MALTA

QORTI TA' L-APPELL KRIMINALI

ONOR. IMHALLEF
JOSEPH GALEA DEBONO

Seduta tas-26 ta' Marzu, 2009

Appell Kriminali Numru. 380/2008

Il-Pulizija
(Supt. N. Harrison)
Vs
Robert Attard

Il-Qorti,

Rat l-akkuza dedotta kontra l-appellant quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli f'dawn il-Gzejjer fit-23 ta' Marzu, 2003, u matul l-ahhar xhur qabel din id-data :

1. biegh jew xort'ohra ttraffika fir-raza mehuda mill-pjanta cannabis jew f'xi preparazzjonijiet li jkollhom bhala bazi din ir-raza;
2. kellu wkoll fil-pussess tieghu r-raza mehuda mill-pjanta cannabis bi ksur tal-artikolu 8(a) tal-Kap. 101 tal-Ligijiet ta' Malta;
3. kellu wkoll fil-pussess tieghu l-pjanta cannabis kollha jew bicca minnha bi ksur tal-artikolu 8(d) tal-Kap. 101 tal-Ligijiet ta' Malta.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tat-12 ta' Dicembru, 2008, li biha, wara li rat l-artikoli 17(h) tal-Kap. 9, 8(a), 8(d), 22(1)(a), 22(1)(b)(i)(ii) u 22(1B) tal-Kap. 101, sabet lill-appellant hati tal-ewwel u tat-tieni imputazzjoni b'dan pero' li din l-imputazzjoni hija assorbita fl-ewwel wahda waqt li lliberatu mit-tielet imputazzjoni w ikkundannatu ghal sittix-il xahar prigunerija w ghall-hlas ta' multa ta' €700, liema multa tista' tithallas bir-rata ta' €50 fix-xahar bl-ewwel pagament isir fi zmien erba' gimghat. Jekk xi pagament ma jithallasx, il-bilanc jithallas f'daqqa w jekk xi parti mill-multa ma tithallasx, din tinbidel f'jum prigunerija ghal kull €11.65 li ma jithallsux.
Il-Qorti ma applikatx l-artikolu 533 minhabba li l-analizi tal-Ispizjar Mario Mifsud kienet negattiva. Din l-analizi saret b'konnessjoni mat-tielet imputazzjoni w il-Qorti lliberat lill-appellant mit-tielet imputazzjoni.
Ghal kull buon fini, jekk fadal xi tracci, l-Qorti ordnat li dawn ikunu distrutti taht is-sorveljanza tar-Registratur.

Rat ir-rikors tal-appellant minnu pprezentat fit-23 ta' Dicembru, 2008, li bih talab li din il-Qorti joghgobha tirriforma s-sentenza appellata b'dan billi ssibu hati taht l-ewwel imputazzjoni pero' bl-applikazzjoni ta' l-ewwel proviso tas-subartikolu 9 ta' l-artikolu 22 ta' l-Ordinanza dwar il-Medicini Perikoluzi, tikkonferma li t-tieni imputazzjoni tigi assorbita fl-ewwel wahda, kif ukoll tikkonfermaha in kwantu lliberatu mit-tielet imputazzjoni w li f'kwalunkwe kaz tigi applikata sentenza aktar adegwata skond il-ligi.

Fliet l-atti kollha processwali.

Rat il-fedina penali aggornata tal-appellant esebita mill-prosekuzzjoni fuq ordni tal-Qorti.

Rat illi l-aggravji tal-appellant, fil-qosor, huma s-segwenti w cioe' :- Li l-Ewwel Qorti, ghab-bazi tal-provi li kellha quddiemha, ma setghetx tasal ghall-konkluzzjoni ta' htija ta' traffikar tar-raza tal-kannabis, ghax ma nstabet ebda droga fil-pussess tal-appellant u l-weraq li nstab ma kienx

