MALTA

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

MAGISTRAT DR.
EDWINA GRIMA

Seduta tad-9 ta' Jannar, 2013

Numru. 1036/2008

Il-Pulizija
(Spettur Spiridione Zammit)

Vs

Bradley Carabott, ta' 27 sena bin Francis u Antonia nee' Ellul, imwieled Pieta' fit-30 ta' Ottubru 1985, residenti nru 20, Franton, Triq Gianni Raimondo, Kalkara, detentur tal-karta ta'l-identita' bin-numru 540885(M)

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat Bradley Carabott akkuzat talli fl-24 ta' Ottubru 2008 u fix-xhur ta' qabel ikkometta serq ta' ingotti ta' metal abjad, tubi tar-ram u affarijiet ohra li l-valur globali taghhom huwa ta' aktar minn elf lira maltin mill-fond, "Ex-Naffi House", Triq id-Dejma, Fgura ghad-dannu ta' Lawrence Attard mill-

Fgura u dana bi ksur tal-artikoli 261(b)(c), 263, 264, 266 u 267 tal-Kap.9 tal-Ligijjiet ta' Malta;

Ukoll talli fl-istess dati, hin, lok u cirkostanzi, b'diversi atti maghmulin minnu wkoll jekk fi zminijiet differenti, li jiksru disposizzjoni tal-ligi, u li gew maghmulin b'risoluzzjoni wahda u dan bi ksur ta'l-artikolu nru.18 tal-Kap.9 tal-ligijiet ta' Malta;

U aktar talli b'hekk jitqies recidiv b'sentenza li saret definittiva moghtija mill-Qorti tal-Magistrati (Malta).

Rat id-dokumenti esebieti

Semghet il-provi

Rat n-nota ta' rinviju ghal gudizzju ta'l-Avukat Generali tal-20 ta' April 2009.

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

Rat l-atti kollha tal-kawza.

Semghet trattazzjoni.

Ikkunsidrat,

Illi l-imputat jinsab akkuzat bir-reat tas-serq aggravat ta' diversi ingotti tal-metall, copperwire u pajpijiet tar-ramm fost affarijiet ohra minn gewwa scrapyard fil-Fgura proprjeta ta' certu Lawrence Attard. Illi l-Prosekuzzjoni issostni illi dana is-serq sehh fuq medda ta' zmien u mhux f'okkazzjoni wahda u tipponta subajgha lejn l-imputat. Dana ghaliex ghalkemm fil-pussess ta'l-imputat ma instabitx ir-*res furtiva*, madanakollu l-imputat inqabad gewwa dina l-iscrapyard mis-sid meta l-imputat gie arrestat oltre li gie osservat minn oht l-imputat Maria Grazia Scanura f'zewg okkazzjonijiet f'dan il-post fejn hija osservatu qieghed igorr xi affarijiet lejn vettura li kienet tkun parkeggjata vicin ix-xatba tal-iscrapyard. Dina izda

ma tarax x'kienu dawn l-oggetti u jirnexxielha tiehu in-numru ta' registrazzjoni tal-vettura.

Illi ghalhekk xhud ewlieni f'dawn il-proceduri hija appuntu Mara Grazia Scanura li tirrakkonta kif hija kienet titla ghand ommha u tqatta' granet shah maghha. Id-dar ta' ommha tinsab ezattament biswit dina l-iscrapyard. F'jum partikolari hija osservat persuna fl-iscrapyard li qajmilha suspett. Tghid illi ghalhekk telghet fuq il-bejt sabiex tkun tista' tara ahjar x'kienet qed taghmel dina l-persuna. Hawn hija tghid li osservat lill-imputat qieghed igorr xi affarijiet u ighabbihom fil-vettura tieghu. X'kienu dawn l-oggetti hija ma setatx tara mill-post fejn kienet, izda tirrakkonta illi hekk kif l-imputat induna li qed tosservah, huwa rikeb fil-vettura u telaq minn fuq il-post. Hija hadet in-numru ta' registrazzjoni tal-vettura u tirrakkonta illi meta nizzlet vicin ix-xatba hija osservat xi ingotti mitluqin fl-art. Hawn hija infurmat lil huha Larwence Attard b'dak illi kienet rat u dana ghamel rapport lill-pulizija, wara li innota xi ingotti neqsin mill-garaxx li hemm f'dina il-yard. Xi jiem wara Scanura tghid illi osservat l-istess vettura vicin ix-xatba u tghid illi regghet rat lill-imputat. Hawn hija regghet cemplet lil huha li nizel fuq il-post u qabad lill-imputat fil-proprjeta tieghu.[1] Fuq l-imputat instabet sega zghira, il-bieb tal-garaxx kien miftuh u mhux imsakkar u fl-art jinstabu xi ingotti mitluqin.[2] Il-pulizija tigi infurmata u l-imputat jigi arrestat.

