

Libel trial McCann v Gonçalo Amaral - Day 13 – Final defence speeches

The hearing as it happened

(10.12.2014, 12:15 pm)

a) The lawyer for Gonçalo Amaral, Dr Miguel Cruz Rodrigues

MCR first says that he will limit his speech to the essential matter.

He speaks hammering the table once in a while with a marker. In the other hand he holds notes but he hardly looks at them.

He gets effectively straight to the point by saying that this action is in fact the way the McCanns have found to allow themselves to feel free from their guilt concerning the disappearance of their daughter due to neglect.

MCR underlines an indirect lack of coordination with the police entities since the companions of the McCanns didn't go to Portugal to take part in the reconstitution* requested by the prosecutor, an attitude that they knew would result in the shelving of the case.

Referring to the AG report, he observes that the claimants complied with its terms, instead of protesting as the report suggests they could or should have done.

The McCanns spoke of their state of mind being destroyed ; they mentioned anxiety, lack of appetite, sleep deprivation and feeling bad. However it seems impossible to prove whether this was due to the book or to the inevitable feeling of guilt concerning their own behaviour, lack of vigilance and limited collaboration with the police authorities.

And nothing more was said.

* I purposely do not translate the Portuguese "reconstituição" with the British "reconstruction", because those two processes have neither the same principle (real protagonists vs actors) nor the same objective (seizing reality vs jogging memories).

b) The lawyer for Guerra&Paz, Dra Fatima de Oliveira Esteves

She first admires the judge's patience and pays her respects to her colleagues. She then greets the journalists (*there's only a British one, with a translator, in the court room*) while noting that whenever the claimants are present the room is full whereas when they're not, like to-day, the room is deserted, inferring from this that the defendant Gonçalo Amaral is of no importance.

FOE speaks also with her arms, one hand holding notes that she hardly consults.

In the perspective of what the claimants intend with this action, she thinks that a story has to be told in a few sentences : four couples go on holiday with their little children. At night they have dinner close by and leave the children on their own in their bedrooms, sleeping. One disappears... The children were alone.

FOE recalls that every time any child disappears, that child's parents are suspected.

She stresses that the McCann facts were widely spread and published. It was the news (about the case), and not Gonçalo Amaral, who shaped the image of the parents in the MSM.

Here Dra Fatima Esteves holds up GA's book while thumbing the pages and asks the audience to look at its size and thickness. There's irony in her voice when she turns towards GA, who is sitting at the bottom of the bench, next to his lawyer and asks..

All this product of your imagination written within 24 hours, Gonçalo Amaral ? Congratulations !

FOE observes that the statements of the claimant's witnesses have been very vague. Two of these witnesses have been invited by Dra Isabel Duarte to hand in a written statement after their respective hearings (*the judge initially rejected those statements, but an appeal was made and won*). About the first of these statements, Alan Pike's, FOE remarks that he provided a psychological support because of the disappearance of the child and not because of GA's book. But later Alan Pike was contacted when the McCanns were made *arguidos* and less than two days after they had left Portugal.

According to AP, the effects of a secondary trauma can be the worst, but, FOE wonders, how can it be measured and compared to a primary trauma ?

When, in the other written statement, David Trickey says that the situation is potentially traumatic for the McCann twins, he clearly means the disappearance of their sister, not the existence of the book. Therefore their well being depends on their parents, not on Gonçalo Amaral. However DT concludes "because of the publication of the book", after having listed all the known traumas related to the disappearance of a sibling. But the trauma was not because of the book.

GA cannot be blamed for the aberrations of the newspapers.

FOE thinks that the financial aspect is central in this action and starts answering some of the claimant speech's points.

She understands that the feeling of guilt, the status of *arguido* and the media pressure didn't make the life of the McCanns comfortable.

But it was not the fault of Gonçalo Amaral.

FOE then observes that the interference of the UK police went over acceptable limits. Every time something was requested, the UK police intervened.

About the McCann twins, If the claimants didn't want them to hear about GA's book, they should not have launched the present action. GA is being persecuted because he dared to think that the parents could have something to do with the crime. This lies at the heart of this case.

FOE refers to the fact that the case was shelved because the reconstitution (*see note above*) was made impossible. Now the case was only reopened due to alleged new evidence. But the public interest has dwindled and actually the claimants never asked for the reopening of the criminal investigation.

What about the Met investigation ? One witness (JT) points to the guilt of Robert M, the little girl is buried somewhere but where ? Excavations and new interviews are scheduled...

It's normal to want to write about a case, the secrecy of justice isn't in question.

Finally Dra Fatima Esteves reports that, as the claimants requested the extracts of GA's accounts, Guerra&Paz, who provided the documents, reacted requesting the extracts of *Madeleine's Fund*.

Though the answer wasn't negative, they desisted because what really matters for Guerra&Paz is the truth.

And so it ended.

c) The lawyer for TVI, Dr Miguel Coroadinha

As Dra Fatima Esteves also did, Dr Miguel Coroadinha thanks the judge for the exemplary way she lead this action. Like her, he opens his arms when speaking and his voice's intonation is benignant. He has no visible notes.

He first observes that, on the day before (Tuesday 9th), the Red Tops' first pages were again about the McCanns, not about this trial, but about the Algarve, the Met and the new suspects. Therefore one has to infer that the case is still high on the agenda.

Unlike most cases, the media interest has not decreased, perhaps because of the mystery, the lack of evidence on either side.

But one has to admit that if the investigation was criticised and campaigns of information or disinformation were launched, it came from the claimants. There is no memory of a case of the disappearance of a child that has remained in the news for so long. If this case deserves to be studied, it is at least for that reason.

When Gonçalo Amaral's book was published, after the investigation was closed, it boosted the public attention because for the first time a thesis different from the abduction was proposed to the public.

