

SOME EARLY MALTESE MEDICO-LEGAL DOCUMENTS

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IN 1974 I had the opportunity to study and publish a medico-legal report (*perizja*) by two Maltese physicians appointed as experts by the Bishop's Court at Mdina in 1542. The case dealt with the annulment of marriage of Catherine nee Busuttill with John Azzopardi on the grounds that the latter had a deformed sexual organ which hindered the performance of the conjugal and procreative act.¹ I drew attention to this document because it is the earliest medico-legal report so far discovered in Malta. In my continued search for such documents I have now come across other sixteenth century manuscripts, though of a later date, among the records of the Bishop's Curia of Mdina. The presence of these medico-legal documents in the files of an ecclesiastical tribunal is accounted for by the fact that by 1575 the inhabitants of the Maltese Islands sought to evade the authority of the Grand Master of the Order of St. John, which then ruled over the Islands, by electing to submit themselves either to the jurisdiction of the Bishop or to that of the Inquisitor in both civil and criminal matters.²

One of these manuscripts is a medical certificate dated 3rd November 1578 by surgeon Paolo Listen (?) from Valletta stating that in August of that year he had treated a certain Paolo Chiatar (Ciantar) from Luqa for 'a wound on the right side of the head near the sagittal suture'. The treatment lasted twenty-two days and consisted in the prescription of an appropriate diet, the administration of a rhubarb mixture internally and the local application of an ointment.³

Another manuscript is a *monitorium* from the Bishop dated 17th June 1578. It concerns the application by Brandano Bonnici to the Ecclesiastical Court of Mdina to declare the testament made by his

¹Cassar, P.A. *Medico-Legal Report of the Sixteenth Century from Malta, Medical History*, 1974, 18, 354.

²Debono, P. *Sommario della storia della legislazione in Malta*, Malta, 1897, p. 338.

³CEM, *Acta Originalia*, Ms. 58a, fol. 195, Cathedral Archives, Mdina.

brother Filippo of Gudja null and void. Brandano alleged that Filippo could not have drawn up a valid will as at the time he was 'out of his mind and senses and deprived of speech and therefore the contents of the will could not have been dictated by him'.

The Bishop's Curia, in considering the application, very appropriately sought to obtain proof of Filippo's alleged unsoundness of mind. It, therefore, issued a circular addressed to all the parish priests of the diocese of Malta enjoining anyone who knew of the testator's alleged insanity to inform the court accordingly within fifteen days under penalty of excommunication if they failed to do so. Very disappointingly there are no further records about this case in the court file and we are left in the dark as to what further procedures, if any, were followed in this case and what conclusion was reached with regard to the establishment of the validity or otherwise of Filippo's will. There is no hint that anyone came forward to enlighten the court on the testator's state of mind.⁴

The midwife fell under the jurisdiction, as regards her professional conduct, of both the secular and the ecclesiastical tribunals. The state laws regulated the exercise of midwifery in so far as professional competence and the issue of a warrant to practice were concerned; the church intervened to ascertain that the midwife was familiar with the correct ritual of the administration of baptism 'in cases of necessity'.⁵ Failure to comply with the procedure laid down by the church rendered the midwife open to the charge of culpable negligence in the Episcopal Curia. On the 7th December 1598 this court investigated the circumstances surrounding the death of an infant during parturition. Among the witnesses heard by the court was the attending midwife, Bernarda Micallef, who testified that the baby died because of a difficult labour due to the prolapse of the baby's foot but that she obtained the necessary water and baptised the child.⁶ Incidentally, Bernarda Micallef, is the first midwife so far known to us by name.

BODILY HARM

It seems that the most common types of bodily harm sustained in squabbles in the mid-seventeenth century in Malta were head wounds produced by hard objects such as stones and sticks. At times they were judged by the attending surgeon to be of a severe kind. Thus on the 26th April 1651 surgeon Domenico Grech declar-

⁴*Ibidem*, fol. 137.

