



**QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI**

**MAGISTRAT DR.
AUDREY DEMICOLI**

Seduta tat-18 ta' Jannar, 2008

Numru. 948/2004

**Police
Inspector Joseph Mercieca**

vs

David Julius Carmelino Sciberras

The Court;

Having seen that the accused David Julius Carmelino Sciberras, son of Martin and Beverly Joyce nee` Townsend, born in Slough, England on the 2nd of March, 1986 and without a permanent residence and holder of I.D. card number 465494 (M) was brought before the Court;

a) Charged with having on the night between the 27th and the 28th September, 2004, in Qawra, rendered himself an accomplice with other unknown persons, in terms of Section 42 (c) & (d) of Chapter 9, in the commission of theft of car, make Ford Fiesta, registration no. LDK 328, to the detriment of Agius Car Hire of Qawra, which theft is aggravated by value exceeding Lm 1,000, by time and by the nature of the thing stolen.

b) Furthermore, he was also charged with having, under the same circumstances, on the same night and after that, but before the 2nd October, 2004, in these islands, wilfully committed spoil and / or damage on car, registration no. LDK 328, which damages do not exceed five hundred Maltese liri but exceed fifty Maltese liri (Sect. 325 (b) of Chapter 9).

Having seen all documents and records of the procedures including the note filed by the Attorney General (folio 88) dated 10th May 2007 whereby he transmitted acts and records of the preliminary investigation to be heard and decided as by this Court as a Court of Criminal Judicature and whereby he deemed that from the preliminary investigation there might result an offence or offences under the provisions of:-

- (a) Articles 42, 43, 45, 46 and of articles 261(b), 261(c), 261(f), 261(g), 263, 264, 265, 266, 267, 270, 271, 278, 279, 280, 281 of Chapter 9 of the Laws of Malta;
- (b) Article 325 of Chapter 9 of the Laws of Malta;
- (c) Articles 31 and 533 of Chapter 9 of the Laws of Malta;

Having seen that on the 18th May 2007 (*a folio 83*) the accused answered that he had no objection that his case is heard by summary proceedings and decided by this Court as a Court of Criminal Judicature.

Having heard the final submissions made by the Prosecution and the Defence Counsel.

Having taken into consideration the following:

The facts of the case relate to the theft of a vehicle bearing registration number LDK 328 of the make Ford Fiesta which theft was reported on the 28th September 2004. Inspector Joseph Mercieca explained (vide evidence on folios 30 et sequitur of the proceedings) that on the said date a French tourist, Vincent Sedo, filed a report at the Qawra Police Station to the effect that he had parked the abovementioned vehicle in Garcia Toledo Street, Qawra the previous night and he found it missing the next morning, that is on the 28th September 2004. On the 1st October 2004 the owner of the said vehicle Joseph Agius, which had been rented out to Vincent Sedo, reported that he had found the vehicle parked in Imrejka Street, Qawra and that it was slightly damaged. Inspector Mercieca explained that he went personally on site that is the place where the vehicle was found, where he found the vehicle in question slightly damaged with a dent on the left front mudguard and in the side lamps. On site he spoke to Julian Agius, the son of the owner of the vehicle, and the former explained to him that that same afternoon a certain David Julius Carmelino Sciberras, that is the accused, had called at his father's garage in Qawra and asked to have the car washed when all of a sudden he disappeared. While the Police were on site they observed the accused and another man peeping out from the balcony of an apartment situated a few metres away from where the car was found. The Police interrogated and subsequently arrested both the accused and the other person, a certain Martin Barry King. The latter and the accused told the Police that the vehicle had been given to them by a man called Leslie whom they used to meet at a place called Bell Bar, in Qawra but they were unable to provide further details regarding this person. The accused released a statement to the Police (exhibited at folio 41 of the proceedings) whereby he told them that that the vehicle could have been stolen by a certain Mariano Perrone. The latter was interrogated by the Police and he categorically denied having stolen the vehicle; however, he informed the Police that the accused was a friend of

his and he had shown him a false key which could be used to open Fiesta vehicles. The accused and Martin Barry King were released from arrest and the latter disappeared from Malta and could not be traced. Inspector Mercieca explained that Mariano Perrone is presently undergoing separate charges relating to the receipt of stolen property. In cross examination Inspector Mercieca stated that during the investigations it had not been established who had actually stolen the vehicle and he explained that the accused is being charged as an accomplice to the theft of the vehicle due to the fact that Mariano Perrone had stated that he had given the accused a key which could open Ford Fiestas. Inspector Mercieca also confirmed that the said key was never found even though searches were carried out on the accused and in the premises where he was residing at the time.

