MALTA

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

MAGISTRAT DR.
EDWINA GRIMA

Seduta tas-16 ta' Marzu, 2011

Numru. 911/2008

Il-Pulizija
(Spettur Michael Mallia)

Vs
Rashad Elarbi Mabruk ta' 38 sena iben Larabi Mabruk u Arbija Sharif, imwieled l-Libja nhar it-22 ta' Gunju 1972 u li joqghod go karma fi Blokk no. 6, Flat 3, Triq it-Turgien, Valletta detentur tal-karta ta'l-identita bin-numru 154699(M)

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat Rashad Elarbi Mabruk li gie akkuzat talli fis-27 ta' Jannar 2007 ghal habta tat-tlieta ta' wara nofs in-nhar fil-Belt Valletta ikkometta serq ta' Lm300 fi flus kontanti minn gol-fond bl-isem "Damage", sitwat fis-Savoy Shopping Arcades, fi Triq ir-Repubblika, liema serq huwa kkwalifikat bil-mezz u bil-valur li jeccedi s-somma ta' €233 (mitt lira Maltin) izda

inqas minn €2330 (elf lira Maltin) u li sehh ghad-dannu ta’ Justin Agius.

Huwa gie akkuzat ukoll talli sar recidiv ai termini ta’l-artikoli 49, 50 u 289 tal-Kap. 9 tal-Ligijiet ta’ Malta b’sentenzi moghtija mill-Qrati ta’ Malta, liema sentenzi saru definittivi u ma jistghux jgu mibdula.

U finalment qieghed jigi akkuzat ukoll talli kiser il-provvedimenti ta’ l-artikolu 7 tal-Kapitolu 446 tal-Ligijiet ta’Malta, b’sentenza moghtija lilu mill-Qorti ta’ Malta nhar it-28 ta’ April 2005.

Rat l-kunsens tal-Avukat Generali tat-22 ta’ Settembru 2008 sabiex dana il-kaz jigi trattat u deciz bil-procedura sommarja minn din il-Qorti.

Rat l-atti kollha tal-kawza

Semghet il-provi u it-trattazzjoni tal-partijiet.

Ikkunsidrat,

Illi l-imputat jinsab akkuzat bis-serq ta’ somma flus minn gewwa hanut bl-isem “Damage” li jinsab fis-Savoy Arcades gewwa l-Belt Valletta. Mill-provi akkwiziti jirrizulta illi ma kien hemm l-ebda xhud okulari ghal dina s-serqa. Illi l-imputat min-naha tieghu jichad l-involviment tieghu fil-kummissjoni ta’ dana ir-reat. Fil-fatt meta gie arrestat mill-pulizija huwa inizjalment jichad illi kien fil-post fil-gurnata in kwistjoni u jghid illi lanqas biss jaf bl-esistenza tal-hanut minn fejn sehhet is-serqa. Illi fil-kors ta’l-investigazzjonijiet gew elevati xi impronti digitali u palmari minn fuq il-bieb tal-hgieg tal-hanut li gie sgassat u dana minn naha ta’ barra tieghu. Di piu gie elevat ukoll filmat tal-*closed circuit camera* li hemm fil-post li juri il-kurridur quddiem il-hanut in kwistjoni. Illi f’dana il-filmat jidher car l-imputat ghaddej minn hdejn dana il-hanut u vicin proprju l-hanut in kwistjoni. Ghalkemm fuq il-filmat l-imputat ma jidhirx qieghed jisgassa il-bieb tal-hanut, madanakollu ma jidhru l-ebda persuni ohra ghajr ghal mara li ma tidhirx illi

ghamlet wisq hin hemm gew. L-imputat ghalhekk rinfaccjat b'dana kollu irrilaxxja l-istqarrija tieghu fejn jammetti illi l-persuna li tidher fil-filmat huwa proprju hu ghalkemm jibqa' jichad l-involviment tieghu.[1]

Illi fil-kors tat-trattazzjoni tal-kawza l-Qorti innominat lil Joseph Mallia bhala espert tal-impronti digitali li ipprezenta r-relazzjoni tieghu fejn ikkonkluda illi l-impronta tan-nofs li tidher elevata permezz ta' *lifter* dokument 07 AFR 301, taqbel u ghalhekk hija identika mal-marka tas-saba tan-nofs ta' l-id ix-xellugija ta'l-imputat. Illi wkoll l-parti minn impronta ta' marka ta' pala ta' l-id fuq il-*lifter* dokument 07 AFR 302 taqbel u ghalhekk hija identika mal-marka tal-pala ta'l-id ix-xellugija ta'l-imputat.[2]

Illi inoltre mill-filmat esebit bhala Dokument MM12 a fol.73 u r-ritratti Dokument MM13 a fol. 7, tidher cara l-persuna ta'l-imputat vicin il-hanut fil-hin li sehh dana ir-reat. Fil-fatt l-imputat stess jammetti fl-istqarrija tieghu illi l-persuna li tidher f'dawn ir-ritratti huwa proprju hu. Illi din il-prova giet imsejjha mill-awturi Inglizi bhala *real evidence*. Illi fil-ktieb tieghu Cross, On Evidence (6th edition) huwa jaghti definizzjoni ta' dak imsejjah bhala real evidence:

'Things are an independent species of evidence as their production calls upon the court to reach conclusions on the basis of its own perception and not on that of witnesses directly or indirectly reported to it ...
Although it was devised by Bentham and adopted by Best, 'Real evidence' is not a term which had received the blessing of common judicial usage. There is general agreement that it covers the production of material objects for inspection by the judge or jury in court, but it is debatable how much further the term should be extended'.