Meta jigi interrogat l-imputat jinnega l-involviment tieghu u ighid illi kien vicin ix-xatba ghaliex kien qieghed ifittex ghal xi bumpers imkissrin. Ghalkemm jigi mistoqsi jekk hux minnu illi dawn l-ingotti bieghhom lil persuna bl-isem Hayman, huwa jinnega mhux biss li ha dawn l-ingotti izda li bieghhom lil dina l-persuna. Jammetti illi huwa kellu il-vizzju tad-droga u ighid illi kien lest li ihallas ghal oggetti misruqa biss biex jevita li imur il-Habs.[3]

Meta imbaghad jixhed fis-seduta tat-30 ta' Novembru 2011, l-imputat ikompli jinnega l-involviment tieghu f'dana

[1] Ara xhieda ta' Maria Grazia Scanura a fol.62
[2] Ara ritratti a fols.3 sa 8 tal-process
[3] Ara stqarrija a fol.13 Dokument AG1.

s-serq u ighid, dina id-darba, illi waqaf vicin ix-xatba ghaliex kien qieghed ifittex xi tyre. Jinnega illi qatt dahal fl-israpyard u li kien waqaf barra vicin ix-xatba. L-imputat isostni ukoll fix-xhieda tieghu illi dina l-iscrapyard kellha parti mill-hajt taghha imgarraf u li ghalhekk il-fond kien accessibbli ghal kulhadd u kwalunkwe persuna setghet tidhol u tiehu l-affarijiet.[4]

L-imputat ukoll jistqarr illi Attard u xi persuna ohra li kien hemm mieghu tawh xebgha u anke carrtulu it-tyres tal-vettura tieghu. Huwa jaghmel dina l-allegazzjoni ukoll meta jigi interrogat u mir-rapport tas-surgent 85 Cyril Butters jidher illi fil-fatt il-vettura ta'l-imputat kellha tigi ittowjata minn fuq il-post minhabba f'dana il-fatt oltre li l-imputat gie mehud ic-Centru tas-Sahha biex jigi immedikat ghal griehi li kellu. Ma jidhirx madanakollu illi l-pulizija investigaw dawn il-fatti jew li ittiehdu xi passi fuq dawn l-allegazzjonijiet.[5]

Illi minn investigazzjonijiet ulterjuri li isiru mill-pulizija, jidher illi r-*res furtiva* ma instabitx fil-pussess ta'l-imputat. Saret tfittxija kemm fil-vettura ta'l-imputat kif ukoll fir-residenza fejn ighix u f'xi garaxx ta' missieru, izda dawn kienu fin-negattiv. Jidher illi l-pulizija interrogaw ukoll lil persuna kunjomu Hayman, li jinnegozja fir-ramm, u anke saret tfittxija ghandu, izda dawn ukoll irrizultaw fin-negattiv fejn dina l-persuna innegat illi kienet akkwistat xi oggetti minn ghand l-imputat.[6]

Ikkunsidrat,

Illi ghalhekk wiehed jistaqsi, dawn l-provi huma sufficjenti sabiex wiehed jikkonkludi illi l-imputat huwa l-awtur tad-delitt li dwaru jinsab akkuzat? Illi huwa principju rassodat illi l-provi fil-kamp kriminali jistghu ikunu kemm diretti kif ukoll indizjali, izda dawn ta'l-ahhar iridu ikunu univoci, iwasslu ghal konkluzjoni wahda u iridu ikunu sufficjenti tali biex inisslu konvinciment morali f'mohh il-gudikant lil hinn minn kull dubbju ragjonevoli mir-reita' ta'l-imputat.

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[4] Ara xhieda ta'l-imputat a fol. 253 et seq.

[5] Ara rapport Dokument CB a fol.50

[6] Ara xhieda ta'l-Ispettur Alexander Grech a fol.129 et seq.

Illi l-ewwel u qabel kollox hemm l-identifikazzjoni li issir minn Maria Grazia Scanura tal-persuna ta’l-imputat f’okkazzjoni precedenti ghal dik meta huwa jinqabad fil-post. Illi r-regoli illi tfasslu fil-kawza R vs Turnbull fl-Ingilterra ghalkemm ma jikkostitwixxu l-ebda regola taht il-ligi Maltija, madanakollu huma linji gwida fil-kaz ta’l-identifikazzjoni tal-persuna akkuzata. Illi dana gie ukoll sottolinjat f’sentenza moghtija mill-Qorti ta’l-Appelli Kriminali fl-ismijiet Il-Pulizija vs Stephen Zammit (deciza 16 ta’ Lulju 1998) fejn il-Qorti tat esposizzjoni tar-regoli Turnbull fid-decizjoni taghha:

“First, whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is done in clear terms the judge need not use any particular form of words.

Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual

appearance? If in any case, whether it is being dealt with summarily or on indictment, the prosecution have reason to believe that there is such a material discrepancy they should supply the accused or his legal advisers with particulars of the description the police were first given. In all cases if the accused asks to be given particulars of such descriptions, the prosecution should supply them. Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence.

Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.

***All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger"*.**

Illi fil-kaz in dizamina ix-xhud Maria Grazia Scanura tafferma f'iktar minn okkazzjoni wahda fix-xhieda taghha illi hija taghraf lill-imputat bhala l-istess persuna li rat fl-iscrapyard ta' huha. Lejn l-ahhar tal-kawza hija sahansitra tosserva kambjament fil-persuna ta'l-imputat ghall-ahjar. Dana huwa minnu ghaliex matul il-kors ta' dan l-iter processwali l-imputat segwa program ghar-riabilitazzjoni mill-vizzju tad-droga u ghalhekk dina l-bidla setghet tosservaha il-Qorti stess. Di piu' ix-xhud issostni illi hija hadet in-numru ta' rgeistrazzjoni tal-vettura li rat lill-imputat jahrab biha. Fil-fatt mix-xhieda ta' Brian Farrugia, rappresentant tat-Transport Malta jirrizulta illi dina l-vettura u cioe' dik bin-numru ta' registrazzjoni SAM213 hija vettura tal-ghamla Volkswagen Polo kulur blu registrata fuq isem l-imputat.[7]

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[7] Ara xhieda ta' Brian Farrugia a fol.85 u Dokument BF a fol.87

Illi fit-tieni lok, ghalkemm fil-pussess ta’l-imputat ma tinstabitx r-*res furtiva*, madanakollu meta huwa jinqabad fuq il-post, tinstab sega zghira fil-pussess tieghu, oltre diversi ingotti li jidhru li gew imcaqalqa mill-post fejn kienu u instabu mifruxin ma’l-art. Lawrence Attard sahansitra ighid illi rah b’ingotta f’idejh li telaqha fl-art hekk kif induna bih. Illi fl-ewwel okkazzjoni fejn jigi osservat minn Scanura jiehu xi oggetti u ighabbihom fil-vettura tieghu, ghalkemm ix-xhud ma hijiex f’posizzjoni tidentifika l-oggetti li l-imputat kellu f’idejh, madanakollu wara li jahrab minn fuq il-post hija tinzel vicin ix-xatba fejn kien qieghed bil-vettura tieghu u tosserva l-ingotti mitluqin fl-art.

Illi fl-ahharnett ghalkemm l-imputat jinnega l-involviment tieghu fil-kummissjoni ta’ dana id-delitt, madanakollu l-provi li iressaq ma humiex tali illi jikkonvincu lil dina l-Qorti sal-grad tal-probabbli illi huwa ma kellu xejn x’jaqsam ma dina s-serqa. Id-difiza tieghu illi l-fond huwa accessibbli ghal kulhadd mhijiex bizzejjed sabiex tezonerah mill-htija tieghu. Inoltre huwa ma iressaqx prova konvincenti dwar dak li allegatament kien qed jaghmel fuq il-post u ghalkemm huwa jichad illi dahal gewwa, l-imputat ma jistax jigi emmnut billi hemm xhieda illi isostnu illi huma rawh hemm gew f’iktar minn okkazzjoni wahda.

Illi ghalhekk il-provi li tressaq il-Prosekuzzjoni huma univoci u jippuntaw f’direzzjoni wahda u cioe’ illi l-imputat huwa hati tar-reat tas-serq addebitat lilu.

Illi minn qari tan-nota ta’ rinviju ghal gudizzju ta’l-Avukat Generali jidher illi is-serq addebitat lill-imputat huwa aggravat bil-kwalifiki tal-mezz u tal-valur. Illi dwar l-aggravju tal-mezz ma hemmx dubbju illi l-imputat kiseb access ghal garaxx fejn kien hemm l-ingotti tal-metall billi kisser il-katnazz ta’ dana l-garaxx. Lawrence Attard ighid illi il-katnazz li bih kien jaghlaq il-garaxx ma sabux u il-garaxx kien miftuh.[8]

Illi dwar l-aggravju tal-valur, l-Qorti tistqarr illi dana l-aggravvju ukoll gie ippruvat. L-imputat jikkontendi illi ma

