MALTA

QORTI TA' L-APPELL KRIMINALI

ONOR. IMHALLEF
JOSEPH GALEA DEBONO

Seduta tat-28 ta' Ottubru, 2004

Appell Kriminali Numru. 182/2004

Il-Pulizija
(Spettur S. Valletta)
(Spettur C. Magri)

Vs

Aaron Cassar
Omissis

Il-Qorti:

Rat l-akkuza dedotta kontra l-appellant quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti Istruttorja talli b'diversi atti wkoll jekk maghmulin fi zminijiet differenti u li jiksru l-istess dispozizzjonijiet tal-ligi w li gew maghmulina b'rizoluzzjoni wahda w cioe':
1) fit-8 ta' Frar, 2002 ghall-habta tas-6.15 p.m. filghodu mill-Vibro Blocks ta' Triq Mdina, Haz- Zebbug,

ikkommettew serq ta' somma flus kontanti li tammonta ghal LM18,000 u oggetti ohra, liema serq huwa kkwalifikat bil-vjolenza, bil-mezz, bil-valur li jeccedi l-elf lira Maltin (LM1000), bil-hin u li sar ghad-dannu tad-dirigenti tal-istess kumpanija;
2) fl-istess data, hin, lok u cirkostanzi bla ordni skond il-ligi ta' awtorita' kompetenti u barra mill-kazijiet li fihom il-ligi taghti s-setgha lill-privat li jarresta lill-hati, arrestaw, zammew jew issekwestraw lil Raymond Vassallo minn H'Attard kontra l-volonta' tieghu;
3) fl-istess data, hin, lok u cirkostanzi uzaw vjolenza sabiex igieghelu lill-imsemmi Raymond Vassallo jaghmel, ihalli jsir, jew jonqos milli jaghmel xi haga;
4) fl-istess data, hin, lok u cirkostanzi, fil-hin li ghamlu delitt kontra l-persuna, kellhom fil-pussess taghhom arma tan-nar, arma regolari, imitazzjoni ta' arma tan-nar jew imitazzjoni ta' arma regolari;
5) f'dawn il-Gzejjer fit-8 ta' Frar, 2002 u fil-granet ta' wara din id-data zammew u/jew garrew, jew kellhom fil-pussess taghhom armi tan-nar (senter u pistola) minghajr licenzja tal-Kummissarju tal-Pulizija;
6) f'xi hin fil-lejl ta' bejn is-6 u s-7 ta' Frar, 2002 mill-garage numru 9 sitwat fi Triq il-Kultellazz, Mosta, kkommettew serq ta' van tal-ghamla Subaru bin-numru tar-registrazzjoni JOE-029 ghad-dannu ta' Guzeppe Muscat mill-Mosta, liema serq huwa kkwalifikat bil-mezz, bil-valur li jeccedi l-elf lira Maltin (LM1000), bil-hin u bix-xorta tal-haga misruqa;
7) fl-istess data, hin, lok u cirkostanzi, kkommettew serq ta' diversi ghodod u accessorji ohra ghad-dannu tal-istess Guzeppe Muscat mill-Mosta, liema serq huwa kkwalifikat bil-mezz, bil-valur li jeccedi l-elf lira Maltin (LM1000), bil-hin u bix-xorta tal-haga misruqa;
8) fl-istess data, hin, lok u cirkostanzi u fil-granet ta' wara din id-data volontarjament hassru, ghamlu hsara, jew gharrqu hwejjeg haddiehor, mobbli jew immobbli, u cioe' fuq il-van tal-ghamla Subaru bin-numru tar-registrazzjoni JOE-029 kif ukoll fuq il-bieb tal-imsemmi garage, liema hsara tammonta ghal izjed minn hamsin lira Maltin (LM50) izda mhux izjed minn hames lira Maltin (LM500) ghad-dannu ta' Guzeppe Muscat;

