



Court of Criminal Appeal

Onor. Imħallef Consuelo Scerri Herrera, LL.D., Dip Matr., (Can)

Appeal Number: 424/2023

The Police

Vs

Iljasu Seidu

Today, 5th March 2024

The Court,

Having seen the charges brought against the appealed, Iljasu Seidu, 23 years of age, son of Mohammed and Habiba, born in Ghana on the 19th of May 1999, and residing at the Corradino Correctional Facility, accused with having on the 21st September 2022 between 20.30hrs and 21.15 hrs in Triq il-Kungress Marjan Marsa:

1. Committed theft of jewellery which theft is aggravated by means and amount which does not exceed two thousand and three hundred and twenty-nine Euro and thirty-seven cents (Euro 2,329.37) and by time from the person of Theresa Demanuele of eighty-one (81) years of age and that occurred to the detriment of the same Theresa Demanuele.

The Court was humbly requested that in case of a guilty plea, to order the accused to pay the expenses in regards to the appointment of the experts and architects nominated in these procedures according to article 533 of Chapter 9 of the Laws of Malta. The Court was also asked to apply articles 383, 384, 385 and 412C of Chapter 9 of the Laws for the safety and protection of the persons mentioned herewith.

Having seen the judgement of the Courts of Magistrates (Malta) dated 14th of November 2023, the Court of Magistrates found him guilty as charged and sentenced him to an effective prison term of two and a half years.

Having seen the application of the accused Iljasu Seidu dated 30th November 2023 where he is asking that this Honourable Court to **reform** the judgment proffered against him in these proceedings by:

- **CANCELLING, ANNULING AND REVOKING** the judgement appealed which found him guilty of the charge brought forward against him and consequently **ACQUITS** him from any guilt and punishment; or alternatively **REFORMS the judgement** by confirming that part where the appellant was found guilty of the charge brought against him and varies the judgement appealed with respect to the part of the punishment inflicted and this by imposing a lesser punishment which is more appropriate and just in the circumstance as this Honourable Court deems fit and opportune.

The grounds of appeal are manifestly clear and consist of the following:

First Grievance - Of the Evidence Produced

- Appellant was arraigned before a Court of Criminal Judicature and thus the Court of Magistrates had to comply with the procedural rules stipulated in the Criminal Code in order to arrive at its judgement.

- In criminal proceedings, the *onus of proof* lies on the Prosecution who must in turn prove its case up to the standard of proof required by law, i.e. that of beyond reasonable doubt.
- In this regard one must point out that the prosecution failed to produce crucial eyewitnesses, namely the husband of the victim, and the four (4) ladies who were near the victim at the moment of the theft, who were even mentioned by the victim. Theresa Demanuele herself *a tempo vergine* in the version given to the police in the police report and also referred to in the testimony in front of the First Honourable Court.
- That in furtherance to this point, the appellant makes reference to **article 638(1)** of the Criminal Code of Malta which for clarity's sake is being reproduced.

“In general, care must be taken to produce the fullest and most satisfactory proof available, and not to omit the production of any important witness”.

- Moreover, article **520(1)(d)** of the Criminal Code renders applicable **article 559** of the COCP Chapter 12 of the Laws of Malta whereby the Court must be presented with the best possible evidence which any party can bring.
- That the appellant humbly submits that no witness was produced who managed to recognise the accused in the court room and it was solely the Inspectors who recognised the accused from the CCTV footages.
- That with all due respect, basing the whole case solely on CCTV footages and relying on the fact that the quality of the CCTV footages is high and relying

solely on the moral certainty reached by the prosecutors of the case is in the humble opinion of the appellant a case where the carriage would be put in front of the horse.

- That in view of the above, the appellant humbly contends that the Court of Magistrates made a highly partial evaluation of the evidence and ignored the submissions made by applicant in rebuttal of the single charge brought against him.

Second Grievance - Of the Identity of the Accused

- That the appellant humbly submits that his identity was effectively never confirmed by the alleged victim or by any witness brought to the stand.
- That the Inspectors felt convinced from the word go that the person in the CCTV footages was the appellant however still went around Marsa Stables to try and find someone who can recognise the person in the footages as being the appellant.
- That *a tempo vergine* no identification parade was done by the police to try and obtain the actual identity of the assailant from the victim herself or from the parties who were close to the victim at the time of the theft, instead the police solely relied on their ability to identify the individual seen on the Marsa Bridge CCTV footage, not even a CCTV footage capturing the actual incident.

Third Grievance – Of the punishment and its Proportionality

- That the appellant humbly submits that in view of the fact that he has clean police conduct the punishment should have been less to reflect the real circumstances of the case at hand.
- Moreover, without prejudice to other grievances put forward, the appellant makes reference to the fact that underlying the issues which he has faced continuously on the island of Malta due to being of dark complexion, at the time of the alleged offence, the appellant also had a dependence on the use of drugs.
- That as much as he is an accused in these proceedings, the appellant can also be seen as a victim of the system as shall be shown in the course of the appeal.
- That the appellant humbly submits that *ai tempi moderni* the exercise of whether the punishment is equitable and just usually revolves around 3 cardinal principles namely that of have a retributive, preventive and re-educative/rehabilitative effect of the punishment itself on the person subject to it.
- In lieu of this, the appellant believes that a lesser and more just punishment should have been given.

Having seen the acts of these proceedings namely all the documents exhibited in the acts in particular, though not exclusively the CCTV film and relative stills.

