



Qorti tal-Appell Kriminali
Onor. Imhalled Dr. Edwina Grima LL.D.

Appelli Nru: 166/2016, 253/2016

Il-Pulizja
Spettur Elton Taliana
Vs
Samah Yousef Hassan
Eyman Abulas Mohammed

Illum 9 ta' Gunju, 2016

Il-Qorti,

Rat l-akkuzi dedotti kontra l-appellanti Samah Yousef Hassan detenur tan-numru tal-Pulizija 14E205, u Eyman Abulas Mohammed detenur tan-numru tal-Pulizija 14E20 akkuzati quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli:

Nhar it-23 ta' Marzu 2016 ghall-habta ta' 15.15hrs f'Pembroke;

1. Bil-hsieb li jikkomettu delitt ta' **serq** aggravat bil-'valur' li jkun izjed min elfejn tliet mija u disgha u ghoxrin euro u sebgha u tletin centezmu (€2,329,37), bil-'lok', u bil-'mezz', urew dan il-hsieb b'atti esterni u taw bidu ghall-esekuzzjoni tad-delitt, liema delitt ma giex esegwit minhabba xi haga accidentali u indipendenti mil-volonta taghhom, u dan ghad-dannu tal-familja Cassar (*Art. 41 (1) (a), Art. 261, 263, 267 u 269 Kapitolu 9 ta' Ligijiet ta' Malta*);

2. U aktar talli fl-istess data, lok, hin u cirkostanzi, volontarjament hasru, jew gharqu hwejjeg haddiehor, mobbli jew immobbli, meta ghamlu hsara fir residenza 231, Octagon, Triq l-Imhalled William Harding, Pembroke, liema hsara ma tkunx tiskorri l- mija u sittax-il euro u sebgha u erbghin centezmu (116.47), imma jkun izjed minn tlieta u ghoxrin Euro u disgha u ghoxrin centezmu (23.29);

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali, tal-25 ta' Marzu, 2016, fejn il-Qorti wara li rat l-artikoli 31, 41 (1) (a), 261, 263, 264, 267, 269, 278, 279, 280, 325 (1) (c) u 330 tal-Kap 9 tal-Ligijiet ta' Malta, fuq ammissjoni sabet lill-imputati Samah Yousef Hassan, Eyman Abulas Mohammed hatja ta' l-imputazzjonijiet migjuba kontra taghhom u ikkundannathom erbgha u ghoxrin xahar prigunerija effettivi.

Il-Qorti spjegat lill-imputati fi kliem ordinarju l-import ta' din is-sentenza.

Stante li l-Prosekuzzjoni ma kellhiex il-kunsens tal-Avukat Generali sabiex il-kaz kontra l-imputati ikunu trattati u deciz bil-procedura sommarja, tordna li l-atti jntbghatu lill-Avukat Generali fi zmien li trid il-ligi.

Rat ir-rikors tal-appell tal-imputat Eyman Abulas Mohammed, pprezentat fir-registru ta' din il-Qorti fl-4 t' April, 2016, fejn talab lil din l-Onorabbli Qorti joghghobha tilqa' dan l-appell u tirrifirma s-sentenza appellate kif gej:

1. Tikkonfermaha fil-parti tar-reita'; u
2. Thassarha u tirrevokaha fil-parti tal-piena billi minflok l-piena nflitta tigi imposta piena jew sanzjoni ohra li tkun aktar ekwa u gusta ghac-cirkostanzi tal-kaz.

Rat ir-rikors tal-appell tal-imputat Samah Yousef Hassan, pprezentat fir-registru ta' din il-Qorti fl-4 t' April, 2016, fejn talab lil din l-Onorabbli Qorti joghghobha tilqa' dan l-appell u tirrifirma s-sentenza appellate kif gej:

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Rat l-atti u d-dokumenti kollha.

Rat il-fedina penali aggornata tal-appellat esebita mill- prosekuzzjoni fuq ordni tal-Qorti.

Rat illi l-aggravju ta' Hassan Samah Yousef li hu limitament dwar il-piena huwa car u manifest u jikkonsisti fis-segwenti:

1. Illi kif ser jigi sottomess waqt it-trattazzjoni ta' dan l-umli appell, l-esponent umilment jemmen illi fil-kaz odjern jezistu fatturi li jimmilitaw favur temperament fil-piena nflitta mill-Ewwel Onorabbli Qorti. Fost affarijiet ohra, l-esponent jixtieq jippuntwalizza bir-rispett illi:
 - a. L-imputat ikkollabora bis-shih fl-investigazzjoni tal-Pulizija;
 - b. L-ammissjoni bikrija tal-imputat;
 - c. Il-fedina netta tieghu;
 - d. Is-Sur Rene' Cassar s-sid tad-dar li sar l-attentat ta' serq fuqha mill-esponent u Eyman Abulas Mohammed infurmani li huwa hafer lill-esponent u li jixtieq li l-esponent jinghata piena aktar pietuza. Huwa jixtieq li jixhed fil-Qorti tal-Appell Kriminali sabiex jindika r-ragunijiet tieghu ghalfejn jixtieq li l-Onorabbli Qorti tal-Appell Kriminali turi hniena fil-konfront tal-esponent.

