MALTA

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

MAGISTRAT DR.
EDWINA GRIMA

Seduta tad-19 ta' Mejju, 2010

Numru. 402/2008

Il-Pulizija
(Spettur Joseph Mercieca)
(Spettur Jesmond Micallef)

Vs

Sandro Degabriele ta' 31 sena, iben Peter u Mary Anne nee' Camilleri, imwieled Pieta' fil-21 ta' Marzu 1979 u li joqghod numru 80, Triq San Frangisk, Bormla detentur tal-karta ta'l-identita' 168979(M)

Il-Qorti,

Rat l-imputazzjoni migjuba kontra l-imputat Sandro Degabriele li permezz taghha huwa gie akkuzat talli fit-3 ta' April 2008 u/jew fix-xhur ta' qabel, f'dawn il-gzejjer xjentement laqa' ghandu jew xtara hwejjeg misruqa, mehuda b'qerq, jew akkwistati b'reat, jew, xjentement, b'kull mod li jkun, indahal biex ibieghhom jew imexxiehom.

Akkuzat ukoll tali rrenda ruhu recidiva ai termini ta'l-artikoli 49, 50 u 289 tal-Kapitolu 9 tal-Ligijiet ta' Malta permezz ta' diversi sentenzi moghtija mill-Qrati Maltin, liema sentenzi saru definittivi w li ma jistghux jigu mibdula.

Rat id-dokumenti esebiti.

Semghet il-provi.

Rat n-nota ta' rinviju ghal gudizzju ta'l-Avukat Generali tal-15 ta' Ottubru 2008.

Semghet illi l-imputat ma kellux oggezzjoni illi dana l-kaz jigi trattat u deciz bil-procedura sommarja minn dina l-Qorti.

Ikkunsidrat,

Illi min-nota ta' rinviju ta'l-Avukat Generali jirrizulta illi l-imputat qed jigi imputat lilu r-reat tar-ricettazzjoni ikkontemplat fl-artikolu 334 tal-Kapitolu 9 tal-Ligijiet ta' Malta. Dan l-artikolu jipprovdi li huwa hati ta' reat kull min f'Malta, "xjentement jilqa' ghandu jew jixtri hwejjeg misruqa, mehuda b'qerq, jew akkwistati b'reat, sew jekk dan isir f'Malta jew barra minn Malta, jew, xjentement, b'kull mod li jkun, jindahal biex ibieghhom jew imexxihom". Ix-xjenza mehtiega fir-ricettatur tirrigwarda l-provenjenza kriminuza generika, u ma tirreferix ghad-dettalji specifici tar-reat principali tas-serq, fis-sens li hija xjenza li tista' tigi dedotta mic-cirkostanzi tal-kaz. Dan l-element intenzjonali jirrikjedi li r-ricettatur kien jaf, jew li mic-cirkostanzi partikolari tal-kaz, kien messu ragonevolment jaf li l-oggett li ser jakkwista gej minn provenjenza kriminuza.[1]

Illi mill-provi akkwizti f'dina l-kawza jirrizulta illi fil-granet bejn l-14 ta' Ottubru u is-17 ta' Ottubru 2007 sehhet serqa minn gewwa mahzen li jinsab fil-barracks ta'l-Inglizi gewwa Ghajn Tuffiegha. Dawn l-oggetti kienu jappartjenu lil certu Emanuel Borg u l-valur ta'l-oggetti kollha misruqa

