

QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA` GUDIKATURA KRIMINALI

MAGISTRAT:

DR JOSEPH CASSAR BA., LL.D.

Il-Pulizija

(SpetturI Neil Harrison / Sandro Zarb)

vs

Marzouki Hachemi Beya Bent Abdellatif

Illum 21 ta` Gunju 2001.

Il-Qorti,

Wara li rat l-akkuza kontra l-imsemmija Marzouki Hachemi Beya Bent Abdellatif ta` nazzjonalita` Tunezina, ta` 41 sena, bint Abdellatif u Rokajja, imwielda Tripoli, Libja fit-12 ta` Frar 1958, prezentement mizmuma fil-Facilita` Korrettiva ta` Kordin u li ghandha passaport bin-numru K 647085 mahrug f`Tunez fit-22 ta` Dicembru 1993.

Talli f`dawn il-Gzejjer fl-4 ta` Novembru 1996, fit-18 ta` Frar 1997, fit-3 ta` Novembru 1997 u fid-9 ta` Dicembru 1997;

(1) Tghat xhieda falza fi proceduri kriminali dwar delitt suggett ghal piena akbar mill-piena ta` prigunerija ghal zmien sentejn, sew kontra kemm favur il-persuna akkuzata;

(2) Halfet falz quddiem Magistrat;

(3) Bil-qerq, holqot jew gieghlet li jidher li donnu hemm fatt jew cirkostanza sabiex dan il-fatt jew cirkostanza li jkunu jistghu il-quddiem jiswew bi prova kontra persuna ohra, bil-hsieb li b`hekk din il-persuna tkun tista tigi kontra s-sewwa, akkuzata jew misjuba hatja ta` reat.

Rat in-nota tal-Avukat Generali tas-26 ta` April 1999 u rat li l-akkuzata ma oggezzjonatx li l-kaz taghha jigi trattat bi procedura sommarja minn din il-Qorti.

Rat li fl-imsemmija nota l-Avukat Generali qal li tista tinstab htija jew htijiet taht dak li hemm mahsub fl-Artikoli 104(1), 108, 110(1), u 17 (b) tal-Kodici Kriminali.

Semghet ix-xhieda bil-gurament;

Rat id-dokumenti esibiti;

Rat l-atti kollha;

Semghet it-trattazzjoni tad-difiza li ttiehdet shiha u rat in-nota ta` sottomissjonijiet tal-prosekuzzjoni;

Ikkunsidrat:

(1) Illi fl-akkuza jissemmew erba` okkazzjonijiet:

(a) 4 ta` Novembru 1996, stqarrija tal-akkuzata quddiem il-Magistrat Dottor Carol Peralta (fol 112 – 123), fejn jissemma l-isem ‘Geddeda’. Dak inhar stess l-akkuzata kienet ghamlet stqarrija quddiem il-pulizija biss.

(b) 8 ta` Marzu 1997 meta l-imputata tghat xhieda fil-kumpilazzjoni taghha stess. Wara l-imputata tressqet quddiem il-Qorti tal-Magistrati. Inghatat sentenza mill-Qorti tal-Magistrati (Malta) fl-1 ta` Lulju 1997 u wara stante appell mill-imputata inghatat sentenza mill-Onorabbli Qorti tal-Appell fis-16 ta` Frar 1998 (fol 134 – 155 u fol 173 – 176).

(c) 3 ta` Novembru 1997 (fol 86 - 89) xhieda tal-akkuzata quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti Istrutturja fi proceduri kontra Hisham Bashir Abuzukhar.

(d) 9 ta` Dicembru 1997 (fol 90 – 92) meta l-akkuzata ghal darb`ohra xehdet quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti Istrutturja fi proceduri kontra Hisham Bashir Abuzukhar.

2. Illi fin-noti tieghu Sir Anthony Mamo meta jirreferi għall-ispergur jgħid (fol 60 et seq) (Artikolu 104).

“Our law does not give a definition of the crime of perjury or false testimony, or as it is called in some other systems of law, legal or judicial perjury. But it is certain that the essential constituents of such crime are:

- (i) A testimony, given in a cause, whether criminal or civil;
- (ii) On oath, lawfully administered by the competent authority;
- (iii) Falsity of such testimony in a material particular;
- (iv) Wilfulness of such falsity or criminal intent.

