recalled that he had only used a cream. She was in doubt however, whether a condom was used, because she naively retorted that their relationship was conducted in the dark, so she was in no position to answer to this fact (fol 29).

She confirmed that her first HIV test resulted, as premised, in the negative. This was conducted at the General Hospital in February 2005. She confirmed that the second and third test conducted in October 2005 at the GU clinic were positive to the HIV virus. Muscat excluded she had had any sexual relationships with a boy by the name of Kurt prior to her sexual relationship with accused thus confirming that she was a virgin the first time she had intimate contact with Wilcox (fol 19).

Jennifer Muscat was later called as a witness for the defence. In this instance she confirmed that accused had slept with Rodianne and herself at the Bay Street Hotel, on her own invitation. She reiterated that she had had sexual encounters with Wilcox on the St Julians beach, this being, according to witness the first time they had had such intimate encounters (fol 519). This occurred a week before Christmas 2004. She also confirmed that she got hold of the fact that she was HIV positive in October 2005 and was so told by Mr Carabott (specialist at the GU clinic). Now being evidently and visibly pregnant, Muscat confirmed that she had an ongoing relationship with a foreigner who was the father of her unborn child. She also stated that after the termination of her relationship with Wilcox she had developed a series of ailments, predominantly in her intimate parts, and as a consequence of this she underwent the abovementioned tests in February. She was also directed by her gynae to

repeat the HIV tests several months later because the negative outcome thereof, did not necessarily mean that she had not been infected by the virus (as in fact resulted to be the case). She also evidence that the only person with whom she had a relationship after Wilcox was her present boyfriend and his first sexual relationship with him was in October 2005. In fact she confirmed that her due date was August 2006. Asked specifically if between January 2005 (the date of her last intimate involvement with Wilcox) and October 2005 if she had had any other intimate sexual relationships she answered in the negative.

She also stated, and this was later confirmed by the specialist giving evidence, that to date all HIV tests conducted on her boyfriend, so the father of her child, resulted in the negative. As in her case the advice of the doctors with regard to the Syrian boyfriend was also that the HIV test be repeated after a period of three months.

Rodianne Petticrew confirmed that Wilcox had been her boyfriend for these last two years and few months (she was giving evidence on the 17th November, 2005 a fol 66 et seq). She testified about the sexual relationship she conducted with Wilcox during her stay with his then girlfriend Jennifer Muscat at the Bay Street Hotel. Asked if at that time Wilcox had informed her of his HIV infection she answered verbatim:

“He told me yes, but I cannot remember when he told me exactly. He told me, yes, he did.” (fol 71)

She also stated that Wilcox had informed her about his health condition before any sexual intimacies were commenced between them and regardless of this knowledge, she still opted for the physical intimacy due to the fact that condoms were used.

Due to this affirmation, the Prosecuting Officer challenged witness with regards to what she had stated under investigation, that is, that she was not informed by the accused about his health condition prior to her sexual

relationship with him. She explained this contradiction by going into a lengthy retoric about the long and difficult week she had faced prior to the police investigation. All be it confirming that Wilcox was her first boyfriend, she explained to the Court, frankly without making much sense to the Court, that she had lied to the Police about Wilcox's health condition because she had panicked. She gave no explanation at this stage why at this stage of the investigation she had confirmed to the Police that the HIV issue came to her knowledge on the 1st November, 2005.

Miss Petticrew was again asked and here also cautioned that she was under oath, when accused had actually informed her of his condition and after much oscillations stated thus:

“He told me that day that I knew that I was HIV positive“ (fol 76).

This would therefore be November 2005.

Miss Petticrew also informed the Court that her present condition did nothing to perturb her or her partner the accused, since they intended to get married and therefore were at no risk of infecting third parties. Her attitude indicated that the late knowledge of her partner's health condition in no way seemed to disturb the witness.

Petticrew also confirmed that Wilcox had also received a phone call from Inspector Calleja during which accused acted panicky and induced Petticrew to lie to the same inspector to shed off Inspector's inquiries, this during the Police's investigation of this case.

