Qorti tal-Appell Kriminali

Onor. Imhallef Dr. Edwina Grima LL.D.

Appell Nru: 171/2016

Il-Pulizja

Spettur Lara Butters

Vs

Maria Mallia

Illum 30 ta' Novembru, 2016

Il-Qorti,

Rat l-akkuzi dedotti kontra l-appellanta Maria Mallia detentrici tal-karta tal-identita Maltija bin-numru 264 M, akkuzata quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli:

Fil-Marsa u l-Gzira u / jew f' xi bnadi ohra f' dawn il-Gzejjer, nhar it-3 t' Ottubru, 2015 ghall-habta ta' 12.00hrs u fl-istess gurnata jigifieri nhar it-3 t' Ottubru, 2015 ghall-habta ta' 13.35 hrs gewwa Triq Enrico Mizzi, Ta' Xbiex:

1. F' post pubbliku jew f' post espost ghall-pubbliku tlajjat jew ghamlet biex thajjar ghal skop ta' prostituzzjoni jew ghal skopijiet immorali u dan bi ksur tal-Artiklu 7 (2) tal-Kapitlu 63 tal-Ligijiet ta' Malta.
2. Irrendiet b' diversi sentenzi moghtija lilha mill-Qrati Kriminali u li saru definittivi u ma jistghux jigu mibdula.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali, tal-4 t' April, 2016, fejn il-Qorti wara l-imputata ammettit l-

imputazzjonijiet migjuba fil-konfront taghha u ghaldaqstant dawn gew sodisfacjentement ippruvati.

Illi inkwantu ghall-piena, din il-Qorti hadet in kunsiderazzjoni n-natura tar-reati li taghhom instabet hatja l-imputata, ic-cirkostanzi tal-kaz, kif ukoll tal-fatt li l-imputata ftit tghallmet mill-izbalji tal-passat fejn instabet hatja ta' reati simili u ta' ohrajn aktar gravi.

Ghaldaqstant, il-Qorti wara li rat l-artikoli 49 u 50 tal-Kapitolu 9, Ligijiet ta' Malta u tal-artikolu 7 (2) tal-Kapitolu 63 tal-Ligijiet ta' Malta, fuq ammissjoni sabet lill-imputata hatja tal-imputazzjonijiet migjuba fil-konfront taghha izda bl-applikazzjoni tal-artikolu 22 tal-Kapitolu 446 illiberatha bil-kundizzjoni li ma twettaqx reat iehor fi zmien tlett (3) snin.

Il-Qorti spjegat lill-hatja bi kliem car u li jinftiehem il-konsegwenzi jekk twettaq reat iehor waqt il-perjodu operattiv ta' din is-sentenza.

Rat ir-rikors tal-appell tal-imputata Maria Mallia, pprezentat fir-registru ta' din il-Qorti fil-11 ta' April, 2016, fejn talbet lil din l-Onorabbli Qorti, joghgobha tirriforma is-sentenza appellata billi filwaqt li tikkonferma in kwantu ghall-htija, hija tbiddel il-piena inflitta ghal wahda iktar fil-minimu li tkun ekwa u gusta fic-cirkostanzi tal-kaz.

Rat l-atti u d-dokumenti kollha.

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

Rat illi l-aggravji tal-appellanta Maria Mallia huma cari u manifesti u jikkonsistu fis-segwenti:

Illi minkejja li bla dubju l-Ewwel Qorti spjegat ben tajjeb lill-imputata n-natura tar-reat u l-konsegwenzi li ggib l-ammissjoni, l-esponenti hi persuna ta' intellet limitat u fl-assenza tad-difensur legali taghha ma kienetx f' posizzjoni li tifhem tali spjegazzjoni. Dan qieghed jinghad il-ghaliex, li kieku l-esponenti kienet f' posizzjoni li taghmel dan, hi ma kienetx tirregistra ammissjoni ghall-akkuzi hekk kif dedotti.

Illi bla pregudizzju ghas-suespost u tenut kont li l-esponenti fil-fatt irregistrat ammissjoni, l-piena nflitta ma tirriflettix kastig idoneo li kien haqqha l-imputata, izda hija wahda eccessiva u esagerata. Aktar minn hekk, meta wiehed iqis li l-kondizzjoni li ma taghmilx reat inghatat fil-massimu ta' tliet snin li tipprovdi l-ligi, dan zgur ma jirriflettix piena gusta ghall-reat li hu punibbli biss b' piena karcerarja ta' mhux izjed minn sitt (6) xhur habs meta l-istess artikolu 22 tal-Kap 446 hu intiz ghal reati punibbli b' piena karcerarja ta' sahansitra mhux izjed minn seba' (7) snin!

Ikkunsidrat,

Ikkunsidrat,
Illi l-gravam sottopost ghal gudizzju ta' din il-Qorti jikkoncerna biss l-piena inflitta fuq l-appellanti u dan ghar-reati lilha addebitati u ammessi minnha *in toto*. Illi tilmenta mill-fatt illi l-Ewwel Qorti kienet wisq harxa maghha meta applikat id-disposizzjonijiet ta'l-artikolu 22 tal-Kapitolu 446 tal-Ligijiet ta' Malta u illiberata bil-kundizzjoni li ma taghmilx reat iehor fi zmien tlett snin.