9) lil Aaron Cassar wahdu talli f'xi hin matul il-lejl ta' bejn id-29 u t-30 ta' Jannar, 2002 minn Triq Abate Rigord, Ta' Xbiex, ikkommetta serq ta' sellum tal-marka "Werner", liema serq huwa kkwalifikat bil-mezz, valur li ma jeccedix l-Lm1000, hin u box-xorta tal-haga misruqa ghad-dannu ta' Leslie Bonnici minn Ta' Xbiex u tad-dirigenti tal-kumpanija Melita Cable;
10) fl-istess dati, hin, lok u cirkostanzi, xjentement laqghu ghandhom jew xtraw hwejjeg misruqa, mehuda b'qerq, jew akkwistati b'reat, sew jekk dan sar f'Malta jew barra minn Malta, jew xjentement, b'kull mod li jkun, indahlu biex ibieghhom jew imexxuhom;
11) lil Aaron Cassar talli kiser il-kundizzjonijiet tal-Probation (Section 9) tal-Kap. 152 li giet imposta fuqu mill-Qorti tal-Magistrati (Malta) Mag. Dott. Antonio Mizzi LL.D datata 15 ta' Gunju, 1999;
12) u finalment talli saru recidivi ai termini tal-artikoli 49, 50 u 289 tal-Kap. 9 tal-Ligijiet ta' Malta.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tal-1 ta' Settembru, 2004, li biha wara li rat l-Artikoli 18, 261(a)(b)(c)(f)(g), 262, 263, 264, 265, 266, 267, 270, 271, 276, 277, 278, 330, 279(b), 280, 329, 281, 334, 289, 49, 50, 28A sa 28H, 31, 20, 22, 23 u 533 tal-Kap. 9, l-Artikoli 7 u 23 tal-Kap. 446 u l-Artikoli 3, 9, 19, 23, 26 u 27 tal-Kap. 66 tal-Ligijiet ta' Malta sabet lill-imputat Aaron Cassar hati tal-ewwel, it-tieni, t-tielet, r-raba, s-sitt, s-sebgha, t-tmien u l-ghaxar akkuza w ikkundannatu ghal erbgha (4) snin prigunerija, izda ma sabitux hati tal-hames, tad-disgha, tal-hdax u tat-tlettax l-akkuza w illiberatu minnhom, inoltre jhallas l-ispejjez tal-periti nominati fil-kumpilazzjoni li jammontaw ghal mija w sitta w tletin lira Maltin u erbatax il-centezmu (LM136.14c) fi zmien gimgha minn meta jigu hekk interpellati mir-Registratur tal-Qorti.

Rat ir-rikors tal-appellant minnu pprezentat fl-14 ta' Settembru, 2004, li bih talab lil din il-Qorti joghgobha tilqa' dan l-appell, limitatament ghal piena nflitta w tirriforma s-sentenza appellata fis-sens li thassaraha w tirrevokaha fil-

parti tal-piena billi tigi mposta piena aktar gusta w ekwa ghall-kaz odjern.

Fliet l-atti kollha processwali.

Rat illi l-aggravji tal-appellant jikkonsistu fis-segwenti w cioe' :- li l-piena erogata mill-Ewwel Qorti kienet wahda eccessiva fic-cirkostanzi meta imqabbla ma' dik moghtija lil ko-imputat Noel Frendo u ma tal-komplici Jason Abela ; Il-fatt li ko-imputat ammetta l-akkuzi kollha fi stadju inoltrat u avvanzat immens tal-proceduri ma kellux johloq xi bilanc mall-fedina penali kwazi netta tal-appellant u ghalhekk kellu jigi kundannat ghall-piena inferjuri minn Noel Frendo ; Li hu ghandu dritt jikkontesta l-akkuzi bla ma jigi penalizzat ; li l-Qorti naqset li tiehu in konsiderazzjoni l-eta' tal-akkuzat u fil-waqt li l-imputat li ma nghatax piena karcerarja effettiva kellu 31 sena hu kellu biss 21 sena. Illi jekk wiehed iqis li Noel Frendo kellu sentejn prigunerija sospiza nkorporati fl-erba snin li wehel jigi li l-appellant wehel id-doppju ta' Noel Frendo u ghalhekk id-disparita bejn iz-zewg sentenzi hija wahda serja ; li l-Qorti skartat komplertament ir-rakkomandazzjonijiet tal-*pre-sentencng report* u ma semmietx ragunijiet daqshekk impellenti sabiex tiddipartixxi b'mod hekk estrem mir-rakkomandazzjonijiet tal-Ufficjal tal-Probation ;