On being asked how she was infected by Wilcox due to her insistence of the use of condoms, Petticrew gingerly answered that it was probably due to the fact that she had used accused's shaving sticks or blades. (fol 93)

Interesting was Petticrew's grasp of the HIV infection. Although in a confused state of affairs and this due to the

lack of knowledge on the subject specifically and her apparent lack of grasp of the situation in general, Petticrew did admit reluctantly that she did consider HIV as a sort of a serious affair.

She also confirmed that the first time she had heard of the word HIV was the week when she was asked to go for tests. She negated that the subject of AIDS or HIV was brought up in February when Jennifer Muscat had fallen ill. This question being brought about due to the fact that both girls' mothers were still in telephonic communication, Muscat's mother obviously concerned with the state of her daughter's health. Thus Petticrew now negated that Wilcox had told her or hinted to her anything about his condition as early as February when Jennifer Muscat was going through her ailments. She confirmed that Wilcox had informed her about his HIV infection when she was called by the GU clinic to undergo tests. At this stage accused had pacified her worries, if any were present, by assuring her that even he was HIV positive and that there was nothing to worry about since they were bound to stay together.

A third female was also summoned to give evidence with regard to her HIV infection and the presumed contact person from whom such infection was derived. Josephine Borg in fact confirmed that in September 2004 she was informed that she had resulted HIV positive. She explained that she had encountered the accused in June 2004 and a week later commenced intimate relationships with him. She affirmed he had never told her anything of any health condition that might have ailed him. Knowledgeable of her condition she informed accused of same, and urged him to undergo blood tests, which he did eventually, due to his insistence on having them done privately and Mrs Borg's negation of such demand, because she simply could not afford to pay for his tests. In fact Josphine Borg confirmed that in September 2004 Wilcox also resulted to be HIV positive. She stated that precautions were not always used in their sexual encounters together because of Wilcox's refusal. She confirmed that apart from her husband, who later on

resulted to be HIV negative, she had only had an intimate relationship with another foreigner prior to Wilcox. However, it later resulted that this person was never tested because he was untraceable.

Accused's health condition and that of the three witnesses whose evidence has been above surmised is clearly evidenced by the testimony tendered by a number of doctors involved in this case. Be it also premised that it is the strong opinion of the Court that the three HIV positive females around whom the Prosecution's case revolves were so infected by, and only by, the accused. Primarily because as will also further result from the doctor's evidence, he was the common contact person among them, and secondly, because at least two of these females showed immediate health deterioration after physical contact with Wilcox (thus their eventual referral to the GU clinic).

Thus Dr Philip Carabott explained that he first got hold of this situation in September 2004 when a certain Kingsley Wilcox was referred to him as a contact person of a known HIV infected person, being Josephine Borg. Dr Carabott confirmed that by this time accused was well aware that he was HIV positive. He recalled that later on, on the 5th October 2005 a certain Jennifer Muscat was referred to him by her general practitioner. Again, from Dr Carabott's investigation, even in Muscat's case Wilcox was the contact person. During his investigation Muscat revealed to him that Wilcox was seeing yet another girl, thus the third female, for us already known as Rodianne Petticrew, came into the picture, and unfortunately also resulted as HIV positive. Be it also premised that Dr Philip Carabott runs the GU clinic and as a part of his expertise screens patients for any sexually transmitted diseases. Dr Carabott also explained lengthily the various methods of transmission of the Human Immunodeficiency Virus, the most obvious and at high risk being the sexual act (both vaginal and anal), oral sex according to this specialist having a very low percentage of transmission. In conjunction with this evidence Dr Charles Mallia Azzopardi specialising in internal medicine

and infectious diseases (St Luke's Hospital) testified that all HIV positive persons are eventually referred to him at St Luke's hospital for management. He thus spoke about the frequent liaisons between his team and that of the previous witness Dr Carabott at the Genito Urinary Clinic. Dr Mallia Azzopardi also recalled that the first case referred to a Josephine Borg way back to the 20th August 2004, the patient being referred to him due to her positiveness of the virus in question. It also resulted to the specialist testifying that one of her contacts was a certain Wilcox. In fact it was the same witness who had informed Public Health and in turn informed Dr Carabott with regard to Mr Wilcox's possible condition then. Witness confirmed that he himself had spoken to accused in October 2004 thus establishing that by that time Wilcox was already aware of his HIV diagnosis.