Illi issa f'dan l-istadju ta' revizjoni, l-appellanti donnha ghandha ripensament fuq l-ammissjoni minnha irregistrata u tishaq illi hija ammettiet l-akkuzi migjuba kontra taghha ghaliex ma fehmietx dak li kien qed jigri quddiem l-Ewwel Qorti billi ma kenitx assistita mid-difensur

taghha. Tilmenta illi l-Ewwel Qorti applikat l-artikolu 22 ghal perijodu twil wisq ta' zmien u dan ghaliex ir-reati lilha addebitati ma igorrux iktar minn sitt xhur prigunerija, meta l-artikolu 22 huwa applikabbli ghal reati punibbli b'prigunerija sa seba snin.

Illi ghalkemm, kif inghad, l-appellanti fl-aggravji interposti donnha qed tikkontesta l-ammissjoni minnha irregistrata ghall-akkuzi dedotti kontrieha, madanakollu it-talba taghha hija diretta biss lejn ir-riforma tal-piena inflitta u mhux ghar-revoka tad-dikjarazzjoni ta' htija maghmula fil-konfront taghha. Il-Qorti ghalhekk ser tghaddi biex tikkunsidra biss l-gravam dwar il-piena erogata mill-Ewwel Qorti tenut kont ukoll tal-fatt illi jirrizulta mill-atti probatorji kif ukoll mis-sentenza impunjata illi l-Ewwel Qorti fehmet lill-appellanti bil-konsegwenzi ta'l-ammissjoni taghha u hija xortawahda baqghet tippersisti f'dik l-ammissjoni.

Ikkunsidrat,

Illi l-insenjament gurisprudenzjali fir-rigward ta' appell minn piena hija illi qorti ta' revizjoni 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. Thus in Nuttall (1908) 1 Cr App R 180, Channell J said, 'This court will…be reluctant to interfere with sentences which do not seem to it to be wrong in principle, though they may appear heavy to individual judges' (emphasis added). Similarly, in Gumbs (1926) 19 Cr App R 74, Lord Hewart CJ stated: '…that this court never interferes with the discretion of the court below merely on the ground that this court might have passed a somewhat different sentence; for this court to revise a sentence there must be some error in principle." Both Channell J in Nuttall and Lord Hewart CJ in Gumbs use the phrase 'wrong in

principle'. 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]"

Issa din il-Qorti tistqarr minghajr tlaqliq illi dan l-appell jirrazenta l-fieragh mhux biss ghaliex l-Ewwel Qorti kienet miti fl-applikazzjoni tal-piena moghtija billi giet inflitta piena alternattiva ghal dik ta' prigunerija, izda ukoll ghaliex minn harsa hafifa lejn il-fedina penali ta'l-appellanti ghandu johrog illi din ma kenitx l-ewwel darba li hija xellfet difrejgha mal-gustizzja. Fil-fatt dan kien il-hsieb ta'l-Ewwel Qorti meta giet biex teroga l-piena bl-applikazzjoni tal-artikolu 22 tal-Kapitolu 446. Fil-fatt jidher illi l-Ewwel Qorti b'ghaqal u cirkospezzjoni fittxet sabiex holqot bilanc bejn il-beneficcju li ghandu jinghata lill-persuna akkuzata meta ikun hemm ammissjoni bikrija u l-precedenti penali ta'l-akkuzata li kienet f'okkazzjonijiet ohra diga giet ikkundannata min dawn il-qrati ghal diversi reati u kif qalet tajjeb l-Ewwel Qorti "ftit tghallmet mill-izbalji tal-passat".

Illi l-qrati taghna, fejn ikun hemm l-ammissjoni tal-persuna akkuzata, kienu tal-hsieb illi:

Meta jkun hemm ammissjoni huwa xi ftit jew wisq odjuz appell minn piena sakemm din tirrientra fil-limiti li tipprefiggi l-ligi. Dan huwa hekk peress illi min jammetti jkun qieghed jassumi r-responsabilita` tad-

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

decizjoni li jkun ha u jirrimetti ruhu ghal kull decizjoni dwar piena li l-Qorti tkun tista' tasal ghaliha. Naturalment dan ma jfissirx li din il-Qorti u Qrati ohra ta' appell ma jidhlux f'ezami akkurat tac-cirkostanzi kollha biex jaraw jekk il-piena nflitta kenitx eccessiva jew le. Mhuwiex normali pero`, li tigi disturbata d-diskrezzjoni ta' l-ewwel Qorti jekk il-piena nflitta tkun tidhol fil-parametri tal-ligi u ma jkun hemm xejn x'jindika li kellha tkun inqas minn dik li tkun inghatat.[2]"

Stabbiliti ghalhekk dawn il-gwidi gurisprudenjzali u applikati imbaghad ghal kaz in dizamina, din il-Qorti ma tara l-ebda raguni valida 'il ghala ghandha tiddisturba id-diskrezzjoni ezercitata mill-Ewwel Qorti li hadet in konsiderazzjoni il-fattispecje kollha tal-kaz u erogat piena ekwa u gusta fil-parametri dettati mill-ligi.

Ghal dawn il-motivi l-appell qed jigi michud u s-sentenza appellata ikkonfermata.

(ft) Edwina Grima
Imhallef
VERA KOPJA

Franklin Calleja
Deputat Registratur

[2] Ir-Repubblika ta' Malta vs Serag F.h. Ben Abid deciza 04/12/2003