MALTA

QORTI TA' L-APPELL KRIMINALI

S.T.O. PRIM IMHALLEF
VINCENT DE GAETANO

Seduta ta' l-20 ta' Settembru, 2007

Appell Kriminali Numru. 188/2007

Il-Pulizija

v

-- omissis --
Anthony Joseph Portelli

Il-Qorti:

Rat l-imputazzjonijiet, originarjament migjuba kontra David (David-Austin) Calleja u Anthony Joseph Portelli talli fil-lejl ta' bejn l-10/3/2001 u l-11/3/2001 ghall-habta ta' nofs il-lejl, f'Bugibba, (**1**) minghajr il-hsieb li joqtlu jew li jqieghdlu l-hajja ta' John Stuart Roberts ta' nazzjonalita` ingliza f'perikolu car, ikkagunaw feriti ta' natura gravi fuq l-imsemija persuna skond ma ccertifika Dott. Anthony Gatt M.D. ta' l-Isptar San Luqa, liema feriti jistghu jikkagunaw debulizza permanenti fis-sahha jew fil-funzjoni ta' xi parti tal-gisem, jew igibu difett permanenti f'parti ta' l-ghamla tal-gisem, jew, marda permanenti tal-mohh jew li jistghu jgibu sfregju gravi u permanenti fil-wicc; (**2**) talli fl-istess

zmien u cirkustanzi kkagunaw feriti hfief fuq il-persuni ta’ Melanie Dawn Garbutt, Neil Edward Lofthouse u Emily Bridget Fox ilkoll ta’ nazzjonalita` ingliza, skond kif iccertifika Dott. Anthony Gatt M.D.; (**3**) qalu kliem oxxen u indecenti fil-pubbliku; (**4**) kisru l-bon-ordni u l-kwiet tal-pubbliku bi hsejjes, ghajjat, glied jew mod iehor; (**5**) Anthony Joseph Portelli wahdu kien akkuzat talli bhala ufficjal jew impjegat pubbliku kkommetta r-reati hawn fuq ipotizzati fl-imputazzjonijiet meta huwa kellu jissorvelja biex ma jsirux, jew minhabba l-kariga tieghu huwa kellu d-dmir li jimpedixxi; (**6**) David Calleja wahdu kien akkuzat ukoll li huwa recidiv b’sentenza tal-Qorti Kriminali datat 29.10.1992;

Rat in-nota ta’ rinviju ghall-gudizzju ta’ l-Avukat Generali tal-15 ta’ April 2002 (fol. 159), kif ukoll il-kunsens tal-imputati sabiex huma jigu ggudikati mill-Qorti Inferjuri (fol. 144);

Rat l-ordni tal-Qorti tal-Magistrati (Malta) tat-3 ta’ Novembru 2006 li permezz tieghu saret is-separazzjoni tal-gudizzju wara li l-qorti giet infurmata li David Austin Calleja “jinsab mahrub”, b’mod ghalhekk li fil-konfront ta’ Calleja l-proceduri thallew *sine die* filwaqt li tkomplew fil-konfront ta’ Anthony Joseph Portelli;

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) tal-25 ta’ April 2007 – moghtija allura fil-konfront ta’ Portelli biss – li permezz taghha dik il-qorti sabet lill-Anthony Joseph Portelli mhux hati skond l-imputazzjonijiet migjuba kontra tieghu u minnhom illiberatu;

Rat ir-rikors ta’ appell ta’ l-Avukat Generali, minnu ppresentat fil-15 ta’ Mejju 2007, li permezz tieghu huwa talab ir-revoka ta’ din is-sentenza u li minflok Anthony Joseph Portelli jinstab hati skond l-imputazzjonijiet dedotti kontra tieghu u tigi nflitta fil-konfront tieghu il-piena skond il-ligi;

Rat u ezaminat bir-reqqa l-atti kollha; semghet lid-difensuri tal-partijiet fl-udjenza tat-28 ta’ Gunju 2007; ikkunsidrat:

L-aggravju ta’ l-Avukat Generali hu maghmul jikkonsisti filli huwa jikkontendi li l-ewwel qorti ghamlet apprezzament zbaljat u rragjonevoli tal-provi li kellha quddiemha, u li allura kien biss ghalhekk li Portelli gie lliberat.

