

Libel trial McCann v Gonçalo Amaral - Day 4 Witness No 2

The testimony as it happened...

(20.09.2013, 3:30pm) Maria Isabel Stilwell is a writer and the editor of *Destak*, the first free daily newspaper in Portugal. She says she interviewed Kate McCann in May 2011 when she launched the Portuguese translation of the book "Madeleine". She only knows Gonçalo Amaral by reputation and has never had any dealings with any of the other defendants. The witness is asked about libel judgements she is or has been part of. She answers that she presently has no process with Gonçalo Amaral.

The Judge asks if the witness has read Gonçalo Amaral's book.
IS says she has.

The Judge asks whether IS has watched his documentary.
IS says "yes".

The Judge asks whether the witness' public controversial position concerning Gonçalo Amaral will influence her testimony.
IS says her conscience tells her "no", but then adds she hopes it will not.

1) The McCann family lawyer, Isabel Duarte, is the first to question the witness.

ID - Are you a writer?
IS says "yes".

ID - Are you familiar with all the files in this case?
IS says she is aware of the contents of the Attorney General's Final Report and adds that she wrote about it.

ID - What was your job then?
IS says she was the editor of *Destak*. She adds that the book campaign was massive.

The Judge overrules the comment as off topic for now.

ID - What was the effect of the Amaral book on the public?
IS – Any person who announces he/she will tell people all the truth is very successful.

ID - About the audience share of the documentary, how did you obtain that data?
IS doesn't know but thinks *Destak* may have found the information online.

ID - It had over 2 million viewers! Is that normal?
IS apologises for being trivial but draws a parallel to a major football competition.

ID - Did the attention of the media and the people diminish after the publication of the book?
IS believes so. She says the issue which had most focus was whether Madeleine was alive or dead. She refers to people in Portugal who believe that bad things happen to bad people and that good things happen to good people. People think that "criminals are always different from us and since the McCanns aren't like us, they are widely considered cold and uncaring."

Dr Santos de Oliveira, lawyer for Gonçalo Amaral listening to this exchange has become increasingly exasperated, reacts saying that it is nothing to do with his client. ID's assistant also reacts vehemently. The judge tells them to stop immediately.

SO dictates the court clerk a protest saying that the witness exhibits a hostile demeanour towards his client and asks that her statement not be admitted by the Court. ID obviously protests.

The Judge cites an Article from Chapter 6, section I of the CPC which can preclude a witness from testifying. She adds that SO presented none of these arguments. Therefore nothing prevents IS from testifying. But the Judge requests that the questions be more objective.

ID - Did the attention of the public and the media decrease after the publication of the book and the broadcast of the documentary?

IS says she "has a feeling" it did.

ID - Are there numbers, notes supporting this?

IS says that as a newspaper editor she knows when an issue is important. She resumes her narrative about beliefs that bad things happen to bad people and observes that everything (in the media) tended to make the McCann couple more distant than they were. **When finally the book was published, the issue appeared to be resolved and closed.**

ID - The Maddie case has been deeply and amply treated, there have been many other books...

IS interrupts objecting she read none of these books. She thinks they're not of much concern and adds that none of them has the credibility or impact of a book written by an ex-inspector who was initially in charge of the case.

ID asks if she knows that former PJ inspector Moita Flores commented on the Maddie case and the book on TV.

IS knows that the book was commented on TV, on the news. She remembers that MF praised Gonçalo Amaral and she adds that a child can be missing without the parents being guilty. She remembers the title "PJ inspector agrees with homicide". She wrote on the *providencia cautelar* (the Injunction) because the people imagined that the issue was to examine whether the parents were guilty or not, she wanted to speak on freedom of expression versus the right to a good name. She resumes her narrative about newspapers which publish anything just for a story, people who accept anything as the truth, etc.

ID asks whether the facts mentioned in the book and the documentary were facts established in the Final Report.

IS thinks they're not, otherwise the parents would have been tried. She says that none of the allegations were proved. She says it is typical Portuguese provincialism to believe the opposite of what a Final Report says.

ID - Were the facts mentioned by Gonçalo Amaral ascertained?

IS thinks "no". The Final Report says there is no proof. She adds that it is not legitimate to speak of freedom of expression without limits.

ID - asks whether the witness speaks of a paragraph in the book or of the insinuations in the conclusions.

The Judge overrules, she requires more precision.

ID - says she refers to the paragraph containing the words, "fraud or abuse of trust..." ("*burla ou*

abuso de...")

During a moment of relaxation at one of these meetings, I did a side step or I might have been inopportune and rather undiplomatic. Worried with the possibility that the McCann couple were somehow involved in their daughter's disappearance and reflecting about the kind of crime they might have committed, something occurred to me. If, really, any type of responsibility of the McCann couple was confirmed, then the fund set up to finance the search for Madeleine that had reached nearly €3 million could be a crime of fraud or abuse of trust. This question was debated and, in fact, with such premises the crimes of qualified fraud or abuse of trust could exist, but Portugal would have no jurisdiction to investigate and judge it. The fund being legally registered in England, it would be our English colleagues who would deal with the case. Our English colleagues then realised a hard reality: the strong possibility that they would have a crime to investigate in their own country, with the McCann couple as the main suspects: a prospect that left them rather reluctant.

IS interrupts and says she didn't read any reference to that fact in the Final Report.

SO objects that this isn't a fact and the Judge concurs.