droga. Fid-dar tal-appellant ma nstabet ebda droga waqt it-tfittxija li saret. Li l-mobile phone li ghalih saret referenza mill-Ispettur Harrison fil-kors tal-istqarrija tal-appellant, qatt ma gie esebit u lanqas tqabbad espert biex johrog il-messaggi minnu. L-unika prova ghalhekk hi l-istqarrija w ix-xhieda tieghu w, anki jekk ma jitwemminx, ma tistax tissostitwixxi l-prova bil-fidi. L-appellant kellu problema tad-droga w stqarr mill-ewwel li kien jiehu r-raza. Jekk umbaghad amplifika waqt ix-xhieda tieghu, dan ma ghandux jitqies bhala kontradizzjoni. Li hawn tezisti cirkostanza ta' "*sharing"* kif koncepit fl-ewwel proviso tal-artikolu 22 (9) tal-Kap.101. Bla pregudizzju, l-piena kienet wahda eccessiva tenut kont li l-appellant kellu biss 19 -il sena, kellu kondotta nadifa, kellu rapport favorevoli tal-probation officer Farrugia, li d-droga kienet raza tal-cannabis u meta tqis sentenzi ohra f' kazijiet analogi, l-piena ghandha tonqos.

Semghet it-trattazzjoni;

Ikkonsidrat;

Illi dan l-appell hu marbut mall-apprezzament tal-fatti li ghamlet l-Ewwel Qorti. Issa hu principju ormaj stabilit fil-gurisprudenza ta’ din il-Qorti (kemm fil-kaz ta’ appelli minn sentenzi tal-Qorti tal-Magistrati kif ukoll fil-kaz ta’ appelli minn verdetti w sentenzi tal-Qorti Kriminali) li din il-Qorti ma tiddisturbax l-apprezzament dwar il-provi maghmul mill-Ewwel Qorti jekk tasal ghall-konkluzzjoni li dik il-Qorti setghet ragonevolment u legalment tasal ghall-konkluzzjoni li waslet ghaliha. Fi kliem iehor, din il-Qorti ma tirrimpjazzax id-diskrezzjoni fl-apprezzament tal-provi ezercitata mill-Ewwel Qorti, izda taghmel apprezzament approfondit tal-istess biex tara jekk dik l-Ewwel Qorti kienetx ragjonevoli fil-konkluzzjoni taghha . Jekk izda din il-Qorti tasal ghall-konkluzzjoni li l-ewwl Qorti fuq il-provi li kellha quddiemha, ma setghetx ragjonevolment tasal ghall-konkluzzjoni li waslet ghaliha, allura din tkun raguni valida, jekk mhux addirittura mpellenti , sabiex din il-Qorti tiddisturba dik id-diskrezzjoni w konkluzzjoni (ara f’dan is-sens “*inter alia*” l-Appell Kriminali : “**Il-Pulizija vs. Raymond Psaila et.”** [12.5.94; “**ir-Republika ta’ Malta**

vs. George Azzopardi " [14.2.1989]; "**il-Pulizija vs. Carmel sive Chalmer Pace"** [31.5.1991] ; **"Il-Pulizija vs. Anthony Zammit"** [31.5.1991] u ohrajn).

"Illi approppositu ta' dan, din il-Qorti tirriferi ghal dak li nghad minn LORD CHIEF JUSTICE WIDGERY fil-kawza "R. v. Cooper" ([1969] 1 QB 276) (in konnessjoni mal-artikolu tal-ligi Ingliza s. 2 (1) (a) tal-Criminal Appeal Act, 1968) :-

"assuming that there was no specific error in the conduct of the trial , an appeal court will be very reluctant to interfere with the jury's verdict (in this case with the conclusions of the learned Magistrate) , because the jury will have had the advantage of seeing and hearing the witnesses , whereas the appeal court normally determines the appeal on the basis of papers alone . However, should the overall feel of the case – including the apparent weakness of the prosecution evidence as revealed from the transcript of the proceedings – leave the court with a lurking doubt as to whether an injustice may have been done, then, very exceptionally, a conviction will be quashed." (Ara wkoll BLACKSTONE'S CRIMINAL PRACTICE (1991), p. 1392)

Ghalhekk din il-Qorti ghamlet ezami approfondit tal-provi biex tara jekk l-Ewwel Qorti, fuq l-provi ammissibbli li kellha quddiemha, setghetx legalment u ragjonevolment tasal ghall-konkluzzjoni ta' htija dwar l-ewwel imputazzjoni dedotta kontra l-appellant, bla ma tapplika l-proviso tas-subartikolu (9) tal-art. 22 tal-Kap.101.

