Qorti tal-Appell Kriminali

Onor. Imhallef Dr. Edwina Grima LL.D.

Appell Nru: 493/2014

Il-Pulizja

Spettur Ian Joseph Abdilla

Vs

Ismael Habesh

Illum 28 ta' Frar, 2018,

Il-Qorti,

Rat l-akkuzi dedotti kontra l-appellant, Ismael Habesh detentur tal-karta tal-identita Maltija bin-numru 15771A, akkuzat quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli:

Talli fit-22 ta' Dicembru 2004 u fil-granet u fix-xhur ta' qabel, f'dawn il-Gzejjer;

1. Ikkommetta serq ta' uniformi tal-Airmalta Co. Ltd., cheque book tal-HSBC Bank Malta Ltd., flus, dokumenti u diversi oggetto ohra li jappartjenu lil Paul Magro, liema serq sar ghad-dannu ta' l-imsemmija Paul Micallef u persuni u kumpaniji ohra, liema serq jaqbez il-mitt lira Matlin, u hu kkwalifikat bill-mezz, bil-valur u bix-xorta tal-haga misruqa;

2. U aktar talli fl-istess zmien, lok u cirkostanzi volontarjament hassar, ghamel hsara jew gharraq hwejjeg haddiehor, mobbli jew immobbli, liema hsara ma tiskorriex hames mitt lira, imma hija izjed minn hamsin lira;

U b'hekk Ismael Habesh sar recediv ai termini ta' l-Artikolu 49 u 50 tal-Kap 9 tal-Ligijiet ta' Malta b'diversi sentenzi moghtija mill-Qorti tal-Appell Kriminali u mill-Qorti tal-Magistrati (Malta) diversament preseduti, liema sentenzi saru definittivi u ma jitghux jigu mibdula;

Kif ukoll b'hekk Ismael Habesh kiser il-provedimenti tal-Artikolu 5 tal-Kap 152 meta kkommetta reat iehor wara li nghata diversi sentenzi fejn gie liberat taht kundizzjoni li ma jikkomettiex reat iehor f'diversi perjodi ta' snin, liema sentenzi gew moghtija mill-Qorti tal-Magistrati (Malta) diversament preseduti, liema sentenzi saru definittivi u ma jistghux jigu mibdula;

Il-Qorti giet gentilment mitluba sabiex f'kaz ta' htija, barra li tinfliggi l-pieni stabbiliti skond il-Ligi, tordna wkoll il-konfiska tal-oggetti esebiti;

Il-Qorti giet wkoll gentilment mitluba sabiex f'kaz ta' htija tikkundanna lill-akkuzat ghall-hlas ta' spejjes li jkollhom x'jaqsmu mal-hatra ta' esperti jew periti fil-proceduri hekk kif ikkontemplat fl-artikolu 533 tal-Kapitlu 9 tal-Ligijiet ta' Malta;

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali ta' nhar l-20 ta' Novembru, 2014, fejn il-Qorti wara li rat l-artikoli 261(b)(c)(g), 263, 267, 271, 278(1) u (3), 325(b), 49 u 50 tal-Kap 9 u l-proveddiment tal-Kapitolu 446 tal-Ligijiet ta' Malta;

Wara li rat il-fedina penali raffrettarja tal-imputat;

Titratta mal-imputat billi tikkundannah ghal-terminu ta' prigunerija ta' sentejn (2) m'illum.

Rat ir-rikors tal-appell ta' Ismael Habesh, prezentat fir-registru ta' din l-Onorabbli Qorti nhar l-1 ta' Dicembru, 2014, fejn talab lill-din l-Onorabbli Qorti tirriforma s-sentenza appellaba billi tikkonferma l-htija izda taghti sentenza aktar ekwa u gusta.

Rat l-atti kollha tal-process.

Rat il-fedina penali aggornata tal-appellant.

Rat l-aggravji tal-appellant li huma s-segwenti:

Illi l-aggravju huwa car u manifest u dan jinsab fil-fatt illi l-Ewwel Qorti ma ghamlitx bir-rispett kollu apprezzament tajjeb tal-fatti kif jirrizultaw mill-provi prodotti. Fil-provi tal-prosekuzzjoni ssemmiet il-figura ta' €700,000 li ttiehdu mill-appellant. L-appellant jsostni li qatt ma rcieva mill-parte civile flus kontanti izda cheques €152. Barra minn hekk ttellghu xhieda familjari ta' Joseph Spiteri li qalu li ghaddew ammonti kbar lil Joseph Spiteri biex jghaddihom lill-appellant. Fil-fatt ma kienx hemm il-prova li fil-verita' Joseph Spiteri fil-verita' ghaddihom lill-appellant. L-anqas ma inghatat prova dwar il-provenjenza ta' dawn il-flus kontanti. Jekk per ezempju gew withdrawn minn xi kont bankarju b'hekk imisshom wrew statements tal-bank li juri dan jew jekk ttiehdu mill-business jintwera d-dhul u l-hrug tal-flus. Barra minn hekk Joseph Spiteri qal li kellu jbiegh id-dar tieghu u l-ubisness, izda naqas milli jippreznenta l-kuntratti ta' dan. L-appellant jammetti biss li rcieva €152,000 f' cheques u mhux flus kontanti. B'hekk l-impressjoni inghatat li l-appellant ha ammont fenomenali u b'hekk il-pieni ta' ghaxar snin kienet gustifikata. Ir-realta kienet li l-appellant kien inghata somma ferm izghar u l-hsara li kien ghamle kienet ferm izghar ukoll.

