



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.
CONSUELO-PILAR SCERRI HERRERA**

Sitting of the 14 th March, 2007

Number 587/2006

**Police
Inspector Jesmond Borg
V**

MOUSSA AHMED AYOUB

AHMED MOHAMMED ABDULKADIR

The Court

Having seen that the accused **MOUSSA AHMED AYOUB** aged twenty five years, son of the late Moussa Ahmed and Aamina nee Olosow, born in Mogadishu, Somalia, on the 2nd June 1982 and currently residing at the Marsa Open Centre for Irregular Immigrants, Albert Town, in possession of identity card for Irregular Immigrants number 04M M019 and **AHMED MOHAMMED ABDULKADIR** aged twenty four years, son of the late Mohamed and Hakima born in Mogadish, Somalia in

August 1982 and currently residing at Marsa Open Centre for Irregular Immigrants, Albert Town, in possession of identity card for Irregular Immigrants number 04I I 008 were arraigned before the Court and charged with having:

1. on the night of the 10th and the 11th June 2006, committed the theft of a white coloured vehicle, make Datsun, model Urvan and bearing registration number ABE 441 which vehicle was parked in Dr. Giuseppe Zammit Street, Albert Town, Marsa to the detriment of Khaled Alshaam Almrabea from Albert Town, Marsa and other parties, which theft is aggravated by means, by value which exceeds one thousand maltese liri, with time and with the nature of the thing stolen;

2. for having on the night of the 10th and the 11th June 2006, from within a white coloured vehicle, make Datsun, model Urvan and bearing registration number ABE 441 which vehicle was parked in Dr. Giuseppe Zammit Street, Albert Town, Marsa committed the theft of an electric driller make Narex model EV 16, and bearing serial number 01330318, valued at seventy five maltese liri, an electric driller make Ryobi, model DCD 80 and bearing serial number 01888, valued at seventy five maltese liri, various tools valued at one hundred maltese liri, a rope used for the scaffolding valued at seventy five maltese liri, and an electric grinder make Topex model Graphite 59G076 bearing an unknown serial number valued at twelve maltese liri to the detriment of Khaled Alshaam Almrabea from Albert Town, Marsa, which theft is aggravated by means, by value, with time and with the nature of the thing stolen;

3. for having on the same date, time, place and the subsequent circumstances, caused voluntary damages on a white coloured vehicle, make Datsun, model Urvan and bearing registration number ABE 441, whilst they were using the same vehicle which damages exceed the sum of fifty maltese liri but less than the sum of five hundred maltese liri to the detriment of Khaled Alshaam Almrabea from Albert Town, Marsa and other parties.

4. for having on the same date, time, place and the subsequent circumstances, been in possession of stolen items.

5. for having on the night of the 10th and the 11th June 2006, driven around the Maltese Islands a vehicle make Datsun, model Urvan and bearing registration number ABE 441, without a driving licence issued by the Commissioner of Police or the Director of Traffic, thus without the necessary insurance cover for third parties.

6. for having on the night of the 10th and the 11th June 2006, driven around the Maltese Islands a vehicle make Datsun, model Urvan and bearing registration number ABE 441, in a reckless, negligent and dangerous manner.

The Court was requested to order any suspension of the driving licence of Moussa Ahmed Ayoub and Ahmed Mohamed Abdulkadir as stipulated by section 15(2) of Chapter 65 of the Laws of Malta.

The Court was also requested apart from applying the necessary punishment as stipulated by law in case of guilt, to apply section 383 of Chapter 9 of the Laws of Malta in order to safeguard the security of the witnesses involved.

The Court saw all the documents exhibited in the acts of these proceedings in particular the articles sent by the Attorney General on the 27th November 2006 so that the case will be dealt with summarily if no objection is forthcoming from both accused.

Having heard both accused declare on the 4th December 2006 that they had no objection to their case being dealt with summarily.