⁵Ms. 643, fol. 589, Malta Public Library, Valletta.

⁶CEM, *Acta Originalia*, Ms. 78b, fol. 457, Cathedral Archives, Mdina.

ed under oath to the Episcopal Court that he had treated a boy for a 'somewhat dangerous head wound caused by a blunt instrument'.⁷

In June 1652 the Rev. Aloysius Tonna of Luqa 'driven by a diabolical spirit, neither fearing God nor justice', struck Giovanni Pensa with a stick causing him several injuries and a great loss of blood. In taking cognizance of this offence on the 14th June the Episcopal Court heard the evidence of Dr. Bartolomeo Magro who certified as follows (translated from Italian): 'I have treated Giovanni Pensa of Luqa for a wound in the head and for a superficial contusion of the bone caused by a hard instrument, the wound being of a type that usually heals save any supervening sinister accident. I have also treated him for a fracture of the radius of the left fore-arm without any solution in the continuity of the overlying soft tissues and skin; this fracture was likewise produced by a blunt instrument and carries no risk of loss of life save any supervening sinister development'.

On the 8th July Dr. Magro re-appeared in court to state that Giovanni Pensa 'was recovering, by the grace of God, and out of danger of death and of crippling'.⁸

Another certificate from the pen of the same Dr. Magro was issued on the 26th July 1652 when Agostino Falzon attacked Paolo Scicluna with a knife during a quarrel (translated from Italian): 'On the 25th of this month I treated Paolo Scicluna for two wounds produced by a cutting and pointed instrument; one of them involves the right arm and is superficial and carries no danger; the other one has penetrated the back near the spinal medulla for which reason I consider it to be dangerous to life'.⁹

I have quoted in full Dr. Magro's testimonies as they are a model of what a medico-legal statement should be – precise in its description of the injuries, clearly and cogently expressed, concise and comprehensive and accurate in its prognosis. There is not one word which is superfluous or ambiguous and no phrase which a twentieth century physician or surgeon would not use except, perhaps, the expression 'by the grace of God'. Dr. Magro may have used this phrase out of deference to the tenets of a church tribunal but he may have done so also in all humility as a genuine acknowledgement of the intervention of Divine help considering that in those days the therapeutic means at his disposal were largely ineffective. In fact the expression occurs also in a *relatio* by surgeon Domenico Grech who, after treating a man with a head injury

⁷ *Ibidem*, Ms. 161, fol. 116.

⁸ *Ibidem*, Ms. 162, fols. 12 & 313.

⁹ *Ibidem*, Ms. 162, fol. 377.

caused by the hurling of a stone on the 14th December 1650, deposed that his patient was 'by the grace of God' out of danger of losing his life.¹⁰ One can almost hear an echo, in this expression, of the saying attributed to the great French surgeon Ambroise Pare (1510-1590), 'I dressed the wound and God healed him'.

This religious slant in court procedure appears also in the series of questions that were sometimes put to the witness to find out whether there were any factors that might affect his credibility. Thus surgeon Joseph Pace of Valletta was asked whether he used to go often to confession and to receive Holy Communion and when he did so the last time. The surgeon replied that he confessed and received Holy Communion every first Sunday (of the month) and that the last time he did so was a month previously.¹¹

On the 27th July 1652 Dr. Magro was appointed by the same court on a different type of case. His *relatio*, translated from Italian, runs thus: 'By order of this Episcopal Grand Court I have this morning inspected the cadaver of the late Domenico Tonna whom I found lying on a stretcher in a room of his house at Luqa. From obvious signs which I have seen to-day on the dead body and which I saw yesterday when I visited him in the last hour of his life, I state and hold for certain that he died of a corrosive poison taken by mouth'.¹²