Bl-akbar rispet, dawn u fatturi ohra, ghandhom jattiraw tnaqqis fil-piena nflitta.

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Bl-akbar rispett, dawn u fatturi ohra, ghandhom jattiraw tnaqqis fil-piena nflitta.

Ikkunsidrat,

Illi l-gravam sottopost ghal gudizzju ta' din il-Qorti jikkoncerna biss l-piena inflitta fuq l-appellanti u dan ghar-reati lilhom addebitati u ammessi minnhom *in toto*. Illi jilmentaw mill-fatt illi l-Ewwel Qorti kienet wisq harxa magghom meta giet erogata il-piena ta' erba' u ghoxrin xahar prigunerija u dana ghaliex ma haditx in konsiderazzjoni erba' fatturi ewlenin u cioe' illi l-appellanti kienu ikooperaw mall-pulizija fil-kors ta' l-investigazzjonijiet tant illi anke meta tressqu l-qorti mal-ewwel ammettew ghall-imputazzjonijiet migjuba kontra taghhom. Inoltre ghandhom fedina penali nadifa u l-parti leza haffrilhom ghall-akkadut tant illi esprima sahanistra x-xewqa illi l-Qorti tkun klementi mal-appellanti.

Illi fil-fatt din il-Qorti wara talba maghmula mill-appellanti hasset il-bzonn ili tisma' lill-parti leza Rene Cassar jixhed quddiemha. Fil-fatt Cassar xehed fis-seduta tat-02 ta' Gunju 2016 fejn huwa hafer b'mod inkondizzjonat lill-appellanti, stqarr li ma ghandu l-ebda pretensjoni fil-konfront taghhom u sahsitra b'mod emmozzjonali u b' sens nisrani qawwi appella ghal klemenza tal-Qorti fil-kalibrazzjoni tal-piena. Esprima x-xewqa illi l-appellanti jinghataw opportunita minn din il-Qorti sabiex jibnu hajjtihom li sa issa kienet mizghuda bil-problemi u mhux jibqghu inkarcerati u dan meta huwa ma sofra l-ebda dannu f'dan l-incident. Hass illi l-agir ta'l-appellanti kien frott il-bluha taz-zghozija u mhux ghax dawn kienu xi kriminal inkalliti. Mhux biss, izda anke l-Avukat Generali fis-sottomissjonijiet minnu maghmula kien tal-fehma illi fic-cirkostanzi ta' dan il-kaz ghandu ikun hemm temperament fil-piena inflitta, ghalkemm din kienet wahda fil-parametri tal-ligi.

Illi l-Qorti ma ghandha xejn x'izzid ma' dan l-appell maghmul mill-parti leza. Illi it-taghlim gurisprudenzjali jiggwida lill-qorti ta' revizjoni sabiex bhala regola ma tirrimpjazzax il-piena moghtija mill-ewwel Qorti b'dik li kieku hija - cioe` din il-Qorti - kienet taghti f'dawk ic-cirkostanzi kemm-il darba ma jkunx jirrizulta li l-piena moghtija mill-ewwel Qorti kienet b'xi mod "*wrong in principle*" jew "*manifestly excessive*".

"...The principle nulla poena sine lege does not mean or imply that a Court of Criminal Justice has to go into any particular detail as to the nature and quantum of the punishment meted out, or, where the Court has a wide margin of discretion with various degrees and latitudes of punishment, that it has to spell out in mathematical or other form, the logical process leading to the quantum of punishment. This is also the position in English Law. As stated in Blackstone's Criminal Practice 2004:

"Save where the statutory provisions mentioned below apply, there is no obligation on the judge to explain the reasons for his sentence. However, the Court of Appeal has encouraged the giving of reasons, and has indicated that that should certainly be done if the sentence might seem unduly severe in the absence

of explanation...It has been held that failure by the sentencing court to give reasons when required to do so does not invalidate the sentence...although the failure may no doubt be taken into account by the appellate court should the offender appeal. Where the sentencer does give reasons and what he says indicates an error of principle in the way he approached his task, the Court of Appeal sometimes reduces the sentence even though the penalty was not in itself excessive. Similarly a failure by the judge to state expressly that he is taking into account any guilty plea, although contrary to [statutory provision], does not oblige the Court of Appeal to interfere with what is otherwise an appropriate sentence..."

As is stated in Blackstone's Criminal Practice 2004 (supra):

"The phrase 'wrong in principle or manifestly excessive' has traditionally been accepted as encapsulating the Court of Appeal's general approach. It conveys the idea that the Court of Appeal will not interfere merely because the Crown Court sentence is above that which their lordships as individuals would have imposed. The appellant must be able to show that the way he was dealt with was outside the broad range of penalties or other dispositions appropriate to the case. In more recent cases too numerous to mention, the Court of Appeal has used (either additionally or alternatively to 'wrong in principle') words to the effect that the sentence was 'excessive' or 'manifestly excessive'. This does not, however, cast any doubt on Channell J's dictum that a sentence will not be reduced merely because it was on the severe side - an appeal will succeed only if the sentence was excessive in the sense of being outside the appropriate range for the offence and offender in question, as opposed to being merely more than the Court of Appeal itself would have passed."