Dr Mallia Azzopardi also recalled that later on in March 2005 he met Jennifer Muscat who recalled that after sexual intercourse had developed a genital irritation. At this stage Muscat had tested HIV negative, however, later on in October 2005 as premised she tested HIV positive and she was referred to Dr Mallia Azzopardi.

Dr Mallia Azzopardi was also asked to explain the reason why initially the HIV test had given a negative result. Witness explained that if one was infected today with the virus one would usually test positive in three months time. This is due to the fact that indirect tests for testing antibodies are used as opposed to the more sensitive ones which would have given a conclusive outcome within few days of contact. In fact Dr Mallia Azzopardi adhered to the Court's remark that a negative result to an HIV test does not necessarily mean the absence of an infection.

In fact Dr Mario Azzopardi premised that if the infection occurred on a said date 80% of the patients will test positive in a month's time after that date. Thus patients are directed to test within three month's time to narrow percentage of failure. The witness also confirmed that Muscat had indicated Wilcox as her contact denying any other sexual contact from January till she tested positive,

although later on admitting that she had an ongoing sexual relationship with another male of Syrian descent. All be it that it was established from Dr Azzopardi's testimony that Jennifer Muscat was not exactly honest about the time she initiated the sexual contact with her Syrian boyfriend, however, as Dr Mallia Azzopardi pointed out he always spoke to the patient in the presence of her mother. Again Dr Mallia Azzopardi was questioned at length about the method of transmission of the HIV virus. He certainly did not agree with Defence's suggestion of a high risk infectious possibility from the sharing of a blade (a theory forwarded by Petticrew). He categorically denied that such possible method of transmission of the infection was discussed with him or voiced in front of him by any of the girls consulting him. He confirmed that both Muscat and Petticrew seemed to accept that they had been infected sexually (fol 221), excluding thus any suggestions placed to him that the infection could have occurred through an indirect transmission.

Dr Charmaine Gauci testified that she is responsible for the Disease Surveillance Unit within the Public Health Department. She confirmed that this issue arose on the 14th August 2004 when the department was notified of a certain Josephine Borg's condition. On being interviewed Borg tendered Kingsley Wilcox's name as her partner, who eventually resulted to be HIV positive. This knowledge was also confirmed by Dr Jackie Melillo. Various other doctors were summoned to tender evidence with regards to the three HIV infected females who also helped to confirm the dates of the knowledge of the infection. The accused chose to tender evidence viva voce and also released at the stage of investigation a statement exhibited as Dok KW a fol 155, therein he confirmed his relationships with Josephine, Jennifer and Rodianne besides mentioning another female which later on he verbally denied, (Melanie). He confirmed that in September 2004 he was informed that he was HIV positive, he insisted with regards to Rodianne and Jennifer that he had informed them prior to their sexual relation about his condition and advanced the suggestion

that Rodianne had contacted the virus through the use of scissors or shaving blades.

Viva voce he recalled that he came to Malta in April 2004 and had previous to that date never encountered any health problems. He again confirmed his relationship with Josephine Borg and the fact that she had addressed him to the GU clinic wherein he was informed of his positive results. He spoke of the fact that Dr Carabott cautioned him with regards to protected sex and the sharing of shaving blades. He recalled that his first sexual encounters with Jennifer were, contrary to what she had evidenced not on a beach but at the Bay Street Hotel. In fact, when asked about their first sexual experience he answered:

“The first day she spent the night in my place, she did not spend the night in the hotel but in my place.” (fol 458).

He was insistent on the fact that he had informed Jennifer of his positivesness and of the use of a condom all through the sexual acts. He premised that he only had two sexual encounters with Jennifer during which sex was protected.

