MALTA

QORTI TAL-MAGISTRATI (GHAWDEX) BHALA QORTI TA' GUDIKATURA KRIMINALI

MAGISTRAT DR. EDWINA GRIMA

Seduta tas-17 ta' Frar, 2011

Numru. 526/2008

Il-Pulizija

(Spettur Frank Anthony Tabone)

Vs

NATHALIE MICALLEF ta' 28 sena binT Francis Xavier u Maria Dolores nee' Spiteri, imwielda ir-Rabat (Ghawdex) nhar il-24 ta' Dicembru 1982, residenti fil-fond Flat 2, Sea View Crt, Triq Santa Marija, Marsalforn detentrici tal-karta ta'l-identita' numru 1483(G)

Il-Qorti,

Rat l-imputazzjoni migjuba kontra l-imputata Nathalie Micallef li permezz taghha hija giet akkuzata talli nhar it-13 ta' Lulju 2008 ghal habta ta' nofsinhar (1200hrs) fl-inhawi ta' Triq l-Imgarr, Rabat, Ghawdex:

a. ikkagunat lil haddiehor jibza' li ser tintuza vjolenza kontrih jew kontra l-proprjeta tieghu jew

kontra il-persuna jew il-proprjeta’ ta’ xi hadd mill-axxendenti, dixxendenti, ahwa subien jew bniet u dan ghad-detriment ta’ Mark Vassallo u Christian Vassallo.
b. Talli fl-istess data, lok u cirkostanzi, kissret volontarjament il-bon ordni u il-kwiet pubbliku.
c. Talli fl-istess data, hin, lok u cirkostanzi hebbet kontra il-persuni ta’ Mark Vassallo u Christian Vassallo sabiex tingurja, idejjaq jew taghmel hsara lil din il-persuna jew lil haddiehor.

Rat id-dokumenti esebiti u l-atti kollha ta’ dan il-procediment.

Semghet il-provi.

Semghet it-trattazzjoni.

Ikkunsidrat:

Illi mill-provi mismugha f’dawn il-proceduri rrizulta illi dana l-incident ghandu bhala sfond kwistjoni familjari li jidher illi ilha ghaddejja ghal xi zmien. Jidher illi bejn missier l-imputata u hutu kien inqala’ xi disgwid dwar il-wirt ta’ommhom, tant illi dawn ma baqghux jitkellmu. Rose Vassallo li tigi z-zija tal-imputata u omm Mark u Christian Vassallo il-parti leza f’dina l-istanza, ma baqghetx tghix gewwa Ghawdex mal-familja taghha u ghalhekk kien inqata’ l-kuntatt bejnha u bejn il-familja taghha. Jidher illi ghalkemm it-tifel taghha Mark kien spiss jitla’ Ghawdex u jzur in-nannu tieghu, missier Rose, madanakollu t-tifel Christian kien ilu ma jara lil nannuh zmien twil. Fil-fatt it-tifel ighid illi qabel ma sehh dana l-incident l-ahhar li kien ra lil nannuh kien fil-precett u cioe’ xi tlett snin qabel u kien rah ukoll f’xi okkazzjoni ohra. Kien ghalhekk illi fil-gurnata tat-13 ta’ Lulju meta Mark iddecieda itella’ lil huh iz-zghir mieghu Ghawdex, jidher illi n-nannu u cioe’ Emanuel

Micallef kien ferah meta ra lit-tifel iz-zghir wara hafna zmien. Huma ltaqghu man-nannu gewwa t-Tapai Bar ir-Rabat fejn in-nannu kien ihobb imur ta' sikwit ghat-te ma' shabu. Iktar tard in-nannu qalilhom biex jinzlu mieghu sad-dar tieghu u cioe' sar-razzett imsejjah Ta' Bendu li jinsab gewwa Triq l-Imgarr. Christian nizel ma' nannuh fil-vann tieghu filwaqt illi Mark segwieh bil-karozza tieghu. Hekk kif wasslu hdejn il-farm u filwaqt li kienu ghadhom fil-vetturi, wasal fuq il-post zijuhom Francis Micallef u bintu l-imputata. Jidher illi hekk kif rahom Micallef irrabja u sahansitra tajjar platt tal-ikel li kellu f'idejh. Huwa beda jghajjat u jistaqsi lil Mark ghalfejn kienu marru hemmhekk. Jidher illi anke l-imputata bdiet tghajjat u tistaqsi lil Mark Vassallo 'il ghala kien qieghed hemm u f'xi hin jidher illi bdiet issabbat b'idejha miftuha fuq il-bonnet tal-vettura ta' Mark Vassallo. Izda jidher illi f'dana l-mument missierha hareg mir-razzett tan-nannu b'arma tan-nar f'idejh u biha beda jhedded lil Vassallo. Hawnhekk jidher illi l-imputata marret tigri fuq missierha biex tipprova tikkalmah.

