QRATI KRIMINALI INFERJURI

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

MAGISTRAT DR. CAROL PERALTA LL.D.

PULIZIJA
SPETTUR STEPHEN MICALLEF

VS

FRANCO GATT
(ID Nru.: 179772M)
JOSHUA ZAMMIT
(ID Nru.: 152773M)
DANIELA CAUCHI
(ID Nru.:61875M)
PATRICK CACHIA
(ID Nru.:190571M)
FRANCIS ZAMMIT
(ID Nru.: 893050M)
JOSEPH BONDIN
(ID Nru.: 221964M)
JOSEPH FARRUGIA
(ID Nru.: 88183M)

Kumpilazzjoni Nru.: 642/2009

Illum,3 ta` Marzu, 2015.

Il-Qorti:

Rat l-akkuza migjuba kontra l-imsemmi Franco Gatt, detentur tal-Karta tal-identita` numru 179772 (M), l-imsemmi Joshua Zammit, detentur tal-Karta tal-Identita` numru 152773 (M), l-imsemmija Daniela Cauchi,

detentrici tal-Karta tal-Identita` numru 61875 (M), l-imsemmi Patrick Cachia detentur tal-Karta tal-Identita` numru 190571 (M), Francis Zammit detentur tal-Karta tal-Identita` numru 893050 (M), Joseph Bondin detentur tal-Karta tal-Identita` numru 221964 (M) u l-imsemmi Joseph Farrugia detentur tal-Karta tal-Identita` numru 88183 (M).

Akkuzati talli:

1. Franco Gatt fil-kapacita` tieghu ta` *Process Planning Manager*, lil Joshua Zammit fil-kapacita` tieghu ta` *HR Manager*, lil Daniela Cauchi fil-kapacita` taghha ta` *EHS Manager*, lil Patrick Cachia fil-kapacita` tieghu ta` *Production Manager*, lil Francis Zammit fil-kapacita` tieghu ta` *Finance Manager*, lil Joseph Bondin fil-kapacita` tieghu ta` *Quality Manager* u lil Joseph Farrugia fil-kapacita` tieghu ta` *Engineering Manager* tal-kumpanija **Actavis Limited** sitwata Bulebel Industrial Estate, Zejtun, nhar is-sitta u ghoxrin (26) ta` Jannar, 2005, ghal habta tal-hdax ta` filghaxija (23:00hrs) u fiz-zmien ta` qabel naqsu milli jassiguraw is-sahha u s-sigurta` tal-persuni kollha partikolarment ta` Roger Aquilina fejn sofra griehi ta` natura gravi, kif ukoll ta` ohrajn li jistghu jigu effetwati bix-xoghol li jkun qed isir u dan billi naqsu milli jiehdu l-passi necessarji sabiex jigi evitat dannu fiziku, korriment jew mewt fuq il-post tax-xoghol u naqsu milli jiehdu l-mizuri necessarji kollha sabiex r-riskju jigi ridott kemm huwa ragonevolment prattiku;

2. Akkuzati wkoll talli fl-istess zminijiet, lok u cirkostanzi bhala persuni li jhaddmu naqsu milli jiehdu l-passi necessarji kollha biex tizgura li l-bibien u x-xatbiet ikunu ta` kostruzzjoni li ma tikkagunax periklu.

Il-Qorti:

Wara li rat il-provi kollha prodotti u ezaminat id-dokumenti esibiti;

Wara li hadet in konsiderazzjoni tac-cirkostanzi kollha tal-kaz;

Wara li semghet ix-xhieda mressqa;

Wara li rat l-Artikolu 226 (1) (a) tal-Kapitolu 9 tal-Ligijiet ta` Malta, l-Artikoli 6 (1) u 38 tal-Kapitolu 424 tal-Ligijiet ta` Malta, l-Artikoli 15 (5) tal-Avviz Legali 44 tal-2002 (L.S. 425.15) u l-Artikoli 17, 18, 31 u 533 tal-Kapitolu 9 tal-Ligijiet ta` Malta.

Ikkunsidrat:

Il-perm kollu tal-kaz idur fuq *stopper* nieqes tal-*entrance gate* tal-fabbrika **Actavis** li minhabba n-nuqqas tieghu waqat il-*gate* fuq saqajn haddiem Roger Aquilina bil-konsegwwenza illi sieq minn tieghu kellha tigi amputata.

F'Interpretation Act, Kapitolu 249, l-artikolu tlettax (13) jghid "kull min ghandu responsabbilita` f'kumpanija li jara li certu affarijiet isiru, dan ghandu obbligu mhux biss morali imma anke legali li dawn jitwettqu".

Pero anke il-Prosekuzzjoni tammetti li strettament is-Sur Paulson li kien id-direttur f'dik il-gurnata meta sehh l-incident li suppost kellu jidher minflok l-imputati u ghaldaqstant jirrispondi ghall-akkuzi ma kienx hemmhekk. Il-legislazzjoni ex-specjalis tghid illi *employer means any person for whom work or service is performed by a worker or who has an employment relationship with a worker*. U tkompli pero l-iktar haga ta` importanza hija s-subinciz b) *in respect of all other organisations which include voluntary ones and in respect of any other requirement under contract or service includes any of the persons in overall direction or having day to day management*.

Illi skond il-Prosekuzzjoni s-sinjuri li ngiebu hawnhekk li huma akkuzati b'dawn l-akkuzi dedotti kontra taghhom kellhom b'xi forma jew wahda jew ohra jew iktar minn wahda d-*day to day management* ta` dik il-kumpanija, ghaldaqstant in vista tal-Interpretation Act.