3. Dwar l-ewwel rekwizit ifiehem il-kelma ‘cause’.

“any contentious proceedings which call for a decision.....it seems that false evidence given before the Court of Magistrates sitting as a Court of Preliminary Inquiry, does not constitute the crime of false testimony, because the proceedings before that court are not a cause (e.g, a formal trial where a final decision must be taken....)

4. L-abili difensur tal-imputata barra li qajjem l-argument dwar x`inhu ‘cause’ semma wkoll t-treggih lura ta` dak kollu li kienet xehdet l-akkuzata f`mument waqt xhieda quddiem l-Onorabbli Qorti Kriminali (fol 249 – 255).

5. It-treggih lura ta` xhieda li twassal ukoll li xhud jghid is-sewwa 'tinnewtralizza' l-ispergur. Din in-newtralizzazzjoni ma tirrizultax mil-ligi imma mill-gurisprudenza. L-Artikolu 602(1) tal-Kapitolu 12 hu applikabbli għall-procedimenti kriminali bl-Artikolu 645 tal-Kapitolu 9; xhud jista` jagħmel xi zieda jew korrezzjoni f` dak li jkun qal, u dan f` kull zmien qabel l-gheluq tas-smigh tal-kawza. Min din id-dispozizzjoni jsegwi li d-diversi partijiet tad-dispozizzjoni jiffurmaw haga wahda indivizibbli, u li d-dispozizzjoni ma tistax titqies kompleta u irriedibbli hlief meta s-smigh tal-kawza jkun definittivament magħluq.

6. Jghid Sir Anthony Mamo (ibid)..

“A witness who retracts any untruthful deposition before it has caused to the community or to the individual an irreparable injury, thereby voluntarily negatives the effects thereof. The law creates the crime of false testimony only in as much as this may wrongfully influence the decision in the cause and unless a person who has given the false testimony prevents its effects in time, one of the ingredients of the crime, that is, the possibility of misleading justice and causing an injury, ceases to exist.

7. It-treggih lura jew ahjar l-effetti tieghu fil-konfront ta` l-akkuzat ma japplikax għall-Artikolu 108 (ara Mamo ibid u s-sentenza ta` l-Onorabbli Qorti tal-Appell in re ‘Il-Pulizija vs Filletti et’ (24 ta` Novembru 1992) Skond l-Artikolu 108 (1);

“Kull min f` kull kaz iehor mhux imsemmi fl-artikolu ta` qabel ta` dan is-sub titolu, jahlef falz quddiem Magistrat jew quddiem ufficcjat iehor li jkollu s-setgha b`ligi li jagħti l-gurament, jehel meta jinsab hati....”

8. Importanti ghall-kaz li ghandha quddiema din il-Qorti l-Artikolu 639 (1) tal-Kodici Kriminali:

".....hadd ma jista` jigi misjub hati ta` kalunja, spergur jew gurament falz, fuq ix-xhieda waheda ta` xhud wiehed biss li jmieri l-fatt li jkun xehed qabel taht gurament l-imputat jew l-akkuzat; izda dan l-imputat jew akkuzat jista` jigi misjub hati fuq ix-xhieda ta` xhud wiehed biss, meta din ix-xhieda tkun korroborata f`xi cirkostanza li tkun tisma` biex tistabilixxi d-delitt allegat, minn provi ohra migjuba skond il-ligi."

9. (a) Stqarrija tal-akkuzata fl-4 ta Novembru 1996 quddiem il-Magistrat Dottor Carol Peralta (fol. 112 - 113).

F`din l-istqarrija l-akkuzata tal-lum halfet falz quddiem Magistrat. Meta din l-istqarrija titqabbel max-xhieda li nghatat quddiem il-Qorti Kriminali fil-hin li l-akkuzata f`dawk il-procedueri regghet lura kull ma kienet qalet qabel, l-istqarrija bl-aktar mod car, tirtirizulta li hi falza. F`din l-istqarrija xliet bniedem li kienet taf li qed tigdeb fuqu u xlietu b`affarijiet serji. Kienet taf sewwa x`qieghda taghmel. Mix-xhieda moghtija quddiem il-Qorti Kriminali l-akkuzata ammettiet li kull ma gara qabel kien inventat. Id-delitt allegat gie pruvat skond il-ligi (ara 'Il-Pulizija vs Filletti et' fuq imsemmi)

Ghalhekk l-akkuzata hi hatja 'ai termini tal-Artikolu 108 (1) tal-Kapitolu 9 tal-Ligijiet ta` Malta.

