Qorti tal-Magistrati (Ghawdex) Bhala Qorti ta' Gudikatura Kriminali .

Magistrat : Dr. Paul Coppini LL.D.

Seduta ta' nhar it-Tlieta 20 ta' Marzu, 2001 .

Kumpilazzjoni Numru : 2/2000 .

Il-Pulizija
(Spettur Antonello Grech)

vs

Brian Azzopardi .

Il-Qorti,

Rat l-imputazzjoni li biha Brian Azzopardi gie akkuzat talli fl-14 ta' Awissu 1998, fl-inhawi maghrufa bhala l-Qbajjar, limiti ta' Marsalforn, b'nuqqas ta' hsieb, bi traskuragini, jew b'nuqqas ta' hila fl-arti jew professjoni tieghu, jew b'nuqqas ta' tharis tar-regolamenti kkaguna il-mewt ta' Michael Sheppard jew b'xi mod ikkontribwixxa ghall-mewt tieghu .

Rat l-atti tal-Process Verbal ta' l-inkjesta relattiva ghall-incident mertu ta' din il-kawza .

Rat il-verbali tax-xhieda kollha mismugha .

Rat id-dokumenti esebiti .

Rat l-att tar-rinviju ta' l-Avukat Generali tal-31 ta' Lulju 2000 fejn, billi deherlu illi mill-kumpilazzjoni f'dan il-kaz tista' tinstab htija (jew htijiet) taht dak li hemm mahsub fl-artikoli 225, 20 u 533 tal-Kodici Kriminali, ddecieda illi kif hemm mahsub fl-artikolu 370(3)

(b) u (c) tal-Kodici Kriminali, jibghat lill-imputat biex jigi gudikat minn din il-Qorti fin-nuqqas ta' oggezzjoni ta' l-istess imputat .

Semghet lill-imputat jghid li ma jsib l-ebda oggezzjoni li din il-kawza tkompli tinstema u tinqata' minn din il-Qorti bhala Qorti ta' Gudikatura Kriminali .

Semghet lill-istess imputat jixhed .

Semghet it-trattazzjoni tad-difensur ta' l-imputat .

Ikkunsidrat :

Illi mill-provi prodotti rrizulta illi Michael Sheppard, turist ingliz ta' sitta u erbghin sena (46), fit-tlettax (13) ta' Awissu 1998 kien ghamel l-ewwel 'dive' tieghu ma' l-imputat, diving instructor kwalifikat, fil-bajja tax-Xwejni li tigi ma' gemb il-bajja tal-Qbajjar, fejn sehh l-incident li wassal ghall-mewt ta' l-imsemmi Michael Sheppard . Dakinhar kollox mar sewwa u ghalhekk hu u t-tifel tieghu Ben ta' xi tlettax (13) il-sena, li ma kienx principjant bhal missieru, peress illi kien gia ghamel kors ta' 'diving' is-sena precedenti fil-Grecja, regghu thajru jaghmlu 'dive' ohra l-ghada l-14 ta' Awissu .

Nizlu ghall-habta tas-sitta ta' filghaxija (6.00p.m.) fil-bajja tal-Qbajjar, minn fuq rampa li hemm hdejn il-Horizon Restaurant . Maghhom inghaqad certu Luca Rognone turist taljan, li kien ser jaghmel l-ewwel 'dive' tieghu . Qabel ma' nizlu fil-bahar, Azzopardi tahom l-istruzzjonijiet kollha mehtiega ghal dan id-'dive', fosthom illi kellhom joqghodu flimkien bhala grupp, tnejn tnejn skond il-procedura rikjesta . Billi t-taljan kien ghadu principjant ghal kollox kellu jakkumpanjah l-imputat, u l-inglizi kellhom jakkumpanjaw lil xulxin . Nizlu jghumu f'fond ta' tliet (3) metri f'bahar mhux iktar fond minn erba' (4) metri fid-direzzjoni tat-torri li hemm fil-gemb tax-xellug ta' din il-bajja . Regolarment Azzopardi kien ihares lejn l-alljevi tieghu biex jara li kollox kien sew u dawna jaghmlulu s-sinjal miftiehem .