Din il-Qorti, kif inghad, ezaminat il-provi bl-akbar reqqa, u ma tistax tifhem kif l-ewwel qorti seta’ kellha xi dubbju dwar l-involviment tal-appellat Portelli fl-offizi li garrbu Roberts, Garbutt u Fox. Il-kaz jinvolvi glieda f’bar, glieda li hadet ftit sekondi, u bhal f’kull sitwazzjoni simili kollox jiddependi mhux tant min-numru ta’ xhieda izda mill-kwalita` ta’ l-“identification evidence”. L-ewwel qorti, wara li ghaddiet in rassenja brevement il-provi, qalet hekk:

“Illi mill-verzjonijiet moghtija mill-feriti [recte: feruti] **jirrizulta li Stuart Roberts jindika li hu gie aggredit minn David Calleja, Melanie Garbutt li giet *head butted* minn Portelli, Lofthouse lanqas jiftakar lil Portelli prezenti, Fox Emily li giet *head butted* minn Calleja.**

“Irrizulta wkoll mill-investigazzjoni ta’ l-ispettur illi Portelli mitkellem *a tempo vergine* nnega li hu kien prezenti fil-Miracles Bar waqt l-incident. Oltre dan rinfaccjati bl-aggressuri taghhom fuq il-lok ta’ l-incident hadd mill-inglizi ma indentifikahom. Kien biss l-ghada li kkonfermaw li kienu Portelli u Calleja li aggredewhom.

“Jirrizulta wkoll li kemm Micallef Keith[1] **kif ukoll Catherine Wilson eskludew lil Portelli prezenti fuq il-post, Wilson billi tghid li ma ratux mentri Micallef qabel ma’ dak depost minn Portelli li hu mar jikkalma lil Calleja meta kienet gia bdiet il-kommozzjoni.**

“Ghaldaqstant il-Qorti tenut kont ta’ dan id-dubju naxxenti a favur ta’ Anthony Joseph Portelli qeghda

[1] Fil-fatt ma hemm ebda xhud Keith Micallef – li hemm huma Keith Caruana u Kevin Micallef.

tillibera lill-istess Portelli mill-akkuzi kif dedotti kontra tieghu.”

Bid-dovut rigward, ir-ragunament ta’ l-ewwel qorti mhux biss huwa semplicistiku ghall-ahhar ghax ma jiehux in konsiderazzjoni r-realtajiet ta’ glieda f’hanut tax-xorb, izda addirittura huwa bbazat fuq provi li l-ewwel qorti jidher li ma fehmithomx jew ma fehmithomx kollha.

Jibda biex jinghad li id-deposizzjonijiet tal-vittmi huma cari u precizi ghall-ahhar, b’fejn raw affarijiet jghidu li raw u fejn ma rawx, jghidu li ma rawx, u dan b’kuntrast evidenti ghad-deposizzjonijiet ta’ Kevin Micallef – sid il-*bar* – ta’ Catherine Wislon u ta’ l-istess appellat – li huma evazivi b’mod eklatanti. John Stuart Roberts (fol. 22 *et seq.*) jindika b’mod car li l-ewwel Calleja *“tapped me on my shoulder and asked me what my problem was”* u <u>wara xi hin</u> qala’ daqqa fuq rasu u fuq imniehru minghand Portelli u spicca jissara mieghu:

“I confirm that it was David Calleja who spoke to me and grabbed me by the chest but I also confirm that I do not recall Mr Calleja at any moment punching me. All punches came from the other accused Portelli. I remember receiving four punches and after that I had to defend myself.”[2]

Dan ix-xhud jghid wkoll li meta Garbutt marret tipprova tghinu, Portelli *“stood up, caught my grilfriend from her arms and head-butted her on the nose.”* Jghid ukoll li lil Portelli ma kienx rah qabel fil-*bar* u mar fuqu <u>wara</u> li kien hemm l-ewwel kuntatt ma’ Calleja. Ma hemm xejn fil-kontro-ezami ta’ dan ix-xhud li b’xi mod idaghjjef jew il-kredibbilita` tieghu jew il-korrettezza tal-identifikazzjoni tieghu.

