MALTA

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

MAGISTRAT DR.
SAVIOUR DEMICOLI

Seduta tat-28 ta' Frar, 2011

Numru 736/2007

Il-Pulizija
(Spettur Ramon Mercieca)

vs

HENRY GATT
EDGAR BORG

Il-Qorti rat l-imputazzjoni li permezz taghha Henry Gatt ta' 61 sena bin John u Michelina nee' Baldacchino, imwieled Senglea, 03/08/1946, u No 46, 'Maria Bambina', Triq Karmelo Ronibinich, Paola detentur tal-karta ta' l-Identita' b'numru: 681446(M) u

Edgar Borg ta' 36 sena bin Peter Paul u Poly nee' Micallef, imwieled Pieta'. 16/06/1971, u No 166, Brared

Street, B'Kara, detentur tal-karta ta' l-Identita' b'numru: 377871(M)

Billi gew akkuzati talli nhar il-25 ta' Lulju 2007 ghall-habta ta' 10:30Hrs, gewwa dawn il-Gzejjer:-

bhala l-persuni li zammew jew qablu li jzommu xi animmal gieghelu lil istess issofri ugiegh, tbatija jew dwejjaq minghajr bzonn u dan bi ksur tal-Artikol 8(2) u 8(3) tal- Att 25 ta' l-2001 Dwar il-Harsien ta' l-Annimali.

Semghet provi.

Rat l-atti u id-dokumenti esebiti.

Rat il-kunsens tal-Avukat Generali esebit bhala Dok RM5 u nnutat li l-imputati m'ghandhomx oggezzjoni sabiex il-kaz taghhom jigi trattat bi procedura sommarja.

Fl-ewwel lok il-Qorti sejra taghmel referenza ghall-brani mid-deposizzjoni ta' Maxine Tonna li fis-Seduta tad-29 ta' Ottubru, 2007, inter alia, qalet:

"On Wednesday the 25th of July 2007 between 11 am and midday I was coming home from the butcher shop with my young grandson Birkirkara, the locality near St Anthony's Church Birkirkara. I heard a noise than I looked over a wall and over the wall on the other side there was like a gully. I noticed a man whom I am recognising as accused, as I am recognizing one of the accused present in the Court room and whom I am being informed is Edgar Borg. This man I noticed he was whipping his pony. At first I thought that since it was a heat wave that this man was hitting the pony because he wanted to place the pony under the tree.

He carried on whipping the pony. At a point in time I shouted over the wall *Leave it you are going to kill it*, which he took no notice and continued whipping the pony. Until the pony ended up having his front legs buckled and it collapsed like a dead cockroach with the cart on the

back, which was on the back of the pony tipped to one side.

I wish to add that the co accused which I am being informed is Henry Gatt did not at any stage whip the pony. What I noticed than was that than I noticed that both accused pulled up the cart and lifted up the pony. Than one of the accused which I do not remember whom it was I noticed that he was pulling the pony by the bridle and still continued whipping him. However I wish to add that I believe that was accused Edgar Borg that continued whipping because I am saying so because I never noticed accused Henry Gatt pull up his hands to hit the pony. Than my grandson who' s two and a half years old told me are they going to kill him because he was seeing the whole scene. Then I hurried back home.

My daughter was in the balcony and I told her to phone up quickly the police which they came within minutes. The pony was very small in size." "……………………." "I wish to add that the position I was in when I was looking and seeing the scene that I had described I was in a high up and position and therefore I did not see whether the pony had any bruises or blood coming out. Later on but not on the same day that I mentioned I went to Birkirkara Police station and released a statement." (Sottolinjar tal-Qorti).

F'dan l-istadju il-Qorti taghmel referenza ghad-deposizzjoni PS 252 Stephen Mallia li fis-Seduta tat-30 ta' Novembru, 2007, qal:

"Nghid illi fil-25 ta' Lulju 2007 ghal habta ta' l-10.30 ta filghodu jien kont qieghed xufier gewwa l-vettura tas-servizz flimkien ma' PS 950 u PC 1512. Ahna imbaghad maqbudin bir-radio fejn infurmawna li ahna kellna mmorru gewwa Triq Wejter f'Birkirkara fejn allegatament kien hemm zewg persuni li kienu qeghdin isawtu ziemel u li kienu ser joqtluh bis-swat. Nghid illi imbaghad ahna waqafna u nghid illi fil-fatt ahna konna fil-vicinanzi ta' l-indirizz moghti. Nizlu mill-vettura s-Surgent 950 u pc 1512. Jiena kelli struzzjonijiet biex jiena nsuq il-karozza, ninzel minn Wejter street biex nghaddi taht il-pont ta'

Birkirkara. Nghid illi kif dhalt iktar il-gewwa nghid illi kien hemm ragel li kien qieghed imexxi pony bic-cinga u kien hemm ragel iehor li kien qieghed imexxi s-serkin b'idu.

