



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

**MAGISTRATE DR.  
JACQUELINE PADOVANI**

Sitting of the 19<sup>th</sup> July, 2007

Number. 197/2007

POLICE  
INSPECTOR CARLO ELLUL  
VS  
ALEHANDRO PALAZIUS GARZIA

The Court,

Having seen the charges brought against the accused Alehandro Palazius Garzia, Algerian nationality, 36 years of age, born in Badajos Spain, on the 14<sup>th</sup> October 1970, son of Juan Palazius and Manuela Alwari Garzia, without any fixed address and without any other form of identification, and charged with having, on the 9<sup>th</sup> March 2007, at about 8.15am, at St. Julians:

(a) by lewd acts, defiled a minor of either sex, which offence was committed on a person who has not completed the age of twelve years, and this in breach of Section 203(a) of Chapter 9 of the Laws of Malta; moreover

(b) on the said date, place, time and circumstances attempted any violent indecent assault which does not, in itself, constitute any of the crimes, either completed or attempted, referred to in the preceding section, and this in breach of Section 207 of Chapter 9 of the Laws of Malta; and moreover

(c) on the said date, place, time and circumstances committed an offence against decency or morals, by any act committed in a public place or in a place exposed to the public, and this in breach of Section 209 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 Articles of Law proffered by the Attorney General, upon which this Court may pronounce guilt;

Having seen the note in the records of the proceedings of the sitting held on the 31<sup>st</sup> May 2007, wherein the accused registered no objection in being adjudicated by the Court of Magistrates.

Having heard the oral submissions of the parties;

Considers:-

From the evidence tendered by Inspector Carlo Ellul, at page 38 et seq, it resulted that the Police was informed about an incident that took place on the 9<sup>th</sup> March 2007 in St Julians, where it was alleged that the accused sexually assaulted a woman by lewd acts in front of a few children, and used vulgar words in their presence. Prosecuting Officer, Inspector Carlo Ellul, interrogated the accused, after cautioning him according to law, during which statement the accused availed of the right to remain silent. The statement was marked and exhibited as document CE at page 40.

Prosecuting Officer, Inspector Carlo Ellul also exhibited a copy of the Police report which was marked and exhibited as document CE1 at page 42.

*Omissis A*, at page 15, stated on oath that whilst she was waiting at the bus stop, together with her son for the school bus to arrive, the accused, whom she identified in the Court room, approached them and started to touch the hair of two school children who were in the vicinity. Moreover, he started pulling faces and in fact made them cry. *Omissis A* stated that he started to talk to her, but at first she could not understand him, and that she responded by saying that she did not know him and he did know them, and she asked him to leave them all alone because he had made the children cry. *Omissis A* stated that thereupon, the accused started to point his finger in her face, saying that he was going to make her cry, and then started swearing and touched her breast and used some very vulgar language which is vividly described at page 16 of her evidence. *Omissis A* stated that it was raining and because of this incident, she had to exit the bus shelter to get away from him. She stated that there was a telephone booth nearby and therefore, she took the children inside the telephone box in an effort to evade the accused.

*Omissis A* stated that she stood in front of the telephone box and opened her umbrella, whereupon the accused approached her for the second time, and started to touch her umbrella. *Omissis A* stated that after this, she closed her umbrella and told him that if he came any closer, she would hit him with it. *Omissis A* stated that one of the children in fact telephoned the Police from the telephone booth, and within a few minutes, the Police arrived on the spot. The accused addressed *omissis A* with the words **'you bastard, you called the Police'**.

*Omissis A* stated that the vulgar language and the indecent assaults occurred in the presence of her *omissis*-year old son, in the presence of her friend *omissis B* and her son *omissis B1*, and in front of an English woman who was also there with her two sons. *Omissis A* confirmed

that the incident happened on the 9<sup>th</sup> of March between 8.00am and 8.30am, whilst the women were waiting for the school bus to pick up their children. *Omissis A* confirmed that she had never ever met this person before or seen him, and that she had no previous argument before this incident. She reiterated that the only thing that she told him was to leave them all alone because he was making the children cry. She added that whilst he was addressing her in the vulgar language that she described, the accused was also fingering his groin and pointed at her. *Omissis A* stated that this behaviour was completely unacceptable, especially in view of the fact that there were children present. *Omissis A* added that there were other three girls waiting for the school bus and that she moved them away from the bus shelter as well.

In cross-examination, *omissis A* stated that the accused was talking in Maltese and in English. *Omissis A* was adamant that the accused spoke to her in Maltese and in English and she was very sure of the accused's identification (vide page 18).