Melanie Garbutt (jew Garbett) (fol. 28 *et seq.*) tikkonferma s-sekwenza ta’ l-incident, cioe` li l-ewwel ghaddew xi kliem bejn Roberts u Calleja, u wara hija intlaqtet, kienet “dazed” u, fuq parir tat-tfajla li kienet qed isservi wara l-

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[2] Fol. 25.

bank tal-*bar*, bdiet tiela t-tarag ghall-ambjent ta’ fuq tal-lokal, evidentement biex tevita li tigi involuta fil-glieda. Wara, izda, daret u regghet nizlet biex tghin lil Roberts (li hi tghid li dak il-hin ratu jissara ma’ persuna ohra, cioe` la Calleja u anqas Portelli) u li kien dak il-hin li Portelli taha daqqa b’rasu:

“I remember he first looked me straight into the eye and then head-butted me and then everything just stopped and we were able to walk out of the bar.”[3]

Neil Edward Lofthouse (fol. 32 *et seq.*) ighid li ma lahaqx ra min ta’ daqqa jew daqqiet lil Roberts ghax kien qed ihares f’direzzjoni opposta; pero` kif appena dawwar wiccu huwa ntlaqat f’wiccu u waqa’ fl-art u wara huwa wkoll tela’ fl-ambjent ta’ fuq. Id-daqqa jew daqqiet li dana Lofthouse qala’ hu jghid li qalaghhom minghand Calleja – u dan huwa konformi mas-sekwenza tal-incident kif temergi mill-provi, u cioe` li l-ewwel kien involut Calleja u <u>ftit wara</u> dahal fix-xena Portelli. Dan Lofthouse jghid bla tlaqliq:

“I do not recall seeing Mr Portelli at the time. By saying so I am not excluding that Mr Portelli was there. It is just that my attention was not drawn to him. I did not see Mr Roberts being hit at the time. I knew afterwards that he was hit…I do not know who hit me in the head, that is why I turned round to see so. In the moment I did so I was hit again in the face and that was the first time I saw the accused Mr Calleja. As I explained I then fell to the floor and was kicked and punched again but I do not know by whom. This all happened inside the Bar. I did not offer any resistence to all this. I did not punch anyone. I did not even defend myself, I just tried to get out of the way.”[4]

[3] Fol. 29-30.
[4] Fol. 34.

Huwa car, fil-fehma ta' din il-Qorti, li dan ix-xhud jista' jiddeponi biss dwar l-"ewwel parti" ta' l-incident, fejn kien involut Calleja u qabel ma dahal fix-xena Portelli.

Emily Fox (fol. 36 *et seq.*) ukoll tispjega li wara l-ewwel parti tal-incident – fejn allura, kif rajna, kien involut Calleja – hi u Garbutt telghu fl-ambjent ta' fuq tal-lokal. Hi tkompli:

"We turned round to see if Neil and Stuart were with us but they weren't We then went back down to try and help them. We then saw Stuart and Neil and both of them had a lot of people around them. I was trying to get to Neil, he was on the floor. As I turned round I got a head-butt in the face. I Identify the accused on the right who gave me the head-butt. The Court notes that the witness is referring to David Calleja. That knocked me on the floor and I was kicked. All I saw was feet coming at me and I just scrambled to get away."[5]

Pero` minnufih u fl-ezami stess din ix-xhud tikkoregi ruhha:

"I wish to correct myself. It was the person on the left, that is the accused on the left hand side which [recte: who] **head-butted me. The Court notes that the witness is referring to Anthony Joseph Portelli. Previously I said that it was the accused on the right because I was not facing him in the court room to state whether it was my left facing the court room or my left facing the accused. I could not see the person who had hit Neil."[6]**