[1] Ara stqarrija ta'l-imputat a fol.21
[2] Ara rapport ta' Joseph Mallia Dokument JM3 a fol.111

Cross imbaghad jghaddi sabiex jaghti diversi ezempji ta' dak illi jikkostitwixxi "real evidence" u fost dawn l-ezempji huwa jinkludi automatic recordings u ighid:

'Most discussion has hitherto centred on the admissibility of tape-recordings, but this has now been supplemented by a thin trickle of authority on the admissibility of other media such as film, video-tape and computer output. In all of these cases the evidence is real evidence when it is tendered to show what it was that was recorded'.

L-awtur Murphy, imbaghad fil-ktieb tieghu 'A Practical Approach to Evidence' (3rd Ed) jaghti dina id-definizzjoni ta' 'Real evidence' (fol. 7):

'A term employed to denote any material from which the court may draw conclusions or inferences by using its own senses. The genus includes material objects produced to the court for its inspection, the presentation of the physical characteristics of any person or animal, the demeanour of witnesses (which may or may not be offered or presented to the court by design), views of the locus in quo or of any object incapable of being brought to court without undue difficulty and such items as tapes, films and photographs, the physical appearance of which may be significant over and above the sum total of their contents as such ... What is of importance in each case is the visual, aural or other sensory impression which the evidence, by its own characteristics produces on the court, and on which the court may act to find the truth or probability of any fact which seems to follow from it'. …

'The court may look at and draw any proper conclusions from its visual observation of any relevant material object produced before it ... The tribunal of fact is entitled to act on the results of its own perception, even where it conflicts with other evidence given about the object ...'.

Ikompli:

‘The court must, before admitting recordings as evidence be satisfied that the evidence which may be yielded is relevant and that the recording produced is authentic and original ... The above principles apply to the use of film produced by hidden, automatic security cameras installed in banks and elsewhere for the purpose of recording robberies and other incidents. The jury are entitled to consider the film as identification evidence of the persons recorded on it, subject to the foundational requirements stated above" see e.g. ‘R v Dodson; R v Williams [1984] Crim LR 489; see ”Taylor v Chief Constable of Cheshire [1986] 1 WLR 1979’.

Illi l-Qorti kellha l-opportunita tistudja dana il-filmat u r-ritratti li ittiehdu minn dana il-filmat u ma ghandha l-ebda dubbju illi dina turi il-persuna ta’ l-imputat li fil-jum u fil-hin tal-kummissjoni jinsab proprju fuq ix-xena tad-delitt u cioe’ vicin hafna l-hanut minn fejn sehhet is-serqa.

Illi apparti dina l-prova imbaghad, l-Qorti ghandha provi cirkostanzjali konsistenti fl-impronti digitali u palmari li instabu fuq ix-xena tar-reat, precizament fuq il-bieb tal-hgieg tal-hanut li gie sgassat minn naha ta’ barra tieghu. Illi l-espert Joseph Mallia jindika sahansitra *14 points of comparison* ma’ l-impronti digitali tas-suba ta’l-imputat u *16 points of comparison* mal-pala ta’l-id ta’l-imputat li huma bizzejjed sabiex jikkonvincu lil dina l-Qorti illi kien proprju l-imputat li kien involut fil-kummissjoni tar-reat li bih jinstab akkuzat.

“L-impronti digitali (u dawk palmari) huma forma ta'prova indizzjarja - "circumstantial evidence" - li kif qal Lord Salmon fil-kaz DPP v. Kilbourne [1973] AC 729, p. 758 "…works by cumulatively, in geometrical progression, eliminating other possibilities." Il-kwistjoni kollha hi mhux jekk l-impronta instabitx f'post pubbliku jew f'post privat jew anqas pubbliku - il-kwistjoni kollha hi jekk, fid-dawl tac-cirkostanzi kollha, il-post fejn instabet l-impronta tikkonvincix lill-

gudikant lil hinn minn kull dubbju dettat mir-raguni li dik l-impronta saret mill-persuna li lilha tappartjeni fil-kors tal-kommissjoni minn dik l-istess persuna tar-reat li bih tkun akkuzata jew fil-kors ta' xi atti li jammontaw ghall-anqas ghal tentattiv ta' dak ir-reat.”
(Il-Pulizija vs Noel Frendo deciza 30 ta’ Novembru 2004 – Appelli Kriminali Inferjuri)

Illi ukoll fil-kawza Il-Pulizija vs Vincent Calleja iktar ‘il fuq iccitata jinghad:

“Il-ligi taghna ma tistabilix il-kriterji ta' numru ta' "matching points" jew "points of comparison" li ghandhom jinstabu fuq il-post tad-delitt jew xi repert iehor ma dawk tal-persuna suspettata.Fil-prattika pero' il-Pulizija ghall-biex tmexxi l-investigazzjoni ulterjorment il-quddiem, tistrieh fuq 9 points. Izda qabel ma tmur il-Qorti tkun trid li jkollha mill-inqas 14 il-"point of comparison.”