*Omissis B*, at page 19, stated that on the day in question, she was at the bus stop in St Julians, accompanying her son *omissis B1* until the school bus arrived. She stated that there were other women present together with their children. She stated that the accused, whom she identified in the Court room, approached them and started to talk to the children, and that the children came alarmed and that her friend *omissis A* tried to stop him. *Omissis B* stated that the accused did start to talk to her, but that she didn't understand him very clearly, however she saw that he was pointing his finger to her face, and made a fist at her. *Omissis B* stated that the accused addressed her personally in very foul language as indicated at page 20. *Omissis B* stated that the children became most alarmed. Thereafter, a *omissis*-year old son, phoned for Police assistance from the telephone box.

*Omissis B* stated that the accused, furthermore, touched his groin whilst he uttered the foul language indicated. *Omissis B* confirmed that she had never seen or met this

person before the incident. *Omissis B* confirmed that she does not speak or understand the English language, and therefore she was not understanding the accused, except when he was talking in Maltese. *Omissis B* confirmed that present for this incident were herself and her son *omissis B1*, *omissis A* and her son *omissis A1* and two other foreign children. *Omissis B* confirmed that on the date in question it was raining and that the women and the children got soaked because the mother decided to take the children out of the bus shelter to avoid further contact with the accused. *Omissis B* confirmed that the accused also touched *omissis A*'s breasts twice. *Omissis B* stated that the accused came under the bus shelter and told him that he was going to take the bus, however, several public buses passed by and the accused did not take any of them.

*Omissis A1*, *omissis* years of age, stated that the school bus picks them up from St Julians in front of the Wembley Motors. *Omissis A1* stated that on the day in question, an Arab speaking man approached them and started to touch the hair of two school children, who in fact, started to cry. He said that his mother interceded on their behalf and told the children to follow her. *Omissis A1* said that after this, the man said some rude words, and started pointing his finger in his mother's face. He said that he also made a fist at her, and then put his hands in his pockets as though he was going to take out a knife or a similar object, and that he touched his mother's breasts.

*Omissis A1* stated that this man started to annoy his mother by touching and twilling her umbrella and that soon after, his friend *omissis B1* phoned for police assistance. *Omissis A1* confirmed that the Police came and arrested the man. *Omissis A1* stated that he believed that the man was talking in Arabic, and that he could not really understand him. At page 29, *omissis A1* indicated and identified the accused.

*Omissis B1*, at page 31 et seq, stated that his mother accompanies him everyday to where the school bus picks him up, that is, at the bus shelter in St Julians, close to the

play ground and the Wembley Car Hire. He said that on the day in question it was raining and therefore they used the bus shelter. *Omissis B1* stated that he saw his mother sniffing, and a man passed from behind her, and that she smelt a smell of alcohol. He stated that this man made two English school children cry because he was touching their faces. *Omissis B1* stated that his mother told him to stop it because he was making the children cry, and that this man answered her back, stating that he will make her cry. He said this in the English language.

*Omissis B1* stated that he touched his mother's face and made a fist at her face. Thereupon, he started to use foul language, and therefore they decided that they should phone up the Police, but his mother did not have a mobile, and therefore, he went into the telephone box and phoned for Police assistance. A few minutes after, the Police came and arrested the man. He started resisting them. *Omissis B1* stated that he saw the man touching the breast of his mother's friend, and stated also that this man made other gestures and indicated the groin area.

In cross-examination, *omissis B1* stated that this man used very rude language and whilst doing so, he was speaking in Maltese. At page 34, *omissis B1* identified the accused present in the Court room, as the man.

At page 36, *omissis A* exhibited the medical certificate marked as document MS, to the effect that she was suffering from severe anxiety on the 9<sup>th</sup> March 2007 at 10.30am.

PC 691 Huan Mula Debono confirmed document CE2, the statement released by the accused. He confirmed that the accused was duly cautioned before he released the statement.

*Omissis C*, at page 54, stated that she was at the bus stop with her two boys, when she noted the accused who crossed the road and came steadily in their direction. *Omissis C* stated that the accused kicked quite high in the air, as if to kick them, which made her rather wary. She

noted that he was drunk, and he started to talk to her children. He asked for their names and started to touch the hands, the hair and their faces. *Omissis C* stated that she felt quite uneasy and was rather glad to note that two other women with their children had arrived at the bus stop and so, *omissis C* started to ask them whether they knew this man. *Omissis C* stated that her children had started to cry, and that one Maltese lady interceded and asked the man to go away because he had made the children cry. Thereupon, the accused started to argue with her in an aggressive tone.

*Omissis C* stated that her children were *omissis* and *omissis* years old respectively. She identified the man who had caressed her children as the accused. *Omissis C* stated that he remained close to her sons, but could hear the accused asking the other women questions and then noticed that one of the women had gone off very quickly, but was not in a position to state exactly what had happened:

**‘He was always there, just wouldn’t go away, and we just wanted him to go away.’**

*Omissis C* stated that the children were crying because the accused had frightened them, because he was drunk and had used a threatening tone. *Omissis C* did not note any other action the accused may have done because she was attending her own children and trying to blockade them. *Omissis C* stated that she noticed that one of the women was very upset and in fact, started to cry, and that the Police were called by one of the school children present. *Omissis C* said that after this, the Police arrived.

