



**COURT OF MAGISTRATES (GOZO)
AS A COURT OF CRIMINAL JUDICATURE**

**Magistrate Dr. Joseph Mifsud B.A. (Legal & Int. Rel.),
B.A. (Hons), M.A. (European), LL.D.**

Case number 650/2015

Today, 27th January 2016

**Police
(Inspector Frank Anthony Tabone)**

vs

OMISSIS

The Court;

Having seen the charges brought against **OMISSIS**, born on **OMISSIS**, accused for having on the 26th March 2014 at the Victoria Police Station, Victoria, Gozo at around 14:45hrs;

1. With the intent to harm a **OMISSIS** accused such person before a competent authority with an offence of which she knew that such person was innocent;

2. And also for having on the same date, time and place and circumstances fraudulently caused any fact or circumstance to exist, or to appear to exist, in order that such fact or circumstance may afterwards be proved in evidence against OMISSIS with the intent to produce such person to be unjustly charged with or convicted of any offence;

Having seen the records of these proceedings;

Having heard the witnesses;

Considers,

That the main charges brought against the accused by the Prosecution are those found in Section 101 and Section 110(1) of the Criminal Code, being the crimes of calumnious accusation and fabrication of false evidence.

Section 101 - Calumnious or False accusation.

The crime of false accusation as outlined in Section 101 of the Criminal Code deals with any information, report or complaint whether filed verbally or in writing defined as being verbal and direct (as opposed to the crime contemplated in Section 110(1) being the calumnious accusation known as real or indirect.) As Professor Mamo points out in his Notes on Criminal Law *“such crime is completed by the mere presentation of the information, report or complaint to the competent authority.”*

It must be stated that from the wording of Section 101 it is clear that the sole intention of the person being charged with the commission of this crime, must have been to cause harm to the person or persons being unjustly charged or accused and also that the false report or information must be such that criminal action could have been instituted or was instituted against the person or persons being unjustly reported. In a judgment delivered by the Court of Criminal

Appeal in its inferior jurisdiction on the 7 November 1949 in the names **The Police vs Vincenzo Attard** it was decided:

"Biex ikun hemm ir-reat ta' falza denunzja hemm bzonn li d-denunzja falza tkun dwar delitt jew kontravenzjoni li jaghtu lok ghal azzjoni kriminali persegwibbli quddiem il-Qorti ta' Gustizzja Kriminali."

Also in another judgment in the names the **Police vs Joseph Seychell** (17/10/1997 Criminal appeal) it was stated:

"L-akkuza jew denunzja, ghall-finijiet tal-kalunja ma tirrikjedi ebda formalita' partikolari; l-unika haga li hi rikjesta hi li dik l-akkuza jew denunzja issir quddiem awtorita' kompetenti, jigifieri awtorita' li ghandha is-setgħa li tipprocedi biex tinvestiga u eventwalment tressaq il-Qorti lil dik il-persuna li tkun allegatament ikkomettiet dak ir-reat."

Finally in yet another judgment delivered by the Court of Criminal Appeal in its inferior jurisdiction **The Police vs Doreen Zammit** - (15/06/2001) it was stated:

"Kull ma jirrikjedi l-artikolu 101 (reat ta' kalunnja) huwa l-att materjali tar-rapport lill-awtoritajiet kompetenti, u l-element formali fis-sens li min għamel dak ir-rapport kontra persuna fejn akkuzata b'reat, kien jaf li dik il-persuna fil-fatt ma kinitx għamlet dak ir-reat, bil-konsegwenza naturali li tali agir effettivament iwassal sabiex tigi kagonata hsara lill-persuna rapportata. Kif dejjem gie ritenut, wiehed huwa tenut dejjem responsabbli għall-konsegwenzi naturali ta' dak li intenzjonalment u volontarjament jagħmel."

Considers,

Consequently from the testimony of Inspector Melvin Camilleri (*a fol. 5 et seq.*) the following facts result:

On twenty sixth (26th) March two thousand fourteen (2014) the accused reported at Victoria Police Station that her six year old daughter was allegedly sexually abused by her husband with whom she was separating.

On the 25th April, two thousand fourteen (2014) released a signed declaration where she explained that her six year old daughter told her that her former husband OMISSIS shook her bottoms. The child told her, she said that whilst doing so he touched her private parts from behind. The accused added that she was very concerned and asked her daughter about this a thousand times over. And she would even wake up her daughter to see if she was saying the truth.

The interview at the Police Headquarters took around two hours in which she was constantly literally fouling her husband. When specifically she was asked to state something positive about her husband she said that there is nothing positive to report.

The investigating officer noted that her focus and concern was more of speaking about her husband rather than reporting the abuse or the alleged abuse on her daughter.