Din il-kjarifika l-ewwel qorti, fis-sentenza taghha, jidher li haditha bhala xi forma ta' ambivalenza jew incertezza, tant hu hekk li f'pagna tlieta tas-sentenza jinghad: *"Aktar tard, pero`, tibdel il-verzjoni u tghid li kien fil-fatt l-akkuzat Portelli li kien ghamlilha 'head-butt'."* Bid-dovut rigward lejn l-ewwel qorti, meta d-deposizzjoni ma kienitx qed tigi

[5] Fol. 37.
[6] Fol. 38.

registrata direttament fuq it-*tape* izda, kif jirrizulta kjarament, is-sustanza tax-xiehda kienet qed tigi dettata mill-qorti, huwa evidenti li hawn ma hawn ebda "tibdil" da parti tax-xhud izda nuqqas ta' precizjoni f'dak li kien qed jigi ddettat mill-istess qorti.

Mela, kif tajjeb josserva l-appellant Avukat Generali fir-rikors tieghu, xejn anqas minn tlieta min-nies jidentifikaw lill-appellat bhala li kkagunalhom offizi. Id-deposizzjonijiet l-ohra kollha ma hemm fil-verita` xejn fihom li jista' jiskossa din l-identifikazzjkoni. Pjuttost, anzi, hemm punti li jikkonfermaw din l-identifikazzjoni jekk wiehed jazaminahom b'attenzjoni. Hekk, per ezempju, is-Surgent 874 Patrick Zammit ighid a fol. 51 li appena dahal lura fil-*bar* ma' Roberts u t-tfajla ta' dan Roberts, *"…indikali li kien hemm wiehed mal-bar u li indikali li kien wiehed minhom. Dan irrizulta li kien Anthony Portelli li sakemm jien mort biex inkellem lill-owner, Anthony Portelli gie minn quddiemi u beda jitkellem ma' Roberts"*. Hawnhekk jirrizulta li Portelli kellem lil Roberts b'ton aggressiv u ta' *bully* u kien f'dan l-istadju u anke wara li Calleja beda jkellem lil l-istess Roberts (dejjem issa fil-presenza tal-Pulizija)[7] li, mistoqsi ghal darb'ohra biex jidentifika lil min kien aggredih, Roberts qal – mhux car mid-deposizzjoni tas-surgent jekk hux darba jew aktar min darba – li kien konfuz. Dan hu perfettament komprensibbli – mhux biss huwa kien imbezza' izda rrizulta li kellu offiza gravi fis-sens li iz-zigoma tal-lemin kient sfrundata. In fatti, fl-okkorrenza tal-Pulizija hemm inizzel – wara li jinghad li Roberts identifika *"…one of the culprits as being Anthony Portelli who was still by the bar…" – "…but then hesitated and stated that he thought things were becoming confused. Later on after further enquiries by the police with the other suspect namely David Calleja who was found by the Ceasar's, same was confronted with victim Roberts but again could not confirm him as the culprit. As the victims <u>looked very shaked up by the outcome</u> and <u>needed medical treatment</u> they were advised to seek medical attention and <u>were escorted</u> to their*

[7] Ara fol. 55-56.

accommodation…" [8] (sottolinear ta' din il-Qorti). L-ghada, pero`, meta l-imsemmi Surgent mar ikellem lil Roberts l-isptar, dan ikkonferma min kienu l-aggressuri. Fi kliem is-Surgent:

"U ghidtlu ezatt biex jaghtina *description* ta' min huma. U hu qalli, mhux diga` ghidtlek il-bierah, u jien ghidtlu, inti ghidt li kont *confused* u li ma kienux huma. Qalli le kienu huma. *Definitely they were them*."[9]

Dan kollu l-ewwel qorti ma jidhirx li taghtu l-attenzjoni misthoqqa.