Il-fatti li jemergu mill-provi traskritti jistghu jigu sintetizzati kif gej:- Wara suspetti li kellhom il-Pulizija, saret tfittxija minn PS 536 Jason Caruana, PC 579 Antoine Micallef u PC 10 Trevor Cassar Mallia fid-dar tal-appellant pero' hemm ma nstab xejn. Fil-karozza Peugeot numru AAR 154 tal-appellant pero' kienu nstabu xi ftit weraq tal-cannabis. Pero' kif irrizulta mir-relazzjoni tal-espert Spizjar Mario Mifsud, ghalkemm fil-farka hadra li hu analizza kienu nnotati t-*trichomes* li jkun hemm fuq il-weraq tal-cannabis, ma sabx tracci tas-sustanza THC u cioe' s-

sustanza li tinsab fil-pjanta tal-cannabis li hi kontrollata bil-ligi.

Meta gie interrogat mis-Supratendent Neil Harrison, l-appellant qal *"inter alia*" li hu kien ipejjep il-cannabis bhala blokka imma qatt bhala *"grass"* u kien ilu jpejjipha ghax-xaharejn qabel kien qed jigi interrogat. Qal ukoll li meta kien imur jixtri blokka ghalih u jkun hemm haddiehor, hu kien jixtrilu. Kien qal testwalment : *"Meta nkun sejjer nixtri l-blokka u nkun naf li haddiehor ikun ukoll irid jixtri ghalih, jew l-ewwel jaghtuni l-flus, imbaghad nixtrilhom u wara naghtihom il-blokka, jew inkella l-ewwel nixtrilhom il-blokka (raza tal-cannabis) u jhallsuni meta naghtihom."* Ammetta li dan ghamlu xi hmistax jew ghoxrin darba kull daba li kien imur jixtri ghalih. U *"kwazi kull darba li kont nixtri ghalija kont nixtri ghal haddiehor."* (fol. 11 tal-process).

Illi meta umbaghad xehed quddiem l-Ewwel Qorti (fols. 34 sa 43) l-appellant xehed "*inter alia"* li hu kien ipejjep il-cannabis mal-hbieb. Gieli kien imur jixtri ghalih u meta jkunu sejrin huma kienu jgibulu huma maghhom bhal ma gieli kien igib hu ghalihom peress li kien ikun sejjer jixtri. Meta kien ikun sejjer jixtri ghalih u peress li kienu jpejjpu bhala hbieb filghaxija , jekk xi hadd minnhom kien ikun irid, kien jibghatu (lill-appellant) u jgibu. Hu mal-hbieb kien ipejjep flimkien. Ghal hbieb tieghu li kien jafhom gieli kien jixtrilhom meta jkun ha jmur jixtri w imbaghad ihallsuh wara jew inkella kienu jaghtuh il-flus mill-ewwel. Hu qatt ma biegh raza tal-cannabis jew pilloli extacy. Ikkonferma dak li kien qal fl-istqarrija tieghu w cioe' li kien xtara ghalihom xi hmistax jew ghoxrin okkazzjoni w li kwazi kull darba li kien imur jixtri ghalih innifsu kien jixtri ghalihom. Ikkonferma li kien jixtri minnghand certu Gharbi Ali li kien jitkellem bl-Gharbi-Malti, li pero hu ma kienx jaf fejn joqghod u ma jaf xejn aktar fuqu. Kien jiltaqa' mieghu fejn il-Muzew tal-Gwerra l-Belt u jekk ikun hemm dan l-Gharbi kien jaqdieh, jew jghidlu jghaddi kwarta ohra. Hu dejjem hallsu mill-ewwel ghad-droga.