About Jennifer's age Wilcox stated that he got to know this during the time the three of them were at the hotel together. The age issue came about due to her parents' refusal to meet him due to racist issues. Jennifer had then commented that within a few month's time she would be of age and thus able to get married. According to Wilcox this discussion occurred when he had already had the two sexual encounters already mentioned with Jennifer. At the end of January 2005, according to accused, he commenced his relationship with Petticrew. Even here he insisted that he had informed Rodianne of him being HIV positive to which information according to accused, like Jennifer, Rodianne failed to react. Wilcox testified that he had supplied both girls with this information before having any sexual relationship with them. He also confirmed that he had protected sex with Rodianne. To prove Rodianne's knowledge of his

condition he testified that he was on a daily dosage of Septrin, the intake of which was witnessed by his girlfriend, to the extent that the same Petticrew at times even purchased the same medicine herself for the accused. About Rodianne's knowledge of his HIV condition he had this to say:

"... to say that I spoke to her about HIV on October I am beginning to understand that when I was discussing with her January and February maybe, she was not understanding what I was discussing with her. That is what I am beginning to understand now." (fol 478)

Under cross examination he confirmed that he had sex with Rodianne and Jennifer in January 2005. He reiterated that both Rodianne and Jennifer must not have understood him when he informed them that he was HIV positive. Questioned about the girls' comprehension of English but not their understanding of the HIV issue he explained that HIV was something one had to explain and that he did not do so to the girls, simply because they did not ask (fol 484). He also refuted the fact that the girls were surprised when they were told that they were HIV positive, retorting that he was not present when such news was delivered to them. In this case Wilcox seems to have forgotten that he had accompanied Petticrew to the clinic when her results were discussed. Always in cross examination and back to Jennifer's age he confirmed that he became aware of this during their stay at the hotel where she had told him she would be 18 in a few months' time (fol 487). He was also cross examined about the contents of various text messages sent to Petticrew when the Police got hold of the situation to which the Court will refer at a later stage.

Asked whether he ever had oral sex with Jennifer Muscat since he was insistent that a condom was always used, he denied this. Thus on being queried how Jennifer contracted HIV he cheekily suggested that now that she was pregnant she could have been infected by the father of her child. Most obviously Wilcox, as the Prosecuting

Officer retorted, seemed to forget that a human's gestation period is that of 40 weeks.

Having seen the note of submissions tendered by both parties consider;

Prosecution's note is very much based on an analysis of the facts produced in the case. On the other hand, Defence brought forward both legal and factual arguments against the charges premised.

As aforementioned and contrary to Defence's theory the Court is convinced beyond reasonable doubt that all three females contracted HIV from sexual contact with the accused. The fact that Josephine Borg had a previous relationship with a foreigner does nothing to negate the result that after her relationship with Wilcox not only did her health deteriorate, but she contracted HIV, a condition which resulted to be also present in the accused.

Even if the Court had to accept Defence's argument with regards to Josephine Borg's promiscuity, therefore accepting that Borg was not infected by Wilcox, still accused's antics are questionable as regards to his subsequent relationship.

Wilcox befriended and started a physical relationship between December 2004 and January 2005 with Jennifer Muscat. Two issues arise in this regard – did he inform his partner of his health condition, consequently did he adopt proper precaution to prevent the transmission of the virus in question, and secondly was Wilcox aware of Muscat's age.

Knowledgable of his condition when he befriended Muscat accused insisted that he made his girlfriend aware of such. According to him no reaction was forthcoming from her and that they always had protected sex.

On the other hand Muscat testified and was emphatic about the fact that she was never aware about the accused's health status and became thus aware through a series of medical interventions and later police investigations.

Very naively in the Court's opinion, she testified that she was not aware if the accused used condoms because their intimacies were conducted in the dark. Wilcox's solution to Jennifer's infection was also, according to him, imputable to her promiscuity thus pointing a finger to a certain Kurt with whom allegedly Jennifer had a previous sexual relationship. Later on as premised, accused suggested that Jennifer contracted HIV from her Syrian boyfriend, who as we know, tested in the negative.

The fact that Muscat as has resulted was not honest about the date when she started seeing her Syrian boyfriend would make her in that respect a partial liar, but not negate the fact that Wilcox was the only HIV positive person she had contact with. Furthermore Muscat, when challenged about the date she started seeing her boyfriend, duly corrected her testimony as already above premised.

