



COURT OF CRIMINAL APPEAL

**His Honour Chief Justice Silvio Camilleri – President
Hon. Mr. Justice David Scicluna
Hon. Mr. Justice Joseph Zammit McKeon**

Sitting of Thursday, 23 February 2017

Bill of Indictment No. 3/2012

The Republic of Malta

v.

Janis Boruss

The Court:

- 1.** Having seen the bill of indictment filed by the Attorney General on the 27th January 2012 wherein the said Janis Boruss was accused of having on the fourteenth (14) December of the year two thousand and ten (2010) and in the preceding months, conspired to traffick in dangerous drugs in breach of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or promoted, constituted, organised or financed the conspiracy;
- 2.** Having seen the judgement delivered on the 27th November 2012 whereby the Criminal Court, after having seen the verdict whereby the jury by eight (8) votes in favour and by one (1) vote against, found the accused guilty of the First and Only Count of the bill of indictment, declared the said Janis Boruss guilty

of having on the 14th December 2010, and in the preceding months, conspired to traffick in dangerous drugs in breach of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or of promoting, constituting, organising or financing the conspiracy, and this according to the First and Only Count of the Bill of Indictment;

3. Having seen that by the said judgement the first Court, after having seen that accused has a clean criminal record, having considered the gravity of the case, and having seen articles 9, 10(1), 12, 14, 15(A), 20, 22(1)(a)(f)(1A) (1B)(2)(a)(i)(3A)(a)(b)(c)(d) and 26 of the Dangerous Drugs Ordinance and regulation 4 and 9 of the 1939 Regulations for the Internal Control of Dangerous Drugs (Legal Notice 292/39), and in sections 23 and 533 of the Criminal Code, condemned the said Janis Boruss to a term of imprisonment of twelve (12) years, and to the payment of a fine (multa) of thirty thousand Euros (€30,000), which fine (multa) shall be converted into a further term of imprisonment according to Law, in default of payment; furthermore condemned him to pay the sum of two thousand seven hundred and twenty seven Euros and seventy two Euro cents (€2,727.72) being the sum total of the expenses incurred in the appointment of court experts in this case in terms of Section 533 of Chapter 9 of the Laws of Malta, within fifteen (15) days from the date of the appealed judgement; ordered also the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which he has been found guilty and other moveable and immovable property belonging to the said Janis Boruss; and finally ordered the destruction of all the objects exhibited in Court, consisting of the blocks of paracetamol and caffeine related to this case, which destruction shall be carried out by the Assistant Registrar, under the direct supervision of the Deputy Registrar of this Court who shall be bound to report in writing to that Court when such destruction has been completed, unless the Attorney General files a note within fifteen days declaring that said drugs are required in evidence against third parties;

4. Having seen the application of appeal of the said Janis Boruss filed on the 19th December 2012 wherein he requested that this Court revokes the verdict and consequently acquits him of all charges; alternatively, in the event that this Court confirms the verdict, that it varies the punishment of imprisonment by inflicting a more fair and equitable one which reflects better his responsibility and the circumstances of the case; having heard the submissions made by counsel for appellant and counsel for the respondent Attorney General; considers:-

5. Appellant's grievances are, in short, the following: (1) that from the evidence produced the jurors could not reasonably arrive to his guilt; (2) that, without prejudice to the first grievance, in the event that this Court confirms his guilt

and conviction, the sentence imposed should be reformed because it is excessive and not proportional to the crime committed.

6. Before considering appellant's grievances, this Court is going to consider a grievance raised during the sitting of the 13th October 2016, reproduced hereunder:

“The defense respectfully submits that during the course of the submissions of evidence a report was admitted by expert Dr Martin Bajada. Following a recent Court judgement in particular Chetcuti Bonavita vs Dr. Beppe Fenech Adami noe decided on the 29th April, 2016, the defense request that this report is expunged from the acts of these procedures.

“The Prosecution is objecting to the said request in view of the fact that this case is before the Court of Appeal.

“Since this matter was never raised in these proceedings it cannot be raised before the Court of review.

“Secondly, Martin Bajada was appointed according to law and no party objected to such appointment.

“Thirdly, his report was presented in the acts of proceedings according to law as stipulated in the Criminal Court and hence it is a valid report according to law and there is no reason why it should be expunged.

