



COURT OF CRIMINAL APPEAL

**THE HON. MR. JUSTICE
JOSEPH GALEA DEBONO**

Sitting of the 26th November, 2009

Criminal Appeal Number. 368/2009

**The Police
(Insp. Joseph Hersey)**

Vs

Rouben Justin Koury

The Court,

Having seen the charges brought against the appellant Rouben Justin Koury before the Court of Magistrates (Malta) as a Court of Criminal Judicature namely:-

1. with having on the 26th September, 2009 and in the previous days in Malta, with the intention of gain, helped, assisted, given advice or incited other people to attempt to enter or leave Malta against the Laws of Malta, or whether in Malta or outside Malta conspired with other people and this in breach of Article 337A of Chapter 9 of the Laws of Malta;

2. under these circumstances, in these islands, associated himself together with other persons in Malta or outside Malta with the intention of committing a crime in Malta (Article 337A of Chapter 9 of the Laws of Malta) which is punishable by imprisonment, and this in violation of Article 48A of Chapter 9 of the Laws of Malta;

3. under the same circumstances, in these islands, as a person that has a passport issued in his name (French Passport No. 05AR02518) from a competent authority or not, transferred that same passport to another person (David Ba, Police No. 06X-011) and this in breach of Article 4 of Chapter 61 of the Laws of Malta;

4. under the same circumstances, in these islands, that is in Qawra Police Station, filed a report to the executive Police of a crime he knew that was not committed, or with deceit made believe of a crime in a way that criminal proceedings can be instituted so that it would be established that the crime had been done. (Sic!)

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 8th October, 2009, by which, after that Court had seen articles 337A and 48A of Chapter 9 of the Laws of Malta and Article 4 of Chapter 61 of the Laws of Malta and after the accused admitted the charges brought against him, found the accused guilty as charged and condemned him two (2) years imprisonment.

The Court explained in clear words the terms of the judgement to the accused.

Having seen the application of appeal filed by appellant on the 20th October, 2009, wherein he requested this Court to confirm that part whereby the Court found the appellant guilty of all charges made against him and, while revoking that part of the judgement where he was condemned to two years imprisonment, imposing an alternative punishment not being restrictive of personal liberty.

Having seen the records of the case.

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Having heard Counsels' submissions during today's hearing.

Now therefore duly considers.

That the grounds of appeal of appellant, can be briefly summarized as follows:-

That the punishment imposed by the First Court in the circumstances was excessive. This was the first time that the appellant had problems with the law. He co-operated immediately with the Police and in fact, as stated above, he filed a report himself admitting his involvement in helping Hamadu travel to Catania from Malta before he was actually discovered by the Police. During the Court sitting he actually refused assistance by a lawyer and instead admitted the charges immediately. In the circumstances, appellant submitted that a punishment other than imprisonment would have been a more reasonable punishment.

Now duly considers;

That the case law regarding appeals requesting a mitigation of punishment is now well established. The Court of Criminal Appeal will not vary the judgement unless it appears that the punishment falls outside the parameters fixed by law or unless it appears to be manifestly excessive in the circumstances.

Particularly so, when the appellant has himself pleaded guilty to the charges proffered against him, leaving it to the Court to establish the punishment that fits the crimes he has pleaded guilty to, as happened in this case.

The punishment inflicted by the court of first instance falls well within the parameters of the law that contemplates the offences wherewith he was charged.

The articles of the law contravened by appellant deal with the serious crimes of conspiracy to trafficking in human beings, the transfer of his passport to a third person and the filing of a false report with the authorities and the

maximum cumulative punishment for these offences under article 17 of the Criminal Code exceeds by a good margin the sentence under appeal. Suffice it to say that the offence under article 337A of the Criminal Code fetches a maximum punishment of five years imprisonment and a fine multa of Euros 23,293.73c. In addition, the law expressly lays down that in meting out punishment for this offence, the Courts cannot apply the provisions of article 21 and 28A of Chapter 9 or those of the Probation of Offenders Act. Hence a sentence of imprisonment is mandatory in these cases, even if the accused is a first-time offender, as he appears to be in this case.

In addition, as has been recently stated by the Court of Criminal Appeal in its superior jurisdiction in the case “**Ir-Repubblika ta’ Malta vs. Gamil Abu Bakr**” [12.11.2009] where it confirmed a judgement of the Criminal Court, sentencing the offender to a term of six years imprisonment :-

“...din il-Qorti taghmilha cara li hija tikkondividi pjenament il-hsieb tal-Qorti Kriminali dwar il-gravita’ tar-reat li tieghu l-appellant instab hati , gravita’ li hija accentwata mhux biss minhabba l-perikoli ghall-istess persuni li jkunu qed jigu traffikati , izda wkoll minhabba l-problemi ta’ sigurta’, kemm nazzjonali kif ukoll internazzjonali, li t-traffkar tal-persuni jimporta.”

Besides, as already stated, the appellant pleaded guilty to other crimes which also fetch a punishment of imprisonment.

In addition it results from appellant’s statement to the police, that this was the fourth time that he had given his passport to aliens to be able to travel from Malta to other countries illegally and on two occasions he was paid money for his participation and on the other two occasions, he was paid in kind.

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Accordingly this Court finds no reason to vary the punishment awarded by the Court of first instance in this case.

The appeal is therefore being dismissed and the judgment of the Court of first instance is being upheld in it entirety.

< Final Judgement >

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