Ghaliex l-artikolu 6 (b) tal-ligi jghidlek espressament li dawn ghandhom ikunu n-nies li ghandhom *the overall control* tal-azjenda *or the day to day management*. Issa min huma n-nies li ghandhom l-*overall control*? Mhux zgur il-*Managing Director*, u jekk il-*Managing Director* mhux qieghed hawn, floku mhux id-diretturi li ghandhom l-overall control u *day to day management*, u l-kelma tal-ligi hija bi hsieb, ara kieku qalet *sectional control* jew *divisional control*. Meta l-ligi qed tghidlek *employer* huwa dak fil-kaz ta` *body corporate*, ghax ahna fuq hekk qiedghin nitkellmu, fil-kaz ta` *body corporate* min ghandu l-*overall control* zgur hadd mill-akkuzati ma jgawdi l-*overall control*, jigifieri l-element essenzjali biex l-akkuza tohrog fil-konfront taghhom hija nieqsa.

Hemm Franco Gatt li huwa *Process Planning Manager*, Joshua Zammit m'ghadux hemm, Daniela Cauchi titkellem ghaliha l-kollega, Patrick Cachia *Production Manager*, Francis Zammit *Finance Manager* u Joseph Bondin *Quality Manager*. Illum ghax x'kienu meta gara fid-data

tal-incident ma jirrizultax. Ma gibniex il-*Managing Director*, ma gibniex id-diretturi bhal ma jsir dejjem regolarment fil-kawzi ta` dawn it-tip inharrku d-diretturi, din id-darba ma harrikniehomx avolja kien hemm diretturi li joqghodu Malta u ma kienx hemm problema li nsibuhom. Dawn in-nies ghandhom ix-xoghol taghhom strettament definit, per ezempju Joshua Zammit jispjega fid-dettall x'inhuma. Per ezempju dawn illum kif jista` wiehed b'xi *sketch* tal-imaginazzjoni tghid isma min kien *Process Planning Manager* li allura jipprepara u jaghmel il-pjanijiet tal-process tal-manifattura tal-pilloli tal-medicini fil-fabbrika, hux responsabbli biex imur jara jekk il-*gate* kelliex *stopper* jew le dan filghodu missu jqum u flok imur jaghmel il-*production planning* tieghu imur jiccekkja l-i*stopper* tal-*gate* jew jiccekkja l-brejkijiet tal-vann tal-fabbrika jew jaghmel xi haga ohra minn dawn, zgur li mhux il-kaz. Kien hemm risarciment civili tal-vittma. Kif jista` wiehed jasal ghall-konkluzzjoni li bniedem li ghandu funzjoni strettament definita llum u mhux dakinhar meta gara l-incident, ghandu jerfa` r-responsabbilita` kriminali ta` dan l-incident li zgur m'ghandu l-ebda rabta mieghu.

Daniela Cauchi kienet tokkupa l-kariga ta` *Environment Health and Safety Manager* mal-**Actavis** fil-hdax (11) ta` Ottubru, 2004. L-incident in kwistjoni gara fis-sitta u ghoxrin (26) ta` Jannar, 2005, jigifieri ftit xhur wara. Wiehed ghandu jiehu in-konsiderazzjoni li qed nitkellmu fuq fabbrika ta` dan id-daqs li kulhadd jaf x'tip ta` fabbrika hi l-**Actavis** li timpjega numru sostanzjali ta` nies u li biex filfatt Daniela Cauchi twettaq ir-responsabilitajiet taghha kellha bzonn certu ammont ta` zmien. Minnufih qabdet lil Gaston De Giovanni sabiex jaghmel rapporti ta` sigurta` relattivi.

Ghandna cirkostanza fejn il-persuni li l-Qorti ghandha quddiemha, huma verament in-nies li jhaddmu l-impjegati ta` din is-socjeta`? Monkman jghid,

1. "*It may be that the employer has done nothing to carry out his obligation*";
2. "*In the second case the employer may have been informed of a defect or danger and did nothing to remedy it*";
3. "*The employer knowing of a defect on his plant or premises or a danger in the course of the work, may have taken inadequate measures to eliminate or reduce the risk*";
4. "*Though the employer does not know that anything is wrong, it may be that he ought to know that he could have found out by reasonable care*".

Wiehed ghandu jiehu notament ukoll ghal fatt illi l-fabbrika tal-**Actavis** inbniet mill-Gvern fis-snin disghin (90) fuq specifikazzjonjiet generali ghal kull sit ta` fabbrika mibnija mill-Gvern. Anke l-grada li hija parti originali tal-fabbrika mibnija mill-Gvern, kienet ipprovduta mill-Gvern u ilha hemm mid-data ta` bini tal-istess fabbrika.

B'referenza ghas-sentenza rigward *reasonably practicable* tal-*employer*, Pulizija kontra Angelus Bartolo, Qorti tal-Appell preseduta mill-Imhallef Galea Debono, hdax (11) ta` Jannar, 2007, fejn il-Qorti qalet kemm il-darba l-Qorti ma tippruvaw li r-reat ikun sar minghjar it-taghrif taghha u li tkun esercitat id-diligenza kollha xierqa biex tevita l-ghemil tar-reat.

Ghal dawn il-motivi, peress li l-akkuzi kif dedotti ma jirrizultawx, din il-Qorti tillibera lill-imputati mill-akkuzi migjuba kontra taghhom.

Il-Qorti spjegat il-portata ta` din is-sentenza lill-imputati.

DR. CAROL PERALTA, MA (Human Rights & Democ.), LL.D., MAGISTRAT