Illi l-appellant jixtieq jirrileva li huwa vittma ta' uzura u b'hekk dan il-fattur kellu jsir konsiderazzjoni anki fil-piena li huwa vittma ta' reat.

Illi t-tieni aggravju huwa li s-sentenzi fit-tieni akkuza m gewx ipprezentati u b'hekk m'hemmx prova taghhom u m'ghandhomx jigu operattivi. Dan barra l-fatt li l-Qorti tista' testendi s-sentenza sospiza jekk taghti raguni sufficjenti u l-fatt li l-Ewwel Qorti tat sentenza ta' prigunerija ta' ghaxar snin u l-fatt li l-appellant huwa vittma ta' uzura b'hekk jikkwalifika ghal estensjoni tas-sentenza sospiza.

Ikkunsidrat,

Ikkunsidrat,

Illi il-gravam sottopost ghal gudizzju ta' din il-Qorti jikkoncerna unikament il-piena erogata mill-Ewwel Qorti ghall-akkuzi ta' serq bl-aggravanti tal-mezz, tal-valur u tax-xorta tal-haga misruqa id f'id mar-reat tal-hsara volontarja. Jilmenta illi l-piena komminata mill-Ewwel Qorti ma kenitx wahda ekwa u gusta tenut kont tal-fatt illi

huwa ma kienx ghamel uzu mic-cekk book misruq, liema cekk book instab fil-pussess ta' certu Elaine Rapinett.

Illi mal-ewwel jigi osservat illi huwa stabbilit b'mod kopjuz fil-gurisprudenza 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*".

"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 l-appellanti qieghed isejjes il-lanjanza tieghu fuq il-mertu tal-kaz li ma giex ikkontestat minnu. Illi di piu' din il-Qorti tistqarr minghajr tlaqliq illi l-motivazzjoni li igib 'il quddiem l-appellanti ma ghandha l-ebda bazi legali. Dan ghaliex bil-fatt illi huwa ghadda wiehed mill-oggetti misruqa minnu u cioe' ic-cekk book lil terza persuna ma jezonerahx mir-responsabbilta' ghar-reati li dwarhom hu gie akkuzat u lanqas inaqqas bl-ebda mod mis-serjeta ta'l-istess.

Illi l-artikolu 142(1) tal- Criminal Justice Act 2003 fl-Ingilterra jistabilixxi hames principji li ghandhom jigu segwiti fl-imposizzjoni tal-piena bhala:

(a) the punishment of offenders

(b) the reduction of crime (including its reduction by deterrence)

(c) the reform and rehabilitation of offenders

(d) the protection of the public

(e) the making of reparation by offenders to persons affected by their offence

Illi allura min hu imsejjah biex jiggudika ma ghandux ihares biss l-interessi tal-persuna ikkundannata izda ghandu jara illi ihares l-interessi tal-vittma jew vittmi tar-reat u is-socjeta in generali billi jaghti dik il-piena li ghandha isservi bhala kastig ghal min jikkometti r-reat, li tara li twassal ghat-tnaqqis tal-kummissjoni ta' reati ohra, li tista' twassal ghar-rijabilitazzjoni u r-riforma tal-hati, li taghti il-harsien mehtiega lil pubbliku u li l-hati jaghmel reparazzjoni ghal hazin li jkun ghamel. Illi il-piena erogata f'dana il-kaz ma jidhirx illi tbieghdet b'xi mod minn dawn il-principji.

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

Illi b'harsa lejn l-fedina penali piuttost voluminuza ta'l-appellanti, li kopja aggornata taghha giet esebieta f'dan l-istadju ta' revizjoni, johorgu ghadd gmielu ta' kundanni ghal reati simili bhal dawk addebitati lill-appellanti permezz tal-presenti proceduri. Mhux biss izda l-appellanti huwa pluri-recediv, b'dan illi allura b'dan l-addebitu l-piena certament ma tistax tinghata fil-minimu taghha. Illi di piu' ma hemm l-ebda prova in atti li tista' remotament tindika illi l-appellanti ghamel xi progress f'hajjtu, anzi jidher ghal kuntrarju illi hemm rigress tant illi wara l-kummissjoni tar-reati addebitati lilu permezz tal-presenti istanza huwa baqa' ighix fil-hajja tal-kriminalita'. Il-Qorti ghalhekk issa fi dmir li tara illi jkun hemm retribuzzjoni minn naha tal-hati, izda ukoll illi s-socjeta tigi imharsa mir-repetizzjoni ta' offizi ohra.

Ghal dawn il-motivi ghalhekk din il-Qorti ma tara li hemm l-ebda mottiv li jista' igieghla tvarja l-kalibrazzjoni tal-piena erogata mill-Ewwel Qorti li hija *del resto* wahda li taqa' sewwa fil-parametri tal-ligi.

Ghaldaqstant l-appell qed jigi michud u id-decizjoni appellata ikkonfermata.

(ft) Edwina Grima

Imhallef

VERA KOPJA

Franklin Calleja

Deputat Registratur