Having gone through all the evidence brought forward in the case by the production of several witnesses.

Having heard the parties make their oral submissions during the sitting of the 13th of February 2024.

Considers the following.

The appellant in his first aggravation states that it is the duty of the prosecution to bring forward all witnesses in favour and against to prove its case. It should do this by bringing forward its best evidence to prove its case on a level beyond reasonable doubt.

As stated in the judgment delivered by the Court of Appeal in its superior jurisdiction in the names '**Il-Pulizija vs Eleno sive Lino Bezzina**' the Court held that: -

Illi l-grad ta' prova li trid tilhaq il-prosekuzzjoni, sakemm ma jkunx hemm specifikat mod iehor fil-ligi, huwa tal-htija lil hinn minn kull dubbju dettat mir-raguni. Fil-kamp kriminali huwa l-oneru tal-prosekuzzjoni li tipprova l-akkuza taghha kontra l-akkuzat 'beyond reasonable doubt,' kif gie deciz fil-kawza "Pulizija vs Bugeja", tas-26 ta' Marzu, 1987. Illi min-naha l-ohra d-difiza, msahha bil-presunzjoni tal-innocenza tal-akkuzat, tista' tibbaza u/jew tipprova l-kaz taghha anke fuq bilanc ta' probabbilita`, jigifieri jekk huwa probabbli li seta' gara dak li gie rakkuntat mill-akkuzat kif korroborat mic-cirkostanzi jew le.

Illi dan ifisser li l-prosekuzzjoni ghandha l-obbligu li tipprova l-htija tal-akkuzat oltre` kull dubbju dettat mir-raguni u f'kaz li jkun hemm xi dubbju ragonevoli, il-prosekuzzjoni tigi kunsidrata li ma ppruvatx il-kaz taghha ta' htija u ghalhekk il-Qorti hija obbligata li tillibera.

The Court of Criminal Appeal (Sede Inferjuri) in the case in the names Pulizija vs Peter Ebejer decided on the 5th December, 1997 stated that:-

“Ta' min ifakkar hawnhekk li l-grad ta' prova li trid tilhaq il-prosekuzzjoni hu dak il-grad li ma jhalli ebda dubbju dettat mir-raguni u mhux xi grad ta' prova li ma jhalli ebda ombra ta' dubbju. Id-dubbji ombra ma jistghux jitqiesu bhala dubbji dettati mir-raguni. Fi kliem iehor dak li l-gudikant irid jasal ghalih hu li, wara li jqis ic-cirkostanzi u l-provi kollha, u b'applikazzjoni tal-buon sens tieghu, ikun moralment konvint minn dak il-fatt li trid tipprova l-prosekuzzjoni. Ghamlet sew infatti l-ewwel qorti li ccitat b'approvazzjoni l-ispjegazzjoni moghtija minn Lord Denning fil-kaz Miller v. Minister of Pensions¹” tal-espressjoni “proof beyond a reasonable doubt”; “Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence “of course it is possible but not in the least probable” the case is proved beyond reasonable doubt, but nothing short of that will suffice” (373-374).

In its judgement in the names Il-Pulizija vs Lela Ristic², the Courts of Magistrates (Malta) as a Court of Criminal Judicature examined in funditus that which constitutes circumstantial evidence:

At law the position in Malta relative to circumstantial evidence that can lead to a conviction was analysed in various judgments, including Il-Pulizija vs. Abderrah Berrad et³ decided by the Court of

¹ 1974] 2 All E.R. 372

² Per Onor. Magistrate Aaron M. Bugeja decided 16th December 2005

³ Per Onor. Magistrate Consuelo Scerri Herrera; decided on the 19th May 2014; Il-Pulizija vs Abdellah Berrad, Youness Berrad.

Magistrates (Malta) where the main principles were outlined as follows :-

Huwa minnu wkoll kif rapportat aktar 'l fuq li fl-Artikolu 638(2) tal-Kap. 9 ix-xhieda ta' xhud wiehed biss, jekk emnut minn min ghandu jiggudika fuq il-fatt hija bizzejjed biex taghmel prova shiha u kompluta minn kollox, daqs kemm kieku l-fatt gie ppruvat minn zewg xhieda jew aktar. Ghalhekk jispetta lill-Qorti tara liema hija l-aktar xhieda kredibbli u vero simili fic-cirkostanzi u dan a bazi tal-possibilita'.

*Huwa veru wkoll li l-Qorti ghandha tqis provi cirkostanzjali jew indizzjarji sabiex tara jekk hemmx irbit bejn l-imputat u l-allegat reat. Dan qed jinghad ghaliex ghalkemm huwa veru li fil-kamp penali l-provi ndizzjarji hafna drabi huma aktar importanti mill-provi diretti, pero' hu veru wkoll li provi ndizzjarji jridu jigu ezaminati b'aktar attenzjoni sabiex il-gudikant jaccerta ruhu li **huma univoci**.*

*Fil-fatt il-Qorti hawnhekk taghmel referenza ghall-sentenza moghtija mill-Qorti tal-Appell Kriminali fil-hmistax (15) ta' Gunju, 1998 fil-kawza fl-ismijiet **Il-Pulizija vs Joseph Lee Borg**, fejn kien gie ritenut li provi jew indizzji cirkostanzjali ghandhom ikunu univoci, cioe' mhux ambigwi. Ghandhom ikunu ndizzji evidenti li jorbtu lill-akkuzat mar-reat u hadd iktar, anzi l-akkuzat biss, li hu l-hati u l-provi li jigu mressqa, ikunu kompatibbli mal-presunzjoni tal-innocenza tieghu.*

Illi ghalhekk huwa mportanti fl-isfond ta' dan il-kaz li jigi ppruvat li kien l-imputat biss li ghamel dak li gie akkuzat bih u ghalhekk il-Qorti sejra tikkonsidra kwalunkwe prova possibilment cirkostanzjali li tista' torbot lill-imputat b'mod univoku bir-reati addebitati lilu.