Rat il-fedina penali aggornata tal-appellant esebita mill-Prosekuzzjoni fuq ordni tal-Qorti;

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.)**

F'dan il-kaz il-piena decizament hija entro l-parametri tal-ligi.

L-appellant pero' jilmenta li hu ma nghatax piena konfacenti ma dawk li gew erogati fil-konfront tal-ko-akkuzat Noel Frendo fl-istess sentenza w fil-konfront ta' komplici Jason Abela f' sentenza moghtija fi process separat pero' deciz mill-istess Qorti w preseduta mill-istess Magistrat;

Illi fir-rigward tal-aggravju bazat fuq il-paragun ma pieni li inghataw lill-ko-akkuzati jew ko-awturi ohra, din il-Qorti taghmel riferenza ghall-insenjament tal-Qorti tal-Appell Kriminali (kolleggjali) fis-sentenzi taghha fil-kawzi "Ir-Repubblika ta' Malta vs. Omissis u Brian Godfrey Bartolo" **[14.11.2002] u** "The Republic of Malta vs. Omissis and Perry Ingomar Toornstra" **[12.6.2003], fejn fiz-zewg kazijiet gew citati b'approvazzjoni brani mill-**BLACKSTONE'S CRIMINAL PRACTICE **u minn** ARCHBOLD , "Criminal Pleading , Evidence and Practice" **, li jezaminaw x' jghidu l-Qrati Inglizi f' sitwazzjonijiet simili, biex wiehed jislet certi linji ta' gwida.**

Hekk fil-BLACKSTONE'S **2001, (para. D22.47 p.1650) jinghid :-**

"A marked difference in the sentences given to joint offenders is sometimes used as a ground of appeal by the offender receiving the heavier sentence. The approach of the Court of Appeal to such appeals has not been entirely consistent. The dominant line of authority is represented by *Stroud* (1977) 65 Cr App R 150. In his judgement in that case, Scarman LJ stated that disparity can never in itself be a sufficient ground of appeal – the question for the Court of Appeal is simply whether the sentence received by the appellant was wrong in principle or manifestly excessive . If it was not the appeal should be dismissed, even though a co-offender was, in the Court of Appeal' s view treated with undue leniency. To reduce the heavier sentence would simply result in

two rather than one, over-lenient penalties. As his Lordship put it, 'The Appellant's proposition is that where you have one wrong sentence and one right sentence, this Court should produce two wrong sentences. That is a submission which this Court cannot accept.' Other similar decisions include *Brown* [1975] Crim LR 177, *Hair* [1978] Crim LR 698 and *Weekes* [1980] 74 Crim App R 161….. However, despite the above line of authority, cases continue to occur in which the Court of Appeal seems to regard disparity as at least a factor in whether or not to allow an appeal (see, for example, *Wood* (1983) 5 Cr App R (S) 381). The true position may be that, if the appealed sentence was clearly in the right band, disparity with a co-offender's sentence will be disregarded and any appeal dismissed, but where a sentence was, on any view, somewhat severe, the fact that a co-offender was more leniently dealt with may tip the scales and result in a reduction.