ID - asks how she can explain the effect of...

IS interrupts and says that whoever reads it sees all the pieces fall into place, the theory seems genuine, it doesn't leave room for doubt. She says it is written from the perspective of a victim.

The Judge again overrules...

IS interrupts saying it's her reading of the book. She adds that if it was true the McCanns would be in jail.

2) Defence lawyers.

a) TVI lawyers' questions.

TVI - You're not sure about the over 2 millions of audience share?

IS says that at the time she thinks an article was written on this but it's easy to check.
She makes a gesture towards her bag but stops as nobody reacts.

TVI - Are you speaking as a journalist?

IS says "yes".

TVI - asks a conclusive question about freedom of expression versus good name.

The Judge again overrules.

IS resumes her narrative criticising the documentary where the group is shown drinking and a little girl left alone without any alternative point of view. How could parents agree with fifty minutes of that? She says that after 33 years of professional work she's allowed to value judgements.

TVI - wants to know if the witness has evidence comparisons on the topic of decreasing interest.

IS says she has.

b) Valentim de Carvalho (DVD production/distribution) lawyer's questions

VC - Do you remember when the Final Report was released?

IS thinks it was in June 2008.

VC reminds her that the Final Report states that the definition of the crime was not established from the available evidence.

IS says she didn't read that.

The Judge intervenes and points out that the case was shelved for lack of evidence.

VC asks whether IS remembers the conclusions of Gonçalo Amaral book and starts to quote an extract...

The results my team and I have arrived at are the following:-

- 1. The minor, Madeleine McCann died inside apartment 5A of the Ocean Club in Vila da Luz, on the night of 3rd May 2007;*
- 2. There was simulation of abduction;*
- 3. Kate Healy and Gerald McCann are suspects of involvement in the concealment of their daughter's body;*
- 4. The death could have occurred as a result of a tragic accident;*
- 5. There are clues about the parents' negligence concerning the care and safety of the children.*

VC - asks in what way those are facts or conclusions.

IS starts to claim vehemently and loudly that Gonçalo Amaral had no right to, he has an obsession... She mentions the Intermediate Report that he signed (*10th September by Tavares de Almeida*). She insists that it is worse than the book. She says the book is very well written, easy to read.

VC - Are the facts of the criminal investigation the same as close expressed in the book? If the conclusions...

IS again interrupts, but not to answer. She speaks with a great volubility which renders her speech difficult to understand. She speaks of the newspaper *Correio da Manhã* and of delirious theories of conspiracy.

c) Guerra & Paz's lawyer's questions

GP - asks since when did IS commence working in journalism.

IS says she started in 1981 and starts listing everything she did in a sarcastic manner.

The Judge intervenes to remind the witness this is a judgement and not to be sarcastic by entering into such minute detail.

GP - was the decrease of news related to the fact it was a book?

IS answers it's obvious that news may emerge when, for example, there's a judgement. The feeling is that people think that what happened is already known.

GP - but...

IS interrupts GP again saying that when there are doubts, people speak a lot. She starts describing how a journalist works.

GP - asks if someone was in charge of marketing of the book.

IS says that marketing actions, to-day, can't be bypassed. She resumes a narrative about the marketing of books, including books for children, cooking, novels, etc.

GP - mentions the three other books written on the case and asks about their marketing.
IS says she didn't read them.

GP – Do you know how many copies the Correio da Manhã sells?
IS knows, but asks "what has that got to do with the issue?"

The Judge overrules the witness's question and observes the witness is continuously attempting to give meaning to what she says. IS interrupts the Judge and protests. The Judge concludes she can't help it.

GP – In your editorials you mentioned the position of Gonçalo Amaral...
IS again interrupts saying there are two kinds of things in a newspaper, facts and articles of opinion.

GP – Didn't you say your objective was to clarify things in order to inform the public?
IS answers that from the beginning, in May 2007, she claimed she would be objective and wouldn't necessarily be on the side of the parents, known to be the initial suspects in this kind of case.

GP reminds her that the book was published on the 24th July while the Final Report was released on the 21st July. She wants to know if GA could be aware of the Final Report's conclusions.

The Judge overrules.

d) Santos Oliveira (GA lawyer) questions

SO - Are your opinions only based on news?
IS says "not only". She mentions TV programs, books.

SO - Have you read all the Final Report?
IS says "no".

SO – Are you aware that the Final Report indicates the child to be most likely dead?
IS says she is.

SO – Since this hypothesis exists in the Final Report, the book...
IS interrupts again saying the fact of death doesn't mean that the parents are guilty.

The Judge – The Final report doesn't say the homicide is due to the parents.
She reads this part from the Report:

No respeitante aos outros crimes indiciados não passam disso mesmo e pese embora se nos afigurar não ser de descartar, dado o seu elevado grau de probabilidade, a verificação dum homicídio, tal não pode passar de mera suposição por carência de elementos de sustentação nos autos.

Concerning the other indicated crimes, they are no more than that and despite our perception that, due to its high degree of probability, the occurrence of a homicide cannot be discarded, such cannot be more than a mere supposition, due to the lack of sustaining elements in the files.

(Astro translation).

SO - But the book doesn't say that the homicide was due to the parents. If the book doesn't say anything else that what's in the...
IS interrupts, but in turn is immediately interrupted by the Judge.

Judge: Let me do this part!

Evidence ends.

End of day 4.