Identification in the Law of Evidence

Zammit Tabona vs Saliba[1]

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By means of a preliminary judgment given in October 2006, the First Hall of the Civil Court declared that defendant had indeed participated in the robbery and after referring to Article 1049 Civil Code,[2] stated that defendant had to make good the damages suffered by plaintiffs. In a final judgment given by the same First Hall in March 2008, defendant was ordered to pay the sum of €130,441.42 in damages together with interest and expenses. Defendant appealed.

At first instance, plaintiff testified that he had recognised defendant amongst the other thieves when they were leaving the house: '*jiena lill-konvenut għaraftu u kien wieħed mis-sitta jew sebgħa żgur li kienu. Għaraftu b'għajnejja, wara li ġa kont naf li kien wieħed magħhom mill-ewwel, b'widnejja…*'. He had known defendant personally for about twelve years before the incident and before knowing him he even knew his father. He added: '*Għalhekk il-fare tiegħu, l-istatura, it-tul u l-atteġġjament nafhom tajjeb u kienu kollha jaqblu mad-dettal li rajt u ma' dak li naf dwar il-persuna tal-konvenut hekk midħla tiegħi, anke l-moviment u l-inklinazzjoni tar-ras*'. The Court believed plaintiff and went on to declare that defendant had indeed participated in the robbery.

The Court referred to another episode concerning some buckets of gold. Defendant worked as a plumber and electrician and prior to the robbery plaintiff had asked him to carry out certain works on his house. Due to personal circumstances, plaintiff was not in a position to pay and asked defendant to give him some time until he could affect such payment. To put defendant's mind at rest, he metaphorically told him that he had '*żewgt ibramel deheb biex jagħmlu tajjeb*'. However, what he really meant was that he had other property if he could not pay instantly in liquid cash.

What really shocked the plaintiff was the fact that during the robbery the thieves had asked him to hand over the buckets of gold. It followed that the thieves had either heard about the gold from defendant or defendant was one of the thieves who went there specifically to steal the gold. Ultimately, the Court concluded:

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[1] *Dr Joseph Zammit Tabona et vs Charles sive Charlie Saliba*, Court of Appeal (Civil, Superior), 6 October 2009

[2] Civil Code, Chapter 16 of the Laws of Malta, Article 1049

Tassew, il-Qorti kienet tkun aktar konvinta li kieku l-attur qal pożitivament li għaraf lill-konvenut u waqaf hemm, għax jinħoloq is-suspett illi kienu c-cirkostanzi l-oħra – l-aktar il-'bramel tad-deheb' – li kkonvincew lill-attur li għaraf lill-konvenut, u mhux għax tassew għarfu. Madankollu, l-attur ma jħalli ebda dubju fix-xhieda tiegħu illi tassew għaraf lill-konvenut minn persuntu u mill-qagħda u l-imāieba tiegħu, u l-Qorti hija sodisfatta illi tista' toqgħod fuq il-kelma ta' l-attur.

APPEAL

Defendant contested the judgment of the First Hall of the Civil Court. He claimed that the level of proof required in a situation where a person is being accused of a crime in civil proceedings required the application of a more rigorous test similar to that used in criminal proceedings.

It is well established that there is a clear distinction between the level of proof required during criminal proceedings and that required during civil proceedings:

> Filwaqt li f' ta l-ewwel l-akkuza triq tirriżulta '*beyond reasonable doubt*' fil-kamp ċivili jkun biżżejjed li l-provi prodotti jwasslu lill-ġudikant għal '*a moral certainty',* li l-provi jwasslu għall-akkoljiment tat-talba attriċi.

Each case must be considered on an individual basis and the judge is to adopt a more rigorous test especially when dealing with issues of identity. There is a cross-reference to 'Il-Pulizija vs Stephen Zammit',[3] in which it was held that the law does not list rules for dealing with cases of identification since the legislator 'ried iħalli fil-ġudizzju prudenti u għaqli tal-ġudikant'. Moreover, the Court quoted from the abovementioned judgment as follows:

> *Il-liġi tagħna hi partikolarment skarsa dwar regoli li għandhom x'jaqsmu ma l-identifikazzjoni ta' imputat jew akkuzat. Infatti, l-unika disposizzjoni tal-liġi in materja – l- Artikolu 649 tal-Kodiċi Kriminali – hi redatta fin-negattiv, fis-sens li tgħid x' mhux meħtieg u mhux x'inhu meħtieg. Minn din id-disposizzjoni jidher ċar li l-leġislatur ma riedx ixekkel lill-partijiet fil-kawża b'regoli riġidi ta' kif għandha ssir identifikazzjoni ta' persuna jew oġġett, iżda ħalla fil- ġudizzju prudenti tal-Qorti li tirregola ruħha skond il-każ.*

Here, the whole matter related not only to identification, but to the plaintiff's recognition of defendant on the night of the robbery. One cannot fail to mention that such a violent robbery would have left certain psychological effects on the plaintiff's memory resulting in a number of inconsistencies and contradictions in the evidence provided. Despite these inconsistencies, the First Court believed plaintiff on the basis that he had recognized defendant because he was well-known to him. Therefore, the First Court had examined all the evidence and was morally convinced that plaintiff's demands deserved to be upheld – the Court of Appeal had no reason to depart from such judgment.

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[3] Court of Criminal Appeal, 16 July 1998