MALTA

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

**MAGISTRAT DR.
AUDREY DEMICOLI**

Seduta tal-15 ta' Marzu, 2012

Numru. 1257/2009

**Il-Pulizija
Spettur Daniel Zammit
Spettur Fabian Fleri**

vs

Aaron Axisa

Il-Qorti:

Rat l-imputat Aaron Axisa ta’ 27 sena, bin Carmelo u Marianna nee’ Bartolo, imwieled Pieta’ fid-19 ta’ Awwissu 1982 u residenti gewwa Qronfla Flt2, Triq Ras il-Gebel, Xghajra u detentur tal-karta tal-identita’ numru 461582(M) gie mressaq quddiemha akkuzat talli:

1. Fil-lejl bejn il-21 ta’ Novembru 2009 u it-22 ta’ Novembru 2009, gewwa Triq is-Santwarju, Zabbar

ikkommetta serq minn gewwa s-Santwarju tal-Madonna tal-Grazzja liema serq sar ghad-dannu tal-Parocca ta' Haz-Zabbar, u liema serq huwa aggravate bil-mezz, bil-valur li jaqbez elfejn tliet mija u disgha u ghoxrin ewro u sebgha u tletin centezmu (€2329,37), bil-lok u bil-hin;

2. Fl-istess data, hin, lok u cirkostanzi volontarjament hassar, ghamel hsara jew gharraq hwejjeg haddiehor, mobbli jew immobbli, liema hsara tammonta ghal izjed minn elf mija u erbgha u sittin euro u disgha u sittin centezmu (€1,164.69) u liema hsara saret ghad-detriment tal-parocca ta' Haz-Zabbar;

3. Irrenda ruhu ricediv ai termini ta' l-artikoli 49, 50 tal-Kap 9 tal-Ligijiet ta' Malta wara li nstab hati b'diversi sentenzi tal-Qrati ta' Malta liema sentenzi saru definittivi u ma jistghux jinbidlu; u aktar talli wettaq reat fil-perjodu operattiv ta' sentenza sospiza.

Rat in-nota tal-Avukat Generali datata 6 ta' April 2011 (esebita a fol. 198 tal-process) fejn huwa deherlu li tista' tinstab htija jew htijiet taht dak li hemm mahsub;

(a) fl-artikoli 18, 261(b)(c)(e)(g), 263, 264, 267, 269, 270, 278, 279, 280 u 281 tal-Kapitolu 9 tal-Ligijiet ta' Malta ;
(b) fl-artikoli 325(1) tal-Kapitolu 9 tal-Ligijiet ta' Malta ;
(c) fl-artikolu 49 u 50 tal-Kapitolu 9 tal-Ligijiet ta' Malta ;
(d) fl-artikolu 17, 23, 23B, 30, 31, 383, 532A, 532B, 533 tal-Kapitolu 9 tal-Ligijiet ta' Malta ;

Rat li waqt l-udjenza tat-8 ta' April 2011, l-imputat ddikjara li huwa m' ghandux oggezzjoni li l-kaz tieghu jigi trattat bi procedura sommarja u deciz minn din il-Qorti fil-kompetenza taghha surreferita.

Semghat il-provi ;

Semghat it-trattazzjoni finalli maghmula mill-Prosekuzzjoni u mid-Difiza ;

Ikkunsidrat:

Illi l-fattispeci ta’ dan il-kaz jirrigwardaw serqa li sehhet fil-lejl bejn il-21 u t-22 ta’ Novembru 2009 mill-Knisja tal-Madonna tal-Karmnu f’Haz-Zabbar fejn insteraq laptop li kellu valur ta’ Lm892[1], fejn sar sgass fin-nicca fejn tinzamm il-Madonna tal-Grazzja minn fejn insteraq id-deheb kollu li kien hemm fuq l-istatwa u fuq il-Bambin hlief ic-cinturin tad-deheb li kellha l-Madonna. F’din is-serqa infethu wkoll l-erbgha kaxxi tal-offerti li kien hemm fil-knisja u ttiehdu l-flus kollha li kien hemm fihom u ttiehdu wkoll il-flus kollha li kien hemm fi tramigjana tal-hgieg li kien hemm fejn il-bieb tal-Knisja. Minn fuq l-istatwa tal-Madonna ttiehdu sitt icrieket tad-deheb isfar u bid-djamanti, par imsielet tad-deheb isfar bid-djamanti, gizirana tad-deheb isfar u medaljun bid-djamanti kif ukoll brazzuletta u gizirana tad-deheb isfar minn fuq l-istatwa tal-Bambin. Mill-provi rrizulta li min dahal fil-Knisja tela’ mal-iscaffolding li kien hemm man-naha tal-lemin tal-faccata tal-Knisja fejn kien qed isir restawr tal-faccata, dahal f’bieb fejn hemm il-kampnar tan-naha tax-xellug u imbaghad dahal minn bieb iehor minn gewwa li jaghti ghal gewwa l-Knisja. Mix-xhieda ta’ Fr. Sebastian Caruana li diga’ saret referenza ghaliha aktar ‘il fuq irrizulta li fit-tramigjana tal-hgieg li kienet hdejn il-bieb tal-Knisja u li minnha ttiehdu l-flus kollha li kien hemm fiha ttiehdu wkoll zewg biljetti tal-Lira Maltija antika, wiehed ta’ Lm10 u l-iehor ta’ Lm5, bis-serial numbers C32039323 u karta ta’ hames(5) liri Maltin B22993329. Il-Kappillan spjega li huwa kien qieghed dawn in-noti u ha s-serial numbers taghhom wara li xi zmien qabel kienu ttiehdu l-flus li kien hemm fit-tramigjana u huwa ghalhekk iddecida li jpoggi dawn il-flus u jiehu notament tas-serial numbers sabiex jekk jergghu jinsterqu l-flus ikun jista’ jghaddi l-informazzjoni dwar is-serial numbers lil Pulizija sabiex jghinhom jirrintraccjaw lil min ikun ha l-flus, kif fil-fatt spjega li ghamel meta ntavola r-rapport dwar is-serqa li tifforma l-mertu tal-kawza odjerna.

[1] Ara xhieda tal-Kapillan Father Sebastian Caruana inserita a fol. 18 sa 23 tal-atti processwali u d–dokument minnu esebit inserit a fol. 24 tal-stti processwali.

Mill-provi u senjatament mix-xhieda tal-Ufficjal Prosekutur l-Ispettur Daniel Zammit li xehed waqt l-udjenza tas-16 ta' Dicembru 2009 irrizulta li meta Fr. Sebastian Caruana ghadda dawn is-serial numbers lil Pulizija huma immedjatament ghaddew dawn id-dettalji lil Bank Centrali, peress li f'dak l-istadju il-banconoti tal-Lira Maltija setghu jissarfu f'Ewro biss mill-Bank Centrali, u qalulhom sabiex jekk xi hadd jipprezenta ruhu sabiex jissarfu l-banconoti b'dawk is-serial numbers huma kellhom jinfurmaw immedjatament lil Pulizija. Mill-provi rrizulta wkoll li fl-24 ta' Novembru 2009 il-Bank Centrali informa lil Pulizija li xi hadd kien mar sabiex isarraf iz-zewg banconoti hawn fuq imsemmija u li huma kienu zammewh hemm. Il-Pulizija marru immedjatament fuq il-post u gie arrestat l-imputat li kien il-persuna li prezenta ruhu sabiex isarraf iz-zewg banconoti bis-serial numbers indikati minn Fr. Sebastian Caruana lil Pulizija. Shirley Scerri il-kaxxiera tal-Bank Centrali li xehdet f'dawn il-proceduri waqt l-udjenza tat-22 ta' Jannar 2010 identifikat lill-imputat bhala l-persuna li prezenta ruhu quddiemha fl-24 ta' Novembru 2009 sabiex isarraf il-banconoti bis-serial numbers indikati lilhom mill-Pulizija. Inoltre mic-CCTV recording inserit a fol. 86 u mill-istills relattivi nseriti a fol. 87 tal-process jirrizulta li l-imputat kien il-persuna li mar isarraf l-imsemmija banconoti fil-gurnata tal-24 ta' Novembru 2009.