“In a subsidiary matter, if the Court finds that Dr Martin Bajada should have never been appointed as an expert, in view of the fact that his task was limited to data extraction from mobiles and hence relating factual issues, his testimony and report can still remain in the acts of proceedings as an ordinary witness.”

7. Now, as was held in the judgement delivered by this Court on the 7th November 2002 in the case **Ir-Repubblika ta' Malta v. Mark Pace**: “Hija ġurisprudenza ormai paċifika li l-Qorti ta' l-Appell ma tistax tieġu konjizzjoni ta' raġunijiet ta' l-appell, ossia aggravji, li ma jkunux ġew imsemmija fir-rikors ta' appell. Dan jōhroġ ċar minn dak li jipprovdi s-subartikolu (1) ta' l-artikolu 505 tal-Kodiċi Kriminali li tali rikors *'għandu jkun fih il-fatti tal-kawża fil-qosor imma ċari, ir-raġuni ta' l-appell* (enfazi tal-Qorti) *u t-talba ta' l-appellant*’.”

8. Moreover this Court has seen the judgement referred to by counsel to appellant (**Joseph Chetcuti Bonavita et vs Av. Beppe Fenech Adami et noe**, Court of Appeal, 29th April 2016) and noted that in that judgement it has been stated that the allegations with respect to the abovementioned Court expert which were considered in said judgement, were revealed in the media on the 2nd November 2012. It is to be noted that the trial by jury commenced on the

26th November 2012. It is true that the accused renounced to his right for legal assistance and carried out his own defence. But not only was the matter not raised during the trial, nor was it raised in the application of appeal.

9. Nonetheless, this Court cannot fail to observe that the situation in the abovementioned case before the Court of Appeal in its Civil Jurisdiction was markedly different from the situation in this case. In that case, the expertise required was a calligraphic opinion due to an alleged forgery. In the present case, what was required was the extrapolation of data from a mobile phone and sim cards; this essentially constitutes a determination of facts.

10. Consequently this Court finds no reason to uphold appellant's request for the expungement of the relative report.

11. With regard to the first grievance, appellant states that there wasn't sufficient evidence for the jury to arrive at a guilty verdict beyond reasonable doubt. His only defence was that he had no knowledge that the luggage contained the cutting agent. Therefore he had no intention to conspire with anyone to traffick drugs to Malta, nor did he have any intention to distribute drugs and had no knowledge of the possession of drugs. Consequently, appellant submits that the jurors could not have reached a guilty verdict in view of the total absence of evidence of his knowledge of the drugs.

12. This grievance requires a reappraisal of the facts of the case. This Court has therefore to determine whether the guilty verdict reached by the jurors was reached legally and reasonably. Consequently a thorough examination has been made of the records of the case, including the transcriptions of the evidence tendered, the submissions, and the summing-up, the documents exhibited as well as the record of the committal proceedings.

13. The facts of the case are relatively straightforward. On the 14th December 2010 appellant arrived at Malta International Airport from Luton. He was stopped and searched and his suitcase was found to contain a double bottom within which were found three sealed packets originally thought to contain an illegal drug but after forensic analysis of the substance found to contain paracetamol and caffeine which are not controlled substances.

14. The question at issue is whether appellant could nonetheless be guilty of the crime of conspiracy. In its preliminary judgement of the 23rd October 2008 in the case **The Republic of Malta v. John Steven Lewis Marsden**, this Court had stated:

“Appellant maintains that once that the drugs that he actually brought into Malta were “fake” ecstasy pills – pills which up to that time were not proscribed by law – then under no circumstance can there be a conspiracy to import into Malta, or to traffic in, the “real” ecstasy pills, that is the ones whose chemical composition is proscribed by law. Even here appellant is simply trying to confuse issues and compound confusion. A person may be found guilty of, say, conspiracy to import heroin into Malta, even though the stuff that he eventually brings into Malta turns out to be baking powder. It all depends on what was actually agreed upon between the conspirators and, more specifically, on the object of the conspiracy. Was the object of the conspiracy “real” ecstasy or “fake” ecstasy? The Attorney General is clearly of the opinion that it was “real” ecstasy; appellant disagrees. But this is a point which has to be decided by the jury, and not at this preliminary stage either by the Criminal Court or by this Court.”

