MALTA

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

MAGISTRAT DR.
AUDREY DEMICOLI

Seduta tas-26 ta' Frar, 2010

Numru. 997/2004

Il-Pulizija
Spettur Martin Sammut

vs

Malcolm Mifsud

Il-Qorti,

Rat li l-imputat Malcolm Mifsud ta’ 19-il sena, iben Michael u Mary Rita nee’ Camilleri, imwieled nhar is-26 ta’ Marzu 1985 Pieta’ u residenti Flat 4, Navillus Flats, Triq Lapsi, San Giljan u detentur tal-karta tal-identita’ numru 230785(M) gie mressaq quddiemha akkuzat talli:

F’ dawn il-Gzejjer:-

1. Fil-lejl ta’ bejn l-10 u l-11 ta’ Marzu 2004, minn gewwa Triq id-Dragonara, San Giljan, ikkommetta serq ta’

erba' roti (tyres u rims) tal-marka Alesio u Barum, ta' valur komplensiv ta' Lm250, minn fuq il-vettura bin-numru tar-registrazzjoni LEO208 tal-ghamla Mazda 323, ghad-dannu ta' Emanuel Bezzina u Walter Bezzina, liema serq huwa kwalifikat bil-'valur', bil-'hin' u bix-'xorta tal-haga misruqa', u dan bi ksur ta' Artikoli 261, 267, 270 u 271 ta' Kap. 9 tal-Ligijiet ta' Malta.

2. F'xi granet ta' bejn l-10 u t-23 ta' Marzu 2004 gewwa San Giljan u bnadi, xjentament laqa' ghandu jew xtara hwejjeg misruqa, mehudha b' qerq jew akkwistati b' reat, jew, xjentament, b' kull mod li jkun, indahal sabiex ibieghhom jew imexxihom u dan bi ksur ta' Artikoli 261, 267, 270 u 271 ta' Kap. 9 tal-Ligijiet ta' Malta.

Rat l-atti kollha ta' dan il-procediment u d-dokumenti esebiti, inkluz il-kunsens tal-Avukat Generali datat 17 ta' Novembru 2004 (esebit a fol. 6 tal-process) sabiex dawn il-proceduri jigu trattati bi procedura sommarja u decizi minn din il-Qorti.

Rat li l-imputat waqt l-ezami li sarlu fl-udjenza tat-8 ta' Marzu 2005 iddikjara li ma kellux oggezzjoni li l-kaz tieghu jigi trattat bi procedura sommarja u deciz minn din il-Qorti fil-kompetenza taghha surreferita.

Semghat il-provi.

Ikkunsidrat:

Illi dan il-kaz jirrigwarda is-serq jew ir-ricettazzjoni ta' sett tyres bir-rimmijiet li sehh fil-lejl bejn l-10 u l-11 ta' Marzu 2004 minn Triq id-Dragonara, San Giljan, liema tyres u rimmijiet kellhom valur kumplessiv ta' madwar Lm250. Dawn it-tyres insterqu minn fuq il-vettura bin-numru tar-registrazzjoni LEO 208 liema vettura kienet registrata f'isem Emanuel Bezzina izda kienet tintuza minn ibnu Walter Bezzina. Dan tal-ahhar li xehed waqt l-udjenza tat-8 ta' Marzu 2005 spjega kif fil-gurnata imsemmija huwa kien ipparkeggja l-vettura tieghu f'Dragonara Road, San Giljan u meta irritorna ghall-vettura sabha minghajr tyres u

ggakjata permezz ta’ zewg kantuni minn wara. Huwa ghamel ir-rapport relattiv lil Pulizija u spjega li fl-24 ta’ Marzu 2004 ghamel rapport iehor lil Pulizija fejn infurmahom li habib tieghu kien ra it-tyres li kienu insterqulu imwahhlin fuq vettura li kienet ghal bejgh ghand ir-Rocky Autodealer f’Valley Road, B’Kara u meta huwa mar fl-imsemmija showroom u spezzjona it-tyres u rimmijiet setghu jarafhom bhala dawk li nsterqu minn fuq il-vettura tieghu u dan minhabba xi brix li kien hemm fil-kanali tar-rimmijiet u li kien ghamilhom huwa stess meta kien qed inaddaf ir-roti bl-isteel wool. Meta il-Pulizija kellmu lil sid is-showroom Carmel Grima u lil ibnu Darren Grima dawn infurmawhom li kienu xtraw it-tyres u r-rimmijiet minghand l-imputat. Meta dawn iz-zewg persuni xehdu quddiem din il-Qorti wiehed waqt l-udjenza tat-30 ta’ Novembru 2007 (Carmel Grima) u l-iehor waqt l-udjenza tal-15 ta’ Frar 2008 (Darren Grima) dawn ikkonfermaw li kienu xtraw it-tyres minghand l-imputat li identifikaw fl-awla u qalu li huma kienu staqsewh jekk dawn it-tyres kienux misruqin qabel ma xtrawhom u huwa kien irrisponda li ma kienux misruqin izda kien partathom.