Most cases of disparity arise out of co-offenders being sentenced by different judges on different occasions. Where however, co-offenders are dealt with together by the same judge, the court may be more willing to allow an appeal on the basis of disparity. The question then is whether the offender sentenced more heavily has been left with 'an understandable and burning sense of grievance' (*Dickenson* [1977] Crim LR 303). If he has, the Court of Appeal will at least consider reducing his sentence. Even so, the prime question remains one of whether the appealed sentence was in itself too severe. Thus in *NOOY* (1982) 4 Cr App R (S) 308, appeals against terms of 18 months and nine months imposed on N and S at the same time as their almost equally culpable co-offenders received three months were dismissed. Lawton LJ said :

There is authority for saying that if a disparity of sentence is such that appellants have a grievance, that is a factor to be taken into account. Undoubtedly, it is a factor to be taken into account, but the important factor for the court to consider is whether the sentences which were in fact passed were the right sentences."

ARCHBOLD **(2001 para. 5-174,p.571 jikkumenta hekk :- "Where an offender has received a sentence which is not open to criticism when considered in isolation, but which is significantly more severe than has been imposed on his accomplice, and there is no reason for the differentiation, the Court of Appeal may reduce the sentence, but only if the disparity is serious. The current formulation of the test has been stated in the form of the question: "would right-thinking members of the public, with full knowledge of the relevant facts and circumstances, learning of this sentence consider that something had one wrong with the administration of justice ?" (per Lawton LJ in *R. v Fawcett* , 5 Cr. App. R. (S) 158 C.A.). The Court will not make comparisons with sentences passed in the Crown Courts in cases unconnected with that of the appellant (see *R. v. Large*, 3 Cr. App. R. (S) 80 , C.A.) There is some authority for the view that disparity will be entertained as a ground of appeal only in relation to sentences passed on different offenders on the same occasion : see *R. v. Stroud* , 65 Cr. App. R. 150 C.A. It appears to have been ignored in more recent decisions, such as in R. v. Wood … *Fawcett*, ante and *Broadbridge* , ante. The present position seems to be that the court will entertain submissions based on disparity of sentences between offenders involved in the same case, irrespective of whether they were sentenced on the same occasion or by the same judge, so long as the test stated in *Fawcett* is satisfied."**

Issa fil-kaz in ezami proprjament non si tratta ta' disparita'fil-piena bejn zewg ko-akkuzati fl-istess process, ghax inghatat l-istess piena ta' erba snin habs kemm lill-appellant odjern u lill-appellant iehor li l-kawza tieghu qed tigi deciza ukoll illum. Izda fil-waqt li wiehed qed jargumenta li s-sentenza tieghu ghandha tkun inqas minn tal-ko-akkuzat li ma ammettiex, l-iehor li ma ammettiex- i.e, l-appellant odjern - qed jargumenta li hu m'ghandux jigi penalizzat ghax ma ammettiex u b'hekk jehel daqs il-

ko-akkuzat l-iehor li ammetta izda ghandu fedina penali refrattarja aktar minn tieghu.

L-appellant jaghmel riferenza ghas-sentenza ta' din il-Qorti (kollegjali) tal-14 ta' Novembru, 2002 "Ir-Repubblika ta' Malta vs. Omissis , Brian Godfrey Bartolo u Omissis"**, fejn gie ritenut li *"kull persuna akkuzata ghandha dritt li tikkontesta l-akkuzi dedotti kontra taghha u tipproduci x-xhieda idoneji . Il-fatt li l-appellant ma ammettiex fl-istess gurnata li ammettew il-..persuni l-ohra ma jistax ghalhekk jittiehed bhala raguni valida ghal xi awment fil-piena….Ghalhekk filwaqt li min jammetti fi stadju bikri tal-process jista' jibbenefika minn tnaqqis fil-piena , m'ghandux jigi penalizzat jekk ma jammettix."***

Illi l-Ewwel Qorti spjegat ghala kienet qed taghti l-istess piena billi qalet :
"Illi ghalkemm il-kondotta taz-zewg akkuzati hija differenti u cioe' Noel Frendo ghandu fedina penali kriminali filwaqt li Aronne Cassar ghandu fedina penali mhux daqstant refrattarja , din il-Qorti hija tal-fehma li l-piena ghandha tkun l-istess ghaliex filwaqt li Noel Frendo ammetta l-akkuzi kollha kif dedotti kontra tieghu , Aronne Cassar ma rregistra ebda ammissjoni ghal xi reat ghalkemm uhud minnhom kien jirrizultaw ippruvati mill-bidu nett tal-atti u din ma saritx bl-ispereanza li l-imputat isib x'intopp tekniku ghall-liberazzjoni tieghu."