[8] Ara xhieda ta’ Lawrence Attard a fol. 176

hemmx prova fl-atti illi huwa ha l-oggetti kollha illi l-parti leza ighid li sab neqsin mill-garaxx tieghu u cioe' dawk elenkati fil-lista Dokument LA esebiet a fol.27 tal-process. Madanakollu l-artikolu 267 tal-Kapitolu 9 tal-Ligijiet ta' Malta jiddisponi illi dana l-aggravju jirrizulta jekk l-oggett misruq ikun jiswa iktar minn €232.94. Illi kif diga gie rilevat iktar 'il fuq l-provi kemm diretti kif ukoll indizzjarja kollha jippuntaw f'direzzjoni wahda u cioe' illi l-imputat dahal f'iktar minn okkazzjoni wahda fil-fond proprjeta ta' Attard u seraq l-oggetti mill-garaxx tieghu u cioe' l-oggetti indikati mill-parti leza stess. Illi ma hemmx prova ohra fl-atti li tista' tindika dak li jallega l-imputat u cioe' illi setghu dahhlu nies ohra li serqu dawn l-oggetti. Jidher illi Scanura li tkun ta' kuljum fil-post u tosserva dak li ikun qed jigri, tghid illi osservat lilu biss u lil hadd iktar. Kwindi dana l-aggravju certament jirrizulta ippruvat billi ma hemmx dubbju illi l-oggetti indikati minn Attard jeccedu il-valur ta' €233.

Illi meta tigi biex tqies il-piena li ghandha tigi inflitta l-Qorti ser tiehu in konsiderazzjoni il-fatt illi l-imputat ghamel progress kbir fil-hajja tieghu. Jidher illi huwa qieghed jaghmel l-almu tieghu biex jeghleb il-vizzju tad-droga, segwa program residenzjali ghar-riabilitazzjoni tieghu u illum anke ghandu impieg fiss. Illi f'dawn ic-cirkostanzi ghalhekk piena karcerarja effettiva ma tkunx idonja ghalkemm l-imputat huwa akkuzat illi huwa recidiv. Il-Qorti tikkondividi dak mistqarr mill-Qorti ta'l-Appell Kriminali u minn gurisprudenza ohra f'sentenza tat-18 ta' Jannar 2001 fil-kawza fl-ismijiet 'Pulizija vs George Farrugia' fejn intqal is-segwenti:-

Apparti li din il-Qorti ma tistax taqbel ma' l-Avukat Generali fejn dan jghid li s-sitwazzjoni ta' l-appellant hija « irriversibbli » - fil-fehma tal-Qorti hija l-mewt biss li ggib stat jew sitwazzjoni ta' irriversibilita' assoluta – anqas ma tista' din il-Qorti tikkondividi l-fehma ta' l-Avukat Generali li Ordni ta' *Probation* hu indikat biss ghal « first offenders » zghazagh. Anke fil-kaz ta' persuna ta' eta' mhux zghira u li forsi hu recediv, tista' titfacca fil-hajja ta' dik il-persuna « a window of opportunity » li permezz taghha jkun jista' jinkiser ic-ciklu ta' kundanni u ta' prigunerija. Kif jispjega

David Thomas fil-ktieb tieghu **Principles of Sentencing** (Heinemann, London, 1979) :

“The term “inadequate recidivist” is used to describe an offender, middle aged or older, who has over a long period of years committed numerous offences, not in themselves in the first rank of seriousness, and has served many terms of imprisonment as well as experiencing an extensive selection of other penal measures. Faced with such an offender, the Court will usually grasp any chance of breaking the cycle of offence and sentence, even if the chances of success are obviously limited…As in the case of the intermediate recidivist there must be some prospect of success, however remote” (pp. 22,23) U aktar tard l-istess awtur jghid hekk dwar l-uzu ta’ l-Ordni ta’ Probation :

‘The probation order is clearly the most important individualized measure available to a sentencer. It is not limited to any one group of offenders; as the discussion in chapter one illustrates, probation is used to deal with recidivists of mature age as well as the young and those of good character’ (p. 236).”

Illi ghaldaqstant ghalkemm l-imputat huwa recidiv il-Qorti ser tghaddi sabiex tapplika l-provedimenti ta’l-artikolu 7 tal-Kapitolu 446 tal-Ligijiet ta’ Malta bit-tama illi l-imputat ikompli fit-triq it-tajba u jirriforma hajtu kompletament.

Ghaldaqstant il-Qorti wara li rat l-artikolu 18, 261(b)(c), 263(a), 264, 266, 267, 278(1)(2), 279(b), 280(2), 49, 50 u 289 tal-Kapitolu 9 tal-Ligijiet ta’ Malta, issib lill-imputat hati ta’l-akkuzi migjuba fil-konfront tieghu, izda fid-dawl tal-konsiderazzjonijiet maghmula u b’applikazzjoni ta’l-artikolu 7 tal-Kapitolu 446 tal-Ligijiet ta’ Malta, tqieghed lil hati taht ordni ta’ probation ghal zmien tlett snin mil-lum.

Il-Qorti twissi lil hati bil-konsegwenzi skond il-ligi jekk huwa jikkometti reat iehor matul dana il-perijodu ta’ zmien jew jekk jikser l-ordni imposta fuqu illum.

< Sentenza Finali >

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