



## **QORTI TA' L-APPELL KRIMINALI**

**ONOR. IMHALLEF  
DAVID SCICLUNA**

Seduta tat-2 ta' Lulju, 2008

Appell Kriminali Numru. 374/2007

**The Police**

**v.**

**Song Zehao**

The Court,

Having seen the charges brought against the said Song Zehao before the Court of Magistrates (Malta) as a Court of Criminal Judicature that in these Islands, in February 2005 and in the preceding months:

(1) By means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or

apprehension of any chimerical event, made a profit of approximately three thousand (3,000) euros to the detriment of Chen Hua, Kangrong Chen, Feng Lin, Wumin Xue, Hongmei Yu, Chaoyan Lin, Link School of English and other persons;

(2) Misapplied, converted to his own benefit or to the benefit of any other person, anything which had been entrusted or delivered to him under a title which implies an obligation to return such thing, or to make use thereof for a a specific purpose, from money which amounts to three thousand (3,000) euros or more, which money belonged to Chinese nationals mentioned and other persons;

(3) In order to gain any advantage or benefit for himself or others, in any document intended for any public authority, knowingly made a false declaration or statement, or gave false information;

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 16<sup>th</sup> October 2007, whereby the said Song Zehao was declared not guilty of the charges brought against him and was acquitted of the same;

Having seen the application of appeal filed by the Attorney General on the 31<sup>st</sup> October 2008 wherein he requested that this Court revokes and annuls the said judgement, finds the said Song Zehao guilty of complicity in the commission of all the crimes mentioned in the charges proffered against him and inflicts punishment according to law;

Having seen the records of the case and the documents exhibited;

Having heard submissions made by the prosecution and the defence;

Having considered:

Appellant's grievances require a reappraisal of the facts of the case. Now, this Court is a Court of review and, in carrying out this function, it has examined carefully the record of the proceedings, including the transcriptions of evidence and the documents exhibited, to determine whether on the basis of the evidence produced, the first Court could have legitimately and reasonably reached its conclusion.

In **Blackstone's Criminal Practice 2001** we read (at para. D22.15 page 1622):

**"The case of *Cooper* [1969] 1 QB 267 continues to provide guidance on how the word 'unsafe' should be interpreted in determining a criminal appeal. In that case, Lord Widgery CJ explained that if the overall feel of a case left the court with a 'lurking doubt' as to whether an injustice may have been done, then a conviction will be quashed, notwithstanding that the trial was error-free. Lord Widgery said (at p. 271 C-G):**

**'[This is] a case in which every issue was before the jury and in which the jury was properly instructed, and, accordingly, a case in which this court will be very reluctant indeed to intervene. It has been said over and over again throughout the years that this court must recognise the advantage which a jury has in seeing and hearing the witnesses, and if all the material was before the jury and the summing-up was impeccable, this court should not lightly interfere. Indeed, until the passing of the Criminal Appeal Act 1966 [which somewhat widened the court's powers to quash a conviction] it was almost unheard of for this court to interfere in such a case.**

**However, now our powers are somewhat different, and we are indeed charged to allow an appeal against conviction if we think that the verdict of the jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory. That means that in cases of this kind the court must in the end ask itself a subjective**

**question, whether we are content to let the matter stand as it is, or whether there is not some lurking doubt in our minds which makes us wonder whether an injustice has been done. This is a reaction which may not be based strictly on the evidence as such; it is a reaction which can be produced by the general feel of the case as the court experiences it'."**

And in its judgement of the 1<sup>st</sup> December 1994 in the names **Ir-Repubblika ta' Malta v. Ivan Gatt** this Court in its superior jurisdiction said:

**"Fi kliem iehor, l-ezercizzju ta' din il-Qorti fil-kaz prezenti u f'kull kaz iehor fejn l-appell ikun bazat fuq apprezzament tal-provi, huwa li tezamina l-provi dedotti f'dan il-kaz, tara jekk, anki jekk kien hemm versjonijiet kontradittorji - kif normalment ikun hemm - xi wahda minnhom setghetx liberament u serenament tigi emmnuta minghajr ma jigi vjolat il-principju li d-dubju ghandu jmur favur l-akkuzat, u jekk tali versjoni setghet tigi emmnuta w evidentement giet emmnuta, il-funzjoni, anzi d-dover ta' din il-Qorti huwa li tirrispetta dik id-diskrezzjoni u dak l-apprezzament."**

The first Court had the obvious advantage of seeing and hearing the witnesses and, after having examined all the evidence submitted before it, concluded that the prosecution had not proved its case beyond a reasonable doubt. Appellant is now submitting that the first Court should have at least found Song Zehao guilty as an accomplice and is in fact so requesting this Court to find.

Appellant submits that Song Zehao himself admits to having received the funds and passing them on to Geng Ni in the presence of the students. Appellant also refers to a number of documents found on Zehao's computer which were clearly related to the documents subsequently passed on to the students and claimed to be false. He says that the text was found in separate documents from those containing the stamps and letterheads. Appellant says that although P.S. 266 exonerated Song's

involvement, the fact that the computer could have been used by a third party does not exclude the fact that “it could have been Song himself who assisted or offered his computer for use by the third party.” Appellant insists that Zehao was part and parcel of the whole plot as his computer was situated in his residence and therefore access to it was necessarily restricted. Appellant further states that Zehao’s involvement goes further as when the students started chasing him for their money, he communicated with Geng Ni about this and followed his advice to change his mobile number. This, according to the appellant, shows that Zehao was not simply a careless, carefree or negligent interpreter as he portrayed himself to be. The fact that criminal action was taken against Geng Ni who admitted to the charges does not exonerate Song Zehao who should have at least been found guilty as an accomplice.

This Court, having examined the records of the case, agrees that Song Zehao could have been considered an accomplice, but an unwitting accomplice. It is true that a number of documents used to create the guarantee letters were found stored in his computer. But it is pure conjecture on the part of the Attorney General to state that “it could have been Song himself who assisted or offered his computer for use by the third party.” If Zehao allowed his computer to be used by a third party – as appears to be the case from the evidence tendered by P.S. 266 Stefan Decelis – it cannot be safely concluded that he knew that the items downloaded by said third party were false. The fact that it was Geng Ni who suggested to Zehao to change his mobile number when the students started chasing Zehao for their money, shows that it was Geng Ni who carried out all the plotting and that Zehao was merely a pawn in Geng Ni’s hands. It was Geng Ni who pocketed all the money. Had Zehao been involved in Geng Ni’s plot he would have clearly taken his share from the proceeds. The fact that he did not indicates that to him Geng Ni was carrying out a licit operation and that the funds were really needed to obtain the guarantee letters from China.

Kopja Informali ta' Sentenza

Consequently this Court agrees with the conclusion reached by the first Court and furthermore states that the evidence cannot be said to prove beyond reasonable doubt that the said Song Zehao should be considered an accomplice as suggested by the Attorney-General.

For these reasons:

The appeal is dismissed and the judgement of the first Court is hereby confirmed.

**< Sentenza Finali >**

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