Wara li kien ilhom jghoddsu b'dan il-mod ghal madwar sittax (16) il-minuta, Azzopardi ccekkja l-'pressure gauge' ta' kull wiehed

mill-alljevi li kellu mieghu u innota illi dawn kien ghad baqghalhom aktar minn-nofs tac-cilindri ta' l-arja mimlijin . Madankollu ddecieda li jibdew it-triq lura lejn l-art . Meta' pero', wara xi zewg minuti rega' hares lura, innota li Ben Sheppard kien wahdu u missieru ma kien jidher imkien . Fittxew inutilment lil Sheppard ghal xi minuta u imbaghad ta struzzjonijiet lit-taljan u lit-tifel biex jitilghu fil-wicc u jistennewh hemmhekk . L-imputat rega' ghodos wahdu jfittex lil Sheppard . B'sogru personali dam ifittxu ghal madwar hmistax (15) il-minuta fil-bahar, imma ghal xejn . X'hin, peress li kienet qed tonqoslu l-arja, rega' tela' fil-wicc, innota kommozzjoni fuq il-blat u nduna li kien qed jittella' ragel mill-bahar . Huwa mmagina mill-ewwel x'seta'gara u telaq jigri lejn l-art .

Michael Sheppard kien ittella' fuq l-art minn certu Carmel Seguna, bughaddas ukoll, illi kien fl-inhawi dak il-hin, u nizel ghalieh, wara li sema' n-nies jghajtu li kien hemm ragel f'diffikultajiet f'nofs il-bajja . Sheppard kien liebes ic-cintorin tac-comb madwar qaddu fuq id-'diving suit' u l-'flippers' . Pero' ma kellux la l-maskra u lanqas ic-cilindru ta' l-arja fuqu . Qabel ma lahqet giet l-ambulanza, inghata l-'cardo pulmonary resuscitation' minn turista ingliza li nzertat fuq il-post, imma sakemm twassal l-isptar gie ccertifikat mejjet . Mill-awtopsja li saret fuq il-kadavru rrizulta li l-kawza tal-mewt kienet 'salt water drowning' (ara rapport a fol. 82-84 tal-process) .

Permezz tal-kawza prezenti Brian Azzopardi qed jigi akkuzat illi b'negligenza ikkaguna l-mewt ta' Michael Sheppard jew li b'xi mod ikkontribwixxa ghall-mewt tieghu . Fil-ktieb "The Law and the Diving Professional" ta' E. Steven Coren, ippublikat fl-1995 mill-'Professionl Association of Diving Instructors" (PADI), l-istess istitut li ccertifika lill-imputat bhala 'driving instructor' kwalifikat, insibu jinghad fil-kapitolu li jittratta n-negligenza illi :

"It is impossible to predict the proper duty that is owed to a student in any particular situation involving injury to a student . Each situation has its own innumerable factors to be considered . However, there are some general standards against which an instructor's conduct in a situation will be measured . These

standards help define the duty of care owed by a scuba instructor . The following areas are suggestive of such standards :

1. A scuba instructor should possess and use that degree of knowledge, ability and skill usually possessed by competent instructors in the field of scuba instruction .

2. A scuba instructor's conduct will be measured against the commonly accepted standards of instruction on national diving-instruction organisations .

3. A scuba instructor must exercise that same degree of care that would be exercised by a reasonably prudent scuba instructor in the same situation when considering the current state of advancement of the profession .

4. To satisfy this duty of teaching a student properly and keeping the student safe from any unreasonable risk, an instructor must be concerned with every aspect of a scuba course . (p. 25-26) .

F'dan ir-rigward l-imputat spjega fid-dettal sew waqt l-inkjesta magisterjali kif ukoll quddiem din il-Qorti l-proceduri kollha minnu adottati in konnessjoni ma' d-'dive' in kwistjoni . Hekk naraw illi wara li Michael Sheppard u ibnu gew iccertifikati validi ghad-'diving' mit-tabib Mario Saliba, ghamillhom kors hafif ta' teorija bazika qabel ma' hadhom ix-Xwejni ghall-ewwel 'dive' . L-ghada, il-jum ta' l-incident, inghaqad maghhom Luca Rognone . Fi kliem l-imputat : " … tlaqna ghal din id-dive u kif ftehmna minn qabel, jiena qghadt 'buddy' ma' Luca Rognione … peress li huwa kellu l-inqas esperjenza …. L-ohrajn, Ben u Michael, kienu 'buddies' ma' xulxin illi dejjem jibqghu fil-vicinanzi taghna …… dejjem f'area fejn dak li jkun jista' jarak tajjeb …. Dik hija d-'dive' kif naghmluha, nimxu, … indur kultant u ….. nikkontrolla kemm baqghalhom arja; jiena rrid nara wkoll fejn sejjer u …. nara kemm sar hin …. imbaghad x'hin tilhaq il-hamsa u ghoxrin minuta mid-dive, ghax ahna ghamilna ghaxar minuti ezercizzju, hmistax il-minuta sejrin f'direzzjoni … u dorna lura …. ma deher li kien hemm xejn pero', peress li kulhadd ghamel is-sinjal ta' cirku b'subajh illi jfisser OK, kollox tajjeb . Ahna bdejna gejjin lura, l-istess, niccekja kultant dak li jkun kemm baqaghlu arja . Jiena