MC remarks that numbers have to be taken with a pinch of salt. Telling the court that "millions of spectators" watched the documentary isn't accurate. "2 million" is just the top of the curve. Millions of people were in contact with the program, having put it on with the intention of watching it, but the curve shows that they didn't see it entirely.

People have a legitimate curiosity for certain things and TVI followed that, intending to offer different perspectives about the McCann case. This is why TVI wished to broadcast both McCanns' documentary (directed by Emma Loach) and by *A verdade da mentira* inspired documentary. He recalls that McCanns decried the formal contract signed with TVI when they discovered that TVI had programmed GA's documentary. Hence they opted for SIC.

Attention to the case went on, investigations did too. Regarding the damages, it is difficult to distinguish the pain due to the disappearance of a child and the pain due to the thesis of the book.

The Expresso interview of the McCanns, published on the 6th of September 2008, shows how much they were conditioned by journalism :

- Expresso – Did you read The Truth of the Lie, the book that GA wrote ?
- Both McCanns – No.
- KMC – Why would I ?
- GMC – I won't learn anything from reading it.
- Expresso – It was a success in Portugal.
- GMC – Was it ? How many copies did it sell ?
- Expresso – Approximately 200 thousand...
- GMC – That is what can be called illicit enrichment.

At that time the McCanns didn't highlight the book.

Only later did they understand what the book suggested : a fact that was the main mistake of this particular criminal investigation (but no atonement here). That fact was omitting to inquire about the parents after 24 hours, as Moita Flores underlined in his statement.

MC observes (a laugh in his voice) that it can't be denied that there was a certain subservience in the relations with the UK police.

MC criticises the inclusion in the process of Alan Pike's and David Trickey's written 'complementary' statements, observing that those witnesses are close to the claimants, without the necessary distance for a contradictory debate. According to MC, these written reports should be discredited. (they were deposited last January but rejected by the judge as was the request of both McCanns to take the stand, an appeal was filed and won at the High Court for the three requests, a detail that partly explains why this trial was postponed for so many months).

Dr Miguel Coroadinho finally suggests that the wish of the McCanns is that no story other than theirs remains in people's minds. But democracy is vigilant and does not allow that. No unique and exclusive version of the McCann case will make history. 7 years distance is sufficient time for GA's book to be part of it.

And he said nothing else

d) The lawyer for VCFilmes, Dr. Henrique Costa Pinto

Dr Henrique Costa Pinto also starts by thanking the judge and his colleagues. Unlike the claimant lawyer, once he begins speaking he doesn't refer to notes. His voice has an all round casual intonation.

He observes that the project was only to produce a documentary's version with subtitles. Regarding the number of unsold copies among the sold ones, those that had not been invoiced are the copies that remained. Destroying them had a cost. Regarding the *providencia cautelar* (summons for urgent proceedings), he mentions the existence of a pirate version that had damaged the figures.

Gonçalo Amaral was entitled to receive 10% of copy rights, but it was calculated after (and not before) discounting the production costs).

HCP says that in his exhaustive analysis of the GA's book about the McCann investigation, Dr Ricardo Correia Afonso insists that its conclusion is linked to the events of September 2007, leading to the *arguido* status being put on the McCanns. There's also the issue of why the case was shelved, an issue that is linked to the lack of collaboration of the claimants' companions which caused damage to their 'friends'.

Here HCP refers to a passage of the AG report :

Temos para nos que os principais prejudicados foram os arguidos McCann, que perderam a possibilidade de comprovarem aquilo que desde a sua constituição como arguidos têm protestado : a sua inocência face ao fatídico acontecimento ; também estorvada restou a investigação, porque tais factos ficaram por esclarecer.

'We believe that the main damage was caused to the formal suspects (*arguidos*) McCann, who lost the possibility to confirm with proof what they have protested since they were constituted formal suspects : their innocence towards the fateful event; the investigation was also disturbed, because such facts needed elucidation and remained deprived of it.'

HPC reminds also that, according to the AG Report, the death of the child was the more likely hypothesis.

(...) não foi conseguido qualquer elemento de prova que permita a um homem médio, à luz dos critérios da lógica, da normalidade e das regras gerais da experiência... enunciar sequer um prognóstico consistente sobre o seu destino e inclusivamente – o mais dramático – apurar se ainda está viva ou se está morta, como parece mais provável.

'(...) it was not possible to obtain any piece of evidence that would allow for an average man, in the light of the criteria of logics, normality and general rules of experience... even to produce a consistent prognosis about her (the child's) destiny and inclusively - the most dramatic - to establish whether she is still alive or if she is dead, as seems more likely.'

The book and the documentary, HPC remarks, reflect what is said at the end of the documentary :
O mistério persiste, o ex-inspector acredita que um dia se saberá a verdade. Por enquanto só sabemos que no dia 3 de Maio de 2007 Madeleine McCann desapareceu na Praia da Luz. Tinha 3 anos de idade e era um criança feliz.

'The mystery persists. The former inspector believes that some day the truth will be known. For the time being all we know is that, on the 3rd of May 2007, Madeleine McCann disappeared in Praia da Luz. She was 3 years old and she was a happy child.'

As they didn't provide the evidence requested by the Public Ministry, Dr Henrique Costa Pinto notes, the claimants grew irritated with the publications.

And that's how this hearing ended.

Not really...

Considering the time needed for the volume of informations to be digitalised, the judge asks the lawyers whether the 21st of Janeiro 2015 would suit them for the next session, one in which she will let them know what she'll retain as "*matéria de prova*" (matter that can be used as evidence) within the limits fixed for this trial.

Thanks to Astro (who translated the AG report) and Ima, we were three "people" at that hearing. My gratefulness to Lyall, CPN and SP who help me to think against myself.