This is also the position that has been consistently taken by this Court, both in its superior as well as in its inferior jurisdiction.¹

¹ The Republic of Malta vs v. Kandemir Meryem Nilgum and Kucuk Melek tal-25 ta' Awissu 2005

Issa huwa minnu illi l-piena inflitta mill-Ewwel Qorti hija wahda fil-parametri tal-ligi, madanakollu din il-Qorti hija tal-fehma illi kienet eccessiva fic-cirkostanzi billi l-Ewwel Qorti ma esploratx il-possibilita ta' riforma tal-hatja qabel ma giet biex teroga il-piena u dan meta il-ligi stess u anke il-gurisprudenza taghti l-ghodda lil min hu imsejjah biex jiggudika illi jara jekk tali riforma tistax tiswa fil-konfront tal-persuna akkuzata, qabel ma tghaddi biex teroga piena ta' prigunerija effettiva. Illi l-konsiderazzjoni li ghamlet l-Ewwel Qorti sabiex wasslet tikkundanna lill-appellanti ghal perijodu ta' erba' u ghoxrin xahar prigunerija kienet il-fatt illi l-appellanti ma gharfux jiddesistu mill-intenzjoni taghhom li jidhlu jisirqu u dan wara l-ewwel okkazzjoni li kellhom izda regghu irritornaw nofs siegha wara biex ikomplu b'dan il-hsieb malinn u kien biss minhabba cirkostanzi accidentali u indipendenti mill-volonta taghhom, stqarret l-Ewwel Qorti, illi huwa ma irnexxilhomx fil-hsieb taghhom. Illi din il-Qorti hija tal-fehma illi din il-konsiderazzjoni hija strettament marbuta man-natura tar-reati addebitati lill-appellanti billi huma akkuzati bit-tentattiv tar-reat u mhux bir-reat ikkunsmat. Fil-fatt anke l-ligi stess tikkontempla piena iktar miti meta l-malvivent ma ikunx irnexxielu fl-intenzjoni kriminuza tieghu minhabba xi cirkostanzi indipendenti mill-volonta tieghu. Dak li kellha tikkunsidra l-Ewwel Qorti kien jekk kenux jezistu cirkostanzi ohra li jimmeritaw illi l-piena tkun wahda riformattiva u mhux punittiva iktar u iktar meta illum is-sistema ta' gustizzja hija wahda li qed timmira iktar lejn ir-riforma tal-hati milli lejn il-kundanna tieghu ghaliex gie ritenut illi l-piena li ghandha tigi erogata ghandha tkun wahda adattata ghal persuna tal-hati milli ghar-reat kommess minnu u dan sabiex kemm jista' jkun ma ikunx hemm ir-ripetizzjoni tar-reat.

Illi f'dan il-kaz jezistu c-cirkostanzi kollha idonji sabiex il-Qorti teroga piena alternattiva ghal dik ta' prigunerija effettiva. Mhux biss l-appellanti ammettew minnufih u b'hekk evitaw hafna spejjez u hela ta' rizorsi ghall-Istat, izda ukoll huma ta' eta zghira u ghandhom fedina penali nadifa. Bhala *first time offenders* ghalhekk u fic-cirkostanzi ta' dan il-kaz, certament ghandhom jibbenifikaw minn ghajnuna li tista tinghatalhom b'sentenza alternattiva ghal dik ta' prigunerija effettiva. Di piu' il-

Qorti ma tistax tinjora x-xewqa tal-vittma ta' dan ir-reat li kien ukoll tal-fehma illi l-appellanti ghandhom jinghataw opportunita' ohra, tant illi ghamel appell lil din il-Qorti biex tkun klementi mal-appellanti.

Ghal dawn il-motivi, il-Qorti qieghda tilqa' l-appell interpost, tirriforma s-sentenza appellata billi filwaqt illi tikkonfermaha fejn din sabet lill-appellanti hatja tal-imputazzjonijiet dedotti fil-konfront taghhom, tirriforma il-piena inflitta billi ghalkemm tikkonfermaha fejn huma gew ikkundannati ghal perijodu ta' erba u ghoxrin xahar prigunerija, madanakollu b'applikazzjoni ta'l-artikolu 28A tal-Kapitolu 9 tal-Ligijiet ta' Malta, tordna illi dan il-perijodu ta' prigunerija ghandu jigi sospiz ghal zmien sentejn mil-lum. Inoltre wara li rat l-artikolu 28G tal-Kapitolu 9 tal-Ligijiet ta' Malta tqieghed lill-appellanti taht ordni ta' supervizjoni ghal zmien sentejn mil-lum.

Il-Qorti wissiet lil hatja bil-konsegwenzi skond il-ligi jekk huma jikkomettu reat iehor matul il-perijodu operattiv ta' din is-sentenza jew jekk jonqsu mill-jobdu l-ordni imposta fuqhom illum.

(ft) Edwina Grima

Imhalled

VERA KOPJA

Franklin Calleja

Deputat Registratur