Meta nqratlu l-bicca tal-istqarrija dwar messagg li hu suppost kien irceva minnghand certu Pippo, l-appellant xehed li dan kien habib tieghu li jpejjpu filghaxija flimkien. Hu ma jafx ezatt x' ried ifisser bil-messagg: ***"Ghandi bzonn bicca ta' 20 u ohra ta' 30 please. Ghal x' hin man?"*** imma jahseb li ried xi bicca ta' xi 20 jew xi bicca ta' 30 biex ipejjpu filghaxija flimkien. Ghar-rigward tal-messagg: ***"Tinsiex iggib iz-zebgha kannella.",*** spjega li dan li ghamillu l-messagg kien habib tieghu w kienu jmorru ghand xulxin u dak iz-zmien hu kellu d-delizzju tal-hamiem bhal ma kellu hu w hu kien qed jghinu fil-gallinar tal-hamiem "*u nassumi li z-zebgha kannella biex nizbghu il-gallinar flimkien, peress li kont qed nghinu fil-bicca xoghol."*

Mistoqsi mill-Avukat tieghu biex jispjega l-messagg minnghand xi hadd Hyundai Lisbia": "***Ghall-hdax tkun tista', fil-kaz nizzilli bicca ta' l-10 ma noqghodx naqla tal-5",*** spjega li *"Lil din ma tantx nafha hafna pero' gieli kienet tigi tpejjep maghna ghax aktar habiba tal-hbieb tieghi kienet u peress li kont sejjer nixtri jiena dak in-nhar baghtitli messagg biex ingibilha jien."*

Umbaghad inqratlu dik il-parti tal-istqarrija fejn kien wiegeb x' kien ifisser il-messagg: ***"Check how many left because I have somebody else interested for 500"*** u fejn hu kien qal li dak ifisser li jrid LM500 raza tal-cannabis u li dak kien staqsieh kemm l-gharbi kien ghad fadallu ghandu ghax xtaq jixtri LM500 raza tal-cannabis u fejn hu qal li nzerta fejn l-Gharbi u kien staqieh u l-gharbi qallu Ok, l-appellant xehed *"Jien lilu ma ccekkjajtlux mhux vera lill-Gharbi, qbadt u ghidtlu li ghandu biex mal-persuna l-ohra li kienet staqsietu biex jaqbad u jmur jaghmel id-deal hu.",* u kien qal hekk ghax beza' mill-Pulizija li ma jemmnuhx.

Ikkonsidrat;

Illi l-aggravju bazat fuq il-fatt li ma nstabet ebda droga ghand l-appellant ma jannjentax id-dikjarazzjoni tal-appellant li ma gietx retratta minnu lanqas fix-xhieda tieghu li hu kien jixtri r-raza tal-cannabis ghalih kif ukoll

ghal haddiehor, sija pure fix-xhieda tieghu emfasizza kemm felah li dan kien jaghmlu biex ipejjpuha flimkien. Din id-dikjarazzjoni tieghu, ladarba giet maghmula volontarjament tikkostitwixxi l-prova regina w ma hemmx ghalfejn tkun akkompanjata minn xi prova ohra bhal ma hi s-sejbien fiziku tad-droga fil-pussess tieghu.

Illi l-aggravji bazati fuq il-fatt li ma giex esebit il-mobile phone u li lanqas ma gew *"downloaded"* jew estratti l-messaggi minnu tramite xi espert, ftit ghandu importanza f' dan il-kaz, ghaliex meta gie interrogat, l-appellant ma cahadx li kien ircevihom jew qal li ma jafx bihom dawn il-messaggi, gharaf min kien baghthomlu w kien pront ipprova jispjega s-sinifikat taghhom. Ghalhekk implicitament gie accetta li kien ircevihom fuq il-mobile phone tieghu.

Illi dwar l-aggravju li dan kien kaz ta' "*sharing",* din il-Qorti tosserva li mir-riassunt tal-provi fuq espost, jidher li fil-waqt li fl-istqarrija tieghu l-appellant kien ta l-impressjoni li hu kien imur jixtri r-raza tal-cannabis kemm ghalih kif ukoll ghall-shabu, meta xehed quddiem l-Ewwel Qorti, ghamel minn kollox biex igibha qrib il-likk li hu kien jixtri biss biex ipejjep flimkien ma shabu biex ovvjament ikun jista' jibbenefika mill-proviso tal-artikolu 22(9) tal-Kap. 101.