miexi quddiem . Ma’ gembi ghandi t-taljan . Issa t-tnejn l-ohrajn jistghu joqghodu warajja, jistghu joqghodu ma’ gembi, … ahna m’ghandniex ordni, jridu jibqghu fil-vicinanzi … imma jekk jinqala’ xi haga jien rrid inkun f’posizzjoni li nghinhom . Issa dan biex jurini jista’ jew itaptapli fuq spalti jew jigbidli l-fin kif normalment jigri jekk jinqalghalu xi haga li jiena ifhem, ma nkunx f’posizzjoni li narah . ... gara illi f’dawn ic-cirku ta’ attivitajiet kont inhares, kulhadd jghidli li kollox tajjeb, imbaghad f’hin minnhom jiena harist u lil Mike Sheppard ma rajtux mat-tifel tieghu … ” (a fol. 147 et. seq tal-process) .

Huwa appuntu hawnhekk biss illi l-espert tekniku, Antonio Anastasi, inkarigat mill-magistrat inkwirenti, deherlu illi seta’ naqas minn dmiru l-imputat, ghax fl-inkjesta relattiva dan stqarr illi : “**Imxejna daqs zewg minuti ohra, ergajt harist lura u nara lil Mike nieqes**” . (a fol. 61 tal-process) . Fir-rapport tieghu l-istess espert jghid f’dan ir-rigward “Two minutes is a long time . An eternity underwater . Experienced, qualfied divers should not allow such a long time to pass between one glance and another . The instructor has a duty to care . This also means direct, constant supervision, so that trainees are as much as possible within sight,” (a fol. 73 tal-process) .

Madankollu l-espert ‘ex parte’ prodott biex jixhed mill-intimat, Carmel Vella Brincat, illi bhall-espert fl-inkjesta ghandu esperjenza vasta f’dan l-isport, ma sab xejn irregolari fl-agir ta’ l-imputat . Fil-fehma tieghu : “… jiena anke mir-rapport stess hareg, li l-procedura giet segwita . Jigifieri kien miexi, kemm bhala ‘briefing’ qabel, kemm bhala waqt id-‘dive’, kien qed jimmoniterjahom u anke wkoll jigifieri, il-procedura li ttiehdet meta indunaw li kien hemm persuna nieqsa” . (a fol. 167 tal-process) .

Fil-ktieb “Law and the Diving Profession” gia citat insibu jinghad f’dan ir-rigward illi : “Supervision and control must provide adequate care and safety for the scuba students . It is crucial to maintain both visual contact and sufficient proximity at all times to enable effective and rapid response in case of a problem … Supervision also requires a more strict interpretation during an entry-level scuba course (bhal ma kellna fil-kaz in ezami) than it would during an advanced scuba course … Regardless of the level

of training, it is recommended that an instructor be in the water and in proximity to the students whenever feasable even if it is not specifically required by certification standards.” (p. 69)

Minn dak li rrizulta mill-kaz in ezami jidher ampjament illi, hlief ghall-kwistjoni jekk setghax induna qabel li Sheppard kien illontana ruhu mill-grupp, kulhadd jaqbel illi l-imputat osserva skrupolozament ir-regoli kollha mehtiega ghal ‘dive’ bhal dik in ezami . Dan anke meta nduna bin-nuqqas ta’ Sheppard, u b’riskju personali ghalieh, wara li ha hsieb l-aljevi l-ohra, rega' nizel joghdos f’’tentattiv li jsibu .