Nghid illi jiena qed naghraf liz-zewg imputati prezenti fl-Awla bhala zewgt irgiel li kien hemm. Nghid in kwantu ghal imputat Edgar li jiena nafu, Edgar kien qieghed imexxi l-pony bic-cinga waqt li l-l-imputat l-iehor kien qed imexxi s-serking. Nghid illi jiena l-pont rajtu fil-vicin. Jiena dort mal-pony u nnutajt li dana kien miexi normali, la kellu griehi u lanqas kellu feriti. Jiena wkoll kellimt liz-zewg imputati. Nghid illi jiena indirizzajt specifikament lil imputat Edgar illi dana staqsejtu jekk huwa kienx sawwat iz-ziemel u hu huwa kien irrispondini insawtu ghadni kif xtrajtu tliet mija (Lm 300). Nghid illi imbaghad iz-zewg imputati bil-pony u serkin telghu mieghi hdejn il-karozza taghna imbaghad PS 950 kellem liz-zewg imputati u dana fil-presenza tieghi qalu l-istess diskors li qalu lili. Jiena ghid illi jiena meta rajt iz-ziemel dana ma kellux l-ebda feriti jew griehi. Iz-ziemel kien miexi normalment." (Sottolinjar tal-Qorti).

In kontro ezami minn Dr. Melvin Mifsud ghal imputat Edgar Borg l-istess fl-istess Seduta qal:

"Nghid illi dan il-pony kull ma kellu fuqu kien cinga biex biha l-imputat Edgar seta' jmexxih. Il-bqija iz-ziemel ma kellu xejn oggetti fuqu. Ma kienx mghotti. Nghid illi ebda wiehed miz-zewg imputati ma kellu frosta f' idejh. Inzid nghid ukoll illi jiena liz-zewg imputati meta kienu bil-pony hsadthom. Huma ma kienux indunaw biha li kont gej. U dana fis-sens li kieku dawn kellhom xi haga li riedu jarmuha ma kellhomx cans." (Sottolinjar tal-Qorti).

L-Ispettur Ramon Mercieca fis-Seduta tat-12 ta' Mejju, 2008 in kontro ezami minn Dr. Melvin Mifsud ghall-imputat Edgar Borg, inter alia, qal:

"Nixtieq nghid illi dwar il-fatt illi ma kienx tqabbad veterinarju biex jezamina lil dan il-pony fid-data ta' meta konna rcivejna t-telefonata anonima, dan sar ghaliex dak inhar il-pulizija kienet ikkonstatat u kkonfermat illi meta

marret tara l-pony a tempo vergine, dana ma kellux griehi fuqu. Sussegwentement, pero' kien ghadda trapass ta' zmien ghaliex imbaghad kienet harget l-artikolu fil-gazzetta u l-persuni tressqu l-Qort, jiena kont ikkuntatjajt lill-veterinarju Dottor Chetchuti Ganado.
Nghid illi jiena meta kont hadt l-istqarrija ta' Maxine Tonna dina imkien ma kienet qaltli fl-istqarrija taghha li fuq il-pony rat xi demm jew inkella xi feriti. Anzi meta jiena staqsejtilha b'mod dirett, din kienet qaltli: 'le ma rajtx'. Biex nirrispondi ghad-domanda li qed issirli minn Dr. Melvin Mifsud nghid illi jiena stante li kien hemm il-pulizija li meta kien iddahhal ir-rapport anonimu kienu marru fuq il-post u a tempo vergine ma rawx illi dan il-pony kellu xi griehi jew kellu xi dmiegha. Stante li ukoll Maxine Tonna fl-istqarrija li rrilaxxat dina, lili ma kienitx semmietli li dan il-pony kellu xi dmiegha jew inkella xi feriti. Tenut kont ukoll il-fatt illi dawna c-cirkustanzi ma rajtx il-htiega illi kellu jigi msejjah vet." (Sottolinjar tal-Qorti).

L-imputat Edgar Borg fis-Seduta tat-23 ta' Frar, 2010 minn jeddu qal:

"Ghada kif inqrat l-istqarrija tieghi dok RM 7 li tinsab minn fol 24 sa fol 25 tal-process. Jiena nikkonferma l-kontenut kollu ta' din l-istqarrija. Jiena nikkonferma bil-verament tieghi li jiena fl-ebda mument ma sawwat jew hqart dana l-pony u nghid ukoll li fl-ebda mument m'uzajt xi frosta biex hqart dana l-pony." (Sottolinjar tal-Qorti).