Illi din il-linja difensjonali tirrientra proprju fl-ahhar aggravju tal-appellant dwar il-mertu - li jirrigwarda ukoll l-aggravju dwar il-piena sa certu punt- u ticcentra fuq jekk f'dan il-kaz l-Ewwel Qorti setghetx legalment tapplika l-*proviso* ghas-subartikolu (9) ta' l-Artikolu 22 tal-Kap. 101. Is-subartikolu (9) imsemmi jipprovdi li ghar-reat, fost ohrajn, ta' bejgh jew traffikar ta' droga bi ksur tad-disposizzjonijiet ta' l-imsemmija Ordinanza, ma jkunux applikabbli d-disposizzjonijiet ta' l-Artikoli 21 (inzul taht il-minimu) u 28A (sentenza ta' prigunerija sospiza) tal-Kodici Kriminali, kif ukoll lanqas ma jkunu applikabbli d-disposizzjonijiet tal-Att dwar il-*Probation*. Ir-rizultat ta' din il-projbizzjoni hi li fil-kaz ta' tali bejh jew traffikar trid dejjem tigi applikata l-piena ta' prigunerija w ta' multa ghall-anqas fil-minimu taghhom – f'dan il-kaz, trattandosi ta' proceduri quddiem il-Qorti tal-Magistrati, l-minimu huwa ta' sitt xhur prigunerija w multa

ta’ Euro 465.87 (il-minimu jista’ jizdied bi grad jekk ikun hemm l-aggravanti tad-distanza).

Pero' l-ewwel *proviso* ghal dan is-subartikolu, li gie introdott bl-Att XVI ta’ l-2006, jipprovdi hekk:-

“Izda meta, dwar xi reat imsemmi f’dan is-subartikolu, wara li jitqiesu c-cirkostanzi kollha tal-kaz inkluz l-ammont u x-xorta tal-medicina in kwistjoni, ix-xorta ta’ persuna involuta, l-ghadd u n-natura ta’ kull kundanna li l-persuna kellha qabel, inkluzi kundanni li dwarhom tkun saret ordni taht l-Att dwar il-*Probation*, il-Qorti tkun tal-fehma li l-hati kien bi hsiebu jikkonsma l-medicina f’dak l-istess post flimkien ma’ ohrajn, il-Qorti tista’ tiddeciedi li ma tapplikax id-disposizzjonijiet ta’ dan is-subartikolu…” (sottolinear ta’ din il-Qorti).

Kif gie ritenut minn din il-Qorti diversament preseduta mill-Onor. Prim' Imhallef Dr. V. De Gaetano fil-kawza "**Il-Pulizija vs. Russell Bugeja"** [5.5.2008]:-

"Huwa evidenti mid-dicitura tal-ligi li, apparti konsiderazzjonijiet ohra li l-qorti ghandha tizen sew qabel ma tapplika dan l-ewwel proviso (fosthom l-ammont u x-xorta ta’ medicina involuta, ecc), trid tkun tirrikorri wkoll sitwazzjoni partikolari fejn id-droga tkun ser tigi, jew tkun giet, ikkunsmata (i) fl-istess post u (ii) minn min ikun qed jipprovdiha flimkien ma’ ghall-anqas persuna ohra. Il-kliem “flimkien” u “fl-istess post” jissottolineaw l-element ta’ komunanza – dak li aktar popolarment jissejjah “sharing” – jigifieri li dak li jkollu id-droga intiza ghalih jiddeciedi li jaqsamha ma’ haddiehor f’dak l-istess waqt li jkun qed jikkunsmaha huwa stess. Kif inhu risaput, fil-ligi taghna min joffri d-droga, li jkollu ghall-uzu tieghu, lil haddiehor – cioe` jaqsamha ma’ haddiehor – ikun qieghed jipprovdi (“supply” fit-test ingliz) dik id-droga ghall-finijiet tad-definizzjoni ta’ traffikar (Art. 22(1B)), u, per konsegwenza, ikun qed jitraffika dik id-droga. Dak li l-legislatur ried kien li ***meta jkollok kazijiet zghar u izolati*** *ta’ “sharing” – persuna jkollha d-droga ghaliha u taqsamha ma’ haddiehor – tkun tista’ (izda mhux bilfors – ghalhekk iridu*

jitqiesu c-cirkostanzi kollha tal-kaz) tigi evitata, ghall-anqas ghall-ewwel darba, il-piena mandatorja ta' prigunerija b'effett immedjat." (ara ukoll App. Krim. **'Il-Pulizija vs. Marco Galea"**) (emfasi w sottolinear ta' din il-Qorti)

