



COURT OF CRIMINAL APPEAL

**THE HON. MR. JUSTICE
MICHAEL MALLIA**

Sitting of the 16th July, 2010

Criminal Appeal Number. 447/2009

**The Police
(Supt. Paul Vassallo)**

Vs

Dayang Sakienah Binti Mat Lazin

This, (16th) day of July, 2010

The Court,

Having seen the charge brought against the appellant Dayang Sakienah Binti Mat Lazin before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having on these islands on the 5th March, 2008 and in the preceding months, belonged to an organization of two or more persons with a view to committing criminal offences.

And also with having on these islands on the 5th March, 2008 and in the preceding months, by several acts even though committed at different times but constituting a

violation of the same provisions of law and committed in pursuance of the same design:

- Conspired with one or more persons in Malta or outside Malta for the purpose of committing any crime in Malta;
- Carried out acts of money laundering by:
 - a) converting or transferring property knowing that such property is derived directly or indirectly, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;
 - b) concealing or disguising the true nature, source, location, disposition, movements, rights with respect of, in or over, or ownership of property, knowing that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity
 - c) acquiring property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
 - d) retaining without reasonable excuse of property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
 - e) attempting any of the matters or activities defined in the above forgoing sub-paragraphs (i), (ii), (iii) and 9iv) within the meaning of article 41 of the Criminal Code;
 - f) acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above forgoing sub-paragraphs (i), (ii), (iii), (iv) and (v).

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 23rd November, 2009, by which, after that Court had seen articles 18, 48A and 83A(2) of Chapter 9 of the Laws of Malta and section 3 of Chapter 373 of the Laws of Malta, found appellant guilty of the charges brought against her and condemned her to six years imprisonment

and to the payment of a fine of forty two thousand Euros (€42,000) which fine shall be converted to a further term of imprisonment of eighteen (18) months if it is not paid within six months. Appellant was also condemned to pay the sum of nine hundred, eighty two Euros and sixty one cents (€982.61) representing expenses incurred in the appointment of experts in this case, payment is to be effected within six months.

Having seen the application of appeal filed by appellant on the 3rd December, 2009, wherein she requested this Court to annul, cancel and revoke the appealed judgement and consequently to acquit the appellant of all charges or, alternatively, to vary the same judgement referred to dated 23rd November, 2009 in the sense that while confirming that part where it found guilt in the accused, it revokes that part relating to the punishment and gives a more reasonable punishment in the circumstances.

Having seen the records of the case.

Now duly considers.

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

That according to our law and jurisprudence the crime of money laundering requires three essential requisites. The law requires possession of money or other assets, that such assets originate from a particular crime and the knowledge or suspicion that the assets in fact originate from that crime.

The prosecution failed to prove the *nexus* between the money that the accused was in possession of and the particular crime from which such money allegedly originated and precisely because there is no proof of the crime that the prosecution was alleging. The prosecution alleged the crime of drug trafficking. However this remains an allegation. At Fol. 75 of the Court proceedings we find the report by Mario Mifsud. This particular expert was nominated to go through particular items which the accused was wearing but no illicit

substance was found. There is no other evidence that drug trafficking actually took place. The prosecution was very conscious of this fact. Otherwise it would have proceeded in accusing appellant under the specific money-laundering contemplated Chapter 101 of the Laws of Malta. Knowing perfectly well that no crime under Chapter 101 could be proved, the prosecution had no choice but to proceed under the general law of money laundering. However even here unless the particular crime results from the evidence no charge of money laundering can result.

That the penalty in the circumstances was too harsh.

Considers :

That accused was brought to Court on charges of money laundering whilst acting as a courier between Malta and Spain to deliver drugs and money.

The facts of the case are relatively simple and result chiefly from the statement made by appellant to the Police.

Appellant is a Malaysian girl who decided to seek a better future for herself. She was introduced to some persons who suggested that she travelled to Europe to carry packages for them in Europe and Africa. Appellant would be given one thousand dollars (\$1000) for every trip. Appellant agreed and with another Malaysian girl Noor Faizura Binti MD Lias travelled to Spain. Both were given the same instructions, i.e, on their arrival in Spain they had to contact specific persons who would give them further instructions.

Appellant made at least two trips to Malta. The first was on the 29th of January 2008 when she was asked to carry two packets containing yellowish powder in a corset which she wore round her waist. She was given specific instructions where to stay and whom to contact once in Malta. Delivery of these packets was successful and after three days she was given thirty six thousand Euros

(€36,000) to take back to Spain, which she did. A second trip was organised and again defendant carried the packages which she described as leaves round her waist. This time she was given six thousand Euros (€6000) which she transferred to two persons in Argentina via Western Union. After effecting this transfer appellant went back to her hotel and was intercepted by the Police who took her into custody.