*Fil-fatt kif gie ritenut fis-sentenza moghtija mill-Qorti tal-Appell Kriminali fissitta (6) ta' Mejju, 1961 fil-kawza fl-ismijiet **Il-Pulizija***

vs Carmelo Busuttil, "Il-prova ndizzjarja ta' spiss hija l-ahjar prova talvolta hija tali li tipprova fatt bi precizjoni matematika."

Illi huwa veru li fil-kamp penali, il-provi ndizzjarji hafna drabi huma aktar importanti mill-provi diretti. Hu veru wkoll li l-provi ndizzjarji jridu jigu ezaminati b'aktar attenzjoni sabiex wiehed jaccerta ruhu li huma univoci.

Archbold fil-ktieb tieghu Criminal Practice (1997 edition para 10-3) b'referenza ghal

dak li qal Lord Normand fil-kaz Teper vs R (1952) jghid:

"Circumstantial evidence is receivable in Criminal as well as in Civil cases; and indeed, the necessity of admitting such evidence is more obvious in the former than in the latter; for in criminal cases, the possibility of proving the matter charged by the direct and positive testimony of eyewitnesses or by conclusive documents much more than in civil cases; and where such testimony is not available. The Jury is permitted to infer the facts proved other facts necessary to complete the elements of guilt or establish innocence.

It must always be narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion on another... It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there is no other co-existing circumstance which would weaken or destroy the inference."

Illi din hija ezattament il-posizzjoni hawn Malta, kif fil-fatt giet konfermata 'sentenza moghtija mill-Qorti tal-Appell Kriminali nhar d-disgha ta' Jannar, 1998 fil-kawza fl-ismijiet Il-Pulizija vs Emanuel Seisun.

Din il-Qorti thoss u tghid li provi cirkostanzjali huma bhal katina li tintrabat minn tarf ghal tarf, b'sensiela ta' ghoqiedi li jaqblu ma' xulxin

u li flimkien iwasslu fl-istess direzzjoni. Il-Qorti hija rinfaccjata b'zewg versjonijiet ta' kif sehhet il-grajja.....

.....

Thus in order for a Court of Criminal Jurisdiction to be able to secure a conviction on the basis of circumstantial evidence:-

(a) it has to assess this evidence with a high degree of circumspection and attention (if only because evidence of this kind may be fabricated to cast suspicion on another);

(b) it has to be sure that a direct link is established between the alleged perpetrator and the offence itself – and no other person apart from the accused;

(c) it has to be univocal and not equivocal or ambiguous (It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there is no other coexisting circumstance which would weaken or destroy the inference);

(d) it has to ensure the continuity of the chain of evidence;

(e) it has to be such that it leads the Court to conclude, solely on its basis that the accused committed the crime beyond a reasonable doubt.

*Now in this case the clear evidence that shows the accused rummaging among the personal property of the Zammit family is taken from an incident that took place on the 20th June 2014 and not the 23rd May 2014. Can this piece of evidence lead to a presumption of fact in the sense that once the accused was seen rummaging on the 20th June 2014 then it was automatically and solely she who did the same and stole the €2000 on the 23rd May 2014? According to law, it is possible for a presumption of fact to arise from circumstantial evidence. According to **Blackstone's Criminal Practice**⁴, Lord Simon in **DPP v Kilbourne***

⁴ 2013, F1.18 to F1.27

⁵stated the following : -

The Lord Justice-General Lord Clyde started his judgment: 'The question in the present case belongs to the department of circumstantial evidence. This consideration is vital to the whole matter ...'

Circumstantial evidence is evidence of facts from which, taken with all the other evidence, a reasonable inference is a fact directly in issue. It works by cumulatively, in geometrical progression, eliminating other possibilities.⁶

On the other hand, according to Mr Justice Joseph Galea Debono in Il-Pulizija vs James Abela,⁷ a presumption of fact: -

"tqum fejn meta il- "fatti pruvati jkun u fihom infushom tant elokwenti li l-interpretazzjoni logika u naturali taghhom necessarjament u ragjonevolment twassal għall-prova fi grad sodisfacenti ta' certu fatti."

.....

[enfazi tal-Qorti]

Reference is also being made to the judgment in the names Il-Pulizija vs Michael Attard⁸:

Fi kliem Sir Rupert Cross, 'Presumptions of fact (praesumptiones hominis) are merely frequently recurring examples of circumstantial evidence, and instances which have already been mentioned are the presumption of continuance, the presumption of guilty knowledge arising from the possession of recently stolen goods and the presumption of unseaworthiness in the case of a vessel which founders

⁵ [1973] 1 All ER 440 at 462; [1973] AC 729 at 758.

⁶ See also Exall (1866) 4 F&F 922 at 929 per Pollock CB.

⁷ Criminal Court of Appeal decided on the 11th July, 2002.

⁸

shortly after leaving port. These are all inferences which may be drawn by the tribunal of fact'.