Issa l-Ewwel Qorti, fis-sentenza motivata taghha, qalet li kienet qed temmen l-istqarrija li l-appellant kien ghamel *"a tempo vergine"*, fejn skondha kien jidher b' mod car il-protagonizmu tal-appellant. Il-Qorti ghar-ragunijiet hemm moghtija kkonkludiet li l-appellant fix-xiehda tieghu ma kienx attendibbli w li dan ma kienx kaz ta' *"sharing".* Din il-Qorti, wara li ezaminat akkuratament il-provi w partikolarment l-istqarrija tal-appellant, tara li l-Ewwel Qorti setghet liberament tasal ghall-konkluzzjoni minnha raggunta kemm legalment kif ukoll ragjonevolment u ghalhekk ma tarax li ghandha tiddisturba l-apprezzament tal-Ewwel Qorti fir-rigward tad-decizjoni dwar il-htija tal-ewwel imputazzjoni ta' traffikar. Hu minnu li l-appellant ipprova jaghmel tentattiv fix-xhieda tieghu biex jikkonvinci lill-Qorti li kien igib id-droga biex tigi impejjpa flimkien ma shabu meta kien jixtriha hu, pero' f' dan mhux kredibbli. Mhux verosimili lanqas sal-grad tal-probabbli li wiehed jintriga li jgib id-droga ghal persuna li *"ftit jafha"* fuq semplici messagg SMS meta umbaghad jghid li ghax kien ser ipejjipha flimkien maghha, meta ftit jafha. Illi anki jekk kien minnu li kien ipejjep ma xi hadd mill-hbieb tieghu, x-xiri ripetut ta' droga f' volumi konsiderevoli zgur li ma jirrientrax fid-dispozizzjoni tal-proviso fuq imsemmi, kif awtorevolment interpretat mill-oghla gudikant f' din il-gurisdizzjoni, u kif fuq citata *verbatim*. L-agir tal-appellant anki kif minnu ammess ma jinkwadrax f' xi kaz **zghir u izolat** ta' *"sharing".*

Illi meta din il-Qorti fliet il-provi kollha rat li ma hemmx raguni ghala ghandha tiddipartixxi mill-apprezzament tal-fatti maghmul mill-Ewwel Qorti ghax dan l-apprezzament setgha jsir b' mod legali w ragjonevoli minnha w ma jistax jitqies bhala wiehed *"unsafe and unsatisfactory"* fic-cirkostanzi.

Konsegwentement l-aggravji dwar il-mertu qed jigu respinti bhala infondati.

Ikkonsidrat;

Illi ghar-rigward tal-aggravju dwar il-piena, mhux normali li din il-Qorti tal-Appell li tvarja d-diskrezjoni tal-Ewwel Qorti jekk il-piena erogata tkun tirrientra fil-parametri tal-ligi w ma tkunx manifestament eccessiva. Kif gie ritenut fl-Appell Kriminali (Superjuri) : "**Ir-Repubblika ta' Malta vs. Carmen Butler"** [26.2.2009]:-

"Il-Qorti tal-Appell Kriminali, bhala regola, ma tiddisturbax il-piena erogata mill-Ewwel Qorti, sakemm dik il-piena ma tkunx manifestament sproporzjonata jew sakemm ma jirrizultax li l-Ewwel Qorti tkun naqset milli taghti importanza lil xi aspett partikolari tal-kaz (u anki, possibilment, lil xi cirkostanza sussegwenti ghas-sentenza tal-Ewwel Qorti) li jkun jincidi b' mod partikolari fuq il-piena, S' intendi, 'sentencing is an art rather than a science' u wiehed ma jistax jippretendi xi precizjoni matematika jew identita' perfetta fit-tqabbil tal-fatti ta' kaz ma iehor, jew ta' piena erogata f' kaz ma dik erogata f' kaz iehor." (Ara koll **"Ir-Repubblika ta' Malta vs. Bernard sive Benny Attard"** [20.3.2009] App. Krim. Superjuri)"

Illi l-piena ghar-reat ta' traffikar tar-raza mehuda mill-pjanta cannabis mertu tal-ewwel imputazzjoni, meta l-kaz jigi deciz mill-Qorti tal-Magistrati, hija wahda mandatorja ta' prigunerija ta' mhux inqas minn sitt xhur u mhux izjed minn ghaxar snin u multa ta' mhux inqas minn Ewro 465.87c izda mhux izjed minn Ewro 11,646.87c. Ghalhekk zgur li l-piena ta' prigunerija erogata ma kienetx teccedi l-parametri tal-ligi w kienet ferm aktar vicin il-minimum ta' sitt xhur prigunerija milli lejn il-massmu.