Illi bir-rispett din il-Qorti ma taqbilx ma din il-konsiderazzjoni . Ibda biex fil-waqt li Noel Frendo ammetta ghaxar akkuzi kif ukoll l-addebitu li kkommetta reat waqt periodu operattiv ta'sentenza sospiza w dak tar-recidiva, l-appellant odjern instab hati biss ta' seba akkuzi u gie liberat minn tlitt akkuzi u ghalhekk il-htija tieghu kienet inqas minn dik ta' Frendo. Fit-tieni lok fil-waqt li Frendo ammetta kemm ir-recidiva kif ukoll li kiser il-kondizzjoni tas-sentenza sospiza , dan l-addebitu tar-recidiva ma rrizultax fil-konfront tal-appellant odjern u lanqas ma rrizulta dak li kiser l-ordni tal-probation u gie liberat minnhom

.Inoltre l-fedina penali tal-appellant ma kienetx wahda refrattarja daqs dik tal-appellant l-iehor . Ghalhekk dan kollu kien jimmilita favur differenzjazzjoni fil-piena bejn l-appellant u Noel Frendo . Bil-fatt li dan ma sarx , din il-Qorti tista' tapprezza li l-appellant hass *"a sense of grievance"* bil-fatt li hu spicca wehel il-piena li wehel Frendo . Din il-Qorti ma tistax f'dan il-kaz tinjora tali anomalija u dan necessarjament irid jigi rifless fil-piena infraskritta.

Illi l-aggravju bazat fuq il-paragun mas-sentenza li inghatat fil-konfront ta' komplici iehor Jason Abela fid-19 ta' Novembru, 2003 mill-Ewwel Qorti preseduta mill-istess Magistrat pero' ma jreggix ghax dan il-komplici li kien akkuzat biss b'erba imputazzjonijiet u mhux – bhall-appellant – instab hati ta' reat kontinwat ta' seba reati, mhux biss kien ammetta mill-ewwel fl-istqarrija tieghu mall-Pulizija w fl-ewwel opportunita' li kellu meta gie akkuzat quddiem dik il-Qorti izda kkopera mall-Pulizija w sahansitra ta x-xhieda tieghu fil-process kontra l-appellant odjern , xhieda li zgur ghenet biex seta' jigi rizolt il-kaz. Inoltre dik il-Qorti kienet immotivat sew u ulterjorment id-decizjoni taghha li tikkundanna lil Abela ghal sentejn prigunerija sospizi ghall-erba snin u multa ta' LM500 kif ukoll poggietu taht is-sorveljanza ta' probation officer. Hu kien instab biss hati ta' komplicita' u l-partecipazzjoni tieghu kienet wahda limitata u ma ha xejn mir-rikavat tas-serqa . Inoltre Abela kellu fedina penali netta hlief ghal kontravvenzjoni wahda li ghamilha ta' hawker bla licenzja. Dawn il-fatturi kollha li gew elenkati fid-dettall minn dik il-Qorti certament jispjegaw u jiggustifikaw – jekk xi gustifikazzjoni hi mehtiega – d-differenza fil-piena erogata fil-konfront tieghu w dik fil-konfront tal-appellant fi process differenti. Ghalhekk dan l-aggravju mhux fondat.

