



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

Magistrate Dr. Jean Paul Grech B.A., LL.D
M.Juris (Int. Law), Adv. Trib. Eccl. Melit

Judgement

Today, Tuesday the twenty-sixth (26th) of November 2024

Case No: 95/2024

The Police
(Inspector Keith Xerri)

VS

Omissis

The Court,

Having seen the charges brought against ***Omissis*** for having on the sixth (6th) of November 2023 at about quarter to ten at night (21:45hrs) and in the preceding hours, in One80 Bar, situated in Triq Martino Garces, Għajnsielem, Għawdex, and/or in the vicinity and/or in other places in this Island:

- (1) reviled, or threatened, or caused a bodily harm to PC 34 George Scicluna, PC 1317 Robert Allan Portelli and PC 390 Charlon Xuereb, persons lawfully charged with a public duty, while in the act of discharging their duties or because of them having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty;¹
- (2) at nighttime, disturbed the repose of the inhabitants by rowdiness or bawling, or in any other manner;²
- (3) even though in a state of intoxication, publicly uttered any obscene or indecent words, or made obscene acts or gestures, or in any other manner not otherwise provided for in the Criminal Code, offended against public morality, propriety or decency;³
- (4) in any manner not otherwise provided for in the Criminal Code, wilfully disturbed the public good order or the public peace;⁴
- (5) disobeyed the lawful orders of any authority or of any person entrusted with a public service, that is the orders of PC 34 George Scicluna, PC 1317 Robert Allan Portelli and PC 390 Charlon Xuereb, or hindered or obstructed such persons in the exercise of

¹ Art. 95 of Chap. 9 of the Laws of Malta

² Art. 338 (m) of Chap. 9 of the Laws of Malta

³ Art. 338 (bb) of Chap. 9 of the Laws of Malta

⁴ Art. 338 (dd) of Chap. 9 of the Laws of Malta

their duties, or otherwise unduly interfered with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any other manner whatsoever;⁵

(6) in any public place or place open to the public, was found drunk and incapable of taking care of herself or in any public place or place open to the public, being in charge of a child under the age of seven years, or of any horse, mule or ox, or steam engine, or of any vehicle, was manifestly in a state of intoxication, or, in such a state, caused any annoyance or disturbance, or was in possession of firearms, or refused to quit any wine and spirit shop, inn, tavern or lodging-house, or attempted to enter any passenger boat or vessel or other vehicle, or refused to quit such boat, vessel or other vehicle notwithstanding the warning of the person in charge thereof not to enter into or to quit such boat, vessel or other vehicle;⁶

(7) uttered insults or threats to PC 34 George Scicluna, PC 1317 Robert Allan Portelli and PC 390 Charlon Xuereb, not otherwise provided for in the Criminal Code, or being provoked, carried such insult beyond the limit warranted by the provocation.⁷

⁵Art. 338 (ee) of Chap. 9 of the Laws of Malta

⁶ Art. 338 (ff) of Chap. 9 of the Laws of Malta

⁷ Art. 339 (1)(e) of Chap. 9 of the Laws of Malta

The Court was humbly requested in case of guilt, to provide for the security of PC 34 George Scicluna, PC 1317 Robert Allan Portelli and PC 390 Charlon Xuereb in terms of articles 382A, 383, 384, 385 and 412C of Chapter 9 of the Laws of Malta.

Having seen that during the sitting of the fifth (5th) of March 2024 the defence raised the plea of insanity in terms of article 33(a) of Chapter 9 of the Laws of Malta;

Having seen the request made by the Defence during that same sitting to appoint a psychiatrist to assess the mental state of the accused at the time of the commission of the offences with which she has been charged with a view to establish whether the accused had the capacity *di intendere and di volere*;

Having seen that this request was not objected to by the Prosecution;

Having seen its decrees of the sixth (6th) March 2024, fourth (4th) April 2024, seventh (7th) May 2024 and fourth (4th) June 2024 wherein by virtue of the latter decree the Court appointed Dr. Joseph Spiteri to examine the accused with a view to determine whether at the time of the commission of the alleged offences the accused was in a state of

insanity as a result of which she was not in a position to will and understand her actions;⁸

Having seen the report prepared by Dr Joseph Spiteri which was confirmed on oath during the sitting of the twenty-fourth (24th) of September 2024;

Having heard the evidence under oath of by Dr. Joseph Spiteri during that same sitting;

Having heard submissions by the parties on this plea;

Having seen all other acts of these proceedings;

Considers

This judgement will only be addressing the plea of insanity raised by the defence in terms of article 33(a) of Chapter 9 of the Laws of Malta during the sitting of the fifth (5th) of March 2024.