U fl-edizzjoni ta' l-2001 ta' Archbold jinghad hekk dwar presunzjonijiet ta' fatt: 'A presumption arises where from the proof of some fact the existence of another fact may naturally be inferred without further proof from the mere probability of its having occurred. The fact thus inferred to have occurred is said to be presumed, i. e. is taken for granted until the contrary is proved by the opposite party...And it is presumed the more readily, in proportion to the difficulty of proving the fact by positive evidence, and to the facility of disproving it or of proving facts inconsistent with it, if it really never occurred.' [Il-Pulizija vs Louis Gauci Borda App Krim - 24/04/2002]."

Therefore, being driven by these principles of a probative right in criminal proceedings this Court considers that the Court has to be convinced that it was the accused and no other person but him that stole the necklace from the person of the *parte civile* on the evening of the 21st of September 2022 between 8.30 p.m and 9.15 p.m in Triq il-Kungress Marjan, Marsa.

Furthermore, the Criminal Court of Appeal in its case in the names **Ir-Repubblika ta' Malta vs George Spiteri**⁹ decided the following:-

L-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

⁹ Superior court of Criminal Appeal decided on the 5th July, 2002.

lilu w, allura, kull dubju ragjonevoli fir-rigward ghandu jmur favur l-akkuzat skond il-ligi.¹⁰ [sottolinejar tal-Qorti]

The Court has thus to examine the evidence brought forward by the prosecution to see if the evidence brought forward is enough to prove the charge brought forward by the prosecution in regard to the appellant.

Having seen the evidence given by **Inspector Lydon Zammit** on the 9th of November 2022 who stated that on the 21st of September 2022 at about 8.45 a.m he was informed that an elderly woman had just been robbed by an unknown person whilst being in front of her residence in Triq il-Kungress Marian, Marsa. The district police reported on the scene immediately and spoke to the victim, a certain Teresa Demanuele who confirmed the report he had received earlier on.

She explained that whilst she was outside of her residence together with her husband George Debono, a male person had approached her and asked her directions to Hamrun. She then showed him the way and he left. After a couple of minutes, she explained that the same person approached her again grabbed her necklace from her neck and ran towards Triq ix-Xemxija, towards the other side where he had left in the first instance.

Both the victim and the witness her husband stated that the aggressor was wearing a baseball cap, a dark hoodie, and a surgical mask. The victim Teresa Demanuele also stated that the perpetrator was a person of dark complexion. She confirmed that her necklace was of gold and had a value of around two thousand euros (€2,000).

The police carried out further investigations and analysed CCTV's that were downloaded from the area. He states that it was confirmed (but does not say how or who confirmed this) that the perpetrator escaped towards Triq ix Xemxija and turned towards Triq il-Jum before going on the pedestrian bridge that crosses the Marsa/Hamrun bypass.

¹⁰ **Ir-Repubblika ta' Malta v Angel sive Angelo Bajada**; Decided 15 th May 1990 by the Criminal Court of Appeal in its Superior jurisdiction

He states that the suspect was seen changing his clothes and whilst using the lift that is installed, he is noticed putting something small inside his pants. Though he says that it could not be confirmed what the thing was that he had under his pants, though most probably is the necklace. He then continued running towards the stables in Qormi.

From the footage he says they had a good image of the face of the aggressor and of his physique.

They also made some inquiries in the Marsa and Qormi area where a certain Valentina Schembri immediately recognised the suspect from the photo, he was showing her and stated that it was her boyfriend the appellant Ijasu Seidu. She told him that the appellant was in prison and had been arrested some days earlier during a public raid that was held in Marsa and had been arrested in relation to a drug issue.

Once he had this information and the identity of the suspect, he then went to prison to confirm the identity of the suspect and confirmed he was the same person he had seen on the CCTV. He was then arrested and opted to speak with Dr Mario Mifsud. He then asked him in relation to the clothes he was wearing in the photo, and he answered him that they were given to him by a friend. When shown the footage he insisted that it was not his person. He was then asked where he had been on the day in question and the accused remained silent. He exhibited the police report which is marked as Dok LZ2 and the visual statement taken of the appellant marked as Dok LZ3. He concluded by saying that the victim Teresa Demanuele is 80 years old.

PC 1087 Roderick Degiorgio gave evidence on the 9th of November 2022 and confirmed that on the 21st of September 2022 he was informed that an elderly woman in her seventies had fallen victim of a snatch and grab. Together with PC 1255 he reported on the site in question namely in Triq il Kungress Marjan, Marsa and spoke to the victim Teresa Demanuele together. She said that the previous day namely on the 21st of September 2022 she was sitting outside speaking with some friends and a male person whom she described as dark skinned wearing a dark hoodie, quite thin carrying a haversack approached her and asked her for some directions to Hamrun. She gave him these directions and he went away though saw him roam around in the

area. Though he was roaming around they found nothing suspicious about that. However, after a while he went onto Theresa and grabbed her gold necklace from her neck and started running towards the Marsa Hamrun bypass where there is an orange bridge and started running towards the bridge. She confirmed too that when he approached her, he was wearing a white surgical mask. She knew he was the same person who had asked her for directions as he was wearing the same clothes. She said that despite it being hot the aggressor was still wearing a hoodie. They searched the area for any CCTV footages which could help them in the investigation. Though there were no CCTV footages which could capture the incident in question though there were other cameras in the vicinity which could help in the investigations. He said that one of them was situated near the residence of Demanuele where the incident took place.