Mix-xhieda tal-Ufficjal Prosekutur jirrizulta li meta l-imputat gie arrestat u nterrogat mill-Pulizija gie elevat minn fuqu mobile phone li kellu SIM card bin-numru 9925 1769 u meta l-espert tekniku nominat mill-Qorti, Martin Bajada, talab call profile tal-imsemmija linja ghad-dati tal-21 u tat-22 ta' Novembru 2009 rrizulta li fit-22 ta' Novembru 2009 bejn 1.53am u 3.58am Aaron Axisa rcieva telefonati u baghat SMS's fejn ir-repeater tal-Vodafone li huwa qabad mieghu kien dak ta' Haz-Zabbar. Minn dan il-call profile irrizulta wkoll li meta l-imputat ghamel jew ircieva telefonati waqt li kien fir-residenza tieghu fix-Xghajra huwa qabad mar-repeater li hemm fix-Xghajra. Din l-informazzjoni kollha tirrizulta kemm mix-xhieda ta' Damaris Agius, ir-rapprezentant tal-Vodafone li xehdet waqt l-udjenza tat-22 ta' Jannar 2010 fejn esebiet

dokument bil-call profiles u localisation li jinsab inserit a fol. 71 sa 77 kif ukoll mix-xhieda u mir-rapport tal-espert tekniku Martin Bajada[2]. Mir-rapport ta' dan tal-ahhar fil-fatt jirrizulta s-segwenti:-

Illi, kif indikat, MSISDN 9925 1769 fit-22 ta' Novembru 2010 bejn il-01:53:10 u l-03:58:08, kien qieghed fejn il-Knisja Paroccjali ta' Haz-Zabbar.
Illi, l-esponent jiddikjara li ttraskriva fis-sewwa, fedelment u bl-ahjar hila u taghrif l-informazzjoni estratta minn fuq il-call profiles prezentati minn VODAFONE Malta.

Ikkunsidrat:

Illi l-imputat ghazel li ma jixhidx f'dawn il-rpoceduri u 'a tempo vergine meta gie nterrogat mill-Pulizija rrilaxxja zewg stqarrijiet[3] fejn fl-ewwel stqarrija qal li fit-22 ta' Novembru 2009 wara nofsinhar kien iltaqa' ma' certu Emanuel Bianchi u huma marru jixtru d-droga flimkien u peress li Bianchi ma kellux flus f'Ewro l-imputat qal li huwa hallas ghad-droga u Bianchi tah iz-zewg banconoti ta' Liri Maltin li huwa mbaghad mar isarraf mis-Central Bank. Huwa qal li fil-lejl bejn il-21 u t-22 ta' Novembru kien qieghed id-dar ix-Xghajra. Fit-tieni stqarrija huwa ghazel li ma jwiegeb prattikament ghall-ebda domanda li saritlu.

Ikkunsidrat:

Illi f'dawn il-proceduri l-imputat jinsab addebitat bi tlett imputazzjonijiet fejn l-ewwel imputazzjoni tirrigwarda ir-reat ta' serq ikwalifikat bil-mezz, bil-valur li jaqbez €2329.37, bil-lok u bil-hin, it-tieni imputazzjoni tirrigwarda hsara volontarja ghal-aktar minn €1164.69 u t-tielet imputazzjoni tirrigwarda l-addebitu tar-recidiva. Minn ezami akkurat tal-provi migjuba mill-Prosekuzzjoni f'dan il-kaz jirrizulta lil hinn minn kull dubju dettat mir-raguni li l-imputat instab fil-pussess taz-zewg banconoti li nsterqu mill-Knisja ta' Haz-Zabbar fil-lejl ta bejn il-21 u t-22 ta'

[2] Traskrizzjoni tax-xhieda u rapport inseriti a fol. 180 sa 184 tal-atti processwali.
[3] Inseriti a fol. 47 sa 57 tal-atti processwali.

