

IR-RABA' PARTI

L-EWWEL SEZZJONI — QORTI KRIMINALI

16th May, 1952

Judges :

The Hon. Mr. Justice L. A. Camilleri, LL.D.,

Chief Justice;

The Hon. Mr. Justice A.J. Montanaro Gauci, LL.D.;

The Hon. Mr. Justice W. Harding, B.Litt., LL.D.

Her Majesty the Queen *versus* George Agnew

**Consolidation of Offences — Single Offence —
Accidental "Nexus" — Natural or Juridical "Nexus".**

It is a well-established principle, laid down in a long series of precedents, that, in order that it may be permissible to consolidate two or more offences into one, it is necessary that the offence be committed in such a way that, if one is to be committed, the other must likewise be necessarily committed, not as a natural consequence of the malice of the accused (accidental nexus), but as a result of a natural inevitability of connection (natural or juridical nexus).

Of course, the rejection of the plea that two or more offences should have been consolidated into one offence does not preclude the Court, should the case arise, from applying the provisions of law relating to the mitigation of punishment in cases of concurrent offences.

The Court — At the opening stage of the trial the accused set up a plea in bar to the effect that the first and third counts of the bill of indictment are null, in as much as the offences charged therein are merged in the offence charged in the second count;

This plea in bar was contested by the Attorney General;

The trial Judge, by an order of the 8th. of May, 1952, remitted the record to the Court composed of three Judges for its decision on the issue as raised;

After hearing the arguments, this Court considers as follows;

It should be noted at the outset that the plea in bar, set up by the accused, is in the sense that the offences charged in the first and third counts should be consolidated with the offence charged in the second count, thus making a single offence of all the acts alleged to have been committed by the accused;

It is a well settled principle, laid down in a long series of precedents, that, in order that it may be permissible to consolidate two or more offences into one, it is necessary that the offences be connected in such a way that, if one be committed, the other must likewise be necessarily committed, not as a result of the malice of the accused (accidental nexus), but as the result of a natural inevitability of connection (natural or judicial nexus). A "locus classicus" to illustrate this difference is that concerning a charge of false accusation. If a person be charged with this offence, he cannot be also charged with slander, because, since the making of a false accusation necessarily and inevitably implies the making of a slanderous statement, apart from the will of the offender, consequently the two offences very properly should be considered as a single offence. The "nexus" between the two offences in the case now quoted is a natural or juridical one (vide, as regards this theory of the separability or otherwise of offences, decisions given by this Court in "Rex vs. Simler", 11th. March, 1921; "Rex vs. Farrugia", 6th. December, 1926; "Rex vs. Caruana", 16th. November, 1928; "Rex vs. Degiorgio", 29th. January, 1937; "Rex vs. Caruana", 27th. January, 1942; and Criminal Appeal "The Police vs. Manwel Formosa", 18th. December, 1942);

There is nothing comparable in the present instance. According to the indictment (and, of course, at this stage the Court can only look at the indictment), the accused is alleged to have abducted the minor, defiled him by lewd acts, and to have had unnatural carnal connection with him. Each of these acts, or series of acts, is the subject of a separate charge, and properly so; because the offender might have stopped after allegedly committing the abduction, or after allegedly committing the defilement. The fact that, as alleged, he passed from abduction to defilement by lewd acts, and to unnatural carnal knowledge, was created by his malice, and was not the result

of an inevitable "nexus" between the offences in question;

The three counts should, therefore, continue to stand separately, and they do not fall to be merged in one offence;

Of course, the rejection of this plea in bar will not preclude the trial Judge from applying at a later stage of the proceedings, should the occasion arise, the provisions of law relating to the mitigation of punishment in cases of concurrent offences;

For the afore going reasons;

The Court disallows the plea set up by the defence, and directs that the record be sent back to the trial Judge in order that the case be proceeded with.