He downloaded these cameras, took stills from them, and arranged them in chronological order. He formed a timeline which is marked as Dok RD1. He also exhibited a copy of the footages from where he took the stills. One has the residence of the victim. The other is from the camera on the orange bridge. These are marked as Dok RD2 and RD3. On page three there is a map which he himself took a screenshot from Google Maps showing the place of the incident and the other places which he downloaded. On page four there is the first time the assailant is caught on camera. He said that he was identified as the assailant as he did something which was explained by the victim. On page 5 there is a still taken from inside the elevator. The face cannot be seen though his facial hair can be seen namely in the lower part of the jaw. On page 6 he says there is a good image of the person who committed the crime Page seven shows the assailant going in the direction of where the victim lives. The image below shows the assailant wondering in the area as explained by the victim. The still on page eight shows the assailant going to commit the crime. The victim says that there were two persons who had tried to stop the assailant by running after him. At fol 9 there is the assailant running towards the bridge wearing the same clothes. At page 10 there are the two persons who ran after the assailant as described by the victim. At page ten there is the assailant going up the stairs and dropping something that is shiny and looks like the necklace and he then puts it

inside his trousers. He then takes off the hoodie and changes his clothes. In page eleven he appears changing his clothes. In the lower part he keeps the jacket in his hands and is walking towards Marsa. In page twelve he is still visible going down the stairs to Marsa

Till then they did not know who the person was though they had a good image of him. They then printed an image and started roaming the area, which area is quite known with the police. The area between Malta post and the racecourse. They asked several persons if they recognised the assailant from the photo they had in hand. They did not know his name though indicated that he is usually in the same corner where he sells drugs.

On a particular occasion they came across Valentina Schembri and when they spoke to her, she immediately recognised the person in the photo as her boyfriend for a period and she was certain that it was him. They asked her where they could find him, and she told them that he was in prison as he had been arrested a few days earlier in connection with being in possession of drugs. They then saw who had been arrested and there was a person who looked like the image they had. He confirms that he was the same person by the name Iljasu Seidu. The same person here in Court. He states that he was present when the accused was investigated at the depot. He was given disclosure by Inspector Stephen Gulia and Inspector Lydon Zammit. They showed him the stills and whilst seeing the still they asked him about the clothes were since he was in jail without clothes. He replied that he did not know as they were given to him by a friend. Then the Inspector showed him the stills and he denied that the person in the stills was in fact him.

PS 991 Alexander Gauci gave evidence on the 27th December 2022 and says that on the 21st September 2022 he was duty night watch. At around 20.45 p.m he received a telephone although the Hamrun Police Station that a female person had been robbed in Triq il Kungres Marian, Marsa. The district police went on sight and spoke with the victim Teresa Demanuele. She told him that a male person had stolen her necklace from around her neck. She said he had a dark complexion he approached her and grabbed her bracelet (recte necklace) from her neck and went off running. They did

a search in the area which proved futile. It resulted (though he does not say how) that the assailant was wearing a dark baseball cap, a white surgical mask, a dark hoodie and dark pants. He says that he encountered no person with the description he was given before. Though in the vicinity there were people with dark skin who were passing by.

PC 42 Lydon Azzopardi gave evidence on the 1st of February 2023 and confirmed that he was together with PC 126 when they received a telephone call from the Hamrun Police station that a theft had just occurred in Triq il-Kungress Marian, Marsa. He together with PC 126 went immediately on site and met the victim Theresa Demanuele together with her husband George Demanuela. She stated that a male person of dark skin asked her for directions to get to Hamrun and as she was explaining the directions, he grabbed her gold necklace that she was wearing round her neck and ripped it off and ran away with it. She also stated that the value of the necklace was €2,000. She told them that the assailant was wearing a dark baseball cap surgical mask, dark hoodie, and dark sweatpants. He immediately informed the police control room about this description to assist them in the search for such person. However, during that night this person could not be located. He signed the police report exhibited in the acts of the proceedings marked as Dok LZ 2 at fol. 16 of the acts of the case.

Teresa Demanuele gave evidence on the 1st of February 2023 and remembered that some time in summer though could not state the exact date, she was outside her residence 'Our Cottage, Triq il-Kungress Marian, Marsa.' All of a sudden, a man with dark skin stopped besides her and asked her how he can get to Hamrun and she told him that she could show him the way. Immediately he approached her and grabbed her necklace and snatched it and gave her no chance to react. It was of gold, and she had received it as a gift from her brother-in-law from Singapore. Asked for the value she states that it was given to her nine years alone and cost three thousand euros. He ran off towards Marsa. Asked if she remembers what he was wearing she says that a lot of time had passed, and it was dark when the incident happened. She says that he had a cap which he placed with his face. With her there were four other women

who all started shouting and insulting him. Asked if she recognises anyone in court, she states that she does not know her assailant. In cross examination she describes the necklace as thick, precious, and heavy.