L-imputat Henry Gatt fis-Seduta tat-23 ta' Frar, 2010 minn jeddu qal:

"Nghid illi ghadha kif inqratli l-istqarrija tieghi li tinsab esebita fl-atti ta' din il-kawza bhala dok RM 8 u li tinsab a fol 26 u 27 tal-process. Nixtieq nghid illi din il-mara li ghamlet ir-rapport lil Pulizija kienet 41 metru 'l boghod minnha. Nixtieq nghid illi dina l-mara kienet qalet l-ittra taghha fit-Times li ahna bdejna nidghu ahna nghid jiena nichad li jiena u l-ko imputat bdejna nidghu. Nixtieq nghid illi jiena nikkonferma bil-Gurament tieghi illi jiena fl-ebda hin ma sawwat jew hqart lil dana l-pony u nixtieq nghid ukoll li lanqas il-kollega tieghi jiena ma rajtu jahqar jew

isawwat dana l-pony. meta qed nirreferi ghal-kollega tieghi qed nirreferi ovvjament ghal ko imputat." (Sottolinjar tal-Qorti).

In kontro ezami l-istess imputat fl-istess Seduta qal:

"Nixtieq nghid li dakinhar konna ha nippruvaw dawna l-pony l-ewwel darba u nghid nikkonferma li fil-fatt iz-ziemel kien sfratta dakinhar. Kif il-ko imputat gibed il-pony bir-riedni l-pony qabez giex qabziet u nbaram gos-Serkin. Nghid dak il-hin il-ko imputat mar iholl il-pont u jiena ghidtlu biex hu jholl il-pony u jiena nigbed is-Serkin lura. Imbaghad ghidt lil ko imputat biex huwa jmexxi naqra 'l pony ha naraw jekk weggax u jiena kkonstatajt li l-pony ma kellu xejn u kien miexi tajjeb u ghidt hekk il-ko imputat. jiena mexxejt hallih jarah il-ko imputat. it-tnejn rajna li l-pony ma kellu xejn. Sa dan it-tant konna qeghdin naraw x'ghandu hazin fl-armar il-pony u f'daqqa wahda gie Pulizija hdejna. Saqsiena jekk ahna konniex qeghdin insawtu xi ziemel u ghidnilu le u ghidnilu storja. Nixtieq nghid illi ahna lanqas biss kellna frosta maghna ahseb u ara kemm sawwatna l-pony bi frosta. Nghid illi ahna r-riedni taz-ziemel kien twil. Nghid illi fl-ebda mument ma ntuza r-riedni biex jigi msawwat il-pony." (Sottolinjar tal-Qorti).

Rigward l-imputat Henry Gatt il-Qorti hi tal-fehma li mill-provi prodotti l-akkuza migjuba kontra l-imsemmi imputat ma' tirrizultax. F'dan ir-rigward il-Qorti tosserva li ix-xhud Maxine Tonna fis-Seduta tad-29 ta' Ottubru, 2007, inter alia, qalet:

"I wish to add that the co accused which I am being informed is Henry Gatt did not at any stage whip the pony." (Sottolinjar tal-Qorti).

Rigward l-imputat Edgar Borg il-Qorti hi tal-fehma li mill-provi prodotti jemergi kunflitt ta' provi. Apparti dak li xehdu l-imputati in rigward, liema deposizzjonijiet jikkuntrastaw bil-qawwi ma' dak li xehdet Maxine Tonna f'din il-kawza, il-Qorti taghmel referenza ghad-deposizzjoni ta' PS 252

Stephen Mallia li fis-Seduta tat-30 ta’ Novembru, 2007 inter alia qal:

“Jien dort mal-pony u nnutajt li dana kien miexi normali, la kellu griehi u lanqas kellu feriti.”

Mentri ix-xhud Maxine Tonna, fis-Seduta tad-29 ta’ Ottubru, 2007, inter alia, qalet:

“I am recognising as accused, as I am recognizing one of the accused present in the Court room and whom I am being informed is Edgar Borg. This man I noticed he was whipping his pony. At first I thought that since it was a heat wave that this man was hitting the pony because he wanted to place the pony under the tree.

He carried on whipping the pony. At a point of time I shouted over the wall *Leave it you are going to kill it*, which he took no notice and continued whipping the pony. Until the pony ended up having his front legs buckled and it collapsed like a dead cockroach with the cart on the bark, which was on the back of the pony tipped to one side.”

Tali konflitt fil-provi jikkrea dubbju serju dwar is-sussistenza tal-akkuza fil-konfront tal-imputat Edgar Borg liema dubbju ghandu jmur favur l-imsemmi imputat.

Ghaldaqstant il-Qorti, fid-dawl tas-suespost tillibera lill-imputat Henry Gatt mill-akkuza migjuba kontra tieghu stante li din l-akkuza ma’ tirrizultax u tillibera lill-imputat Edgar Borg mill-akkuza migjuba kontra tieghu fuq konflitt ta’ provi.

< Sentenza Finali >

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