There also seems to be disagreement between Jennifer Muscat and the accused as to when they had their first sexual encounter; the girl insisting that it first occurred in December 2004 on St Julian's beach and Wilcox during their stay at the hotel in 2005, all be it in both occasions Muscat was still under the age of 18 and a minor at law (vide Jennifer's birth certificate exhibited a fol 251). In fact as things stand when accused and Jennifer befriended each other, Jennifer was just past her 17th birthday by a couple of months. As premised in his evidence Wilcox insisted that his knowledge of Jennifer's age (minor) occurred after they stopped having sexual intimacies. This is where the question of marriage arose. Wilcox however seems to have forgotten, or rather denies the fact that in his statement he himself said that he met Jennifer in December 2004. He also confirmed that at the time she was going to be 18 and was still going to be

18 “17 plus“ to quote accused (a fol 487) after the hotel issue. Therefore, it clearly transpires that Wilcox was very much aware of the fact that in January 2005, the month that he admits to having sexual intercourse with her, Jennifer was still under age.

There also seems to be little agreement between that testified by Petticrew, a definite allied to the accused, although it is the Court's firm opinion and this very clear from Petticrew's changing versions, that this young lady did her best in collusion with the accused to minimise the damage and the version tendered by the accused. In fact after various warnings with regards to perjury and her arrogant antics in Court, Petticrew admitted that Wilcox had only told her of his condition when she was positively diagnosed. She naively comforted herself that all was fine since the boy, as she called him, had no intention of leaving her. The girl in fact went as far as corroborating Wilcox's version, a weak one at that, that she contracted the virus by using Wilcox's shaver (vide Dr Mallia Azzopardi's evidence in this regard).

Ex admissis and this in agreement with what Rodianne Petticrew testified their relationship was in existence in January 2005. In fact they had their first sexual contact during their stay at the hotel, in the mentioned month.

Considers

Certainly nothing much can be added to Defence's submission with regards to the non retroactive effect of Criminal law and the coming into force of Legal Notice 137 of 2005 on the 17th May, 2005. Clearly the functionability of sections 244A (1)(2) of chapter 9 is dependent on the Diseases or Conditions Regulations to be published in the Government Gazette (Section 244A(3)). Said conditions and diseases are now specified in Legal Notice 137 of 2005 under the heading 'Communicable Diseases and Regulations, 2005' inclusive of the Human Immunodeficiency Virus Infection (HIV) amongst other. As said the Legal Notice brings the date of the 17th May, 2005.

Therefore the applicability of Section 244A (1)(2) excludes immediately any offences with regards to Josephine Borg and Jennifer Muscat as both incidents occurred before May 2005. But as premised, it has amply resulted that Petticrew and Wilcox kept an ongoing relationship beyond May 2005. It also transpires that the Attorney General was so wise to deduce against the accused section 18 of Chapter 9, thus the continuous offence. Frankly the Court does not believe that Petticrew was infected through the use of a shaver. Granted that both girls showed a certain amount of ignorance with regards to their relationship with the accused, and also in agreement with Dr Mallia Azzopardi's suggestion with regards to Miss Petticrew's IQ, the Court still finds it difficult to believe that informed of accused's condition, they would still have opted to carry on with the relationship.

No doubt is left in the Court's mind that Wilcox knowingly and voluntarily transmitted his disease to the three females but due to the date of the coming into force of the Legal Notice he can only be imputed with regards to Petticrew's condition. His knowledge of the whole affair not only emanates from his viva voce evidence, as to the manner with which he tried to fit every fact to suit his conveniences, but more tragically so by his own sms's to his love struck girl friend Petticrew asking her not to betray him, not to let him die for nothing, not to go against him threatening even to commit suicide when his antics were discovered by the Police (fol 303 Dok MB). Here he clearly indicated his awareness of the seriousness of his actions. Noteworthy in this regard are the feeble excuses to his SMSs, excuses that Wilcox ventured to Inspector Calleja's questions under cross examination. The Court is thus of the opinion that Kingsley Wilcox is guilty as charged under sections 18 and 244(1) of Chapter 9, having also seen Legal Notice 137 of 2005.

