



QORTI TA' L-APPELL KRIMINALI

**ONOR. IMHALLEF
JOSEPH GALEA DEBONO**

Seduta ta' l-1 ta' Ottubru, 2003

Appell Kriminali Numru. 135/2003

Il-Pulizija
(Spettur Bernard Zarb)
Vs

Godwin Manche'

Il-Qorti:

Rat l-akkuza dedotta kontra l-appellant quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli f'dawn il-Gzejjer, fit-13 ta' Frar, 2003 u fiz-zmien ta' qabel, fil-fond "Supersound", Paola Square, Paola, b'diversi atti maghmulin fi zminijiet differenti li jiksru l-istess dispozizzjoni tal-Ligi u li gew maghmula b'risoluzzjoni wahda:

1) xjentement qieghed fic-cirkolazzjoni, biegh jew zamm ghall-biegh, jew importa ghall-hsieb ta' kummerc, merkanzija b'marka, sinjal jew emblema imxebhin b'qerq

u cioe' DVD's u dan bi ksur ta' l-artikolu 298(1)(f) tal-Kap. 9 tal-Ligijiet ta' Malta;

2) bi qliegh jew bi skop ta' kummerc, stampa, mmanifattura, dduplika, jew mod iehor iproduca jew ikkopja jew biegh, qassam jew b'mod iehor offra ghall-bejgh jew biex iqassam xi artikolu jew xi haga ohra w cioe' software tal-playstation bi ksur ta' jeddijiet li johorgu mid-drittijiet tal-awtur li jkollha persuna ohra w cioe' "Twentieth Century Fox Film Corporation" u socjetajiet ohra, li taghhom is-socjeta Sony Computer Entertainment Europe Ltd., ta' 25 Golden Square, London, rappresentata minn Dr. Patrick J. Galea LL.D et. hija rappresentanti, protetti bil jew taht il-Ligi ta' Malta, u dan bi ksur tal-artikolu 298B(1) tal-Kap. 9 tal-Ligijiet ta' Malta;

3) opera minghajr licenzja tal-Kummissarju tal-Pulizija ghat-tenur ta' L.N. 120/92.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tas-27 ta' Gunju, 2003 li biha, wara li rat l-Artikoli 298(1)(f), 298(b)(1) u 17 tal-Kap. 9 tal-Ligijiet ta' Malta, kif ukoll l-Avviz Legali 120 tal-1992, sabet lill-imputat hati w ikkundannatu ghall-prigunerija ta' sena, liema piena ghandha tkun sospiza ghall-sentejn, kif ukoll ordnat il-konfiska tal-oggetti kollha maqbuda mill-Pulizija favur il-Gvern ta' Malta.

Rat ir-rikors tal-appellant minnu pprezentat fl-4 ta' Lulju 2003, li bih talab lil din il-Qorti joghgobha tirriforma s-sentenza ghal dik li hija piena billi tinfliggi piena fil-limiti w li tirrispekkja c-cirkostanzi tal-kaz.

Illi l-aggravju tal-appellant hu li s-sentenza li mponiet l-Ewwel Qorti kienet wahda sproporzjonata w ma kienetx ekwa ghall-fatt li kkostitwixxa r-reati li hu ammetta , ghax kienu nstabu "computer games" u mhux DVDs kif imsemmi fis-sentenza w kien hemm biss wiehed u ghoxrin CD . Illi meta wiehed jikkonsidra l-piena massima ta' sena ghaz-zewg reati , li l-appellant ikkoopera mal-pulizija w volontarjament irregistra ammissjoni fl-ewwel seduta, u li kellu l-fedina penali nadifa, , wiehed ma jistax ma jasalx ghall-konkluzzjoni li sena prigunerija , minkejja li hi sospiza ghal-periodu ta' sentejn, hi harxa.

Kopja Informali ta' Sentenza

Fliet l-atti kollha processwali ;

Rat il-fedina penali aggornata tal-appellant li hija nadifa ghal kollox ;

Semghet it-trattazzjoni ;

Ikkonsidrat ;

Illi dan hu appell limitat ghall-piena. Illi l-principju regolatur hu li mhux normali li tigi disturbata d-diskrezzjoni ta' l-Ewwel Qorti jekk il-piena nflitta tkun tidhol fil-parametri tal-ligi u ma jkun hemm xejn x'jindika li kellha tkun inqas minn dak li tkun fil-fatt. (Ara. Ir-Repubblika ta' Malta vs. David Vella" [14.6.1999] , "Ir-Repubblika ta' Malta vs. Eleno sive Lino Bezzina" [24.4.2003] u ohrajn.)

Issa fil-kaz in ezami , l-Ewwel Qorti ikkundannat lill-appellant ghall-massimu ta' sena hats, sija pure sospiza ghall-sentejn, li l-ligi tikkontempla ghaz-zewg reati ammessi mill-appellant. Hu minnu li bl-applikazzjoni tar-regoli tal-konkors tal-pieni , l-Ewwel Qorti setghet tikkundanna lill-appellant ghall-massimu ta' sena w nofs prigunerija (art. 17. (b) Kap.9), u ghalhekk il-piena nflitta ma tohrogx mill-parametri tal-ligi , pero' mill-banda l-ohra, ma jidhirx li ttiehed kont tal-fatt li l-appellant ghandu kondotta netta u li rregistra ammisjoni fl-ewwel opportunita' li kellu.