15. And in its final judgement of the 2nd November 2009 in the same case **The Republic of Malta v. John Steven Lewis Marsden**, this Court clearly stated:

“... evidence of a conspiracy is not necessarily or only derived by inferring it from criminal acts of the parties involved. Indeed, a conspiracy may exist even though there is no subsequent criminal activity, that is to say even though the agreement to deal in any manner in a controlled substance is not followed by some commencement of execution of the activity agreed upon¹. In such circumstances it is obvious that no inference can be drawn from criminal acts because there are no criminal acts subsequent to the conspiracy itself.”

16. In the present case appellant was, in fact, not charged with importation and possession of an illegal drug, as the substance he had imported consisted of a mixture of caffeine and paracetamol. He was charged with conspiracy.

17. Now, appellant says that he had no knowledge of being in possession of a cutting agent rather than an illegal drug. But what were the circumstances giving rise to his coming to Malta with such cutting agent? Reference must be

¹ See also **The Republic of Malta v. Steven John Caddick et** decided by this Court on the 6th March 2003 wherein it was stated: “... although it is true that for the crime of conspiracy to subsist it does not have to be proved that the agreement was put into practice, the converse is not true, that is that evidence of dealing does not necessarily point to a conspiracy. Under our law the substantive crime of conspiracy to deal in a dangerous drug exists and is completed “from the moment in which any mode of action whatsoever is planned or agreed upon between” two or more persons (section 22(1A) Chapter 101). Mere intention is not enough. It is necessary that the persons taking part in the conspiracy should have devised and agreed upon the means, whatever they are, for acting, and it is not required that they or any of them should have gone on to commit any further acts towards carrying out the common design. If instead of the mere agreement to deal and agreement as to the mode of action there is a commencement of the execution of the crime intended, or such crime has been accomplished, the person or persons concerned may be charged both with conspiracy and the attempted or consummated offence of dealing, with the conspirators becoming (for the purpose of the attempted or consummated offence) co-principals or accomplices. Even so, however, evidence of dealing is not necessarily going to show that there was (previously) a conspiracy, and this for a very simple reason, namely that two or more persons may contemporaneously decide to deal in drugs without there being between them any previous agreement.”

made to his statements to the Police which are not contested and which he made after having originally spoken to a lawyer.

18. The following are excerpts from his first statement:

“A: Last Saturday evening I was in Belgium in a bar near the North train station in Brussels. I was drinking and talking a lot and I was boasting that I had travelled to a lot of countries. Then I went outside the bar to smoke and a black man followed me outside and started to talk to me about travelling. He then asked me if I wanted to earn money to bring a suitcase to Malta and he asked me for a copy of my passport. I accepted because first of all I wanted to come back to Malta because I like the country and secondly because at present I do not have a job and since I have an eight month old child to keep and a very sick old mother I needed money to feed my family.

“Q: how much was this black man going to pay you to deliver the suitcase containing the drugs?

“A: he was going to give me 500 euros and 200 euros for return ticket from Malta to wherever I wanted to go.

“Q: what happened after you agreed to take the suitcase to Malta?

“A: after about one and a half hours he returned to the bar with this suitcase the same suitcase that I was carrying today when I was arrested by the police and apart from the suitcase he also gave me an extra 200 euros since he wanted me to take the bus from Brussels north station to London and he told me to pick a flight from Luton airport since he told me that the Malta police were always checking on flights from Amsterdam and Brussels mainly, he also gave me a sim card that I was to use only to call him before boarding the flight to Malta from Luton and he also told me to wear the same clothes I was wearing when I met him at the bar in Brussels. He also instructed me to throw away the sim card he gave me after checking in at Luton airport which I did. I would also like to add that during my trip from Brussels to London he called me regularly on my cell phone on that sim card he gave me to make sure that everything was ok.

“Q: what were his instructions for you when you arrived in Malta?

“A: he told me to go and check in at the Seaview Hotel Bugibba since I had already been there and he told me to leave the suitcase inside my hotel room and just go outside of the hotel entrance and sit outside or just walk around the area and someone would come and tell me my name and surname and then ask for my passport to prove my identity then he or she was supposed to give me 700 euros and I would then count them and then go to my room to get the suitcase and give it to that same person who gave me the money.

“....

“Q: am I correct to state that you knew that inside the suitcase that you were given there was something illegal like drugs?

“A: yes I thought it was either drugs or money.”

19. The following are excerpts from his second statement:

“Q: when last night I asked you if you knew what was inside the false bottom of the suitcase that you brought to Malta from Luton airport you told me money or drugs is that correct?