Informal Copy of Judgement

Having heard all the witnesses brought forward by the Prosecution, as well as both accused give evidence voluntarily.

Having heard both parties make their oral submission on the 28th February 2007.

Having considered that:

Inspector Jesmond Borg took the witness stand on the 21st June 2006 and explained that on the 11th June 2006, at about 10.00 hours the district police of the Paola Police Station were informed that a vehicle had just been stolen which vehicle, was of make Datsun and had the registration number ABE 441.

Through investigations carried out by the police, it resulted that the car was stolen from where it was parked, right in front of the residence of its owner Khaled Alshaam Almrabea that is 3 Arches, Dr. Giuseppe Zammit Street, Albert Town, Marsa.

The following day the district police of B'Bugia, informed him that whilst out on patrol, they had noticed a van parked in the fence near the caves of Ghar Hassan. He was further informed that the van was driven by two men dark in complexion and that they had already been apprehended by the soldiers of the Open Centre of Hal Far. He went to the Open Centre together with PS 1495 Joseph Muscat and was told who the two men were apprehended and that these were the two accused whom he recognized in Court. The accused had already been accompanied to the Police Headquarters for further investigation by the Immigration Police.

The Inspector then went on to speak to the alleged victim that is the owner of the car. He was shown the car which had considerable damage and was told that in the car were a number of hand tools which naturally, had disappeared with the car and were not found in the car when the owner went to see the car, after it had been found. Both accused were investigated and they both

released a statement which is exhibited in these acts of proceedings as document JB and JB 2 [fol 26 et seq], after they had been given due caution. Both accused a tempo vergine denied they had anything to do with the incident in question.

Khaled Alshaam Almrabea took the witness stand on the 26th June 2006 and confirmed that on a particular day, which day he failed to remember, in the morning at about 06.00 hours he woke up and did not find his car parked outside his door, even though he had left it parked there on the eve, so he went to report the incident to the police.

After some time the police contacted him and told him to go to the B'Bugia Police Station which he did and there is where he found his car all broken. The car could not move so he engaged a tow truck to take it to his mechanic. He was told that the damages amounted to between six hundred and fifty and seven hundred maltese liri. He confirmed that he had left a few hand tools in the car but these were not there when he saw the smashed car in B'Bugia. He said that his insurance policy does not cover him for such damages.

Christopher Schembri, a soldier in the Armed Forces of Malta, **took the witness stand** on the 21st June 2006, and explained how on the 11th June 2006, as he was going for his normal walk early in the morning, in B'Bugia, he saw a vann with two coloured men inside it. He immediately thought they might be illegal immigrants and when he later saw them outside the police station, this fact aroused his suspicion. They passed him by three or four times.

He explained that then he went home, had a shower and on his way to work, saw the same van he had seen previously in the middle of the road with a lot of damages by Ghar Hassan. He later saw the same two men who were driving the same car previously walking fast on the runway opposite the runway of Hal Far. He confirmed that it was the accused Ahmed Moussa Ayoub who was

driving the car. He then informed the duty sergeant and the two accused were apprehended.

On the 21st June 2005, the Court nominated Joseph Zammit a court technical expert to make a description of the damages sustained in this vehicle bearing registration number ABE 441 and to indicate the expenses required to make good for the damages.

On the 7th August 2006, **Joseph Zammit took the witness stand** and exhibited his report which the Court marked as document JZ. This expert concluded that the damages were extensive and consequently declared that the car was beyond economical repair. He estimated the pre accident value of the car to be in the region of six hundred maltese liri.

Brian Farrugia took the witness stand on the 7th August 2006 on behalf of the Director of the Licencing Department and confirmed that the vehicle bearing registration number ABE 441 is registered in the name of Khaled Alshaam Almrabea from Albert Town and that the accused Moussa Ahmed Ayoub and Ahmed Mohammed Abdilkadir had no police driving licence issued by the Commissioner of Police.