Section 244A(1) under examination speaks of a person who knowledgeable of his condition "knowingly transmits".

It is the opinion of the Court that although Wilcox here did not have the “dolo diretto” but certainly had the so called “dolo eventuale” as explained by the jurist Antolisei (in the regard of the dolo required discussing lesioni personali e percosse).

“Per l’esistenza del dolo ... occorre la volonta’ e previsione dell’evento e cioe delle malattie nel significato poco innanzi espresso. Poiche tale risultato si considera voluto non solo quando e stato il punto di mira dell’attivita’ del soggetto (dolo diretto), ma anche quando e stato previsto e nel tempo stesso accettato pero l’eventualita’ del suo verificarsi (dolo eventuale), il dolo del delitto in parole sussiste tutte le volte che il reo ha previsto che il suo comportamento avrebbe potuto determinare un pregiudizio all’integrita personale del paziente ed ha agito al fine o a cost di cagionarlo” (Antolisei, Manuale di Diritto Penale Parte Speciale – 1 page 78).

From the above premised Kingsely Wilcox was well equipped with the “dolo eventuale” regarding the consequences of his actions.

The Court deems fit also to pass another comment in this regard. It would certainly be incumbent on the accused fully knowledgable of his condition, to ensure that if using a form of contraception, that a proper one to standard is utilised. With proper care and attention further spreading of the virus can be avoided and no imaginary explanations as to its transmissions need be forwarded as pathetic excuses.

Wilcox was also charged with the crime under section 203(1) Chapter 9. Jennifer Muscat affirmed under oath her intention to sustain her claim against accused. Much fuss was made by parties whether Jennifer and accused had sexual intimacies on St Julian’s beach in December

2004, to no avail, because the original charge refers to January 2005. Certainly no criminal charge can be brought in a vacuum of space and time and so all actions debited to Wilcox have to be examined as charged (during 2005 in these islands).

Thus the charge brought against him in regards to section 203 must be viewed as regards to what happened between Jennifer and accused in the month of January 2005. Ex admissis in his statement, though weakly contradicted viva voce, he admitted that he knew that Jennifer was 17 years of age. Defence in this regard is resting on the legal maxim of "corrupta non corrumpitur" because of Jennifer's antics. Thus Defence's theory is that a person who had had sexual intimacies with a certain Kurt at the age of 15, who invited her boyfriend the accused, to join her at the Bay Street Hotel and furthermore ended pregnant from a Syrian male, cannot be further corrupted.

Accused is therefore even in this instance using Jennifer's alleged promiscuity as his defence. Jennifer emphasized that she was still a virgin when she had her first sexual relationship with accused. Thus it was accused who first exposed the minor to her first sexual encounter even if voluntarily acquiesced and encouraged the relationship. It is this young and immature age that the law here seeks to protect, especially if at that stage in time the person in question is still, as should be, sexually immature.

The fact that Jennifer voluntarily participated in her sexual endeavour with Wilcox neither labels her as an already sexually corrupt person from the outset, nor justifies the accused in encouraging and developing such sexual knowledge. Jennifer Muscat was under age and exposed to sexual intercourse at least twice in the month of January 2005 (as admitted by accused). The fact that few months later she ended up pregnant from yet another foreigner is indicative, if at all, of her sexual immaturity and lack of education in this regard and not that she is a sexually corrupted person.

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Thus the Court considers accused to be guilty also of the crime contemplated under section 203 (1) of Chapter 9.

Thus finds Kingsely Wilcox guilty of the crimes deducted in sections 18, 244 of Chapter 9 Legal Notice 137 of 2005 and section 203 of Chapter 9.

With regards to the punishment, has seen section 18, 244(A), 203, 17, 20, 23, 31 of Chapter 9, section 3 of Legal Notice 137 of 2006.

Seen the accused's conviction sheet considers the seriousness of the crimes committed by Kingsely Wilcox especially the transmission of a serious virus, that is HIV with regards to public safety, thus condemns him to a term of imprisonment of five years from which the period accused spent in preventive arrest is to be deducted.

< Sentenza Finali >

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