“A: yes correct.

“Q: am I correct to state that in fact you believed it contained drugs?

“A: yes

“Q: why do you believe that the suitcase in fact contained drugs?

“A: because the man who gave me the suitcase in Brussels who told me his name was John insisted with me to be careful with the suitcase I was carrying and to keep calm and also keep a calm face when I was at any airport that is both at Luton airport and on my arrival at Malta International Airport . He also told me several times not to drink much and to keep an eye on the suitcase so as not to lose it.

“Q: why did he insist with you in this way Janis?

“A: I believe that given that John kept insisting with me to be careful and to keep my eyes on the suitcase; the drugs the suitcase contained were very valuable.

“Q: what type of drug do you think was inside the suitcase John gave you and told you to bring to Malta ?

“A: cocaine.

“Q: why do you say cocaine Janis?

“A: because cocaine is very popular with a lot of people especially in Europe and when I think of drugs the first thing that comes to mind is the drug cocaine. . I was in South America last March on holiday and when I was there people kept coming over to me because I was from Europe asking me if I wanted to carry some cocaine from Peru to Amsterdam in Europe. . I did not accept but since Amsterdam is very near to Brussels where I was in fact given the suitcase which contained the three blocks hidden in the false bottom I assumed that the drug inside the suitcase I was to take from Brussels to Malta via Luton was in fact cocaine.

“Q: am I correct to state that this John regularly phoned you up whilst you were transporting the suitcase containing the drug from Brussels to Luton on the sim card he had given you when you first met?

“A: On Sunday the 12th of December 2010 in the afternoon at about 1.15 pm I left Brussels north station with a national express bus and by 7.15 pm on that same day I arrived at Victoria Station in London. . On my way I kept receiving calls at least five to six from John in which he asked me where I was , if everything was ok with the suitcase and he also insisted with me to be careful when I arrive on the English border between France and England . He in fact repeated what he had told me in Brussels that police dogs cannot sniff the luggage and that I had to remain calm when I was requested to show my passport to the border authorities both French and British. When I passed the English border I called John back to tell him that everything was ok and also when I arrived at Victoria Station in London. . After arriving at Victoria Station late last Sunday I spent the night at a friend’s house and John kept calling me because I had not told him where I was staying. Apart from asking me where I was staying he insisted several times that I make sure that the suitcase is always in my sight and near me so that it is not stolen or lost. All these conversations between me and John were done using the sim he had given me in Brussels to contact him. .

“Q: what specific instructions did John give you on the use of this sim card Janis?

“A: he told me to use it only to contact him , no one else, no family or friends and also that before boarding the plane at Luton airport after checking in also to destroy it which I did he also told me not to send him any sms for reasons I am not aware of.

“Q yesterday you told me that in the suitcase John gave you to carry to Malta there were some clothes that were not yours in fact you told me that almost nothing was yours except for a t shirt and a towel? what about the other clothes?

“A: the other clothes were already in the suitcase and I think that they were put there on purpose by John or his companions because it does not make sense to carry a suitcase that is apparently empty and it would raise the suspicion of any law enforcement agency. So since I had very few clothes of my own I believe John arranged for other clothes to be put in the suitcase as well to make the suitcase itself less suspicious given what it contained

“Q: explain in detail how you were given the suitcase ?

“A: as I told you yesterday after meeting John at the pub I was drinking in Brussels and agreeing to deliver the suitcase containing the false bottom with the drags to Malta for the simple reason that I was without work and I had a family to feed: he told me to wait one hour so that he would bring the suitcase there and I did wait for more than an hour in fact. At one point in time as I went outside the pub to smoke I saw a car I do not remember its make or registration I think it could have been a Mercedes Benz since it stopped some 20 to 50 m away from me. . John came out of the car he was sitting in the passenger’s seat since the car was being driven by another afro male whom I did not recognize . He went to the luggage booth opened it and took out the suitcase and came straight to me and gave me the suitcase. He walked very quickly and was very agitated. He kept looking around and only calmed down after he had given me the suitcase. I believe that if at that point in time I had shouted or alerted the police that someone was giving me drugs to smuggle given that I had an hour of free time if I wanted to alert the police; John would have been in great trouble. I am sure John was aware of the risk he was taking by trusting me to wait for him and that is why he was very nervous and agitated. After giving me the suitcase he then asked for my passport and I gave it to him. He walked by foot somewhere in the vicinity and was away for about 15 minutes, then he returned the passport to me and told me that he had made a copy and I believe he made it to email someone in Malta my face so that that same person can make contact with me outside the sea view hotel as in fact John had told me. . Obviously this procedure

I believe was necessary since neither myself nor the person who was to collect the suitcase in Malta knew each other.

