

The Defence of Conjugal Subjection In the Criminal Law of Malta

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SECTION 34 of the Criminal Code of Malta lays down as follows:

“No person shall be liable to punishment if at the time of the act or omission complained of, such person—

- (a) was in a state of insanity or frenzy; or
- (b) *was constrained thereto by an external force which he could not resist.*”

The external force mentioned in the last paragraph of this provision of law may be either physical or moral, and a form of moral coercion improperly so called is civil subjection, which may be either public or private. Our Criminal Code, like the French Code and unlike the Italian Code, does not contain an express provision on the subject of civil subjection. It is proposed, however, to consider here the position of private civil subjection with regard to the married women in the Criminal law of Malta.

It is well to start by enunciating the general principle that civil subjection arising from the domestic relations of husband and wife is no defence in Maltese Criminal law and affords no exemption to a wife unless it amounts to such coercion as is envisaged in the last paragraph of the abovequoted provision of law. This may be taken to the general principle governing the subject under investigation.

The defence of civil subjection in respect of the married woman was expressly raised (for the first time, I daresay) in *The Police v. Rita Spiteri and Mario Spiteri*, in which I held brief for Mario Spiteri. By a judgment of the Criminal Court of Magistrates of the 2nd August, 1944, Rita Spiteri was found guilty of having, in Valletta, during the preceding two years, by several acts committed in pursuance of the same design, made false oaths required by law before Labour Officers lawfully authorized to administer oaths and was sentenced to hard labour for a term of seven months and to general interdiction for a term of five years, and her husband Mario Spiteri was also

found guilty of having, by several acts committed in pursuance of the same design, knowingly received a sum exceeding ten pounds but not exceeding one hundred pounds obtained by means of fraud, through his wife's false oaths, and was sentenced to imprisonment for a term of five months. Before that Court Rita Spiteri had set up the plea of coercion by her husband and the presiding magistrate (A.V. Camilleri, now one of His Majesty's Judges) had disallowed the plea on very sound grounds. On appeal the same plea was urged by her, and Harding, J., in an elaborate judgment delivered in His Majesty's Criminal Court in its appellate jurisdiction on the 30th October, 1944, remarked as follows: "The contention of the defence that Rita Spiteri, being a married woman, should be considered, in such a case as this, as having acted under coercion by her husband cannot be accepted by this Court. Even though one were to examine the practical cases to which, *in pari materia*, the doctrine of coercion was applied by English Courts, one must aver that any presumption eventually admitted by English case-law in this connection will fail whenever evidence is adduced that the wife acted voluntarily in assisting her husband. The only coercion under our law is that mentioned in the second subsection of Section 35 of the Criminal Code [now Section 34 (b)]; it is beyond question that *abbedienza gerarchica* in the domestic field (or *timore reverenziale*), as a form of coercion improperly so called, cannot exempt the wife from criminal liability because it does not do away with the consciousness of her wrongdoing nor with the voluntariness of her determination. Therefore the Magistrate was right in remarking in his earlier decision, on remitting the evidence to the Attorney-General, that in the case of a charge brought against husband and wife, there is no presumption under Maltese law that the husband has exercised his power over the wife with a view to committing the crime... Wherefore the contention of coercion, in the absence of proof of coercion in the sense admitted by our positive law, cannot be accepted. This does not necessarily imply that such considerations may not, in appropriate cases, have a bearing on the application of punishment." As a matter of fact, in the case under review, Harding, J., concluded by affirming the judgment of the Inferior Court as regards the merits of the case, but reduced the punishment applied to Rita Spiteri to imprisonment for five months, so that

the punishment restricting the personal liberty of both husband and wife came to extend over the same period of time, as the learned judge avowed his inclination to give weight to the circumstances that Mario Spiteri, as head of the family, should not have passively acquiesced in, but should have actively prohibited, the commission of the offence by his wife.

In England the common law accorded a special privilege to the wife by raising *prima facie* presumption that a felony (other than one of extreme gravity such as treason or murder) committed by a married woman in the actual presence of her husband was committed by her under his coercion and was therefore excused, even though there were no proof of any actual intimidation by the husband. Still, as Kenny says in his *Outlines of Criminal Law* (1945 Edit., p. 83) "this presumption of subjection was only a *prima facie* one; rebuttable by proof that the wife took so active a part in the crime as to show that her will acted independently of her husband's". This principle was affirmed in *Reg. v. Crose* (1838), 2 Moody 53 (K.S.C. 66). As from June 1st, 1926, however, this presumption was abolished, and actually section 47 of the Criminal Justice Act, 1925 (15 and 16 Geo. V. c. 86) lays down as follows: "Any presumption of law that an offence committed by a wife in the presence of her husband is committed under the coercion of the husband is hereby abolished, but on a charge against a wife for any offence other than treason or murder, it shall be a good defence to prove that the offence was committed in the presence of and under the coercion of, the husband."

It is unquestionably relevant to mention here that, doubtlessly acting on the assumption that this presumption had been, at least once before, admitted by our Courts, the defence had, in the Spiteri case, cited *The Police v. John Vella and Rita Vella*, determined by His Majesty's Criminal Court in its appellate jurisdiction on the 30th October, 1943. Harding, J., however remarked that that case was different from *The Police v. Spiteri* abovequoted inasmuch as it had dealt with the presumption of the possessor's identity in the case of the discovery of incriminated objects in a house occupied by a man and his wife. In the Vella case some bedsheets, which were proven to be Crown property, were discovered by the Police in a chest of drawers in a house occupied by Rita Vella and her husband John

Vella. This circumstance, the learned judge observed, should not operate to the prejudice of the wife *alone*, but at least of both the husband and the wife. As a matter of fact, the learned judge went on to remark that on this subject he was rather inclined to follow a principle established in English case-law that unless there are circumstances to show clearly that the wife was acting separately and without her husband's sanction or collusion, it is taken that objects unlawfully found in the house of a husband and his wife are in the possession of the husband. In this connection the learned judge cited *R. v. Booter* (2 Cox, C.C. 272).

The same principle was reaffirmed in a more recent case in which I happened to be prosecuting, *The Police v. Angelo Camilleri and Concetta Tanti*, determined by His Majesty's Criminal Court in its appellate jurisdiction on the 23rd February, 1948. In that case some lengths of material alleged to have been stolen, were found by the Police in a house occupied by the two appellants who were living together in concubinage. Harding, J., however, remarked that even if the Court were to apply the principle affirmed in *The Police v. Vella* to the case of two persons who, like the appellants, were living in concubinage, in the present case the demeanour of both the appellants in the course of the Police investigations was such as to show that both were assuming responsibility for the unlawful possession of the goods in question, in spite of their endeavours to justify such possession. Incidentally the doctrine of marital coercion in English case-law does not apply to cases of mere cohabitation and this privilege accorded to a wife does not extend to a mere concubine, as was held in *R. v. Court* (1912), 7 Cr. App. R. 127.

Finally it would not be amiss to note that even in our Civil Code, as in the Italian Code and formerly in the Code of Este, the Albertine Code, the Neapolitan Code and the Code of Parma) and also in the French Civil Code and in Roman Law (Fr. 22, D. *de rit. nupt.* (XXIII, 2): L. 6, C. *De his quae vi metusve* (II, 20) mere reverential fear (*timore riverenziale*) is not enough to invalidate a contract; and Section 1023 of our Civil Code lays down as follows: "Mere reverential fear towards the father, mother, or other ascendant, or towards the husband, shall not be sufficient to invalidate a contract, if no violence has been used."