Zgur li ma rrizultat ebda prova li tista’ tindika, lanqas b’mod l-aktar remot, illi Azzopardi seta’ ikkaguna l-mewt ta’ Michael Sheppard, kif jinghad fl-akkuza . Nafu illi Sheppard miet kawza ta’ l-ilma bahar li bela’ wara li sab ruhu f’diffikultajiet f’nofs il-bajja tal-Qbajjar . Biex spicca f’dik il-pozizzjoni lahaq gham bicca sewwa taht il-bahar, ghax fil-hmistax il-minuta li Azzopardi dam ifittxu ma seta’ jilmhu mkien . Infatti jidher illi lahaq tbieghed sew minn fejn kienu shabu, fil-gemb tal-bajja taht it-torri, (skond il-pjanta esebita mill-imputat, distanza ta’ circa mija u tmenin metru ; Dok. BA 1 a fol. 163) . Fil-fatt ic-cilindru ta’ l-arja ta’ Sheppard, wara li gie ezaminat, nstab li kien vojt . Dan ma kienx dovut ghall-ebda hsara, imma x’aktarx ghax Sheppard kien hlieh kollu qabel ma ddecieda li jinzghu minn fuqu, flimkien mal-maskra, f’nofs il-bajja . Ma rridux ninsew illi lahqu ghaddew qisu hamsa u ghoxrin minuta ohra minn x’hin induna bin-nuqqas tieghu l-imputat . F’tali sitwazzjoni, bic-cintorin tac-comb ghadu marbut ma’ qaddu, ma setghax ma kienx difficli ghal Sheppard li jzomm f’wicc l-ilma, bil-konsegwenza li gara dak li gara .

Jibqa’ biss ghalhekk sabiex tigi ndagata l-akkuza alternattivi ta’ negligenza kontributorja fl-imputat, u fil-kaz partikolari taghna jekk l-imputat naqasx mill-obligu tieghu ta’ supervizjoni fuq Sheppard . Fl-istandards generali hawn fuq iccitati, nsibu illi : “A scuba instructor must exercise that same degree of care that would be exercised by a reasonably prudent scuba instructor” . Ghamel jew le l-imputat dak li wiehed kien jistenna minnu fic-cirkostanzi partikolari tal-kaz? F’dive li kienet tidher ghal kollox normali u bla ebda problemi sa x’hin bdew jirritornaw lura ghax-xatt, f’bahar

kalm, car u relattivament baxx ta’ mhux aktar minn tliet metri, bil-proceduri kollha mehtiega li kien qed isegwi kontinwament l-imputat, ma jidhirx illi kellu ghalfejn jissuspetta daqstant f’ Sheppard jew ibnu li ma setghax jaqla’ ghanejh minn fuqhom . Fil-bidu tad-dive kien spjega l-importanza li jzommu kollha ma’ xulxin, u infatti t-tifel hekk ghamel il-hin kollu u baqa’ jsegwi l-imputat . Bejn titwila u ohra l-imputat kellu diversi affarijiet x’jaghmel, kif fisser fid-dettal fid-deposizzjoni tieghu . Jekk ma vverifikax qabel li kollox kien ghadu sew maz-zewg aljevi ta’ warajh, dan zgur m’ghamlux b’kapricc jew ghax insihom, imma ghaliex fic-cirkostanzi ma kienx jidher opportun li jaghmel hekk . Jekk Michael Sheppard ghal xi raguni jew ohra, fettillu proprju x’hin l-instructor tieghu ma kienx qed ihares lejh, jitbieghed minn mal-grupp, m’ghandux jitfa’ dell ikrah fuq l- imputat . Infatti lanqas lit-tifel li kien ma’ gembu l-hin kollu ma jidher li nforma b’li kien ser jaqbad u jaghmel, ghax Ben ma kienx kapaci jispjega x’gara x’hin induna l-imputat li Sheppard kien sparixxa .

Fid-dawl ta’ dawn ir-rizultanzi hija l-fehma ta’ din il-Qorti li lanqas ma jezistu provi konvincenti bizzejjed biex jista’ jinghad fil-grad ta’ certezza mehtiega mill-ligi fil-kamp kriminali illi l-imputat ikkontribwixxa b’xi mod b’ghemil negligenti, traskuragni jew nuqqas ta’ hila fil-professjoni tieghu ghall-mewt sfortunata ta’ l-imsemmi Michael Sheppard .

Ghaldaqstant tilliberah mill-akkuzi kollha kif dedotti .

(ft) Paul Coppini
Magistrat

(ft) Francis Attard
Deputat Registratur

SK200Pc