

Court of Magistrates (Malta)
As A Court of Criminal Judicature

Magistrate Dr. Claire L. Stafrace Zammit B.A. LL.D.

The Police
[Inspector Silvio Magro]

-vs-

Salah M’Raoui

Case Number: 309/2017

Today, the 8th of January, 2018

The Court,

Having seen that the accused Salah M’Raoui, holder of French ID 120711100754.

Was charged with having on the 20th July, 2017 between 15:30 and 15:50hrs committed/assisted the theft of various items, to the detriment of Peter Borg (UK resident) for the total amount exceeding two thousand, three hundred and twenty nine euros and thirty seven cents (Chapter 9 Art 42(d), 45 and 279(b) of the Laws of Malta)

On the same day after 15:50hrs, permitted any other person to use a motor vehicle (Hyundai FQZ547) on a road without being covered with a valid insurance policy in respect of third party risks (Chapter 104 Article 3 of the Laws of Malta)

And charged him with having on the 20th July 2017 and the dates before, in these islands forged, altered or tampered with a Passport, ID Card and Residence Permit Card or used or had in his possession a Passport, ID Card and Residence Permit Card which he knew to be forged, altered or tampered with, in the name of Salah M’Raoui bearing numbers 120711100754 (Chapter 61, Sec 5 of the Laws of Malta)

And charged him also with having on the same date, time and circumstances committed any other kind of forgery, or have knowingly made use of any other

forged document, in the mentioned documents (Chapter 9, Sec 189 of the Laws of Malta)

And charged him also with having on same date, time and circumstances forged any document or true copy of a document or any entry made in pursuance of this act (Chapter 217, Sec 32(1d) of the Laws of Malta)

In case of guilt the Court was requested in pronouncing judgment or any subsequent order to the payment of the costs incurred in connection with the employment of experts as per article 533 of Chapter 9 of the laws of Malta

Seen that the accused Salah M’Raoui pleaded not guilty to all the charges brought against him.

Seen the note of the Attorney General dated the fifteenth (15th) day of November of the year two thousand and seventeen (2017) whereby the articles of the Law were indicated which are:-

- a. Sections 42(d), 43 and 45 of Chapter 9 of the Laws of Malta;
- b. Sections 189, 189A of Chapter 9 of the Laws of Malta;
- c. Sections 261(c) and 279(b) of Chapter 9 of the Laws of Malta;
- d. Section 3 of Chapter 104 of the Laws of Malta;
- e. Sections 2 and 5 of Chapter 61 of the Laws of Malta;
- f. Sections 32(1)(d) of Chapter 217 of the Laws of Malta;

Heard all evidence and seen all documentation presented together with the submissions of both parties;

Having considered that accused is being charged with a number of charges namely that of complicity with others of theft at the Malta International Airport on the twentieth (20th) of July of the year two thousand and seventeen (2017) and that of having forged and used illegal documentation of his identity;

As for the charge of complicity in theft the prosecution presented a video extracted from the cameras of the Malta International Airport of that day which show the car that accused was renting and two unidentified individuals coming out of it. There is also another video which shows the inside of the airport namely in the **Goldcar** stand but in not one of these videos show the accused in any manner close or in the near vicinity of the alleged place of the robbery. Upon viewing the video the Court could not identify with precision the aggrieved party and not even the two people mentioned by him so much so that the Prosecution did not present any stills to show the exact time and place of the alleged robbery.

Even more so the Prosecution did not prove beyond reasonable doubt that there was a common design between these two people who committed the theft; who weren't brought to testify or even identified; and the accused.

This is being said in comfort of many previous judgments of our courts namely **Ir-Repubblika ta' Malta vs George Spiteri** decided by the Criminal Court of Appeal on the fifth (5th) of July two thousand and two (2002) where the Court stated the following:

“Il-prova indizzjarja trid tkun wahda assolutament univoka, li tipponta biss minghajr dubju dettat mir-raguni lejn fatt jew konkluzzjoni wahda...biex prova ndizzjarja tigi ammessa bhala prova valida fis-sens li wiehed jista' ragjonevolment jasal ghall-konkluzzjoni tieghu ta' htija in bazi taghha bla ebda dubju dettat mir-raguni, irid ikun moralment konvint minn dan ir-rekwizit ta' l-univocita' taghha, cioe' li dik il-prova tfisser biss u xejn aktar li l-akkuzat huwa hati ta' dak addebitat lilu w, allura, kull dubju ragjonevoli fir-rigward ghandu jmur favur l-akkuzat skond il-ligi.”

In another case **Police vs Paul Grech** decided by the Court of Appeal on the sixth (6th) of April of two thousand and one (2001) it was said:

“Il-provi fil-kamp kriminali jistghu jkunu kemm diretti u kif ukoll indizjali, basta dawn ikunu sufficjenti biex inisslu konvinciment morali f'mohh il-gudikant lil hinn minn kull dubju ragjonevoli mir-reita' ta' l-imputat.”