Illi apparti dawn iz-zewg provi ta’l-impronti u il-filmat, l-imputat ghalkemm fl-istqarrija tieghu, kif diga inghad jichad l-involviment tieghu fil-kummissjoni ta’ dana ir-reat madanakollu ma jikkonvincix il-Qorti illi huwa ma kellu x’jaqsam xejn u dana peress illi jikkontradixxi lilu innifsu f’dak li jghid lill-pulizija investigattiva meta jittiehed fuq ix-xena tad-delitt u dak li jistqarr imbaghad fl-istqarrija tieghu meta rinfaccjat bil-provi li kellha f’idejha il-pulizija. Ghalkemm ghall-ewwel jghid illi huwa ma kienx fil-post u lanqas ghandu idea ta’ dana il-hanut, imbaghad fl-istqarrija tieghu meta jikkonferma illi il-persuna li tidher fil-filmat hija il-persuna tieghu, jistqarr illi huwa jidhol u johrog gewwa s-Savoy Arcades u jghid illi ma jafx ezatt jekk qatt ghaddiex minn hdejn dana il-hanut. Illi dana kollu ma jikkonvincix lill-Qorti illi l-imputat ma kellu xejn x’jaqsam fil-kummissjoni ta’ dana ir-reat ghalkemm jibqa jichad li kien hu. Illi ghalhekk mill-kumpless kollu tal-provi migjuba quddiemha, il-Qorti tistqarr illi ma hemm l-ebda dubbju dettat mir-raguni illi l-imputat kien il-persuna li ikkometta ir-reat li dwaru jinsab akkuzat.

Illi l-imputat jinsab akkuzat bir-reat tas-serq aggravat bil-mezz u bil-valur. Illi ghar-rigward ta'l-aggravju tal-mezz ma hemmx dubju illi l-imputat acceda fil-fond in kwistjoni billi sgassa il-bieb tal-hgieg tal-hanut in kwistjoni Ghaldaqstant l-aggravju tal-mezz a tenur ta'l-artikolu 263(a) jirrizulta ippruvat. Illi l-aggravju tal-valur ai termini ta'l-artikolu 267 ukoll gie ampjament ippruvat billi mix-xhieda tad-derubat jirrizulta illi gew misruqa flus fl-ammont ta' Lm300 li ghalhekk jeccedi il-valur ta' Lm100 jew €234.

Illi meta tigi biex tikkunsidra il-piena li ghandha tigi inflitta, l-Qorti ma tistax tinjora il-fedina penali ta'l-imputat, kif ukoll il-fatt illi l-imputat huwa recidiv, kif gie ippruvat ampjament matul it-trattazjoni tal-kawza. Illi l-imputat inoltre jinsab akkuzat illi kiser il-provvedimenti ta'l-artikolu 7 tal-Kapitolu 446 moghtija fil-konfront tieghu, b'sentenza tal-Qorti tal-Magistrati(Malta) tat-28 ta' April 2005 fejn l-imputat kien tqieghed taht ordni ta' probation ghal zmien tlett snin. Illi ma hemmx dubbju illi dana ir-reat gie kommes fil-perijodu ta' dina is-sentenza u ghalhekk il-Qorti ser tghaddi biex tapplika il-provvedimenti ta'l-artikolu 23(1)(a) tal-Kapitolu 446 tal-Ligijiet ta' Malta.

Ghaldaqstant, il-Qorti, wara li rat l-artikoli 49, 50, 289, 261(b)(c), 263(a), 267, 278(1)(2), 49, 50 u 289 tal-Kapitolu 9 tal-Ligijiet ta' Malta, issib lill-imputat hati ta'l-akkuzi migjuba fil-konfront tieghu u tikkundannah ghal perjodu ta' ghaxar xhur prigunerija. Illi l-Qorti wara li rat ukoll l-artikolu 23(1)(a) tal-Kapitolu 446 tal-Ligijiet ta' Malta u wara li rat l-artikoli 261(b)(c)(e)(f), 263, 267, 269, 270, 278(3), 49, 50 u 289 tal-Kapitolu 9 tal-Ligijiet ta' Malta qed tikkundanna lill-imputat ghal perijodu iehor ta' sena prigunerija sabiex b'hekk b'kollox l-imputat qed jigi ikkundannat ghal perijodu ta' sena u ghaxar xhur prigunerija.

Finalment l-Qorti wara li rat l-artikolu 533 tal-Kapitolu 9 tal-Ligijiet ta' Malta qed tordna lill-imputat ihallas lir-Registratur tal-Qorti s-somma ta' €655.73 bhala spejjez peritali u fin-nuqqas l-ammont ghandu jigi ikkonvertit f'piena karcerarja skond il-ligi.

< Sentenza Finali >

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