Regarding the investigations carried out after the report of OMISSIS Inspector Melvin Camilleri testified during the sitting of the 5th January 2016:

After that interview I interview as well OMISSIS, the six year old, as well together with a female Police Sergeant in the presence of their mother. The first question posed to the daughter, to OMISSIS, were to tell us about her family. And she immediately as if rehearsed, said that her father treated her badly and even his family and his relatives treated her in the same manner. Actually she was stopped by the Police Sergeant and asked to state her favourite thing about her grandmother. The child just said there was nothing favourable, there was always something wrong with her father's family. Without being

asked and just out of the blues she said her father touched her “pipi and popo” she mentioned referring to her private areas, whilst lying down at her grandmother’s house. She said she remembers she was playing with sponge bob or Barney and she remembers that OMISSIS, her brother, wasn’t there. However, when we requested her explain, physically explain, although she said “shook her bottoms, in Maltese she said, “il-patata,” she referred to it as “patata.” Incoherently she didn’t do a shaking sign but a cuddling move like grabbing her. So that was one way of setting off my alarms that the child could have been instructed or rehearsed what she had to say.

Actually the interview continued and at one point she mentioned something in OMISSIS to her mother, she just turned over to her mother and said something in OMISSIS, which I immediately asked what it is the word; obviously I don’t understand OMISSIS. And the mother said that OMISSIS mentioned something related to pornography. At that point I didn’t ask her further questions regarding pornography. Even though it was an important development I kept it for a later stage. The child after some time in the interview, the child said that her father used to smack her and treated her badly and at one point again I asked her about this pornography related thing and the child said that whilst touching her “patata” the father had red pornographic eyes and I didn’t know what this could mean “red pornographic eyes.” So I asked her, did someone tell you what red pornographic eyes means? She told me, yes, mummy. I told her, did someone tell you to say these things? And she repeated that her mummy had told her to say so. I again asked if there was something positive about her father and her answer was that she could not remember at first but then said that she couldn’t find something positive regarding her father. The interview basically was concluded at that.

I interviewed as well – I have to mention something that I noticed during this interview. I asked OMISSIS how she referred to her father and she said that she called him daddy. But all throughout the interview she was referring to him as OMISSIS, as her mother referred to her father.

Following OMISSIS’s interview I interviewed briefly OMISSIS, the younger child. He was quite restless, but considering his age it’s quite normal. But upon being asked about his father he just mentioned a word in OMISSIS which of course I didn’t understand. I asked his mother to explain what that word meant and it meant bandit, a bad

man. That was the answer I received and when specifically asked to tell us what his father did, he just said that his father was always naughty and he never fed him well because he always fed him bread and never cooked ravioli.

Consequently, although in my mind I was already seeing that this could be a case where there were psychological interferences I summoned OMISSIS to my office. In fact he released a signed statement on seventh (7th) May two thousand fourteen (2014). He refuted all the allegations made against him and explained some further facts relating to their marriage and their family, how he was even arraigned in court because there were allegations of mistreatment and a counsellor was appointed after one of the cases they had in court, in fact OMISSIS mentioned that this counsellor had given them the advice to have a second child after the first to mend and to make up for their relationship which was already severed. He mentioned also the question of miscarriage and how it affected them and on the question of domestic violence if he was hitting or smacking his children he mentioned to me that he when the children disobeyed he used corporal punishment but to the proportion to their behaviour and never hit them hard.

After this interrogation I made several considerations particularly psychological considerations. In my report to my superior I indicated particularly three points: the manner in which OMISSIS got married and the question of revenge; the untreated effects of miscarriage and parental alienation. And on these three points I made a recommendation that no criminal action could be taken against OMISSIS. First the child, the only thing we had against OMISSIS was the allegation that the child made her father shook her patata and shaking a patata of someone couldn't be deemed as defilement of minor. But considering these three, particularly the untreated effects of miscarriage and the fact that after just after two months of miscarrying OMISSIS was pregnant again, so the complete untreatedness, and the pregnancy could have led to partial postpartum depression particularly manifesting itself in harming or anger towards oneself and spouse particularly. Secondary to that is the parental alienation which although not deemed as yet as a psychological or psychiatric disorder it is a very strong consideration in these cases, particularly the ongoing, it's on an ongoing basis the child belittles and insults his father or her father; in this case both children were both literally doing that all throughout their interview. There is a combination of factors particularly indoctrination against the other party as in this case child

custody and separation disputes. Whereas normally for that age, three and six, their father is their hero, both these children found complete fault with their father with their situation as if he were demonized. So considering all this I recommended that no criminal action could be taken against OMISSIS.

Inspector Frank A. Tabone:

Basically you said here that the child expressed herself in a certain way. Can you tell us further about, basically when you interviewed her?

The witness:

Basically my feeling as the interview started and as the interview progressed my feeling was that the child was rehearsing what she had to say. In fact she actually said that her mother told her what to say and her mother asked her she said even in her declaration, I asked her a thousand times over. She even was waking her daughter up to check if these allegations were true.