Article 33(a) of Chapter 9 stipulates that: *“Every person is exempt from criminal responsibility if at the time of the act or omission complained of, such person (a) was in a state of insanity.”* The import of this defence

⁸ La capacita' di intendere and di volere.

has been aptly summed up and explained in the judgement **Ir-Repubblika ta' Malta vs David Norbert Schembri**⁹:

“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

⁹ 25th September 2008

fuq bazi ta' probabbilita`, meta d-demenza tkun giet eccemita 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-Ingiliz – 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-Professor 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.”¹⁰

From the expert’s report, it transpired that the accused suffers from a condition referred to as bi-polar affective disorder. The American Psychiatric Association defines this disorder as follows:

“Bipolar disorders are mental health conditions characterized by periodic, intense emotional states affecting a person's mood, energy, and ability to function. These periods, lasting from days to weeks, are called mood episodes. Mood episodes are categorized as manic/hypomanic episodes when the predominant mood is intensely happy or irritable, or depressive episodes, when there is an intensely sad mood or the ability to experience joy or pleasure disappears. People with bipolar disorder generally have periods of neutral mood as well. When treated, people with bipolar disorder can lead full and productive lives.

While people without bipolar disorder may also experience mood fluctuations, mood changes that are part of commonly lived experience typically

¹⁰ Vide also *Il-Pulizija vs Mairo Said* decided on the 28th April 2011.

*last hours rather than days and are not accompanied by extreme changes in behavior or changes in functioning, such as difficulties with daily routines and social interactions. Bipolar disorder can disrupt a person's relationships with loved ones and cause difficulty in working or going to school."*¹¹

Although people suffering from this disorder can potentially lead a normal life, the Court expert in his report explained that after reviewing defendant's medical file a relationship was identified between this condition and her impulsive alcohol consumption. The expert elaborates that: *"it appears that when **omissis** is depressed or when she is in mania she tends to make use of alcohol to deal with her situation (as at that time she has no insight). This augments her apparent disinhibition rendering aggressive behaviour frequent. In turn when alcohol level of blood reaches high levels she would be in a toxic state and thus would be present as an acute organic brain syndrome with amnesia of the experience. She therefore requires good control of the bipolar disorder which if achieved would avoid alcohol consumption. Thus compliance to the correct treatment is essential."*¹²

¹¹ <https://www.psychiatry.org/patients-families/bipolar-disorders/what-are-bipolar-disorders> . Accessed on 25th November 2024.

¹² Fol. 66 of the Acts.

Reference is also made to the expert's evidence given during the sitting of the twenty-fourth (24th) September 2024. When asked specifically whether the defendant's lack of capacity (which he pointed out in his report) was the result of her alcohol intake or else whether it was a direct result of her mental state, the expert replied:

*"It is a complex situation which comes first, but it is clear that when her mental state becomes disturbed, in this case she had a period of being depressed because her boyfriend left her, subsequently she switched off episodes and that has been reported in the medical and psychiatric history during that period, she then switched to drinking alcohol which is a consequence of her mental illness. So, therefore it is my opinion that the alcohol issue is not a question of Dutch courage or But is a consequence of the mental disorder she suffers from, and has been so suffering from it for the last ten years."*¹³

Hence it is clear that alcohol consumption was not something independent and extraneous to her psychiatric condition; it was precipitated directly by her psychiatric condition. It is for this reason

¹³ Fol. 60 of the Acts.

that the Court expert is highlighting the need to keep the bi-polar disorder under effective control.

It is evident from the expert's report that around the time the alleged offences were committed, the accused had a relapse of her psychiatric condition which resulted in alcohol abuse. This in turn had an effect on her capacity of control and therefore she was not in a position to will and understand the consequences of her actions. The Court does not have any valid reason not to endorse the expert's conclusions in their entirety, even the more so when considering that the expert examined in detail the accused's medical file and delved in depth as regards the interaction between the accused's alcohol consumption and her psychiatric condition.

In the light of the above, the defence's plea of insanity merits to be accepted.

- **Decide**

Therefore for the reasons expounded above and after having seen article 33(a) of Chapter 9 of the Laws of Malta and articles 36 and 37 of Chapter 525 of the Laws of Malta, the Court is accepting the plea raised by the defence during the sitting of the fifth (5th) March 2024 and is declaring defendant **exempt from any criminal responsibility, as she**

was in a state of insanity at the time the alleged offences were committed.

Since the Court expert did not indicate in his report that it is necessary or expedient to order that defendant be admitted to a licensed facility for forensic patients for treatment but simply that the defendant is followed regularly and that she is compliant to treatment with the avoidance of intake of alcohol, **the Court will not be making an order** in terms of article 623(1) of Chapter 9 of the Laws of Malta so that defendant is kept in custody in Mount Carmel Hospital.

However, after seeing article 16(1) of Chapter 525 of the Laws of Malta and following the Court Expert's conclusions, the Court orders that this Judgement be notified to the Commissioner for the Promotion of Rights of Persons with Mental Disorders so that a Community Treatment Order be issued in terms of article 16(4) of the same Chapter 525 of the Laws of Malta so that the defendant would be compulsorily treated in the community under a care plan that helps the person to live and integrate in the community. This with the view to ensure regular follow-up and verification that defendant is being compliant to treatment.

(sgd) Dr. Jean Paul Grech
Magistrate

(sgd) Diane Farrugia
Deputy Registrar

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For The Registrar