Illi l-ewwel akkuza migjuba kontra l-imputat hija dik prevista fl-artikolu 251B tal-Kodici Kriminali u cioe' r-reat tal- hekk ismejjah *harassement*. Illi f'sentenza moghtija mill-Qorti tal-Appell Kriminali fl-ismijiet Il-Pulizija vs Raymond Parnis (per Prim'Imhallef Vincent DeGaetano 24/04/2009), il-Qorti tat definizzjoni ezawrjenti ta' dak li jikkostitwixxi l-*harassement* taht dina d-disposizzjoni tal-ligi. Il-Qorti tal-Appell fis-sentenza taghha fil-fatt tissottolinja l-fatt illi l-kelma "imgieba" fit-test tal-ligi timplika "a course of conduct" u mhux xi incident wiehed izolat. Il-Qorti tistqarr:

… illi dawn l-affarijiet kollha li sehhew fil-kuntest ta' incident wiehed – ma jistghu qatt jammontaw ghar-reat kontemplat fl-Artikolu 251B imsemmi. Dan ir-reat gie evidentement ispirat mill-Artikolu 4(1) tal-*Protection from Harassment Act, 1997* tal-Ingilterra, liema artikolu jipprovdi testwalment hekk: *"A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those*

occasions." L-Artikolu 251B taghna – u hawn il-Qorti ser tuza t-test Ingliz proprju biex wiehed ikun jista' jara x-xebh u fejn saru t-tibdiliet – jipprovdi, fis-subartikolu (1) tieghu, hekk: *"A person whose course of conduct causes another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in sub-article (1) of article 222 shall be guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions…"* . Il-kliem "on each of those occasions" huma indikattivi li l-att materjali ma jistax isehh f'okkazjoni wahda izda jrid ikun hemm ghall-anqas zewg okkazjonijiet – proprju kif jinghad fil-matrici Ingliza, "on at least two occasions". Ghal xi raguni – fil-fehma ta' din il-Qorti kompletament illogika – il-kliem "on at least two occasions thallew barra". Fi kliem l-edituri ta' **Blackstone's Criminal Practice, 2008** :

"How separate the two occasions must be remains to be seen. The nature of stalking, the activity which primarily created the need for the new offences, might mean that the occasions are likely to be on separate days, although it may be possible to differentiate activities on one day where they can be viewed as not being continuous. The further apart the incidents, the less likely it is that they will be regarded as a course of conduct…It was recognised, however that circumstances can be conceived 'where incidents, as far apart as a year, could constitute a course of conduct'. The type of incidents would be those intended to occur on an annual event such as a religious festival or a birthday…"

Din il-Qorti mhix ser tipprova taghti definizzjoni ezawrjenti ta' x'jammonta ghal "course of conduct" ghall-fini tal-imsemmi Artikolu 251B(1) – u anqas ma hi ser tipprova telenka kazijiet, anke jekk biss bhala forma ta' ezempju, li jammontaw jew ma jammontawx ghal tali "imgieba", haga li trid tigi deciza minn kaz ghal kaz skond ic-cirkostanzi u bl-applikazzjoni ta' doza qawwija ta' saggezza min-naha tal-gudikant. Dak li qed jigi deciz f'din il-kawza hu biss li incident wiehed (u, *per di piu`*, ta' minuti) ma jammontax ghal "course of conduct" ghall-finijiet tal-Artikolu 251B(1).

Inoltre huwa evidenti li l-vjolenza kontemplata fl-imsemmi artikolu hija dik li talvolta tista' tigi perpetrata fil-futur u mhux dik li effettivament tkun giet kommessa. Il-vjolenza effettivament kommessa tigi punita taht disposizzjonijiet ohra tal-ligi."

Illi l-ligi ghalhekk titkellem dwar *a course of conduct* u minn dina l-esposizzjoni legali jirrizulta illi dana r-reat ma jistax jissussisti jekk dan ikun xi incident izolat. Ghaldaqstant ma hemmx dubbju illi l-imputata qatt ma tista' tinstab hatja tal-kummissjoni ta' dana r-reat billi jidher illi dana kien incident isolat u minn imkien mill-provi ma jidher illi kien hemm xi episodju iehor fejn l-imputata kienet qed tivvessa lill-ahwa Vassallo. Ghalhekk l-imputata ser tigi illiberata minn dina l-ewwel akkuza.

Illi l-istess ma jistax jinghad fir-rigward tal-ahhar zewg akkuzi ta' natura kontravvenzjonali billi ma hemmx dubbju illi l-imputata kissret il-bon ordni b'ghajjat u storbju meta hija bdiet tghajjat ma' Mark Vassallo, u issabbat fuq il-vettura tieghu filwaqt illi l-istess Vassallo kien jinstab fl-istess vettura. Minn imkien mill-provi madanakollu ma jirrizulta illi l-imputata f'xi hin kienet qed thedded jew hebbet ghal Christian Vassallo. Jidher illi kliemha u l-azzjonijiet taghha kienu kollha indirizzati lejn Mark Vassallo.

Ghaldaqstant il-Qorti wara li rat l-artikoli 338(dd) u 339(d) tal-Kapitolu 9 tal-Ligijiet ta' Malta, filwaqt li tillibera lill-imputata mill-ewwel akkuza migjuba fil-konfront taghha, issibha hatja tat-tieni akkuza kif ukoll tat-tielet akkuza, izda limitatament fil-konfront ta' Mark Vassallo biss u tikkundannaha ammenda ta' €25 il-wahda, b'kollox ghalhekk €50.

Finalment il-Qorti wara li rat l-artikolu 383 tal-Kapitolu 9 tal-Ligijiet ta' Malta qed torbot lill-imputata b'garanzija li ma timmolestax lil Mark Vassallo u dana ghal zmien sena mil-lum taht penali ta' €500.

< Sentenza Finali >

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