Inspector Frank A. Tabone:

You also mentioned psychological aspects and considerations. Can you tell the court if you are qualified in psychology or any?

The witness:

I have a Masters in Investigative Psychology.

Cross Examination:

Advocate Dr. Jean Paul Grech:

So, you told us that you sent for OMISSIS together with her children and you interviewed them. The first interview with OMISSIS, she was only present or there were the children as well?

The witness:

No, the first interview she was alone.

Advocate Dr. Jean Paul Grech:

She was alone. And then subsequently you told her to bring her children to your office, right?

The witness:

Yes.

Advocate Dr. Jean Paul Grech:

Now, at one point why did you decide to talk to the children in the presence of the mother, rather, when you talked to OMISSIS, am I right in saying you already were not convinced of what she was saying, right?

The witness:

Yes. So when you asked OMISSIS to bring the children over to your office, for what reason did you speak to the children in the presence of the mother and not in the presence of a third party?

The witness:

First of all it was on the same day. So the children, they came to my office on the same day. So the children were just waiting for their mother together with other police officers. Secondly I had to confirm – their mother, OMISSIS never spoke during the interview, although she was present, she was sitting at the backside of the room. She never, I had already advised her not to intervene, and she actually never intervened except when I asked her for explanation of those OMISSIS words.

Advocate Dr. Jean Paul Grech:

You told us also that you had the suspicion that everything was rehearsed. That's the word you used. So, for what reason then at that point in time you did not decide to speak to the children alone in the presence of a social worker or other third party?

The witness:

This was a first interview. So I had to have the feel of what is going on. The fact that their mother was present since she did not intervene could not impinge on what the children were saying.

Advocate Dr. Jean Paul Grech:

Now, did you send for the children a second time around?

The witness:

No.

Advocate Dr. Jean Paul Grech:

No. was there a particular reason for this?

The witness:

When I saw the history, when I checked about the history and when I confirmed the history of these reports and when I even spoke to OMISSIS again on the phone, just on the phone, even considering what the proceedings were at that time I considered we do not have enough evidence and we did not get enough evidence actually because there were not any other people or persons or anyone who could testify in favour of these allegations. This happens in private. You would not have witnesses. So the only witness you have is the child probably. And considering that all these factors and the only allegation was that her father, the words, "shook her patata" so I could not consider that as defiled.

Advocate Dr. Jean Paul Grech:

From the investigations you carried out, am I right in saying that there was no variation in the statement of facts which was given to you? That is it was consistent throughout.

The witness:

There was only one statement of facts done. So there could not be variations.

Advocate Dr. Jean Paul Grech:

There were no variations from that even from the report which was first lodged here at the Victoria police station.

The witness:

No.

Advocate Dr. Jean Paul Grech:

It was consistent.

The witness:

Yes.

Advocate Dr. Jean Paul Grech:

As regard the issue of corporal punishment which you referred to in your evidence, the fact that OMISSIS used corporal punishment on his children, was it a one off or it was something which was common which he used in the upbringing of his children?

The witness:

From what I get it was something that was done. It was not done to an extreme that could be criminalized. I mean if we have a parameter to consider if corporal punishment, if you could arraign someone on corporal punishment or not it is harming the children. No physical harm was ever reported and I could not see psychological harm from that corporal punishment only. I only did one interview so.

Advocate Dr. Jean Paul Grech:

The corporal punishment that he used from your investigation did it result on which part of the body he used corporal punishment?

The witness:

Bottoms and hands were mentioned.

Considers,

That after hearing the testimony of all the witnesses produced, including the testimony of the accused, and after taking note of the documents exhibited, and submissions made by the parties, it considers that the Prosecution has proved its case beyond a reasonable doubt as regards the first accusation.

In the opinion of the Court regarding the second charge from the evidence heard, and after seeing the judgment delivered by the Court

of Criminal Appeal in its inferior jurisdiction in the names **The Police vs David Mizzi** (16/02/1998) the charge brought against the accused do not result. Hence, the Court declares the accused not guilty of the second charge brought against her and consequently acquits her of the said charge.

Decide:

Consequently after having seen Article 101 and Article 110(1) of the Criminal Code, acquits the accused from the second charge brought against her, but finds her guilty of the first charge and condemns her to thirteen months imprisonment which by application of Article 28A of Chapter 9 of the Laws of Malta is being suspended for two (2) years.

The Court has explained to the accused the consequences at law if she commits a crime within the operation of this judgment.

Finally, in order to protect the identity of the children mentioned in this judgment, the Court orders that the name and details OMISSIS and his children, as well as the name and details of the accused are not published in any means of communication whatsoever.

Dr Joseph Mifsud
Magistrate