Hu minnu li l-appellant kellu fedina penali nadifa meta kkommetta r-reati in dizamina w li llum, kwazi hames snin wara, ghandu biss kundanna wahda ta' danni involontarji rizultanti minn xi incident awtomobilistiku meta habat ma' xi *railings*. Hu minnu ukoll li jidher li heles mill-vizzju tad-droga kif xehed hu stess quddiem l-Ewwel Qorti (fol. 42 u

43) u kif gie anki konfermat fix-xiehda w fir-rapport tal-ufficjal tal-probation Mary Rose Farrugia (fol.55 u 67 tal-process). Irrizulta ukoll li hu jahdem u qata' r-relazzjoni mat-tfajla li kellu w li setghet wasslitu ghall-hajja tad-droga. Pero' dawn il-fatturi diga' ttiehdu in konsiderazzjoni mill-Ewwel Qorti fis-sentenza appellata.

Din il-Qorti taqbel mal-ewwel Qorti li f' dan il-kaz mhux applikabbli l-proviso tal-artikolu 22 (9) tal-Kap. 101 in vista' tar-ripetizzjoni tal-okkazzjonijiet tal-forrnituri w l-ammont konsegwentement involut f' dawn l-okkazzjonijiet ripetuti.

Taqbel ukoll li dan mhux kaz fejn hu applikabbli l-artikolu 29 tal-Kap. 101 ghax billi l-appellant semma bhala s-sors tad-droga certu Gharbi jismu' Ali' li kien jiltaqa' mieghu fejn il-Muzew tal-Gwerra, b' daqshekk din l-informazzjoni zgur li ma setghetx twassal ghal xi identifikazzjoni pozittiva tieghu. Din l-istorja tal-Gharbi injot illum indrat hafna fic-cerkji tad-droga meta dak li jkun jigi mistoqsi minn fejn gabha w l-Qrati ta' gudikatura Kriminali xebghu jisimghuha.

Illi ghar-rigward tal-paraguni ma sentenzi ohra moghtija fi processi differenti, fejn ovvjament il-fatti speciji ma jkunu qatt l-istess, din il-Qorti taghmel referenza 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 gone 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.) <u>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 :</u> 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. <u>The present position seems to be that the court will entertain submissions based on disparity of sentences between offenders involved in the same case,</u> 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." (sottolinear ta' din il-Qorti).

F' dan il-kaz is-sentenzi citati mill-appellant ma kienux inghataw fl-istess process ghalkemm inghataw mill-istess gudikant fl-istess jum w din il-Qorti ma tarax li tista' taghmel paraguni ma sentenzi moghtija fuq fattispecji ghal

kollox differenti. Kif gja gie appropozitu citat aktar il quddiem f' din is-sentenza:-

"….wiehed ma jistax jippretendi xi precizjoni matematika jew identita' perfetta fit-tqabbil tal-fatti ta' kaz ma iehor, jew ta' piena erogata f' kaz ma dik erogata f' kaz iehor."

Ghalhekk ma tarax li hemm raguni biex tiddisturba id-diskrezjoni tal-Ewwel Qorti fl-erogazzjoni tal-piena li hi manifestament ferm eqreb lejn il-minimu ta' sitt xhur milli lejn il-massimu ta' ghaxar snin.

Ghal dawn il-motivi din il-Qorti qed tichad l-appell u tikkonferma s-sentenza appellata, b' dan li t-terminu ghall-hlas tal-multa erogata jigi varjat b' dan li l-ewwel pagament ta' hamsin Ewro (€50) ghandu jsir mhux aktar tard minn xahar mid-data li fiha l-appellant jiskonta l-piena karcerarja li qed tigi b' din is-sentenza konfermata u, ghall-dan il-fini, r-Registratur ghandu jivverifika ma' l-awtoritajiet karcerarji din id-data.

< Sentenza Finali >

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