L-imputat li ghazel li ma jixhidx f’dawn il-proceduri izda kien irrilaxxja stqarrija (inserita a fol. 16 sa 19 tal-process) meta gie interrogat mill-Pulizija kkonferma li kien huwa li biegh it-tyres u r-rimmijiet lil Darren u Carmel Grima izda sostna li dawn it-tyres u rimmijiet kien partathom ma xi amplifiers. Huwa qal li kien jarma ir-Razzett tal-Hbiberija bil-pockets tal-mobiles u chargers u kellu sett speakers u amplifier ghal bejgh meta avvicinah ragel strangier u staqsih jekk riedx ipartat l-ispeakers u l-amplifier mat-tyres u r-rimmijiet u l-ghada dan ir-ragel cempillu u ltaqghu San Gwann fejn ftehmu fuq it-tpartit u l-istrangier apparti li tah it-tyres hallsu Lm50 ohra ghall-amplifier u l-ispeakers. L-imputat qal li huwa imbaghad mar ibiegh dawn it-tyres u r-rimmijiet lil Rocky Autodealer fejn gie miftiehem prezz ta’ Lm65. L-imputat qal li huwa ma kienx jaf li dawn it-tyres u r-rimmijiet kienu misruqin ghaliex altrimenti ma kienx jaccetta li jpartathom.

Ikkunsidrat:

Illi f'dan il-kaz il-Prosekuzzjoni rnexxilha tipprova li f'xi zmien wara li nsterqu it-tyres u r-rimmijiet in kwistjoni l-imputat kellu fil-pussess tieghu l-imsemmija tyres u dan imbaghad bieghhom lil Rocky Autodealer. Din tista' tigi kkunsidrata bhal prova lil hinn minn kull dubju dettat mir-raguni li l-imputat seraq jew altrimenti rcieva dawn il-hwejjeg misruqin meta kien jaf li huma misruqin. F'dan il-kaz irid jigi determinat jekk l-indizju wahdu tal-pussess huwiex bizzejjed sabiex jillegittima l-konkluzjoni ta' reita' fuq imputazzjoni ta' serq jew ricettazjoni. F'dan ir-rigward il-Qorti tixtieq taghmel referenza ghal dak li qalet il-Qorti tal-Appell Kriminali f'sentenza tal-11 ta' Marzu 1993 fil-kawza fl-ismijiet 'Pulizija vs Melchior Spiteri' fejn inghad is-segwenti dwar it-teorija tar-recent possession:-

"Illi fuq id-dottrina fuq 'recent possession' jezistu diversi sentenzi ta' din il-Qorti u sejra ssir riferenza ghal sentenza minnha moghtija kif presjeduta fit-3 ta' Ottubru, 1985 in re: Il-Pulizija kontra Anthony Gatt. F'dik is-sentenza kif ukoll anke f'ohrajn gie rilevat illi skond gurisprudenza kostanti ta' dawn il-Qrati, ghad li huwa indubitat illi l-pussess tal-haga misruqa huwa indizju ferm qawwi ta' reat ta' serq jew ta' ricettazzjoni, irid ikun hemm elementi ohra ta' prova li b'xi mod isahhu l-prova li tigi minn dak l-indizzju. Imbaghad meta l-oggett misruq huwa haga li tghaddi facilment minn id ghal ohra, il-pussess irid ikun ukoll recenti u aktar ma l-oggett ikun tali li jghaddi malajr minn id ghal ohra, aktar il-pussess, biex ikun indizzju ta' serq, ghandu jkun recenti b'mod illi certu perjodu jista' jkun ricenti ghal certu xorta ta' oggetti u mhux recenti ghal xorta ohra ta' oggetti aktar facilment zmercjabbli. (ara ukoll sentenza ta' din il-Qorti: Il-Pulizija vs C.Costa VOL. XXXII.pt.,4 pag. 723)."

Il-Qorti taghmel ukoll referenza ghal dak li qalet l-istess Qorti tal-Appell Kriminali fis-sentenza tas-26 ta' Awissu 1998 fil-kawza fl-ismijiet 'Pulizija vs Emanuel Seisun et' fejn intqal is-segwenti:-

