MALTA

# QORTI TAL-MAGISTRATI

## (GHAWDEX) BHALA QORTI TA' GUDIKATURA KRIMINALI

**MAGISTRAT DR.**

**EDWINA GRIMA**

Seduta tas-27 ta' Frar, 2014

Numru 32/2010

IL-**PULIZIJA**

**(SPETTUR JOSRIC MIFSUD)**

**VS**

**FORTUN FARRUGIA ta' 60 sena bin Saviour u Zarena nee' Galea imwieled ix-Xaghra, nhar is-07 ta' Novembru 1953, residenti fil-fond numru 1, Triq Ta' Vestru, Xaghra u detentur tal-karta ta'l-identita' numru 64453(G)**

Il-Qorti

Rat l-imputazzjoni migjuba fil-konfront ta'l-imputat Fortun Farrugia li gie akkuzat talli nhar il-11 ta' April 2010 ghal habta tal-hamsa u kwart ta' wara nofsinhar, u seba' xhur ta' qabel din id-data, gewwa garaxx go Triq Gajdoru, Xaghra u/jew f'lokalitajiet ohra f'dawn il-Gzejjer, b'diversi atti maghmulin minnu, wkoll jekk fi zminijiet differenti li jiksru l-istess disposizzjoni tal-Ligi, u li gew maghmula b'risoluzzjoni wahda u cioe' talli:

1. bil-vjolenza ikkometta stupru fuq persuna taht l-eta ta' tnax-il sena, cioe ***– omissis -***,
2. b'eghmil zieni ikkorrompa lill-istess minuri ***– omissis -***.
3. bla ordni skond il-ligi ta'l-awtorita kompetenti, u barra mill-kazijiet li fihom il-ligi taghti is-setgha lill-privat li jarresta lill-hati, arresta, zamm jew issekwestra lill-minuri ***– omissis -*** kontra l-volonta tieghu u dan bhala mezz biex l-imsemmi ***– omissis -***jigi mgieghel jaghmel xi haga jew joqghod ghal xi haga li toffendi il-misthija tas-sess tieghu.
4. ippartecipa f'attivitajiet sesswali ma' persuna ta' taht l-eta' u cioe' ma' ***– omissis -***.
5. bil-hsieb li jgieghel persuna ohra taghmel jew tonqos milli taghmel xi haga, hedded lil dik il-persuna cioe' lil ***– omissis -***.
6. offenda l-pudur jew il-morali b'eghmil li sar f'post pubbliku jew f'post espost ghall-pubbliku.

Rat id-dokumenti esebieti.

Semghet il-provi.

Rat n-nota ta' rinviju ghal gudizzju ta'l-Avukat Generali tas-06 ta' Marzu 2012.

Semghet illi l-imputat ma kellux oggezzjoni illi l-kaz jigi trattat u deciz bil-procedura sommarja minn dina l-Qorti.

Semghet l-eccezzjoni sollevata mid-difiza, liema eccezzjoni hija dik ikkontemplata fl-artikolu 33(a) tal-Kapitolu 9 tal-Ligijiet ta' Malta u dana peress illi l-imputat filwaqt tal-kummissjoni tar-reat kien fi stat ta' genn.

Ikkunsidrat,

Illi min-nota ta' rinviju ghal gudizzju ta'l-Avukat Generali u mill-akkuzi migjuba fil-konfront ta'l-imputat jirrizulta illi lill-imputat qed jigu addebitati lilu b'mod ewlieni r-reati tal-istupru vjolenti fuq minuri kif ukoll allura, l-korruzzjoni tal-istess minuri. Fil-fatt mill-provi akkwiziti f'dawn l-atti processwali jirrizulta illi l-imputat kien ghamel attivitajiet sesswali mal-minuri **–** ***omissis*** **-**f'diversi okkazzjonijiet fuq medda ta' zmien billi kien isejjahlu sabiex jidhol fil-garaxx tieghu u hemmhekk

kien jikkorrompi lill-istess minuri. Fuq il-fatti ta’ dana l-kaz, fil-fatt ma jidhirx illi hemm kontestazzjoni u matul il-kors tat-trattazzjoni taghha, id-difiza ma ghamlet l-ebda referenza ghal fatti ta’ dana l-kaz, izda illimitat ruhha biss sabiex issostni l-argumentazzjoni taghha dwar l-eccezzjoni tad-demenza sollevata minnha.