Julian Agius gave evidence on the 19th February 2007 (in examination) and on the 5th July 2007 (in cross examination) and stated that he knew the accused since he was a friend of his. He also explained that in the summer of 2004 the accused had gone to his father's garage in Qawra to have a car washed. According to Julian Agius the accused told him that he had stolen the vehicle and Agius explains that when he went out to see the vehicle which was parked in front of the garage he told the accused that the same vehicle belonged to his father Joseph Agius. The accused told Julian Agius that he was sorry and that he was going to return the vehicle, he was in a state of panic and left. Julian Agius also said that the vehicle was not being driven by the accused but by another man whom he identified as Carmelino. Julian Agius stated that the vehicle was in fact not returned by the accused nor by the man accompanying him and later on that day a friend of his father's told them that he had seen the vehicle parked in a street in Qawra and they went on site and informed the Police. During cross examination Julian Agius confirmed that there was a time when the accused was his best friend and he explained that the accused was aware of the fact that his (Julian Agius) father had a car hire business. He also said that

when the accused accompanied by an English national went to the garage to have a car washed he was shocked when he realised that the vehicle was one that belonged to his father *“even the defendant was shocked, I told him that the vehicle had been stolen. The defendant said that he was going to give the car back to my father. I am being asked whether the defendant said anything else and I reply in the negative”*.

The accused gave evidence on the 25th October 2007 whereby he stated that in 2004 he was living with a man called Martin whom he had met in Bugibba and he started living with him because he was homeless. The accused also said that they had another friend by the name of Mariano and the latter used to go to their apartment quite often. On one occasion he turned up with a vehicle which he said had been rented and he handed over the said vehicle to Martin and told him that he could use it. The vehicle in question was a Ford and it was white in colour. The accused also stated that the next morning they decided to take the vehicle to his friend Julian to have it washed and checked for any defects and when they arrived at Julian's garage the latter immediately told them that the vehicle in question belonged to his father and that it had been stolen. The accused stated that they made a deal with Julian to the effect that they were going to give the car back after picking up Mariano so that they could take the latter to the garage. The accused said that after they left the garage Martin did not want to go and pick up Mariano and so they went home and after a few hours they found the Police and Julian's father outside their apartment where the car was parked.

The accused had released a statement to the Police on the 2nd October 2004 (exhibited at folio 41 of the proceedings) and one can immediately note several discrepancies between what he said then and what he said when he gave evidence before this Court on the 25th October 2007. In the said statement for example the accused told the Police that Martin Barry King was his cousin and that he had come over to Malta to help him. He also told them that a certain Mariano had “nicked” the

Ford Fiesta bearing registration number LDK 328 and he had then handed it over to a time share guy who in turn had given the vehicle to Martin and told him that he could use it for a few days. The accused said that he was sure that Mariano had stolen the car because he had told them that he wanted to steal a vehicle and he had shown them a red key. The accused also told the Police that he and Martin had gone to Julian Agius's garage for a chat and not to wash the car and Julian told them that the vehicle was stolen and belonged to his father. In the statement the accused denied that he had told Julian that he had stolen a vehicle.

The accused is being charged with being an accomplice to the theft of the vehicle mentioned above and with voluntarily causing damage on the same vehicle. Regarding the second charge, that is the one of voluntary damage, it can immediately be said that no evidence whatsoever was brought forward by the Prosecution indicating that the accused had in fact damaged the vehicle in question. The accused is therefore being acquitted from this charge due to lack of evidence.

As to the first charge whereby the accused is being charged with being an accomplice in the theft of the vehicle bearing registration number LDK 328 which theft occurred during the night between the 27th and the 28th September 2004, the Court refers to a judgement of the Court of Criminal Appeal (Inferior jurisdiction) of the 24th May 2002 (Police vs Carmelo Agius) whereby the said Court laid down the extent of evidence which has to be brought forward by the Prosecution for a person to be found guilty of being an accomplice in terms of Section 42 of the Criminal Code. In this judgement the Court of Appeal said the following:-