Kif inghad, id-deposizzjoni ta' Kevin Micallef hija wahda evaziva ghall-ahhar. Pero` dan ghall-anqas jikkonferma li waqt li kien qed jipprova jikkalma lil David Calleja dahal fil-*bar* l-appellat odjern, ghadda minn warajh u mar fid-direzzjoni ta' fejn kien hemm il-kommozzjoni u fejn kien hemm "daqqiet u tgerfix" – ara fol. 70-71[10]. Dan jikkonferma z-zewg fazijiet tal-incident, cioe` l-ewwel fazi meta kien involut Calleja u t-tieni fazi meta kien involut Portelli. Mill-bqija, pero`, tant kien evaziv dan ix-xhud, li l-ewwel qorti hasset il-htiega li twissih dwar il-konsegwenzi ta' spergur – ara fol. 76. L-istess jista' jinghad ghad-deposizzjoni ta' Catrina Wilson, il-*bar maid*. Din prattikament tant kienet biezla u attenta fuq xogholha li ma rat assolutament xejn. Ix-xhud Keith Caruana (fol. 122 *et seq.*) jghid li hu tant kien fis-sakra li ma jiftakar xejn dwar l-incident. Id-deposizzjoni ta' l-appellat, moghtija fit-22 ta' Frar 2006 (fol. 196 *et seq.*) b'ebda mod ma ddaghjjef il-kaz tal-prosekuzzjoni li gie ppruvat lil hinn minn kull dubbju dettat mir-raguni.

Mid-deposizzjoni tat-Tabib Anthony Gatt – fol. 145 *et seq.* – jirrizulta li Garbutt u Fox sofrew offizi ta' natura hafifa, mentri Roberts, peress li kellu z-zigoma sfrundata, sofra offiza ta' natura gravi, certament *per durata*.

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[8] Fol. 64.
[9] Fol. 53.
[10] Ara wkoll fol. 94.

Din il-Qorti, ghalhekk, hija sodisfatta li l-appellat Portelli huwa hati li kkaguna offizi ta’ natura hafifa fuq Garbutt u Fox, u offiza ta’ natura gravi fuq Roberts. Huwa minnu li din il-Qorti, bhala regola, ma tiddisturbax l-apprezzament tal-provi li tkun ghamlet l-ewwel qorti, izda dan hu hekk biss meta tali apprezzamant ikun, fic-cirkostanzi kollha tal-kaz, wiehed ragjonevoli, li f’dan il-kaz ma kienx. Ghalhekk l-appell ta’ l-Avukat Generali jimmerita li jigi akkolt. Kwantu ghall-imputazzjoni numru (5), pero`, din ma tirrizultax – il-fatt li Portelli kien, dak iz-zmien, membru tal-Forzi Armati ma jfissirx awtomatikament li japplika l-Artikolu 141 tal-Kap. 9. Anqas ma hemm prova ta’ kliem oxxen jew indecenti.

Ghall-motivi premessi, tilqa’ l-appell ta’ l-Avukat Generali u, filwaqt li tikkonferma s-sentenza appellata in kwantu din illiberat lill-Anthony Joseph Portelli mit-tielet u mill-hames imputazzjoni kif riportati aktar ‘l fuq f’din is-sentneza, thassarha u tirrevokaha fil-bqija u minflok issib lill-istess Anthony Joseph Portelli hati skond l-ewwel imputazzjoni u cioe` li volontarjament ikkaguna offiza ta’ natura gravi fuq il-persuna ta’ John Stuart Roberts, issibu hati wkoll skond it-tieni imputazzjoni izda limitatament fis-sens li volontarjament ikkaguna offiza ta’ natura hafifa fuq il-persuna ta’ Melanie Dawn Garbutt u Emily Bridget Fox, u hati wkoll skond ir-raba’ imputazzjoni (li hi assorbita fl-ewwel tnejn) u, wara li rat l-Artikoli 214, 215, 216(1), 221(1) u 17(b) tal-Kodici Kriminali, tikkundanna lill-appellat Anthony Joseph Portelli ghall-piena ta’ hames xhur prigunerija.

< Sentenza Finali >

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