Illi matul dana l-*iter* processwali l-imputat beda jinghata kura psikjatrika u dana wara li gie innominat il-psikjatra Dr. Joseph Spiteri sabiex jirrelata dwar il-kundizzjoni ta’ sahha mentali tieghu. Fil-fatt fuq rakkomandazzjoni ta’l-istess espert psikajtriku l-imputat inzamm rikoverat gewwa l-isptar generali ta’ Ghawdex fis-Psychiatric Ward (long stay) u hemmhekk huwa baqa’ jircevi kura medika kontinwa.

Illi abbazi ta’ dak rappurtat mill-imsemmi espert psikjatriku d-difiza issollevat l-eccezzjoni a tenur ta’l-artikolu 33(a) tal-Kapitolu 9 tal-Ligijiet ta’ Malta li ighid testwalment:

“Kull persuna tkun ezenti minn responsabbilta’ kriminali jekk fill-waqt ta’l-att jew tan-nuqqas kienet fi stat ta’ genn.”

Illi esposizzjoni eccellenti tal-ligi in tema ta’ demenza ghall-finijiet ta’ l-Artikolu 33(a) tal-Kodici Kriminali saret f’sentenza moghtija mill-Qorti ta’l-Appell Kriminali (sede superjuri) fl-4 ta’ Marzu 2010 fis-sentenza Ir-Repubblika ta’ Malta vs Anthony Schembri fejn saret referenza ghal dak li qalet din il-Qorti ta’l-Appell (diversament komposta) fis-sentenza taghha **Ir-Repubblika ta’ Malta v. David Norbert Schembri** tal-25 ta’ Settembru 2008:

**"Kif inhu risaput, l-espressjoni "stat ta' genn" fil-paragrafu (a) ta' l-Artikolu 33 tal-Kodici Kriminali**

**ghandha sinjifikat legali li mhux necessarjament jattalja ruhu ma' dak li fil-medicina jew fil-psikjatrija jitqies bhala "genn". Kif jispjegaw l-awturi Jones u Christie fil-ktieb taghhom *Criminal Law* : "'*It is important to emphasise at the outset that insanity is a purely legal concept. It is not a clinical term derived from psychiatry or psychology. Insanity is not synonymous with any medical conception of mental disorder*.'**

**"Fi kliem iehor, persuna tista' tkun marida mentalment fil-mument li tkun ghamlet l-att ta' kommissjoni jew ommissjoni li jammonta ghall-element materjali tar-reat, izda dan ma jfissirx necessarjament li dik il-persuna kienet fi "stat ta' genn" ghall-finijiet ta' l-imsemmi Artikolu 33(a), cioe` tali li tkun ezenti minn responsabbilta` kriminali. Biex ikun hemm l-istat ta' genn li jezenta mir-responsabbilta` kriminali jrid jirrizulta (imqar fuq bazi ta' probabbilita`, meta d-demenza tkun giet eccepita mill-akkuzat jew imputat u allura l-piz ikun fuqu biex jipprova l-fatt li l-akkuzat jew imputat kien qed ibati minn marda tal-mohh li minhabba fiha, fil-mument ta'l-att ta' kommissjoni jew ommissjoni, huwa kien priv (i) jew mill-kapacita` li jifhem in-natura u l-kwalita` ta' dak l-att li qed jaghmel, jew (ii) mill-kapacita` li jifhem li dak li qed jaghmel hu hazin, jew (iii) mill-kapacita` li jaghzel jekk jaghmilx jew le dak l-att. Marda tal-mohh – *disease of the mind* bl-Ingliz – mhux necesarjament tkun patologija lokalizzata fil-mohh – *in the brain*. Kif jispjega Lord Diplock fil-kaz ta' *Sullivan* [1984] AC 156, u b'referenza ghall-M'Naghten Rules – regoli, li wiehed m'ghandux**