PS 1495 Joseph Muscat took the witness stand on the 7th August and confirmed that Khaled Alshaam Almrabea reported to him at the Paola Police on the 11th June 2006, that his car bearing registration number ABE 441 was stolen from in front of his home, together with a number of hand tools which he valued at two hundred maltese liri. He also confirmed that the same car was found at 08.00 hours of the same day near Ghar Hassan. In his presence the owner recognized the car as his own but added that the tools were not there. He stated that he went to the Hal Far detention centre because through preliminary investigation he was told there were two illegal immigrants who had escaped from the Hal Far Barracks and these were involved with the missing vehicle. When he was there he heard Gunner Jeffrey Farrugia state that at about 06.00 hours, while he was on his way to work, he

had seen a white van with two foreign nationals in it driving dangerously. He exhibited a police report which the Court marked as document PS. He was further informed that there were two persons who were detained.

Gunner Jeffrey Farrugia took the witness stand on the 7th August 2006 and stated that on the 11th June 2006 he was on duty and at about 07.00 hours, his friend, a certain Schembri called in and told him that he had seen two illegal immigrants driving a white van and that it crashed about four times. He then went to Hal Far, saw two illegal immigrants with some clothes in their possession and he placed them in the jeep and took them to the headquarters. He recognized the two accused as the persons he had apprehended. He accompanied them to his superior a certain Mr. Gatt of C Regiment.

PS 945 John Cilia took the witness stand on the 18th September 2006 and confirmed the signature of the accused on both statements documents JB and JB 2 exhibited in these record of proceedings and recognised both accused as the persons who released such statements which were countersigned by Inspector Jesmond Borg.

Khaled Alshaam Almrabea took the witness stand again on the 4th December 2006, [fol 80] and confirmed that he had spent the sum of two hundred and fifty maltese liri to fix the car as per receipt marked as document S 2 and the sum of thirty maltese liri for the towing as per document S 1. In all he paid the sum of two hundred and eighty maltese liri in relation to his car, after the incident in question.

On the 5th January 2007, after the prosecution declared it had no further evidence to bring forward, the defense requested the prosecution to exhibit in Court the finger prints that were lifted by the Scene of the Crime Officers in relation to this case so that comparisons could eventually be made with the finger prints of the accused.

PC 1525 Patrick Farrugia took the witness stand on the 17th January 2007 and confirmed that he was entrusted by the police to take the finger print from the car of make Datsun bearing registration number ABE 441, but none of the prints were satisfactory because the car was full of rough surfaces and therefore no comparison could be made with the prints lifted by him.

The accused Moussa Ahmed Ayoub took the witness stand on the 17th January 2007 and confirmed that when he was on the bus stop next to the Open Centre of Hal Far, together with his friend the co-accused, he was apprehended and taken to the Police Headquarters. He was accused of stealing a car and he refused this allegation categorically and added that he did not know how to drive a car. He also confirmed that there was no car next to them when they were apprehended near the Open Centre. He confirmed that he was at the Open Centre in Marsa but goes to that of Hal Far every weekend and that is why he was on the bus stop. He categorically denied what the soldier had said about him regarding the day of the 11th June 2006 and added that he took no lift either.

The co accused Ahmed Mohamed Abdulkadir took the witness stand on the same day and said that on the 11th June 2006 he went to Hal Far Open Centre to sleep as he usually does for the weekend and the following morning as he was doing his training, a soldier went to speak to him. He denied having driven a van or stole anything from a car in Marsa as alleged by the Police. He denied coming out of a car and confirmed the police apprehended him whilst playing football and was standing by a bus stop.

The Court declares that this case depends only on the credibility of the witnesses that testified in this case, coupled up with some circumstantial evidence which possibly could be available in the case.

The defense iterated in its submissions, that the police did not produce any finger prints taken from the car and thus,

this should go in favour of the accused because they were willing to give them finger prints for the sake of comparison.