Inspector Stephen Cachia gave evidence on the 13th of April, 2023 and confirms that on the 21st of September 2022 at around 20.45 p.m, the Marsa divisional police were informed that an elderly woman had been robbed by an unknown male person and this happened in Triq il-Kungress Marian, Marsa. The police immediately went on site where from preliminary investigations it transpired that the victim is Teresa Demanuele who was spoken to by the police. She explained that whilst she was in front of her residence in Triq il-Kungress Marian, Marsa together with her husband namely George Demanuele a male of dark complexion approached them for directions to Hamrun. After showing him the way which he could take, he left. After some minutes this same male came back and once again approached the woman and this time grabbed the gold necklace she was wearing and he ran towards Triq ix-Xemxija, Marsa. Both the victim and her husband said that the victim was wearing a cap a dark hoodie and a surgical mask. He said that the complainants informed him that the necklace costs about €2,000. They immediately started looking for CCTV footages and from an examination of such footages it transpired to him that the assailant ran through Triq ix-Xemxija, and then crossed the bridge situated in the Hamrun/Marsa bypass. They collected the CCTV footages of the bridge which are very clear and made a still of the face of assailant. The assailant is seen putting the necklace in his pants. From inquiries held with Valentina Schembri who recognised the assailant and said that he was her boyfriend. He is the accused present in court.

He states that he has also recognised the accused since a few days before during a raid carried out in Marsa, he had arrested the accused in relation to another incident concerning drugs. He thus, confirmed that the accused was in prison and once they confirmed that it was the same person, he asked for the issuance of a warrant prior to any interrogation the accused spoke with his lawyer Dr Mario Mifsud who subsequently released an audio-visual statement.

Dr Stephen Farrugia Sacco gave evidence on the 24th of May 2023 and presented his report marked as Dok SFS. He confirms that he was appointed by the court to extract still images from disc marked as Dok RD2 and Dok RD3 and presented them in his report.

Dr Katya Vassallo gave evidence on the 28th of June 2023 and presented the statement of the accused which is marked a Dok KV. She also returned the CD to the court.

Valentina Schembri gave evidence on the 31st of August 2023 and states that she is recognising in court her ex-boyfriend Iljasu. She explains that her relationship with the accused ended when he was arrested by the police though she does not remember the day although states that it could be a year before. She remembers that there was a policeman who spoke to her in relation to a picture of a male whom she does not really know. She had stated that it was Ljasu though states that she was under the influence of Crack, and she was paranoid. In fact, she was spoken too in Marsa. She says that she did not see the picture because she was paranoid although the police showed it to her. She explains further that she was shown a picture, Iljasu had already been arrested. She was paranoid due to the police crack and paranoia. She has no recollection of the picture. She did say it was Iljasu but it was not him. She said that she does not remember anything but that day she had been smoking for 24 hours. She says that the accused was arrested before this case. Though when he got arrested, she was lost she was homeless. She was on drugs running around in Marsa. She says that the accused was her partner whom she used to share everything. When she was shown the picture, it was of a male in dark skin and his name was on her mind twenty-four hours a day. She does not remember being given a reason why she was asked to identify the person in the picture. She does not even know who the police man was who showed her the photo.

The court ordered during the sitting of the 31st of August that the prosecution is to present the picture that was shown to her. The prosecution declares that it was presented on the 9th of November 2022 by PC 1087. Shown the picture which was zoomed in at fol. 31 marked as Dok RD she states that she could not confirm it was the same picture. However, being shown the picture says that the person in the

picture is not that of the accused. She says that even the clothes shown in the picture are not his. Asked how she knows this she says that she was with him every day. At that time, they were homeless. She confirms however, that she was spoken to in Marsa about this picture. She confirms that in the area there are a lot of people who look like the accused. There are so many Ghanians in the area and all have the same skin colour.

The accused did not give evidence as is his cardinal right though released a statement on the 27th of October 2022 in front of Inspector Lydon Zammit and Inspector Stephen Gulia who confirmed that before he was interrogated, he was given his rights. He says that he understands the English language. Asked who gave him the clothes shown on a picture he says that those clothes are not his Asked what he was doing on the 21st of September on the pedestrian bridge he says that he cannot recall. Asked if he changed his clothes on the bridge, he says he does not remember. He insists he did not change any clothes. Asked why he changed his hoodie he says that he does not know what they are talking about. Asked why he went to Marsa and stole a necklace from an old lady he says that he does not live in Marsa. Asked why he was putting something in his pants whilst on the bridge he says he has no idea what the police are saying. He says that he did not take anybody's necklace. Asked again about the clothes he was allegedly wearing on the bridge on the 21st once again he says that he has no idea what the police is speaking about. He says that he lives in Msida. Asked by the police if the clothes are in Marsa or in Msida he replies that he does not know where the clothes are. He says he is not the only dark-skinned man in Malta.

Asked if he knows Valentina Schembri, he says she is his girlfriend. Informed that it was she who identified him from the photo he says that she could not testify that in his presence. The photo is not of him. Asked if he knows where Hamrun is he says yes. He adds that he has been in Malta for seven years. He denies having asked for directions to Hamrun. Once again asked why he asked an 81-year-old lady for directions to Hamrun he denies having done so. He says he knows of no other necklace but the silver he had which was removed from him the day he was arrested.

Asked once again about the gold necklace he states that it was the police who told him that the necklace that was stolen was gold. Asked once again about the clothes in particular the jacket and the hat he says he can give no answer as he does not know what the police are talking of. Asked why when he was in the office, he said that the clothes were given to him by his friend and now he is denying knowing about them he says he never told them that his friends gave him those clothes because he was homeless. He said that the police were building a case on him of which he had no knowledge. He said that they should bring the woman to identify him if what they were saying was correct. Asked how much he sold the necklace for; he categorically denies once again any knowledge regards the necklace.

Considers further.