**jinsa, jirreferu biss ghall-kapacita` *di intendere*, mentri l-ligi taghna tikkunsidra wkoll jekk kienx hemm il-kapacita` *di volere:* –**

***"'The nomenclature adopted by the medical profession may change from time to time…But the meaning of the expression 'disease of the mind' as the cause of 'a defect of reason' remains unchanged for the purpose of the application of the M'Naghten rules…'mind' in the M'Naghten rules is used in the ordinary sense of the mental faculties of reason, memory and understanding. If the effect of a disease is to impair these faculties so severely as to have either of the consequences referred to in the latter part of the rules , it matters not whether the aetiology of the impairment is organic, as in epilepsy, or functional, or whether the impairment itself is permanent or is transient and intermittent, provided that it subsisted at the time of commission of the act.'***

**"U kif spjegat aktar fi *Blackstone's Criminal Practice***

***2008*:**

***"'It can also be seen that to a large extent, whether something is a disease of the mind depends on the consequences it produces – impairment of the faculties of reason, memory and understanding. The disease certainly need not be one primarily located in the brain if it produces the relevant consequences there. Thus arteriosclerosis (hardening of the arteries) causing temporary loss of consciousness is a disease of the mind for these purposes even though it is of physical rather than mental origin…However not every cause of an impairment of these mental faculties is a disease of the mind. A disease is something internal to the accused and so: 'A***

***malfunctioning of the mind of transitory effect caused by the application to the body of some external factor such as violence, drugs, including anaesthetics, alcohol and hypnotic influences cannot fairly be said to be due to disease’***

**(per Lawton LJ in *Quick* QB 910 at p. 922, emphasis**

**added).’**

**“L-istess jista’ jinghad fil-kaz ta’ dipendenza, anke wahda qawwija, fuq drogi – tali dipendenza fiha nnifisha ma tammontax ghal marda tal-mohh ghall-finijiet ta’ l-Artikolu 33(a) imsemmi.**

**“Biex din il-Qorti tikkonkludi fuq dan l-aspett ser tikkwota minn dak li wiehed isib fl-appunti tal-Professur Sir Anthony Mamo:**

**“‘The question [of insanity], when it arises, is one of fact: it has, that is to say, to be decided whether the defendant had a mental disease and, if so, whether it was of such a character and degree as to take away the capacity to know the nature of his act or to help doing it.’”**

Illi maghmula dina l-esposizzjoni legali dina l-Qorti ghalhekk ghandha il-kompitu tistharreg jekk l-imputat fil-hin ta’l-kummissjoni tar-reat kienx inkapaci “***di intendere e di volere***” u dana abbazi ta’ dak li jikkonkludi l-espert psikjatriku u anke fid-dawl tal-provi mismugha f’dina il-kawza.

Illi l-espert nominat mill-Qorti Dr. Joseph Spiteri kellu l-opportunita' mhux biss li jistudja l-atti processwali, izda ukoll isegwi lill-imputat tul dana l-iter processwali kollu.

Illi qed jigi sottolinjat dana kollu peress illi kif inghad fis-sentenza hawn fuq iccitata:

"Bhalma jghidu Timothy Jones u Michael Christie, b'referenza ghal-ligi sostantiva u procedurali Skocciza in materja ta' eccezzjoni ta' demenza fil-kamp penali, u li hi simili hafna ghal dik taghna:

**"The issue as to whether the accused's reason was alienated in relation to the crime in question is one for the jury to determine in the light of the evidence and their common sense. In Lord Strachan's terms, 'it is to be judged on the ordinary rules on which men act in daily life.' The jurors are the arbiters of insanity. They can take account of any medical evidence given by expert witnesses, but such evidence is not conclusive. The significance of medical evidence is severely limited by the fact that insanity is a legal rather than a medical concept. Further, a medical witness can only speculate as to the accused's state of mind at the time of the crime, since the information upon which his judgment is based will have been obtained subsequent to the crime being committed."**

