MALTA

QORTI TA' L-APPELL KRIMINALI

ONOR. IMHALLEF
JOSEPH GALEA DEBONO

Seduta tat-28 ta' Ottubru, 2004

Appell Kriminali Numru. 183/2004

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

Vs

Omissis
Noel Frendo

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) 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;
10) lil Noel Frendo wahdu talli huwa kkommetta reat ta' serq aggravat waqt il-perjodu operattiv ta' sentenza ta' sentejn prigunerija sospizi ghal erbgha snin imposta fuqu mill-Qorti tal-Magistrati (Malta) Magistrat Dott. C. Scerri Herrera LL.D datata 27 ta' Settembru, 2001;
11) 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 Noel Frendo hati tal-akkuzi kollha kif dedotti fil-konfront tieghu w ikkundannatu ghal erbgha (4) snin prigunerija inoltre jhallas l-ispejjes 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 sabiex tirriforma s-sentenza appellata billi (a) tikkonfermaha fil-parti dwar ir-reita u (b) thassarha fil-parti dwar il-piena billi tinfliggi piena anqas harxa.

Fliet l-atti kollha processwali.

Rat illi l-aggravji tal-appellant jikkonsistu fis-segwenti w cioe' :- li l-Ewwel Qorti kienet iebsa wisq mieghu meta kkundannatu ghal erba snin prigunerija , ghaliex donnu li ma kien hemm xejn fis-sentenza x' juri li, kif solitament jigri, min jirregistra ammissjoni jibbenifika billi jkollu piena

inqas harxa ; li komparat mall-ko-akkuzat Cassar li ma ammettiex u wkoll ma kellux fedina penali nadifa w xorta wahda ha l-istess piena bhal appellant , jidher li l-appellant ma bbenefikax mill-ammissjoni tieghu ; li l-Ewwel Qorti naqset li taghti ragunijiet l-ghaliex il-ko-awtur l-iehor li ukoll ammetta, nghata sentenza ta' sentejn prigunerija fuq l-istess reat fil-kawza "**Il-Pulizija vs. Jason Abdilla**" (recte. Abela) . Illi fil-waqt li hu jirrikonoxxi li ghandu jmur il-habs, dan ma kellux ikun izjed minn tlitt snin sabiex b'hekk aktar ikun hemm piena li tirrifletti l-andament ta' kif tmexxew il-proceduri f' dan il-kaz.

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 il-beneficcju ta' riduzzjoni fil-piena li kien haqqu ghax irregistra ammissjoni . Issa pero' kif gie ritenut mill-Qorti tal-Appell Kriminali (kolleggjali) fis-sentenza taghha fil-kawza "Ir-Repubblika ta' Malta vs. Mario Camilleri**" [5.7.2002] , l-ammissjoni bikrija mhux bilfors 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 "Ir-Repubblika ta' Malta vs. Nicholas Azzopardi**", [24.2.1997]; u mill-Qorti tal-Appell Kriminali fis-sentenza** "Il-Pulizija vs. Emmanuel Testa**" , [17.7.2002]. F'din l-ahhar sentenza dik il-Qorti kienet irriproduciet il-bran segwenti mill-**BLACKSTONE'S CRIMINAL PRACTICE **, (Blackstone Press Limited – 2001 edit. ecc.) :-**

"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 himself 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) 15 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] 85 Cr. App. R. 281; *Okee* [1998] 2 Cr. App. R. (S) 199.) Similarily , some or all of the discount may be lost where the offender pleads guilty but adduces a version of the facts 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 may 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 has been caught red-handed and a plea of guilty was practically certain ….."

Illi pero' dan l-aggravju lanqas jidher li hu fondat bhala fatt . In effetti l-appellant kien tressaq b'arrest u akkuzat bir-reati eventwalment minnu ammessi fit-13 ta' Frar, 2002 (Fol. 14) . Hu irregistra ammissjoni BISS **fit-23 ta' Lulju, 2004 (fol. 524 tal-process) u cioe' kwazi sentejn u nofs wara w meta kienu gew ezawriti il-provi kollha tal-prosekuzzjoni fi tlitt volumi massicci tal-kumpilazzjoni . Altru minn ammissjoni bikrija f' dan il-kaz!**

B'dana kollu jidher li l-ewwel Qortri xorta kkonsidrat il-fattur tal-ammissjoni fis-sentenza appellata w b'dana kollu , minhabba l-kondotta refrattarja tal-appellant u l-gravita' tal-kaz , hasset li kellha timponi l-piena li mponiet u qalet ghaliex kienet qed taghti l-istess piena lill-appellant li ammetta izda kellu fedina penali kriminali u lill-ko-akkuzat li ghalkemm ma kellux fedina penali daqstant refrattarja , ma kienx ammetta. Ghalhekk mhux il-kaz li l-ewwel Qorti ma kkonsidratx dal-fattur fl-ghoti tal-piena (Fol. 29 tas-sentenza appellata).

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 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 ser 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 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.

Illi apparti li l-Ewwel Qorti spjegat ghala kienet qed taghti l-istess piena ghall-akkuzi li rrizultaw, spjegat ukoll li dak li jaggrava l-pozizzjoni tal-appellant odjern , u cioe' l-fedina penali tieghu hu kontrobilancjat mill-fatt li hu ammetta. Mentri fil-kaz tal-ko-akkuzat li kellu fedina penali inqas refrattarja, dan ma kienx ammetta.

Illi l-aggravju bazat fuq il-paragun mas-sentenza li nghatat fil-konfront ta' komplici iehor Jason Abela fid-19 ta' Novembru, 2003 mill-Ewwel Qorti preseduta mill-istess Magistrat ukoll ma jreggix ghax dan il-komplici li kien akkuzat biss b'erba imputazzjonijiet (u mhux ta' reat kontinwat ta' disa' akkuzi, recidiva w li kkommetta reat ta' serq aggravat waqt il-perjodu operattiv ta' sentenza sospiza, bhal ma kien l-appellant), 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 anki dan l-aggravju mhux fondat.

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 kienetx minnha nnifisha tindika li sar xi haga mhux suppost fl-amministrazzjoni tal-gustizzja. Fil-fehma ta' din il-Qorti, indipendentement minn kull konsiderazzjoni ohra, sentenza ta' erba snin habs kienet altru milli gusta ghall-htijiet ammessi mill-appellant Noel Frendo. Hu instab hati 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 t' arma tan-nar waqt l-istess delitt , talli garr arma minghajr licenzja tal-kummissarju tal-Pulizija , 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 tammonta ghall-izjed minn LM50 u mhux izjed minn LM500; ta' ricettazzjoni u finalment li

kkommetta reat ta'serq waqt periodu operattiv ta' sentenza ta' sentejn prigunerija sospiza ghall-erba snin. Ghal dawn ir-reati bil-konkors tal-pieni u bir-reat kontinwat , il-piena massima setghet tkun ferm u ferm oghola minn dik erogata anzi il-piena hija aktar vicin il-minimu milli l-massimu w ma jidhirx li skattat ukoll is-sentenza sospiza, kif seta' sar.

Ghalhekk din il-Qorti thoss li oggettivament is-sentenza appellata hija wahda gusta w certament ma tistax titqies bhala "*wrong jew manifestly excessive*". L-aggravji tal-appellant ghalhekk qed jigu respinti.

Ghal dawn il-motivi l-appell qed jigi michud u s-sentenza appellata konfermata.

< Sentenza Finali >

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