



**COURT OF MAGISTRATES (MALTA)  
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.  
JACQUELINE PADOVANI**

Sitting of the 20<sup>th</sup> March, 2006

Number. 1/2006

POLICE  
INSPECTOR RAYMOND AQUILINA  
VS  
OMISSIS

The Court,

Having seen the charges brought against the accused omissis, son of omissis, born omissis, residing at omissis, and holder of ID card number omissis, and charge him with having on the 30<sup>th</sup> December 2005, at omissis, which is situated at omissis:

- (1) by lewd acts defiled minor omissis, of six years, a person under age, in breach of Article 203(1)(a) and (c) of Chapter 9 of the Laws of Malta;
- (2) on the same date, place, time and circumstances, without a lawful order from the competent authorities and saving cases where the law authorizes private individuals to apprehend offenders, arrested,

detained or confined the same minor omissis against her will or provided a place for carrying out such arrest, detention or confinement, and this as a means of compelling the said omissis to do an act or to submit herself to treatment injurious to the modesty of her sex, in breach of Article 86 and 87 of Chapter 9 of the Laws of Malta;

(3) on the same place, date, time and circumstances, committed an offence against decency or morals, by any act committed in a public place, in breach of Article 209 of Chapter 9 of the Laws of Malta.

In case of guilt, the Court was requested to provide security of omissis and her family, in terms of Article 383 et sequitur, of Chapter 9 of the Laws of Malta.

Having heard the evidence tendered on oath;

Having seen the record of the proceedings;

Having seen the Attorney General's note of the 17<sup>th</sup> January 2006, whereby the said Attorney General remitted the case for trial before the Courts of Magistrates (Malta) as a Court of Criminal Judicature;

Having seen the consent of the accused that his case be dealt with summarily by that Court;

Having seen the plea of guilt entered by the accused of the 12<sup>th</sup> January 2006;

Having heard the oral submissions of both parties;

Considers:-

The accused in this case has pleaded guilty to all the charges brought against him. The facts of this case in fact, are rather peculiar. The accused, omissis, had been working for a substantial period with omissis, and was known to be an upright man '**ragel sew, ragel tal-affari tieghu**'. (see page 8).

On the date in question, which was during the Christmas festive season, the minor daughter of one of the employees of the company, a six-year old girl, omissis, who had accompanied her father to his place of work, requested her father's permission to say goodbye to all the employees of the same company. In fact, she went upstairs to look for the accused omissis to wish him goodbye, but did not find omissis behind his desk in his office. Omissis, in fact, had been in the toilet and was urinating. The girl did not realize this, and since the door was open, the accused turned with his private parts exposed, and on the spur of the moment, and in a drunken stupor, requested the six-year old girl to open her mouth and to kiss his penis. The girl did not want to do this, and then the accused insisted that she had to kiss his penis.

Omissis stated that she was terrified and felt that she had to do as the accused asked, '**Kelli naghtihielu bilfors**'. After this, she ran away scrubbing her mouth with a tissue and told her father.

Omissis said that he was drunk, he had been drinking Vodka, and the episode to him seemed like an illusion. He admitted his wrong doing in his signed statement before the Police, and was very penitent.

In these circumstances, there is no doubt, in this Court's mind, that all the essential elements of the crime contemplated under Article 203 of the Criminal Code, that is, the age of the victim, the lewd acts and the actual defilement of the minor in question have indeed concurred.

Indeed, in the judgment *The Police vs Thomas Wiffen*, decided by the Court of Criminal Appeal on the 8<sup>th</sup> January 1996:

*'For the completed offence and apart from the formal element of the offence, there must be the lewd act (atto di libidine) and the actual defilement. The lewd act may be committed either on the person or in the presence of the*

*minor. All acts which, either by their very nature or of the circumstances in which they are performed, either are directed to the indulgence of the sexual appetite, either of the agent or of the victim, and are capable of arousing sexual interest of the victim, are lewd acts for the purposes of the offence in question.'*

The duration of these acts is immaterial for the notion of a lewd act (ebid at page 150 Volume LXXX 1996 part 4):

*'For the subsistence of the crime, it is not necessary that the defilement shall be immediate. The very young age of the person with whom the lewd acts have been committed does not rule out the crime if the remembrance of such acts is calculated to cause a defilement. Indeed, according to our Law, if the victim is under twelve years of age, that is, a reason for aggravating the crime.'* (notes on the Criminal Law per Sir Anthony Mamo at page 226).

With regards to the question of punishment, the Defence submitted that there were several factors in this case, which permitted this Court to consider suspended sentence or a supervision suspended sentence, together with treatment orders for the accused rather than imprisonment. The Defence stated that the accused pleaded guilty at an early stage of the proceedings, and that both parents have decided to forgive the accused, and wanted reassurance that this incident did not repeat itself, either on their daughter or on anybody else's.

The Defence argued that should the Court award a prison sentence, the forgiveness so generously given by the parents would in fact be negated by this Court.

Considers:

The facts of this case fall fairly and squarely under Article 203(1)(a)(c). Therefore, this Court is bound to award a period of imprisonment for a term from three to six years. This being the case this Court is prohibited from seeking alternative punishments such as a supervision suspended sentence, unless it deems **that there are special and**

**extraordinary circumstances** in terms of Article 21 of Chapter 9 of the Laws of Malta.

The Court understands that for both parents, this was a traumatic experience, as it was indeed for their daughter omissis. The Court understands, further more, that the forgiveness so sincerely pronounced in Court, shows great maturity in both parents, and that this forgiveness was not something that was lightly given, and yet this Court hesitates before using this special gift of forgiveness of the parents, to procure a lighter sentence for the accused.

Therefore the Court finds the accused by his own admission, guilty of the first charge brought against him, with all other charges being absorbed by the first, and after having seen Article 203(1)(a)(c), 203A 209, 86, 87, 17(b), 383, 20 and 31 of the Criminal Code, condemns the accused for a term of imprisonment of three years and orders a ban on the publication of all names with respect to this judgment.

**< Final Judgement >**

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