Illi f'dana il-kaz ghalhekk l-espert psikjatriku kellu l-opportunita' isegwi lill-imputat ghal certu tul ta' zmien u li ghalhekk seta' jasal ghad-dijanjosi tieghu mhux biss mill-aspett mediku izda ukoll minn

dak kollu fattwalment ikkonstatat minnu meta kien ikun ma'l-imputat. Fil-fatt fil-kawza l-espert psikjatriku jaghti ix-xhieda tieghu darbtejn u jipprezenta anke rapport dwar l-istat ta' sahha mentali ta'l-imputat.[1]

Fir-rapport tieghu, Dr. Joseph Spiteri jikkonstata illi l-imputat kellu ghal snin twal problemi konnessi ma' l-abbuz ta'l-akohol, kellu problemi ta' imgieba kif ukoll IQ baxx hafna. Dan wassal sabiex l-imputat kellu jibda jircevi kura psikjatra u dan sa mis-sena 1974 fejn f'dak iz-zmien kien taht il-kura tal-psikjatra Dr.Abram Galea. Jidher illi fl-1980 imbaghad kien anke gie rikoverat gewwa l-isptar Monte Karmeli ghal kura, tant illi kien anke gie registrat bhala '*incapacitated person*'. Ighid hekk:

"Mill-ezami psikjatriku ma deherx li Fortun kien f'xi stat ta' dipressjoni jew inkella kien hemm xi effett ta' xi psikozi jew xi mard psikjatriku iehor. Madanakollu kien jidher car illi l-intellett ta' Fortun Farrugia kien wiehed baxx. Ghaldaqstant waqt li kien gewwa il-Forensci Unit inghata t-test tad-WAIS – illi huwa IQ test. Is-sur Farrugia irnexxielu jgib score ta' 50 u dan l-iscore huwa meqjuz li huwa baxx hafna u jindika ***sub-normality***."

Jikkonkludi ghalhekk illi ghalkemm l-imputat huwa ragel ta' kwazi sittin sena, madanakollu intelletwalment huwa jirraguna bhala tifel ta' tmien snin. Dan ghal Qorti ma jistax ifisser xejn hlief il-fatt li l-imputat ma huwiex bniedem b'sens ta' maturita u ghalhekk ma ghandux il-kapacaita jaghzel bejn it-tajjeb u il-hazin. Fil-fatt meta mistoqsi mill-Ufficjal Investigattiv fl-istqarrija tieghu jekk kienx jaf li

[1] Ara rapporti Dokument JS a fol.65 et.seq. u xhieda ta' Dr. Joseph Spiteri a fol.151 et.seq.

dak li ghamel kienx hazin jew le, huwa iwiegeb li kien konxju tal-fatt li dak li ghamel kien hazin ghax kien qallu hekk il-qassis u mhux ghaliex huwa kapaci jaghmel dina l-ghazla wahdu. Ghalhekk sabiex jaghmel tali ghazla huwa irid jigi iggwidat u mizmum taht supervizjoni. Dr. Joseph Spiteri ighid hekk fix-xhieda tieghu:

"Issa allura hemm *discordance*: l-apparenza tieghu li huwa bniedem ta' *fifty seven years* u l-*mental age* tieghu, l-IQ tieghu ta' *fifty*, bejn wiehed u iehor, jikkorrispondi xi hadd bejn tmienja u ghaxar snin."

L-espert allura huwa tal-fehma illi ghalkemm l-imputat huwa bniedem '*fit to stand trial*' jew '*fit to plead*', madanakollu huwa ighid illi l-kapacita di *intendere e volere* mill-aspett legali ma tezistiex fl-imputat. Jasal ghal dina l-konkluzjoni ghaliex ighid illi huwa ma kienx kapaci jifformula intenzjoni li jiggwadanja mill-att sesswali fuq tifel, bhal kif jigri f'kazijiet ta' pedofilija. Ighid illi l-imputat ma jippossjediex "*a sense of culpability*" u ghalhekk jista' ikun ta' periklu ghas-socjeta'.

Abbazi ta' dina id-dijanjosi fil-fatt l-espert jirrakkomanda illi l-imputat jibqa' rikoverat u mizmum gewwa sptar mentali.