In this case the accused denies in his statement that he stole the necklace and that the person shown to him on the picture was in fact him. Confronted with the fact that allegedly Valentina said it was him he said that she could not testify that in his presence as it was not him. He denies having any knowledge of the incident when the necklace was stolen.

The prosecution in this case was very scares with its evidence in that it failed to produce George Demanuele, the victim's husband, whom according to the testimony of the police was in the company of his wife when the assailant stole her necklace. Even though when the victim Emanuela testified she said that she was in the company of four women and indeed adds that there were two persons who ran after the assailant. The court notes that none of these persons were brought to court to testify on what had happened. Neither were asked to identify the assailant.

There was no witness who was brought to court to collaborate the version of events as expressed by the victim. All the police officers who gave evidence were reporting what was said to them supposedly by the victim. However, since the victim testified the Court will give regard to her version of events as given in court under oath.

With regards to the version of events allegedly given by Valentina it results that when in court she denied having recognised the accused in the photo she was shown. He remembers having been spoken to and shown some picture which she does not recollect its contents. She said that on the day in question she was under the influence of drugs, was paranoid and disappointed that her boyfriend the accused had been arrested some days prior to the incident. She said that she was homeless. When asked if she recognises the clothes of the accused in the still, she categorically denies that the clothes shown belonged to the accused. The police say that the accused had told them that they were given to him by a friend though when the court heard the audio visual none of these results. It transpires that he was denying that he had any knowledge about the incident of theft. Shown the photo exhibited in the acts of these proceedings he says that the person in the photo is not him.

The court is of the opinion that there was no true identification of the assailant and that the police only concluded that it was the accused because of what Valentina had allegedly told them. Though when in court gave a different version of events.

Contrary to the belief of the police inspectors who gave evidence in this case viva voce the identification made by Valentina Schembri in her state of mind over a picture shown to her was certainly not a strong identification especially when applied to the principles that the court should follow when considering the identification of an assailant.

This court with reference to the identification of the accused makes reference to the judgment in the names **Ir-Repubblika ta' Malta vs Mark Pace** decided on the 7th November 2002 wherein it was held that: _

L-ewwel aggravju ta' l-appellant, u forsi dak principali, huwa bazat fuq il-kwistjoni delikata ta' l-identifikazzjoni ta' l-appellant b'dan li dak li l-appellant qiegħed jattakka hija l-procedura adottata mill-pulizija biex issir identification parade.

*Kif osservat il-Qorti ta' l-Appell Kriminali (sede inferjuri) fil- kawza **Il-Pulizija vs Stephen Zammit** deciza fil-15 ta' Lulju 1998 (Vol. LXXXII.iv.235),*

"il-ligi taghna hi partikolarment skarsa dwar regoli li ghandhom x'jaqsmu ma' l-identifikazzjoni ta' imputat jew akkuzat. Infatti, l-unika disposizzjoni tal-ligi in materja - l-artikolu 648 tal-Kodici Kriminali - hi redatta fin-negattiv, fis-sens li tghid x'mhux mehtieg u mhux x'inhu mehtieg". Dik id-disposizzjoni tipprovi testwalment hekk:

"Biex issir il-prova ta' l-identita' ta' persuna li ghandha tigi maghrufa jew ta' oggett li ghandu jingieb bhala prova, mhux mehtieg, bhala regola, li x-xhud jaghraf dik il- persuna minn fost persuni ohra, jew dak l-oggett minn qalb ohrajn bhalu, hlief meta l-qorti, f' xi kaz partikulari, ikun jidhrilha xieraq taghmel dan ghall-finijiet tal-gustizzja".

Dik l-istess Qorti ezaminat fid-dettal din il-kwistjoni, u billi huwa rilevanti ghall-kaz odjern se jigi kkwotat in extenso. Hija fil-fatt qalet:

"Minn din id-dispozizzjoni jidher car li l-legislatur ma riedx ixekkel lillpartijiet fil-kawza b'regoli rigidi ta' kif ghandha ssir l-identifikazzjoni ta' persuna jew oggett, izda halla fil- gudizzju prudenti tal-Qorti li tirregola ruhha skond il-kaz. Din id-dispozizzjoni, naturalment, tapplika ghal identifikazzjoni f'Qorti; meta si tratta ta' identifikazzjoni li tkun saret barra mill-Qorti, bhal ,per ezempju, fl-ghassa tal-pulizija, u li ghalhekk tkun ipprecediet l-identifikazzjoni fil-Qorti, il-ligi taghna ma tghid xejn. Dan majfissirx li ma hemmx regoli ta' prudenza dettati mill-bwon sens li ghandhom jigu osservati, speċjalment f'dawk li jissejhu identification parades; dawn ir-regoli huma intizi fl-interess kemm tal-prosekuzzjoni kif ukoll tad-difiza bl-iskop li l- identifikazzjoni ta' persuna bhala l-awtur ta' reat jew bhala l-persuna altrimenti involuta fih tkun attendibbli b'mod li l-gudikant tal-fatt ikun jista' jserrah mohhu li ma hemmx zball f'dik l-identifikazzjoni. Fl-Ingilterra hafna minn dawn ir-regoli huma llum

inkluzi fil-Code of Practice D taht il- Police and Criminal Evidence Act, 1984.