The same was said in **Police vs James Abela** decided by the Court of Appeal on the eleventh (11th) of July two thousand and two (2002):

“In kwantu d-dottrina tar-"res ipsa loquitur" timporta xi spostament tal-oneru tal-prova, tali dottrina ma tista' qatt issib post fil-kamp penali. In kwantu, pero', b' "res ipsa loquitur" wiehed jifhem biss li l-fatti - inkluzi provi indizjarji - "circumstantial evidence" - ikunu tali li l-gudikant ihossu moralment konvint li jista' jigbed certi konkluzzjonijiet minn dawk il-fatti, allura wiehed m'ghandux jitkellem dwar "res ipsa loquitur" izda dwar dak li fid-dottrina Ingliza jissejhu "presumptions of fact".... F'materja ta' incidenti stradali il-provi indizjarji hafna drabi jista' jkunu siewja ferm u xi drabi jistghu anki ikunu siewja ferm aktar minn dawk okulari li, kulltant jistghu ikunu biss soggettivi u kulltant, u x'aktarx iva milli le,

ikunu kuluriti b' dak li jissejjah "esprit de voiture". Umbaghad fejn ma jkunx hemm xhieda okulari li jistghu jiddeskrivu jew jispjegaw dak li gara, dawn il-provi indizjarji, jistghu facilment u minghajr bzonn ta' hafna tigbid, jaghtu stampa cara tad-dinamika tal-incident. S'intendi, bhal kull prova indiretta ohra, iridu jkunu tali li jwasslu ghal konkluzzjoni univoka u li biha il-gudikant ikun moralment konvint lill hinn minn kull dubju dettat mir-raguni mill-htija jew responsabbilta' kriminali tal-imputat jew akkuzat...hu dover tal-Qorti li tara jekk mill-assjem tal-provi cirkostanzjali jirrizultax b'mod li jkun sodisfatt il-konvinciment morali tal-gudikant sal-grad rikjest fil-process penali tirrizultax htija ta' sewqan hazin”.

Finally in **Repubblika ta' Malta vs Angel sive Angelo Bajada** of the fifteenth (15th) of May two thousand and nine (2009) it was declared that:

“L-assjem tal-provi kien tali li a bazi tieghu l-gurati setghu ragonevolment u b'konvinciment morali trankwill ghall-ahhar jaslu ghall-konkluzzjoni la ma jemmnux dak li qed isostni l-appellant u jsibu li l-provi jwasslu inekwivokabbilment ghall-htija tieghu. L-indizji, biex jaghmlu prova, jehtieg li jkunu univoci.”

British authors like **Pollock C.B** (Criminal Evidence (3rd Edition) [1995], Richard May (Sweet and Maxwell Criminal Practice) dealt in detail about the interpretation of circumstantial evidence and said:

“It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope comprised of several cords. One strand of cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence – there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a mere suspicion; but the whole taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of. . .”.

Therefore on this ground the Court cannot find any guilt on the accused of complicity in theft.

As regards the other charges the Prosecution brought about the testimony of the owner of the car rental where the accused hired the vehicle FQZ 547 Mr Adrian Vella where he presented a true copy of the contract of rental and where he stated that this car was only insured in favour of the accused and not to third parties. This car was seen on the video of the MIA being driven by other people not the accused. This fact was also admitted by the accused in his testimony. Therefore the second (2nd) charge is proven.

As regards the charges of the forgery of the accused's documents of identification, if one were to see only the testimony of the accused, on one hand he says that his real name is not that of the charge sheet but another one but then he also says that the French authorities issued a passport in the name of the charge sheet. It is the opinion of the Court that once the Prosecution brought the testimony of the French Embassy stating that the passport of the accused was issued illegally and thereby forged, it was incumbent on the accused to prove otherwise. Simply by stating that the French authorities decided to issue it in a different name is not a proof that leads to a doubt, this doubt needs to be a reasonable doubt and one which makes sense. Therefore the accused had in possession of forged documents of identification namely his passport, ID card and residence permit issued allegedly from the French Authorities and actually made use of them in various instances namely when renting a car and when he made the reservation of his hostel room as duly documented in these proceedings.

The same cannot be said of who was the person who actually forged the documents in that the judgments quoted above can be used for this reasoning as well.

On the above basis and after seeing articles 189, 189A of Chapter 9 of the Laws of Malta, Article 3 of Chapter 104 of the Laws of Malta and Article 2 and 5 of Chapter 61 of the Laws of Malta, finds the accused Salah M'Raoui guilty of the second (2nd), third (3rd) and fourth (4th) charges and condemns him to eight (8) months imprisonment whilst acquitting him of the first (1st) and fifth (5th) charges since they were not proven beyond reasonable doubt.

Ft./Dr Claire L. Stafrace Zammit B.A. LL.D.
Magistrate

Benjamina Mifsud
Deputat Registratur