'Biex Agius jista' jinstab hati bhala komplici f'dawn id-delitti (jew imqar f'wiehed minnhom) irid jirrisulta sodisfacentement pruvat mill-prosekuzzjoni – cioe` pruvat lil hinn mid-dubbru dettat mir-raguni – li dana Agius (i) kien jaf li Aquilina u/jew Dimech kienu ser iwettqu xi wiehed minn dawn id-delitti u (ii) li hu deliberatament ghinhom

biex hekk iwettqu ddelitt billi ghamel xi haga li tinkwadra f'wiehed mill-paragrafi (a) sa (e) tal-Artikolu 42 tal-Kodici Kriminali. Is-semplici fatt li Agius mar ma' Aquilina u Dimech, u anke kien fuq il-post waqt li dawn it-tnejn wettqu d-delitti in kwistjoni, ma jfissirx necessarjament li hu kien jaf x'kellhom f'mohhom li jaghmlu listess Aquilina u Dimech. Huwa veru li l-presenza ta' persuna fuq il-post tad-delitt u waqt li jkun qed jigi kommess id-delitt tista' tammonta ghall-komplicita` f'dak id-delitt kemm-il darba jkun jirrisulta li bejn dik il-persuna u l-awtur tad-delitt kien hemm il-hsieb komuni li jsir dak id-delitt, u li l-presenza ta' dik il-persuna effettivament assistiet lill-awtur, anke jekk biss moralment, biex iwettaq dak id-delitt. Fil-kaz in dizamina, pero`, hija plawsibbli t-tezi tal-appellat li hu ma kellux idea li Aquilina u Dimech kienu sejrjn jaghmlu xi haga li tammonta ghal reat (u dan minkejja li jammetti li huma w sejrjn Haz-Zebbug, Aquilina qabad xi gebel u poggihom fil-karozza –gebel li, pero`, ma ntuzaw f'ebda hin waqt l-aggressjoni jew waqt il-kommissjoni tar-reati (fol. 123)); u li hu sar jaf x'kellhom f'mohhom biss kif appena bdiet l-aggressjoni fuq Tarcisio Mifsud, mill-liema stadju 'l quddiem huwa ma ghamel xejn biex jghinhom jew jassistihom iwettqu dawk id-delitti'.

The Court deems that in this case the Prosecution failed to prove beyond reasonable doubt as it was required to do that the accused was an accomplice in the theft of the vehicle in question. First and foremost it failed to prove who was the principal that is the person who effected the theft. Moreover it failed to prove that the accused participated in the said theft. The Prosecuting Officer in cross examination said that that the accused was being charged as an accomplice to the theft on the basis that Mariano Perrone had indicated to the Police that he had handed over a key that could open Ford Fiestas. However, it is to be noted that the said Mariano Perrone was not brought forward as a witness. Moreover, the Prosecuting Officer confirmed that notwithstanding the fact that searches were carried out both on the accused as well as in the apartment where he was residing at the time no key was ever found. The fact that the Prosecution

managed to prove that the accused was made aware of the fact that the vehicle had been stolen when he went to have it washed at Julian Agius's garage is not enough since it cannot be deemed to have been proven beyond reasonable doubt that the accused was an accomplice to the theft of the vehicle.

In the note dated 10th May 2007 the Attorney General indicated that from the preliminary investigation there might result an offence or offences under the provisions of Sections 261(b), (c) (f) (g) and 263, 264, 265, 267, 270, 271, 278, 279, 280 and 281 of the Criminal Code, i.e the sections relating to aggravated theft. As stated above the Prosecution failed to prove who was the principal in relation to the theft of this vehicle and it certainly cannot be said that it managed to prove beyond reasonable doubt that it was the accused who stole the vehicle. In this regard it is relevant to note that when Julian Agius gave evidence on the 19th January 2007 he said that the accused had told him that he had stolen a vehicle. However, when the same witness was cross examined on the 5th July 2007 and specifically asked whether the accused had said anything else on being informed that the vehicle which he had taken to be washed belonged to the witness's father and that it had been stolen, the witness replied in the negative. Julian Agius said that the accused seemed to be very shocked at the news and promised that he was going to return the vehicle but he did not say anything else. There is therefore a conflict between what Julian Agius said in examination and what he said in cross examination and therefore the doubt should operate in favour of the accused. It should also be noted that from the evidence brought forward by the Prosecution it always transpired that the vehicle in question was never driven by the accused. In view of all this the Court cannot conclude that it has been proven beyond reasonable doubt that the accused is guilty of the offence relating to the theft of the vehicle in question.

For the above mentioned reasons the Court declares the accused not guilty of the charges brought against him and

Kopja Informali ta' Sentenza

consequently decides to acquit him from all the said charges.

< Sentenza Finali >

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