Novembru 2009 jumejn biss wara li dawn insterqu u ghalhekk tista’ tigi applikata t-teorija ta’ recent possession. Il-Qorti jidrilha ghalhekk li f’dan l-istadju ikun opportun li ssir esposizzjoni legali ta’ din it-teorija ta’ recent possession u li wiehed jezamina xi stabilew il-Qrati Taghna u x’qalu awturi barranin rigward l-applikabilita’ ta’ din it-teorija. F’sentenza tas-26 ta’ Awissu 1998 il-Qorti tal-Appell Kriminali (sede inferjuri) fil-kawza fl-ismijiet ‘Pulizija vs Emanuel Seisun et’ qalet is-segwenti rigward din it-teorija:

‘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-ahhar edizzjoni ta’ Archbold peress li hi tal-fehma li l-bran li gej jitratta 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 also 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 from 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 on of theft or handling, but it has come into particular prominence in connection with the latter because persons found in possession of stolen good 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 other available evidence" (Archbold: Criminal Pleading, Evidence and Practice, 1997, paras. 21-125, 21-126);

U aktar 'il quddiem jinghad:

“What constitutes “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 judgment 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 ma hemm l-ebda dubju li l-imputat instab fil-pussess ta parti mir-res furtiva izda f’dan il-kaz ingabet ukoll prova ohra konsistenti fil-call profile u l-localisation records li diga’ saret referenza ghalihom aktar ‘il fuq meta saret referenza ghar-rapport tal-espert tekniku Martin Bajada fejn jirrizulta pruvat li bejn is-15.00am u l-4.00am tat-22 ta’ Novembru 2009 l-imputat ircieva telefonati fuq il-mobile phone tieghu meta huwa kien hdejn il-Knisja parrokkjali ta’ Haz-Zabbar. Il-Qorti jidrilha li din il-prova flimkien mal-pussess tal-banconoti jumejn wara s-serqa jikkostitwixxu provi lil hinn minn kull dubju dettat mir-raguni li l-imptuat kien involut fis-serqa li sehhet mill-Knisja Parrokkjali ta’ Haz-Zabbar fil-lejl bejn il-21 u t-22 ta’ Novembru 2009. Il-Qorti jidrilha wkoll li l-Prosekuzzjoni gabet ukoll il-prova tal-aggravji tal-valur, tal-mezz, tal-lok u tal-hin u gabet ukoll il-prova li saret hsara volontarja fil-Knisja Parokkjali ta’ Haz-Zabbar meta saret is-serqa. Il-Qorti izda jidrilha in kwantu jirrigwarda t-tieni imputazzjoni li l-hsara volontarja kienet mezz ghal fini tal-ewwel(1) imputazzjoni u ghalhekk ser jigi applikat l-artikolu 17(h) tal-Kodici Kriminali fir-rigward.

In kwantu jirrigwarda l-addebitu tar-recidiva gew esibiti is-sentenzi relattivi u saret id-debita prova tal-identita’ u l-imputat sejjer ghalhekk jinstab ukoll hati tat-tielet(3) imputazzjoni migjuba fil-konfronti tieghu.

Ghal finijiet ta’ piena l-Qorti kkunsidrat kemm il-fatt li l-imputat huwa recidiv kif ukoll il-fatt li huwa diga’ inghata l-opportunita’ li jirriforma ruhu f’aktar minn okkazzjoni wahda izda jidher li m’gharafx jaqbad it-triq it-tajba b’mod definittiv u fic-cirkostanzi l-Qorti jidrilha li ghandha timponi piena karcerarja effettiva.

Ghal dawn il-motivi u wara li rat l-Artikoli tal-ligi ndikati mill-Avukat Generali fin-nota tieghu tas-6 ta' April 2011 u senjatament l-Artikoli 18, 261(b)(c)(e)(g), 263, 264, 267, 269, 270, 278, 279, 280, 281, 325(1), 49,50,17, 23, 23B, 30 u 31,tal-Kodici Kriminali l-Qorti ssib lill-imputat hati tal-imputazzjonijiet kollha migjuba fil-konfronti tieghu u tikkundannah tlett (3) snin prigunerija.

B'applikazzjoni tal-Artikolu 533 tal-Kodici Kriminali l-Qorti tikkundanna lill-imputat sabiex sa zmien xahar minn meta jigi hekk mitlub bil-miktub ihallas lir-Registratur tal-Qorti s-somma ta' elf tlett mija u tmienja u sittin ewro u sitta u hamsin ewro centezmi (€1368.56) liema ammont jirraprezenta l-ispejjes konnessi mal-hatra ta' esperti f'dan il-kaz.

< Sentenza Finali >

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