It so happened that appellant did not tell her parents where she was going or what she was doing. Once in Spain she was only allowed one phone call where she informed her parents that she was in Europe. The parents raised alarm, contacted International Police Association and a search was effected. Ultimately the local Police found appellant in Malta who took her into custody when she was at the hotel after returning from effecting the transfer of money to Argentina.

Appellant does not contest any of these facts but she claims that when she first accepted to travel to Spain she was not aware that she would be a drug courier for the persons who engaged her. She claims she thought that she would be carrying gold items or clothing. She claims that only when a third girl joined them in the house in Spain that she realised that she and her companion Faizura would be doing.

Noor Faizura Binti MD Lias is the second girl involved in this case who met appellant in Spain. Faizura admitted to making two trips to Malta delivering drugs to persons in Malta.

Even the latter claimed that she initially thought that she would be carrying gold items and clothes, however she admitted that while still in Malaysia she was aware that the persons with whom she might make contact would tell her to carry drugs for them.

Considers :

Appellant is claiming that in spite of the fact that she did transfer money, no evidence was brought forward showing that the money came from illicit means and that she was aware of the illegal source of the money. Appellant submitted that for the crime of money laundering to subsist three elements have to be proven. The first was the possession of the assets, second, knowledge that the assets came from crime and third that the assets actually came from an illegal source. Appellant claims that the last two elements knowledge and illegal source were not proven in this case.

The Attorney General did not agree with this argument although he did concede to the fact that no drugs were actually found in the possession of appellant. However, argued that appellant knew of underlying criminal activity. She did not tell her parents where she was, the type of activity she was entrusted with, the type of instructions given and means to carry out such instructions. All these indicat that accused knew very well what she was doing.

There is no doubt that whilst in Malta she transferred money to a third source through Western Union and this after she had carried out the instructions given to her in Spain.

Considers :

The Court after examining the evidence particularly the judgement of the First Court agrees with its conclusions that appellant did know of the illicit nature of her travels.

It is extremely hard to believe that appellant had no suspicion that what she was doing was illegal. The instructions she said were given to her while still in Malaysia and the amount of money she was promised were sufficient to raise doubts in any person of normal intelligence as to the legitimate nature of the task she was given.

The First Court argued ***“defendant herself claims that she needed money in order to be able to make a new***

life for herself and her child; in that moment of need this (opportunity) was presented to her and she took it but she was scared but she must have known that what she was doing was wrong. If she had any doubts as to the illegitimate nature of what she was doing, these were done away with on her arrival in Spain when she and Faizura were joined by the other Malaysian girl who told them specifically that they would be carrying drugs.”

This Court agrees with this argument. There is no doubt that after her arrival in Spain, the meeting with Faizura and the third Malaysian girl the operations that she would be instructed to carry out should have been crystal clear to her that they did not carry a legitimate stamp. In spite of this, she went ahead with these operations effected at least two journeys to Malta and transferred drugs and money.

The First Court delivered a detailed and clear judgement with well thought out arguments. It left no stone unturned in showing its conviction of the knowledge that accused had that she was taking part in an illegal activity and transferring assets that came from an illicit source.

Like the First Court this Court is also satisfied on the basis of evidence tendered that the prosecution succeeded in showing a link between the money which passed through defendant's hands and drug trafficking operation organised by the persons from whom defendant was taking instructions.

Once this link is satisfied the burden of proof than shifts on defendant who has the onus of proving the lawful origin of the money in question.

This appellant did not do, which means that the charges brought against appellant have been proven to a degree required by law that is, beyond a reasonable doubt.

Now the Court of Criminal Appeal will not disturb the First Court's considerations of the evidence if it comes to the

Informal Copy of Judgement

conclusion that its decision was reasonable and legally correct. In other words the Court of Appeal will not challenge the discretion enjoyed by the First Court but will make a detailed appraisal of the same to find out whether the First Court was in fact reasonable in its conclusions.

This Court effected such appraisal and came to the conclusion that the First Court on the basis of the evidence tendered could reasonably and legally arrive at the conclusions it arrived at.

Even as regards the punishment the First Court considered the gravity of the offences, the amount of money involved, the personal circumstances of defendant, as well as her age when she committed these offences and her clean criminal record.

Appellant asked this Court to take these factors into consideration, but these same arguments were brought before the First Court who did consider these arguments and included them in its judgement.

There is no reason therefore for this Court to disturb such judgement.

For these reasons this Court dismisses the appeal and confirms the first judgement.

< Final Judgement >

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