"*Fil-fehma ta' din il-Qorti din it-teorija mhi xejn hlief l-applikazzjoni tal-bon sens ghal cirkostanzi partikolari li jkunu jirrizultaw ippruvati, fis-sens li meta jigu ppruvati*

certi fatti dawn jistghu wahedhom iwasslu ragonevolment ghall-konkluzjoni li persuna partikolari tkun hatja tar-reat ta' serq ta' l-oggetti misjuba ghandha jew, skond ic-cirkostanzi, tar-reat ta' ricettazzjoni ta' dawk l-oggetti. Hu risaput li in tema ta' law of evidence, kemm-il darba ma jkunx hemm xi dispozizzjoni kuntrarja fil-Kodici taghna, il-gurisprudenza taghna ssegwi hafna dik Ingliza, u ma hemm certament xejn x'wiehed jiccensura fil-fatt li l-Ewwel Qorti ccitat gurisprudenza u awturi Inglizi. Din il-Qorti ukoll ser tikkwota mill-ahjar edizzjoni ta' Archbold peress li hi tal-fehma li l-bran li gej jittratta bl-aktar mod konciz u preciz il-kwistjoni kollha marbuta ma' din it-teorija:

*There appears to have been widespread misunderstanding of the so-called doctrine of recent possession. The "rule" (for it is no more than the application of common sense) is, it is submitted, that where it is proved that premises have been entered and property stolen therefrom and that very soon after the entry the defendant was found in possession of the property, it is open to the jury to convict him of burglary, and the jury should be aso directed: see **R. vs Loughlin**, 35 Cr. App. R. 69; **R. vs Seymour**, 38 Cr. App. R. 68. This of course applies equally to thefts other than in the course of a burglary, whether a pickpocketing or an armed robbery.*

*In **R. v Smythe**, 72. Cr. App. R. 8. C.A., the court stressed that it is a misconception to think that recent possession is a material consideration only in cases of handling; it adopted the following passage fron Cross on Evidence, 5th ed., p.49 (now 8th ed.p.35): "If someone is found in possession of goods soon after they have been missed and he fails to give a credible explanation of the manner in which he came by them the jury are justified in inferring that he was either the thief or else guilty of dishonestly handling the goods, knowing or believing them to have been stolen. The absence of an explanation is equally significant whether the case is being considered as one of theft or handling, but it has come into particular prominence in connection with the latter because persons found in possession of stolen goods are apt to say that*

they acquired them innocently from someone else. Where the only evidence is that the defendant on a charge of handling was in possession of stolen goods, a jury may infer guilty knowledge or belief (a) if he offers no explanation to account for his possession, or (b) if the jury are satisfied that the explanation he does offer is untrue.

*Every case depends on its own facts. There is no magic in any given length of time. However, it is submitted that in many cases where the only evidence is that of recent possession, it will be impossible to exclude the possibility that the defendant was merely a receiver of the stolen property; in such cases a count of burglary ought not to be left to the jury. However, that applies where recent possession is literally the only evidence. The reality is, that in the great majority of cases there are other pieces of evidence which tend to point the case one way or the other. It would be impossible to compile a definitive list of circumstances which might be relevant. They will include, however, the time and place of the theft, the type of property stolen, the likelihood of it being sold on quickly, the circumstances of the defendant, whether he has any connection with the victim or with the place where the theft occurred, anything said by the defendant and how that fits in or does not fit in with the other available evidence" (*Archbold: Criminal Pleading, Evidence and Practice, 1997, paras. 21-125, 21-126);

U aktar 'il quddiem jinghad:

What consistutes "recent possession" depends upon the nature of the property and the circumstances of the particular case…In **R v Smythe**… Kliner Brown J., giving the Court of Appeal's judgement said: "Nearly every reported case is a decision of fact as an example of what is no more than a rule of evidence" (para. 21-320);"

Fil-kaz in dizamina kemm minhabba in-natura tal-oggetti in kwistjoni, liema oggetti huma facilment smercjabbli, u kemm minhabba l-fatt li kienu ghaddew diversi granet (kwazi gimghatejn) minn meta l-oggetti insterqu sakemm imbaghad instabu f'idejn terzi persuni, kemm ukoll

minhabba l-fatt li ma rrizultax b'certezza f'liema perijodu bejn meta insterqu sakemm spiccaw sabiex instabu l-oggetti kienu fil-pussess tal-imputat, il-Qorti ma jidrilhiex li l-indizju tal-pussess f'xi zmien mhux ezattament determinat jista' jwassalha sabiex tasal ghar-reita' tal-imputat odjern. L-ispjegazzjoni minnu moghtija hija plawzibbli u ghalhekk jezisti dubju li effettivament l-imputat kien partat it-tyres u r-rimmijiet ma terza persuna qabel imbaghad bieghhom lil Rocky Autodealer.

Il-Qorti ghalhekk jidrilha li fil-kaz odjern l-indizju ta' pussess fih innifsu ma jistghax iwassal ghal sejbien ta' htija la ghal serq u l-anqas ghal ricettazzjoni.

Ghal dawn il-motivi l-Qorti tiddikjara lill-imputat mhux hati tal-akkuzi migjuba fil-konfronti tieghu u konsegwentement tilliberah mill-istess akkuzi.

< Sentenza Finali >

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