This report raises three important issues: (a) It will be noted that there is no mention that a *post-mortem* examination was carried out and that the diagnosis of poisoning was based solely on the external appearances of the body which, by the way, are not described. We do not know whether necropsies for forensic purposes were ordered in similar cases by this court at this period. It appears, however, that the 'opening' of cadavers formed part of the investigations made by the secular *Corte Capitanale* of Mdina by 1642, the surgeon appointed for this task being usually on the staff of *Santo Spirito* Hospital of Rabat and sometimes of the Holy Infirmary of Valletta.¹³ Much later, in 1724, the code of Grand Master Antonio Manoel de Vilhena prohibited the removal and burial of persons dying of sudden or violent deaths before the holding of an inquest by the court. Specific allusion to the performance of necropsies occurs in a decree of the same Grand Master of the 6th June 1729 which laid down the procedure to be followed in the

¹⁰ *Ibidem*, Ms. 160, fol. 221.

¹¹ *Ibidem*, Ms. 162, fol. 411.

¹² *Ibidem*, Ms. 162, fol. 377.

¹³ Archives 1104, fol. 330, Malta Public Library.

case of *post-mortem* investigations on patients dying at the Holy Infirmary of Valletta:¹⁴ (b) The nature of the 'corrosive poison' is not revealed. Presumably it was corrosive sublimate. However that may be, Dr. Magro's *relatio* constitutes the earliest known document recording the death from poisoning in the Maltese Islands, the other known instance belonging to the year 1726:¹⁵ (c) Dr. Magro limits himself to stating that the poison was taken orally and does not hazard an opinion as to whether it was administered accidentally or with suicidal or homicidal intent. The rest of the court records are just as silent on this point.

FINANCIAL ISSUES

The principle that the offender had to pay the medical expenses incurred by the injured party for the treatment of wounds received in a quarrel was being acted upon by 1598. Two cases are on record, on the 23rd July and on the 23rd November of that year, as having been settled out of court though in one of them the surgeon, Antonio Schembri, who had treated the offended party for a head wound, had to appear in court to declare the amount of money received by him for his services and for the cost of medicaments.¹⁶

On the 17th August 1652 a certain Angiolina Mangion accused Gio Batta Catalano of causing her injuries which deprived her from engaging in her usual occupation of manufacturing stockings. She claimed damages not only for the medical expenses incurred but also for loss of earnings during her illness. She called as witness a surgeon from Valletta, Joseph Pace, who stated in the Episcopal Court that he had treated her for contusions on her neck and other parts of the body; that the treatment lasted nine days; that his fee, which amounted to 18 *tari*, was still unpaid; that the cost of the medicaments prescribed was 6 *tari*; and that he estimated the period of incapacity for work to be ten days.¹⁷ This medico-legal testimony is of particular interest as it is the first document met with so far where the principle of compensation for loss of earnings was mooted in a Maltese law court.

In a *Note on the Economics of Medical Practice in Eighteenth Century Malta*,¹⁸ I dealt with the fees charged by physicians and surgeons who practised in Malta between 1750 and 1798 and with the drawbacks attending the settling of accounts by the patient. I

¹⁴ Cassar, P. Landmarks in the Development of Forensic Medicine in the Maltese Islands, Malta, 1974, p. 6.

¹⁵ Cassar, P., op. cit., p. 21.

¹⁶ CEM, *Acta Originalia*, Ms. 78a, fol. 163 & Ms. 78b, fol. 481.

¹⁷ *Ibidem*, Ms. 162, fol. 411.

¹⁸ *The St. Luke's Hospital Gazette*, 1974, 9, 166.

have since discovered that the collection of the financial rewards by medical practitioners was already a difficult process one hundred years earlier and that claims for fees due were being dealt with by our courts in the previous century.