S'intendi dawn ir- regoli mhumieq applikabbli ghal Malta, izda xi whud minnhom huma utili hafna ghax ighinu biex jizguraw dak li ngħad aktar 'il fuq, u cioe` l-attendibilita` ta' l- identifikazzjoni. Hekk, per eżempju, wahda minn dawn ir- regoli hi li meta jkun hemm aktar minn xhud wiehed u dawna jkunu ser jintwerew xi ritratti, 'only one witness shall be shown photographs at any one time' (para. 2, Annexe D) u dan bl-iskop oovju li xhud ma jkunx jista' jinfluwenza lix-xhud l- iehor. Ix-xhud għandu jigi muri numru sostanzjali ta' ritratti, mhux semplicement wiehed jew tnejn, u 'he shall not be prompted or guided in any way but shall be left to make any selection without help' (para. 4). Ir-ritratti hekk uzati, u speċjalment dak li talvolta x-xhud ikun indika bħala li jirrappreżenta lill-persuna li qed jidentifika, għandhom jigu ppreservati biex jekk ikun il-kaz, jigu eżebiti fil-Qorti. Kwantu għal identification parades dawn ir-regoli jipprovd, fost hwejjeg ohra li:

'The parade shall consist of at least eight persons (in addition to the suspect) who so far as possible resemble the suspect in age, height, general appearance and position in life' (para. 8, Annexe A, sottolinear ta' din il-Qorti);

Jerga' jigi ribadit li n-non-osservanza ta' dawn ir-regoli ma jwassalx għall-inammissibilita` tal-prova ta' l- identifikazzjoni; ikun ifisser biss li, skond ic-cirkostanzi partikolari tal-kaz, dik l-identifikazzjoni tista' ma tkunx attendibbli bizzejjed. Lanqas ma għandu dan kollu jfisser jew jigi interpretat bħala li hemm xi regola generali li xieħda okulari (eye-witness testimony) hija minnha nnifisha inattendibbli jew li fiha xi perikoli. Kif fisser Chief Justice Miles fis-Supreme Court of the Australian Capital Territory fil-kawza Sharrett vs Gill (1993) 65 A Crim R. 44:

'I am unaware of any authority in this country or elsewhere that lays down a general principle that all eye-witness testimony is subject to

weaknesses and dangers. It would be surprising if there were such a principle. Of course, everybody knows that everybody else has human failings with regard to such matters as observation, interpretation, recollection and articulateness and such failings are assumed to be taken into account in most cases by the tribunal of fact unless there is some particular need for the fact-finder to refer to or to be referred to some aspect of the case where such failings are relevant. The highest judicial authorities emphasise that, in jury trials, cases of disputed identification require express and precise reference to these human failings and this principle has been extended to trials without a jury. However, it is hard to imagine life where people are not able to act safely and sensibly upon their observations of what they see and hear, and even upon their identification of fellow human beings by such observations. The ability to distinguish one human being from another and to recognise a person as one previously encountered are surely basic skills indispensable to social existence, and skills well acquired at an early age. What the lawyers call identification is essentially no different from what is generally known as recognition';

Fi kliem iehor huwa biss f'certu kazijiet li tista' veramentr tqum il-kwistjoni ta' l-attendibilita` ta' identification evidence. Il-kaz klassiku fl-Ingilterra huwa dak ta' Turnbull (1977) QB 224, fejn il-Qorti esprimiet ruhha hekk:

'First, whenever the case against the accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition, he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such

witnesses can all be mistaken. Provided that this is done in clear terms the judge need not use any particular form of words.

Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made.

How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example, by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance?

Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.

All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger' (vide Blackstone's Criminal Practice, 1991, page 1991; Archbold, 1997, pages 1255-1256)".

The court noted that in the absence of the prosecution bringing forward any eyewitnesses particularly the two persons who ran after the assailant and the four ladies who were with the victim on the day in question has to rely on other evidence. The court took it upon herself to examine in detail the photo of the dark-skinned man exhibited in these acts namely the one found on page 31 at the bottom of the page

which is a close up of the still found at the top of the page. This it did since the prosecution were basing its identification of the accused on this same photo. The court asked the accused to move forward in the hall and approach the bench so that it could see well the face of the accused.

It is evident from the examination carried out by the court itself that the accused is **NOT** the person shown in the picture. His colouring is less dark than that shown on the male in the picture. Also, his facial features are also different. The court cannot feel serene in deciding that the picture is a photo of the accused.

Therefore, this Court unlike the First Court does not agree that the police "*made a meticulous job in this case*" actually it feels that the prosecution could have done so much more in relation to the identification of the accused. Also, it cannot understand when the police had in their hands all the footages downloaded from the CCTVs in Marsa soon after the incident in September 2022 and took so long to investigate and take the statement of the accused. Likewise, it appears that although the police spoke to the victim soon after the incident took place, her version of events reported in the police report at fol. 16 (Dok LZ2) vary from what she said under oath in Court so much later. Considering that the victim was 81 years old the police should have acted on this case with more haste in that the victim would not have had to wait for five months before giving her version of events. It must also be remembered that although in the police report it is stated that George Demanuele is a witness he was never brought to court to testify and moreover the victim in her testimony denies him being next to her when she was robbed.

In the light of the above the court does not agree with the judgment reached by the First Court in that it is not safe and satisfactory to conclude that the accused is the person who committed the theft. Thus, in the circumstance it is upholding the appeal of the appellant and revokes the judgment given by the First Court and acquits the

appellant from the charge and subsequent punishment imposed on him by the First Court.

Dr Consuelo Scerri Herrera

Hon. Judge