As was held in the judgment delivered by the **Court of Appeal** in the names **Police v Joseph Lee Borg et decided on the 15th June 1998**:

"Illi dan l-argument tad-difiza tal-apellant [li l-prosekuzzjoni ma ressqitx finger prints] bla ebda mod ma jreggi l-ghaliex l-fatt li f'xi kaz ma ttiehdux l-finger prints, jew li m'ingibitx l-prova tal-finger prints, ma jfissirx b'daqshekk li l-prosekuzzjoni ma gabitx l-ahjar provi. Fil-fatt, f'hafna mill-kazijiet, ikun hemm provi ohra, ad eskluzzjoni tal-finger prints, li jkun bizzzejjed biex iwasslu lil Qorti li ssib htija fuq l-akkuzati. Il-prova tal-finger prints, qeghda hemm biex f'xi kazijiet, issahhah provi ohra tal-prosekuzzjoni u f'kazijiet fejn dik tkun l-unika parova. Fejn hemm provi car w anke cirkostanzjali skond l-ligi, mhux necessarju li ghandu bilfors ikun hekk wkoll il-prova tal-marki tas-swaba."

The prosecution in its submissions stated that circumstantial evidence proved that it was the accused who committed the crimes under examination.

With reference to this point in issue, reference should be made to what was said in the judgment delivered by the Court of Appeal on the 9th June 1978 in the names **Police v Dawood Sayed Dawood Abd el Kaader** where the renowned judge made reference to what was said by **Lord Normand** in the case in the names **Teper v The Queen [1952] AC 480, 489**.

"It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference."

As was held in the case decided by the **Court of Appeal on the 17th June 1998** in the names **Police v David Gatt**:

"Provi cirkostanzjali huma bhal katina li tintrabat minn tarf ghal tarf b'sensiela ta' ghoqiedi li jorbtu ma xulxin u li flimkien jwasslu fl-istess direzzjoni."

It is imperative that when a case depends solely on circumstantial evidence, that such circumstantial evidence has to be univocal not equivocal or ambiguous. It has to be evidential evidence which links the accused and nobody else but him, that he was the guilty person and that all the evidence that was brought forward against him is incompatible with his principles of innocence.

This Court had the opportunity to make an appreciation of all the witnesses that gave evidence in this case and this in terms of section 657 of the Criminal Code, and thus since it lived through the collection of evidence brought forward by the prosecution, unlike other courts where the evidence is gathered before an inferior court. The Court took note of the conduct of the witnesses, the way they gave evidence, the interest they had in what they said and if what they said, reflected the truth.

It is the opinion of this Court that both accused seemed very credible in what they said from the very moment they released their statement a tempo vergine of the investigation and that their evidence is definitely collaborated with the evidence brought forward by the prosecution.

The prosecution failed to prove that the accused had escaped from custody and that they were not in custody at the time of the commission of the crime, especially when they gave an alibi in their statement that they were on bus number 13 at 06.35 hours. The accused seemed genuine in what they said.

The Court found it hard to believe how Christopher Sciberras, a soldier at the Armed Forces could have recognised the accused Moussa Ahmed Ayoub drive the car when allegedly they were driving negligently. Also it is strange to see how he states that the accused were

Informal Copy of Judgement

apprehended as he was walking fast when all witnesses say that they were apprehended from the barracks.

The Court also finds it strange to note that although Gunner Jeffrey Farrugia had allegedly noticed a foreign national drive dangerously and collide, he did not stop and investigate further when at the same time he had suspicion that the persons involved could have been escapees, the Court find this odd, when his duty as a soldier demands that he assesses such things.

In the circumstance, and in the light of the above, **the Court declares that it does not find accused MOUSSA AHMED AYOUB and AHMED MOHAMMED ABDULKADIR guilty of the charges and acquits them accordingly of all charges brought forward against them.**

< Final Judgement >

-----END-----