When applying to the court for the settling of his bills, the practitioner had to declare on oath how many times he had visited the patient and the nature of the treatment carried out by him. He had also to corroborate his statements by the production of witnesses. On the 12th January 1661, for instance, Dr. Filippo Doneo sought to recover his fees for attendance on the late Mattiolo Azzopardi from Luqa whom he had treated for 'a most grievous' head wound 'with extraordinary assistance by day and by night' from the 11th to the 23rd July. He had presented a bill for 10 *scudi* for his services but when the court referred the case to the *protomedico* (Chief Government Medical Officer), Dr. Pietro de Franchis, the latter assessed the fee at 8 *scudi* and 4 *tari*.¹⁹

Dr. Bartolomeo Magro from Qormi also requested payment from the heirs of the same person whom he had likewise treated for his head injury by 'making two circular holes in the bone involved in the wound and an incision.' He claimed one *ounce* for each hole and 6 *tari* for the incision 'in accordance with common usage'. Witness Dr. Laurentius Doneo from Attard testified that Dr. Magro had to make the holes in order to remove 'a fragment of bone that was under the cranium'. In his opinion Dr. Magro deserved 30 *tari* for each hole (5 *scudi* for both), 6 *tari* for the incision and 4 *tari* for every visit as 'Dr. Magro had to travel from Qormi to Luqa purposely' to see this patient. These amounts were confirmed by the *protomedico*.²⁰

Sometimes the assessment of fees was made according to the duration of treatment and not to the number of visits. Thus in another case appearing before the Episcopal Court in July 1661 the *protomedico* estimated the remuneration due to Dr. Fabrizio Gauci at 4 *scudi* for the treatment of Domenico Gatt over a period of twenty days.²¹

MEDICAL FITNESS FOR TORTURE

So far the cases illustrated have a sense of actuality but up to the end of the eighteenth century medical men were called by Maltese courts to give their services in very peculiar and bizarre circumstances. The infliction of torture was until then accepted as a

¹⁹ CEM, *Acta Originalia*, Ms. 181, fols. 5-11.

²⁰ *Ibidem*, Ms. 181, fol. 343.

²¹ *Ibidem*, Ms. 181, fol. 357 & Ms. 182, fol. 139.

legal means of extracting the truth from witnesses and accomplices by our courts. The Code de Vilhena sanctioned the use of torture in 1724 but the Code de Rohan of 1784 restricted it to cases of treason and murder.

The Tribunal of the Inquisition in Malta, like the secular courts, also resorted to torture when witnesses proved reluctant to testify; however, before subjecting the individual to torture, the court obtained the advice of medical practitioners as to whether he was physically fit to undergo this excruciatingly painful procedure.²² A case in point occurred in 1721 before the Tribunal of the Inquisition when, on the 14th February, Dr. Pietro Paolo Azzopardi and surgeon Paolo Fiteni of Birgu, were appointed to examine a slave who was charged with the crime of treating a sick man by magical means. As he persistently refused to admit his guilt, the tribunal ordered his removal to the 'place of torture'. Here he was examined by the two practitioners mentioned above who found him fit to undergo the *tormentum funis*. The slave was undressed and his limbs tied with ropes to the framework of the rack. While being questioned by the court officials the ropes attached to his limbs were tightened by turning the rollers at each end of the frame. In spite of the pain caused by the stretching of his limbs he continued to protest his innocence.²³

Torture was done away with in 1798 when Napoleon captured Malta from the Knights of St. John and abolished the Tribunal of the Inquisition.

COMMENT

A systematic and more extensive search in the files of the Bishop's Curia may reveal more of these documents. The few that have been dealt with here were thought worthy of publication because: (a) They shed light on the procedure followed by ecclesiastical tribunals in dealing with civil and criminal charges brought to their cognizance; (b) They show the seriousness with which these tribunals collected information and conducted their investigations to guide them to reach a decision; (c) They illustrate how court officials tried to utilise the medical knowledge of their day in the administration of the law; (d) They demonstrate that the passage of years has brought about no radical change in the role and image of the medico-legal expert except that he is to-day spared from being an accessory to the infliction of legal torture in the search for truth.

²² Cassar, P. Landmarks etc., p. 12.

²³ Archives of the Inquisition, P. 108, *Processo* No. 6, no pagination, Cathedral Archives, Mdina.