(b) Xhieda moghtija mill-imputata fit-18 ta` Frar 1997 f kumpilazzjoni kontra taghha.

Hawnhekk jirrizultaw l-elementi kollha tar-reat kontemplat fl-Artikolu 104 tal-Ligijiet ta` Malta (ara para 3 ta` din is-sentenza). Jekk din ix-xhieda titqabbel max-xhieda moghtija quddiem il-Qorti Kriminali in re- "Ir-Repubblika ta` Malta vs Ramadan Ahmed Suleiman Geddeda" tohrog cara il-falsita`. Dawn il-proceduri intemmu b`sentenza moghtija mill-Onorabbli Qorti tal-Appell wara appell mill-akkuzata, fis-16 ta` Frar 1998. Hawn il-falsita` materjali wkoll. Din ix-xhieda inghatat mill-imputata fi proceduri kontra taghha stess. Jghid Sir Anthony Mamo (ibid);

"As regards the accused himself.....he is a competent though not a compellable witness. If he chooses to give evidence he is liable to be cross-examined notwithstanding that such cross-examination may tend to criminate him of the offence with which he is charged. All the provisions relating to witnesses shall, in such case, apply to the accused giving evidence on oath. Therefore if he makes a false deposition he becomes guilty of the crime of false testimony." (sottolineament tal-Qorti)."

Ghalhekk l-akkuzata hija hatja a tenur ta l-Artikolu 104 (1) tal-Kapitolu 9.

Jinghad ukoll li dwar dawn iz-zewg akkuzi hemm stqarrija ta l-akkuzata maghmula fid-19 ta` Jannar 1998 (fol 32 - 34) fejn regghet ikkonfermat dak li gara 'fil-guri' ta` Geddada.

- (c) Xhieda moghtija mill-akkuzata quddiem il-Qorti tal-Magistrati bhala Qorti Istrutturja fit-3 ta` Novembru 1997 u fid-9 ta` Dicembru 1997.

Quddiem din il-Qorti giet ipprezentata xhieda ta l-akkuzata fil-kaz "Il-Pulizija vs Hisham Bashir Abuzukhan", moghtija quddiem il-Magistrat (illum Imhalled) Dottor Patrick Vella. Tissemma mill- Prosekuzzjoni l-istqarrija a fol 321 li jirreferi biss ghal Geddeda. Il-Qorti ma ssibx li gie ppruvat xi wiehed mir-reati mnizzla fl-akkuza (paragrafi (a)(b)(c)). Ma hemmx l-elementi mitluba mill-ligi biex xi hadd jinstab hati tal-akkuzi.

Ghalhekk il-Qorti fuq ix-xhieda f`dawn iz-zewg u l-ahhar okkazjonijiet ma ssibx lill-akkuzata hatja.

10. Il-Qorti rat l-Artikoli 108 (1), u 104 (1) u 17 tal-Kapitolu 9, issib lill-akkuzata hatja talli fl-4 ta` Novembru 1996 halfet falz quddiem Magistrat kif issibha wkoll hatja li fit-18 ta` Frar 1997 tat xhieda falza fi proceduri kriminali, **tikkundannaha ghal piena komplessiva ta` tlitt (3) snin prigunerija** li minnhom ghandu jitnaqqas iz-zmien li l-akkuzata ghamlet taht arrest preventiv minhabba dan il-kaz. Tilliberaha fuq l-akkuzi l-ohra minhabba nuqqas ta` provi.

Il-Qorti qed **tapplika l-piena ta` interdizzjoni generali, interdizzjoni milli l-hatja sservi bhala xhud hlief quddiem**

**il-Qrati tal-Gustizzja u bhala perit, ghaz-zmien ta` hames
(5) snin mill-lum.**

11. Rat it-talba tal-prosekuzzjoni ai termini tal-Kapitolu 217, tilqa` t-talba billi l-akkuzata instbet hatja, u hekk hija immigranta ipprojbata u **tordna li hrug ta` Ordni ta` Tnehhija** kontriha li ghandha titwettaq meta l-hatja tkun skontat il-piena ta` tlitt snin ta` prigunerija..

Vera kopja

Dr Joseph Cassar

MAGISTRAT

L Spiteri Bailey

Dep Reg.