[1] Ara sentenza App.Krim Il-Pulizija vs Renald Barbara deciza 10/03/2010

kienu jammontaw ghal kwazi Lm7000.[2] Id-derubat irraporta dana il-fatt lil pulizija u saret l-Inkjesta Magisterjali. Ghal habta ta' April 2008, id-derubat jghid illi avvicinah persuna illi huwa jindikah bhala Joe il-mechanic li kien infurmah illi l-oggetti misruqa kienu qeghdin fil-pussess ta'l-imputat gewwa garaxx f'Bormla. F'dana il-perijodu jidher illi l-imputat kien jinsab residenti gewwa il-Habs. Kif l-imputat hareg mill-Habs dana Joe il-mechanic laqqa' lil Borg mieghu. L-imputat kien stqar mad-derubat illi huwa kien jaf kollox dwar is-serqa u kien anke semmielu xi magni tal-kafe' li qallu kienu fil-pussess tieghu. Qallu illi dawn kien ghaddiehomlu certu Joseph Chircop u iehor Charlie maghruf bhala r-Remig bhala tpartit ghal xi vetturi. Indikalu wkoll dana Sandro garaxx iehor vicin dak tad-derubat li kien okkupat minn dan Charlie ir-Remig u siehbu. Emmanuel Borg, b'dina l-informazzjoni baqa' sejjer ghand il-pulizija u abbazi ta' dana kollu beda jigi investigat l-imputat, li fil-kos ta'l-investigazzjonijiet irrilaxxja zewg stqarrijiet.[3] Illi Charles Schembri imressaq bhala xhud mill-prosekuzzjoni ghazel li ma jaghtix ix-xhieda tieghu f'dawn il-proceduri u dana sabiex ma jinkriminax ruhu. Illi l-imputat ukoll ma xehedx f'dawn il-proceduri u ghalhekk il-Qorti trid tistrieh fuq dak mistqarr minnu fiz-zewg stqarrijiet hawn fuq indikati fejn ghalkemm l-imputat ma jammettix direttament illi huwa kien jaf illi l-oggetti li ghaddielu dana Charles Schembri kienu provenjenti mis-serq madanakollu huwa car mil-mod kif iwiegeb ghal mistoqsijiet illi kien konsapevoli tal-fatt illi l-oggetti kellhom provenjenza illecita. Illi inoltre fil-kors ta'l-istqarrijiet rilaxxjati minnu jirrizulta wkoll illi dawn il-magni tal-kafe gew fil-pussess tieghu ftit taz-zmien wara illi fil-fatt kienu gew misruqa.

Illi konstatat dana kollu l-Qorti sejra taghmel referenza ghat-teorija elaborata minn gurisprudenza u awturi inglizi dwar ***"the unlawful possession of recently stolen goods."*** Jew 'l hekk imsejjha ***"theory of recent possession".*** Din it-teorija giet applikata anke minn gurisprudenza taghna u dana peress illi kif inghad f'diversi

[2] Ara process verbal esebiet bhala Dokument MJ a fol.24 tal-process.

[3] Dokument JM a fol.32 u Dokument JM1 a fol.36.

sentenzi din it-teorija mhi xejn ghajr l-applikazzjoni tal-"buon sens" ghac-cirkostanzi partikolari li jkunu jirrizultaw pruvati; fis-sens li meta jigu ppruvati certi fatti dawn jistghu wahedhom iwasslu ragjonevolment ghal konkluzzjoni li persuna partikolari tkun hatja tar-reat ta' serq tal-oggetti misjuba ghandha jew, skond ic-cirkostanzi, tar-reat ta' ricettazzjoni ta' dawk l-oggetti.

Illi f'sentenza moghtija mill-Qorti ta'l-Appelli Kriminali, Il-Pulizija vs Nazzareno Zarb et. (per. Prim'Imhallef Vincent Degaetano) deciza fis-26 ta' Awissu 1998, il-Qorti studjat fil-fond din it-teorija fejn gew ikkwotati diversi awturi Inglizi u saret referenza ghal gurisprudenza Ingliza:
"Din il-Qorti wkoll ser tikkwota mill-ahhar edizzjoni ta' Archbold peress li hi tal-fehma li l-bran li gej jitratta bl-iktar 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 there from and that very soon after the entry the defendant was found in possession of the stolen property, it is open to the jury to convict him of burglary, and the jury should be so directed: see R. v. Loughlin, 35 Cr.App.; R. v. Seymour, 38 Cr. App. R.68. This of course applies equally to thefts other than in the course of a burglary, whether a pick pocketing or an armed robbery.

In R.V.Symthe, 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 from Cross on Evidence 5th ed. (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 ininferring that he was either the thief or else guilty of dishonestly handling the goods,*

knowing or believing them to be 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 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 juryare 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 it fits in or does not fit in with the other available evidence." (Archbold: Criminal Pleading, Evidence and Practice, 1997 paras.21-125, 21-126)."