“Q: what happened then after he gave you the suitcase and took a photocopy of your passport ?

“A: He gave me 200 euros for my trip from Brussels to Luton in the UK and he also gave me the sim card which he used to contact me on during my trip. . He also told me that as soon as they left I was to put the sim card he gave me in my mobile immediately.

“Q: when you were given the suitcase did you open it to see what it contained?

“A: yes I opened it and saw only clothes . Obviously I knew that the drugs were concealed in some way inside the suitcase and I was curious. So when John and his friend left I went to a public toilet in the North Train Station in Brussels and since I was curious to see where the drugs were concealed after locking myself in the toilet cubicle so that no one would barge into me I removed all the clothes and lifted the suitcase from the middle handle to check its weight. In fact I realized that one side of the suitcase was more heavy than the other. In fact if you try to lift the empty suitcase by one finger in the middle the suitcase would tilt. So I assumed that the drugs were concealed inside the bottom of the suitcase . Then I

put back all the clothes in the suitcase and I since I was going to buy ticket to travel to England Victoria Station the following morning I slept at the station sitting on the suitcase itself so that no one would even think of stealing it from me and resting my head on the wall.

“A: apart from the 200 euros you were given by John were you given any more money ⁷

“Q: no because I believe that people like John would not trust people like me and give them the compensation money before the drugs are actually handed over to the person or persons in the country of destination. In fact John told me that after checking in at the Sea View Hotel I was to go outside the same hotel and walk in the area until someone would recognize me, say my name and if I say yes I must then show him or her my passport and then I would be given 700 euros, 500 euros for the job and 200 euros for me to buy a ticket to wherever I wanted to go from Malta.

“Q: the person or persons you were going to give the drugs to what do you think were they going to do with it?

“A: I believe that the drugs inside the suitcase would have been packed in small doses and sold in the local drug market. I think with the amount of drugs found hidden in the suitcase I was carrying it would be sufficient as a supply for at least one year here in Malta. Still I did not know exactly how much drugs were concealed inside the suitcase because when I checked its weight in the train station toilet in Brussels I had no intention of removing any packing of the suitcase to see exactly how much and what exactly was inside the suitcase always in terms of drugs. I did not have any idea about the type of packing used by John and by his accomplice to hide the drugs inside the suitcase. I only got to see actually how well the drugs were packed when it was opened in my presence by the customs and police officers here in Malta. I would also like to add that when I was in the toilet in Brussels out of curiosity I also tried to shake the suitcase after removing the clothes but nothing moved inside it all in confirmation of the good packaging of the drugs.

“Q: did you pack the drugs inside the suitcase yourself?

“A: of course not I was just the courier carrying the drugs from Brussels to Malta and I did not know how much drugs were inside as well.”

20. Now, in terms of subarticle (1) of Article 22 of Chapter 101, a conspiracy as is contemplated in subarticles (1)(d) and (1)(f)² thereof shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between the persons participating in the conspiracy. That an agreement did exist for the importation of drugs into Malta is beyond doubt. This results clearly

² “Any person - ... (d) who in Malta aids, abets, counsels, or procures the commission in any place outside Malta of any offence punishable under the provisions of any corresponding law in force in that place, or who with another one or more persons conspires in Malta for the purpose of committing such an offence, does any act preparatory to, or in furtherance of, any act which if committed in Malta would constitute an offence against any such regulations; or ... (f) who with another one or more persons in Malta or outside Malta conspires for the purposes of selling or dealing in a drug in Malta against the provisions of this article or who promotes, constitutes, organises or finances the conspiracy, shall be guilty of an offence against this article.”

from appellant's statements. Of course, what the prosecution had also to prove beyond reasonable doubt was that the "object of the conspiracy" was an illegal drug and not just a drug. In other words, it had to prove beyond reasonable doubt that when appellant agreed with one or more persons to bring something into Malta, that something was an illegal drug and that both he (that is, appellant) and at least one other person (conspirator) had intended (to bring to Malta) an illegal drug.