PC 446 Joseph Mifsud, at page 58, stated that on the 9<sup>th</sup> of March 2007, he was stationed at St Julians Police Station, where he was contacted by his Sergeant and instructed to go to give assistance near the Wembley’s Garage at St Julians. There, he found two women and their children who were all crying, and the accused who appeared shaky and drunk. They asked the accused to go to the Police station and at first he resided, and then

cooperated with the Police. PC Mifsud stated that the women told him that the man had touched one of the women's breasts.

PC Walter Sergeant, at page 60, confirmed the evidence of PC 446.

In cross-examination, at page 71 et seq, *omissis C* stated that the accused was drunk and that apart from touching her boy's hair and hands, she did not see him touch any other part of their bodies. *Omissis C* stated and agreed that the accused was drunk and was manifesting anti-social behaviour. *Omissis C* stated that she did not actually see the accused touch the woman's breast.

*Omissis A*, in cross-examination, at page 76 et seq, stated that the accused only touched her breast once, even though he subsequently, started to push her. *Omissis A* declared that she was sure that when the accused touched her breast, he did not do this accidentally, and that when he did this, there were four children present.

At page 79, the accused stated that he had been out all night and that he had left the discotheque at 7.00am, stopped at the pizza shop and then was looking for a bus to take him to Valletta. He stated that he had arrived in Malta the night before, and that as it was raining, he went in the bus shelter, where there was a mother with three children. He said that he approached one child and he patted him on the hair, and that this child started to cry and said that he apologized to his mother. The accused declared that this woman did not tell him anything.

After this, another woman approached him and started to shout at him and told him to leave them alone. This outburst embarrassed him and then he confronted this woman and told her not to interfere because she had nothing to do with this. As this lady was carrying the umbrella, she accidentally touched him with the spokes of the umbrella, and he reacted badly. The accused stated that the woman started to shout that she was going to get the Police, and that he answered that she could do so.



The accused admitted that he touched his groin but denied that he touched the breast of *omissis A*.

In cross-examination, upon being asked why the children were crying, the accused stated that maybe it was because it was bad weather. The accused stated that it is true that he made one child cry, for which he apologized immediately to his mother, and that the other children started to cry when *omissis A* started to shout. The accused, furthermore, admitted that he had been drinking throughout the night, and that he had consumed a bottle of wine and two tots of Gin. He also stated that he normally consumed three bottles of wine. At page 85, the accused admitted that he was drunk, but not so drunk that he could not remember what he was doing.

Deliberates:-

From the evidence produced by the Prosecution and Defense, it is evident that the accused had been out partying all night and was in a state of intoxication. In this ubriacated state, he approached a bus shelter, where *omissis C* and her two sons were waiting for the school bus. The accused caressed the children's faces and the children started to cry. There upon, *omissis A* arrived with her son, interceded and asked him to leave. It was here when the situation started to unravel rapidly.

The accused admits that he touched his groin but denied touching *omissis A*'s breasts. The Court finds the latter part of the accused's version not to be a credible reflection of the actual situation. In fact, *omissis A*, *omissis B* and the two children, *omissis A1* and *omissis B1*, both categorically stated that the accused did in fact, touch *omissis A*'s breasts.

It is the Court's considered opinion however, that the lewd acts 'touching one's groin and the touching of *omissis A*'s breasts', were not lewd acts intended to excite any sexual response, but rather an aggressive and impertinent assault on *omissis A*, intended only to humiliate and

debase the same *omissis A*. It is this Court's opinion that the children understood the accused's behaviour to be an aggressive behaviour and not one with sexual overtones.

Indeed, the circumstances of this case fit quite clearly within the parameters of Article 207 and 209 of Chapter 9 of the Laws of Malta:

*Article 207:*

*'Whosoever, shall be guilty of any violent indecent assault which does not, in itself, constitute any of the crimes, either completed or attempted, referred to in the preceding articles of this sub-title, shall, on conviction, be liable to imprisonment for a term from three months to one year.'*

*Article 209:*

*'Whosoever, except in the cases referred to in the preceding articles of this sub-title or in any other provision of law, shall commit an offence against decency or morals, by any act committed in a public place or in a place exposed to the public, shall, on conviction, be liable to imprisonment for a term not exceeding three months and to a fine (multa).'*

For these reasons, the Court finds the accused not guilty of the first charge brought against him, and acquits him of the same, but finds him guilty of the second and the third charge brought against him, and after examining Articles 207 and 209 of Chapter 9 of the Laws of Malta, condemns him to four months imprisonment.

**< Final Judgement >**

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