Illi fil-fehma ta' din il-Qorti l-Ewwel Qorti lanqas ma kienet marbuta li toqghod fuq xi rakkomandazzjoni li seta' ghamel il-Probation Officer fil-pre-sentencing report u ghalhekk dan l-aggravju mhux fondat u qed jigi respint ;

Din il-Qorti taqbel mall-Ewwel Qorti li dawn kienu reati serji ferm u kienu , anki fil-kaz tal-appellant, jimmeritaw piena karcerarja. Wara kollox l-appellant fil-15 ta’ Gunju, 1999, kien gja gie misjub hati ta’ serq ta’ diversi oggetti ta’ deheb u hagar prezzjuz li jiswew aktar minn LM1000 , liema serq kien kwalifikat bil-valur, lok u mezz u ta’ danni volontarji . Jidher pero’ li ma afferrax l-opportunita’ li tatu dik il-Qorti meta lliberatu bil-kondizzjoni li ma jaghmilx reat iehor ghal zmien tlitt snin u rega’ mar jisraq u jaghmel “hold-up” u serq iehor. Din il-Qorti ma tarax li min ikun inghata opportunita’ li jirriforma w jarmiha, ghandu jibqa’ jinghata opportunitajiet ohrajn a skapitu tal-protezzjoni li timmerita s-socjeta’ minn reati simili li kull ma jmur qed isiru aktar u aktar komuni ;

Ghalhekk li wiehed irid jara hawn hu jekk l-appell odjern huwx fondat ghax is-sentenza ta’ erba snin habs ma kienetx gusta fiha nnifisha u, jekk kienet, pero’ inkisritx ir-relativita’ bejn il-htija tal-ko-akkuzat u dik tal-appellant kif ukoll tqiesux bizzejjed il-fatturi ohra bhall-kondotta , eta’ eccetera bejn ko-akkuzat u iehor . Fil-fehma ta’ din il-Qorti, - indipendentement minn kull konsiderazzjoni ohra- sentenza ta’ erba snin habs kienet tkun gusta ghall-htijiet li taghhoim instab hati l-appellant u cioe’ ta’ reat kontinwat ta’ serq ta’ tmintax il-elf lira u oggetti ohra , kwalifikat bil-vjolenza, bil-mezz , bil-valur, li jeccedi l-LM1000 u bil-hin, ta’ sekwestru ta’ persuna, talli uza vjolenza fuq l-istess persuna, talli kien fil-pussess ta’ arma tan-nhar waqt il-kommissjoni ta’ dawn ir-reati, talli seraq van Subaru liema serq huwa kwalifikat bil-mezz, bil-valur li jeccedi l-elf lira Maltin , bil-hin u bix-xorta tal-haga misruqa ; talli fl-istess okkazzjoni seraq ghodod , liema serq hu kwalifikat bil-mezz , bil-valur li jeccedi l-Lm1000, bil-hin u bix-xorta tal-haga misruqa; talli ghamel hsara volontarja li ma tammontax ghall-izjed minn LM10 u ta’ ricettazzjoni. Ghal dawn ir-reati bil-konkors tal-pieni u bir-reat kontinwat , il-piena massima setghet tkun ferm u ferm oghola minn dik erogata.

Pero' meta wiehed iqis il-piena – forsi miti zzejjed – li nghatat lil ko-akkuzat Noel Frendo , din il-Qorti thoss li l-Ewwel Qorti ma ddifferenzjatx bizzejjed bejn il-htija ta' wiehed u tal-iehor u l-fatturi li normalment jitqiesu fl-applikazzjoni tal-piena. Ghalhekk din il-Qorti thoss li hemm lok ghall-temperament fil-piena biex jigi rifless dan kollu w jinzamm kemm hu possibbli l-proporzjon mixtieq .

Ghal dawn il-motivi, din il-Qorti qed tilqa' l-appell u tirriforma s-sentenza appellata u fil-waqt li tirrevokaha fejn ikkundannat lill-appellant Aaron Cassar ghal erba snin prigunerija w minnflok tikkundannah ghall-periodu ta' tlitt snin u tlitt xhur prigunerija, tikkonfermaha fil-kumplament kollu taghha;

< Sentenza Finali >

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