Issa kif gie ritenut minn din il-Qorti diversament preseduta fl-Appell Kriminali : "Il-Pulizija vs. Emmanuel Testa" [17.7.2002]:-

"..kif gie ritenut (minn din il-Qorti kollegjalment komposta) fis-sentenza "Ir-Repubblika ta' Malta vs. Mario Camilleri" (5 ta' Lulju, 2002) l-ammissjoni bikrija mhux bil-fors jew dejjem , jew b' xi forma ta' dritt jew awtomatikament , tissarraf f' riduzzjoni fil-piena. Ir-regoli generali li ghandhom jiggwidaw lill-qrati meta jkun hemm ammissjoni gew imfissra mill-Qorti Kriminali fis-sentenza preliminari taghha tal-24 ta' Frar, 1997 , fl-ismijiet "ir-Repubblika ta'

Malta” vs. Nicholas Azzopardi”, u dana b’riferenza għall-prassi tal-Qrati Inglizi . F’dik is-sentenza kienet saret riferenza għall-BLACKSTONE’S CRIMINAL PRACTICE (Blackstone Press Limited) . Din il-Qorti ser tirriproduci l-bran rilevanti mill-edizzjoni tal-2001 ta’ dan il-manwal , u dana peress li hija taqbel mall-principji espressi f’dana l-bran u qed taghmlu taghha :

“although this principle [that the length of a prison sentence is normally reduced in the light of a plea of guilty] is very well established , the extent of the appropriate ‘discount’ has never been fixed. In BUFFERY (1992) 14 Cr. App. R. (S) 511 Lord Taylor CJ indicated that “something in the order of one-third would very often be an appropriate discount “, but much depends on the facts of the case and the timeliness of the plea. In determining the extent of the discount, the court may have regard to the strength of the case against the offender. An offender who voluntarily surrenders to the police and admits a crime which could not otherwise be proved may be entitled to more than the usual discount (Hoult (1990) 12 Cr. App. R. (S) 180; Claydon (1993) Cr. App. R. (S) 526) and so may an offender who, as well as pleading guilty himself, has given evidence against a co-accused (Wood (1997) 1 Cr. App. R. (S) 347) and/ or given significant help to the authorities (Guy (1992) 2 Cr. App. R. (S) 24) . Where an offender has been caught red-handed and a guilty plea is inevitable, any discount may be reduced or lost (Morris (1998) 10 Cr. App. R. (S) 216; Landy (1995) 16 Cr. App. R. (S) 908). Occasionally the discount may be refused or reduced for other reasons, such as where the accused has delayed his plea in an attempt to secure a tactical advantage (Hollington (1985) 82 Cr. App. R 281; Okee (1998) 2 Cr. App. R. (S) 199) . Similarly, some or all of the discount may be lost where the offender pleads guilty but adduces a version of the fact at odds with that put forward by the prosecution, requiring the court to conduct an inquiry into the facts (Williams (1990) 12 Cr. App. R (S) 415. The leading case in this area is COSTEN (1989) 11 Cr. App. R. (S) 182, where the Court of Appeal confirmed that the discount might be lost in any of the following circumstances: (i)

where the protection of the public made it necessary that a long sentence, possibly the maximum sentence, be passed; (ii) cases of 'tactical plea', where the offender delayed his plea until the final moment in a case where he could not hope to put up much of a defence, and (iii) where the offender had been caught red-handed and a plea of guilty was practically certain. It was also established in COSTEN that the discount may be reduced where the accused pleads guilty to specimen counts."

Konsidrat dan kollu, kif ukoll il-fatt li l-appellant ammetta l-htija tieghu fl-ewwel udjenza quddiem l-Ewwel Qorti w li ghandu kondotta netta, din l-Qorti thoss li f'dan il-kaz kellu jibbenefika minn certu temperament fil-piena.

Mill-banda l-oħra din il-Qorti trid ukoll izzomm f'mohha l-gravita' tar-reati li l-appellant ammetta il-htija taghhom u li dan it-tip ta' reat taz-zminijiet moderni qed isir kull ma jmur aktar prevalenti w qed jikkaguna dannu għall-isem tal-komunita' kummercjali Maltija f'ghajnejn id-dinja w għalhekk hemm bzonn li l-piena sservi ukoll ta' deterrent kontra minn jiggestixxi l-istess attivita' kriminali.

Għal dawn il-motivi din il-Qorti qed tilqa' l-appell u tiriforma s-sentenza appellata billi tirrevokha in kwantu kkundannat lil-appellant għall-sena prigunerija sospiza għal sentejn u minnflok tikkundannah għall-piena ta' sitt xhur prigunerija sospiza għall-sentejn bl-applikazzjoni tal-artikolu 28A tal-Kap.9, liema terminu jibda jiddekorri mill-lum u tikkonfermaha fil-bqija kollha tagħha fejn sabet lill-appellant hati tal-akkuzi kollha dedotti kontra tieghu w fejn ordnat il-konfiska tal-oggetti kollha maqbuda favur il-Gvern ta' Malta.

Ili-Qorti tiddikjara għal kull buon fini illi hija spjegat lill-appellant ir-responsabbilita' tieghu skond il-ligi ai termini tal-Artikolu 28B tal-Kap.9, jekk huwa jikkommetti reat iehor illi għalih hemm piena ta' prigunerija ma tul dan il-periodu ta' prigunerija sospiza.

Kopja Informali ta' Sentenza

< Sentenza Finali >

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