21. Now, what appellant said in his statements, and particularly his second statement, points to his conviction that the drug he had to import was cocaine. Moreover, the agitation shown by his co-conspirator, "John", points to an illegal operation (in one of his smses sent on the 13th December 2010 at 01:38:10, appellant himself refers to an "operation"). The attention to detail shown in the modality of travel so as to reduce the possibility of discovery also point to an illegal operation. Likewise the frequency with which appellant says that "John" called him to ensure that all was fine. Furthermore, from the evidence given by Inspector Dennis Theuma it would appear that appellant was not a novice in carrying drugs as, although in his statement he chose, as he had every right to, not to reply to the question: "you told us verbally that you have transported drugs to places such as Las Palmas in Spain for this N5 what do you have to say to this?" Inspector Theuma stated that he had spoken to appellant about a ticket found in appellant's possession in respect of a flight to Las Palmas Airport in the Canary Islands, and that appellant had said that he had been there to take drugs. This is being pointed out simply to show that it would appear that appellant was already involved in drug-trafficking. It may also be said that a number of smses corroborate the fact that appellant's was not a one-man operation.

22. Consequently this Court believes that the jurors could legally and reasonably conclude that the prosecution proved its case beyond reasonable doubt and that the "object of the conspiracy" was an illegal drug and not just a drug. How the substance actually imported turned out to be a cutting agent would be merely speculative. Although it must be said that the use of cutting agents is an integral part of the general picture of drug trafficking.

23. As regards the punishment awarded, appellant submits that the sentence was excessive when taking into consideration not only the overall circumstances of the case but also those factors which relate to him personally, such as his young age and his clean conduct status in Malta. The sentence is also excessive when compared with other sentences meted out by the same Court in similar cases, some of which were more serious than that of appellant.

24. As to appellant's age, he was 29 years old when he arrived in Malta on the 14th December 2010. This means that he was of age and certainly capable of distinguishing between right and wrong. His only motivation for participating in this conspiracy was undoubtedly "to make a quick buck" as the saying goes.

25. As to his conduct record, at least in so far as his status in Malta is concerned, it is true that this is a clean one, but it is also true that a conspiracy to deal in drugs is a serious offence. In **Ir-Repubblika ta' Malta v. Basam Mohamed Gaballa Ben Khial**, decided on the 19th February 2004, this Court said "**fejn si tratta ta' traffikar tad-droga (inkluza importazzjoni) l-element tad-deterrent ġenerali fil-piena hija konsiderazzjoni ewlenija li kull Qorti ta' Ġustizzja Kriminali għandha iżzomm f'moħħha fil-ghoti tal-piena, basta, s'intendi, li jkun hemm element ta' proporzjonalita` bejn il-fattispeċi partikolari tal-każ u l-piena erogata (ara f'dan is-sens is-sentenza ta' din il-Qorti tas-16 ta' Ottubru, 2003 fl-ismijiet *Ir-Repubblika ta' Malta v. Thafer Idris Gaballah Salem*).**" In fact, in **Ir-Repubblika ta' Malta v. Thafer Idris Gaballah Salem**, this Court said: "**Ma hemmx dubbju li l-element ta' deterrent, speċjalment fil-każ ta' reati premeditati (a differenza ta' dawk li jiġu kommessi "on the spur of the moment") hi konsiderazzjoni legittima li Qorti tista', u hafna drabi għandha, iżzomm quddiem għajnejha fil-ghoti tal-piena.... S'intendi, hemm dejjem l-element tal-proporzjonalita`: qorti ma tistax, bl-iskuża tad-"deterrent", tagħti piena li ma tkunx ġustifikata fuq il-fatti li jirrizultaw mill-provi."**

26. It is true that the substance actually imported into Malta was a cutting agent. However, it is precisely such cutting agents which permit drug traffickers to increase the volume of illegal drugs thereby ensuring a larger return.

27. On the the other hand appellant collaborated with the Police and even participated in a controlled delivery which, unfortunately, did not have a successful outcome.

28. Taking all these points into consideration, this Court believes that the punishment awarded is proportional and finds no reason to disturb the discretion exercised by the Criminal Court in determining the *quantum* of punishment.

29. For these reasons this Court rejects the appeal and confirms the judgement given by the Criminal Court on the 27th November 2012 in its entirety, saving that the period within which the Attorney General is to file a note declaring whether the confiscated substances are required in evidence against third parties is to start running from today.