Illi maghmula dina l-esposizzjoni legali ta' dina t-teorija, l-Qorti ser tghaddi biex tezamina jekk dina it-teorija issibx applikazzjoni fil-kaz in dizamina. Illi l-provi migjuba mill-prosekuzzjoni fil-fatt jindikaw biss illi whud mill-oggetti misruqa minn ghand Emanuel Borg, kienu fil-pussess ta'l-

imputat u cioe’ zewg magni tal-kafe. Illi kif diga inghad iktar ‘il fuq is-serq ta’l-oggetti minn ghand Borg fosthom ta’ dawn iz-zewg magni tal-kafe’ sehh ghal nofs Ottubru tas-sena 2007. Illi fl-istqarrija rilaxxjata minnu Dokument JM, l-imputat jikkontendi illi dawn z-zewg magni gew fil-pussess tieghu madwar xahar qabel dahal il-habs. Ighid illi huwa dahal il-habs ghal bidu ta’ Marzu 2008. Ghalhekk il-Qorti tista’ tasal ghal konkluzjoni illi Charlie ir-Remig ghadda dawn il-magni lill-imputat certament qabel Marzu 2008 x’aktarx fi Frar. Dawn l-imputat hadhom minn garaxx illi dana Charlie kellu vicin il-post minn fejn l-oggetti gew misruqa. Kien telgha ma’ Charlie u ma’ Joey iz-Zebbugi u cioe’ Joseph Chircop fejn hemmhekk huwa ra diversi affarijiet ohra fosthom xi fridges, dinghy u xi umbrellel. Ighid illi dana Joey tallbu Lm150 ghal kull magna u ma qallux minn fejn kien gabhom. L-imputat ighid illi ipprova ibieghhom lil wiehed Gharbi (li xehed f’dawn il-proceduri[4]), li kellu Take-Away gewwa Bormla, izda dana l-Gharbi ma riedhomx u ghalhekk huwa halliehom gewwa garaxx tieghu f’Bormla. Kien avza lil Charlie li ma kienx irnexxielu ibieghhom u wieghdu li kien ser ighaddiehomlu lura, izda peress illi imbaghad dahal il-Habs dawn baqghu f’dana il-garaxx.

Illi meta mistoqsi fl-istqarrija: “Meta tawk il-magni tal-kafe’ int kont taf li mbghabsin, nghid sew?”, L-imputat iwiegeb: “Mhux kont naf, imma ma qghadx naghti kaz.” Mistoqsi: “Kont taf li Charlie Schembri u Joey Chircop ihawdu imma?” Iwiegeb: “Kont naf li gieli jkollhom affarijiet bit-tbaghbis.” Iktar ‘il quddiem fl-istqarrija ikompli ighid illi lil Leli Borg u cioe’ lid-derubat kien qallu biex imur jara jekk il-magni li kienu fil-pussess tieghu kenux jappartjenu lilu u cioe’ kenux dawk li kienu insterqulu: “ghax jiena bsart li kienu misruqin.” Fil-fatt anke Emmanuel Borg stess fix-xhieda tieghu isemmi illi l-imputat kien qallu dana id-diskors: “Kif hareg mill-habs (u hawn ix-xhud qed jaghmel referenza ghall-imputat), niftakar li kien laqqani mieghu, kont ltqajt mieghu gewwa l-garage ta’ dan il-mechanic Bormla u hu kien qalli li kien jaf kollox dwar is-serqa, kien anke semmieli xi magna tal-kafe illi kienet qieghda

[4] Ara xhieda ta’ Mohsen El Gazzar a fol..70 et seq.

ghandu u li kien tahielu certu Joe Chircop u wiehed Charlie imsejjah ir-Remig mir-Rabat bhala tpartit ghal xi vettura."[5]

Illi dana kollu jindika illi l-imputat kien jaf illi dawn l-oggetti kienu misruqa. Fil-fatt jirrizulta illi lil Charlie Schembri u Joey Chircop huwa kien jafhom. Kien jaf illi kellhom dana il-garaxx gewwa l-Imtahleb li kien mimli bl-affarijiet u kien anke indahal sabiex jipprova ibiegh xi oggetti li kellhom provenjenza kriminuza. Fil-fatt l-imputat fit-tieni stqarrija rilaxxjata minnu ighid: "Kienu tawni dawk iz-zewg magni tal-kafe' biss imma kienu qaluli biex nara nbieghx il-lot kollu f'daqqa. Prezzijiet ma konniex ftiehmna." Illi dana kollu sehh ftit xhur biss wara li kienet sehhet is-serqa mill-garaxx tad-derubat. Fil-fatt l-imputat ipprova ibiegh mhux biss il-magni tal-kafe' li kellu fil-pussess tieghu izda ukoll oggetti ohra marbuta mal-catering li kienu gew misruqa minn ghand Borg. Kien fil-fatt l-istess imputat illi kien ha lil Emanuel Borg fil-garaxx gewwa l-Imtahleb fejn kienu qed jigu mizmuma l-oggetti misruqa.