Il-Qorti ghalhekk fid-dawl ta' dan kollu tasal ghal konkluzjoni illi ghalkemm l-imputat ma huwiex bniedem afflitt minn xi mard mentali, madanakollu billi huwa ibati minn kundizzjoni mentali ta' *sub-normality*, l-istat mentali tieghu huwa tali li jirrenduh inkapaci jasal biex jaghmel decizjonijiet ta' bniedem ta'l-eta tieghu u li jaghzel bejn dak li huwa tajjeb u dak li huwa hazin. Dina il-kundizzjoni mentali tieghu tirrendieh inkapaci *di intendere e di volere*, fis-sens li

trid il-ligi. Fuq kollox il-ligi stess tippostula l-esenzjoni mir-responsabbilta' penali fi tfal ta' inqas minn disa' snin u issa bl-emendi introdotti recentement fid-dritt penali[2] taghna, sahanistra anke ghal tfal sal-erbatax-il sena. Dawn jitqiesu bhala *doli incapax* ghaliex hemm il-presunzjoni illi tfal zghar ma jistghux jitqiesu responsabbli ghall-agir taghhom. Il-Qorti ghalhekk tara illi l-imputat bhala bniedem b'kapacita intellettiva ta' tifel ta' tmien snin, ghalkemm ma ghandu l-ebda infirmita' mentali, ma jistax jitqies responabbli ghal dak illi jaghmel u dana billi ma jistax jifformula l-intenzjoni li jikkometti r-reati li taghhom jinsab akkuzat.

Illi huwa interessanti ghalhekk dak li ighid il-Professur Mamo fin-noti tieghu meta minn ezami tal-gurisprudenza estera jikkonkludi:

"**the right and wrong test as established by the MacNaughton rules is not the sole test of responsibility in all cases: it must be supplemented by the so called 'Irresistible Impulse' test: a person who knew he was committing an act which was morally wrong and prohibited by law may nevertheless be excused from responsibility if, by reason of his mental disease, he lacked the power of conscious volition and inhibition to resist the impulse to commit it.**"

Illi ma hemmx dubbju illi dan l-istat mentali fl-imputat mhux biss kien jesizti fil-mument tal-kummissjoni tar-reati in dizamina, izda x'aktarx twieled mieghu u ser jibqa afflitt minnha sa mewtu. Ighid hekk Dr. Spiteri:

"L-IQ tieghu li konna osservajnieh li kien ta' madwar fifty mhux ser jinbidel. Jigifieri dak huwa l-istat psikologiku .. . intelletwali tieghu."

[2] Att numru 3 ta'l-2014

Fid-dawl ta’ dawn il-konsiderazzjonijiet, il-Qorti ghalhekk, wara li rat l-artikolu 33(a) tal-Kapitolu 9 tal-Ligijiet ta’ Malta, qed tilqa’ l-eccezzjoni sollevata mid-difiza, tiddikjara illi l-imputat huwa ezenti minn kull responsabbilta kriminali.

Ghaldaqstant il-Qorti wara li rat l-artikoli 623 tal-Kapitolu 9 tal-Ligijiet ta’ Malta qieghda tordna illi l-imputat jinzamm taht kustodja fl-isptar Monte Karmeli u hemmhekk jibqa taht kustodja u mizmum skond id-disposizzjonijiet tat-Taqsima IV ta’l-Att Dwar is-Sahha Mentali, Kapitolu 262 tal-Ligijiet ta’ Malta u dana taht il-kura tal-psikjatra Dr. Joseph Spiteri.

Il-Qorti tordna li kopja ta’ dina is-sentenza tintbghat lit-Tabib Supretendent ta’l-Isptar Monte Karmeli .

Wara li rat l-artikolu 3 tal-Att XXIII tal-2011 u cioe’ l-Att dwar Registrazzjoni ghal Protezzjoni tal-Minuri, qieghda tordna notifika ta’ dina s-sentenza lir-Registratur Qrati Civili u Tribunali sabiex jiehu hsieb ir-registrazzjoni tal-hati skond il-ligi.

**< Sentenza Finali >**

---------------------------------TMIEM---------------------------------