Illi anke meta wiehed iqis il-prezz li l-imputat isemmi li kien ser ibiegh dawn il-magni jaghti x'jifhem illi dawn l-oggetti ma kenux gew akkwistati mis-sewwa. Fil-fatt hwua ighid illi Joey Chircop kien qallu illi ried il-prezz ta' Lm150 ghal kull magna meta Emmanuel Borg jixhed u ighid illi dawn il-magni huwa kien xtrahom godda ghal prezz ta' Lm1800 'il wahda. (ara ukoll rapport esebiet bhala Dokument JM6 a fol.57 tal-process minn fejn jirrizulta illi dawn il-magni kienu jiswew Lm1500 il-wahda).

Il-Qorti ghalhekk fid-dawl tac-cirkostanzi partikolari tal-kaz u fid-dawl tal-fatt ukoll illi l-magni in kwistjoni kienu fil-pusess ta'l-imputat certament ftit xhur wara li insterqu kif ukoll fid-dawl tal-ispjegazzjoni illi l-imputat jaghti dwar kif dawn l-oggetti gew fil-pussess tieghu, ma ghanda l-ebda dubbju illi l-imputat kien ben konsapevoli tal-fatt illi l-magni in kwistjoni kienu gejjien mis-serq.

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[5] Ara xhieda a fol.74.

Illi fin-nota tar-rinviju tieghu, l-Avukat Generali jindika ukoll l-artikolu 334A tal-Kapitolu 9. Illi dina l-akkuza inghatat bhala kap alternattiv ghall-akkuza tar-ricettazzjoni u ghalhekk peress illi l-Qoti qed issib htija ghal dana ir-reat, ghalhekk ser tastjeni milli tiehu konjizzjoni ta' din id-disposizzjoni tal-ligi indikata mill-Avukat Generali.

Illi meta tigi biex tiqes il-piena li ghandha tigi inflitta l-Qorti ma tistax tinjora il-fatt illi l-imputat huwa recidiv. Fil-fatt l-akkuza tar-recidiva giet ampjament ippruvata permezz ta' diversi sentenzi esebiti mill-prosekuzzjoni (Dokumenti JM2 sa JM5) debitament ikkonfermati mill-Ufficjali Prosekuturi f'dawn il-kawzi. Illi l-fedina penali ta'l-imputat turi wkoll il-karattaru refrattarju tieghu u l-fatt illi huwa ghadu maqbud f'dina l-hajja tad-delinkwenza. Ma tressqux provi lanqas mid-difiza (u dana ghalkemm il-kawza kienet ilha sena tigi differita ghal provi tad-difiza) illi l-imputat qieghed jiehu passi sabiex jirriforma hajjtu u ghalhekk il-Qorti hija tal-fehma illi piena karcerarja effettiva hija idonja f'dana il-kaz. Illi madanakollu peress illi l-imputat ma hux qed jigi akkuzat bis-serq ta'l-oggetti kollha proprjeta ta' Emmanuel Borg u illi fil-pussess ta'l-imputat instabu biss zewg magni tal-kafe, l-Qorti mhijiex ser tikkundanna lill-imputat ihallas id-drittijiet u spejjez peritali inkorsi fl-atti ta'l-inkjesta dwar l-istess serqa. Inoltre peress illi l-imputat minn jeddu ghadda l-oggetti misruqa li kienu fil-pusess tieghu lid-derubat u anke ipprova ighinu sabiex jinstabu l-oggetti l-ohra misruqa l-Qorti ser tinfliggi l-minimu tal-piena ghar-reat addebitat lill-imputat.

Ghaldaqstant, il-Qorti wara li rat l-artikoli 334(a), 279(a), 49 u 50 tal-Kapitolu 9 tal-Ligijiet ta' Malta issib lill-imputat hati ta'l-akkuzi migjuba fil-konfront tieghu u tikkundannah piena ta' tlettax-il xahar prigunerija.

< Sentenza Finali >

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