



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

**MAGISTRAT DR.
EDWINA GRIMA**

Seduta tat-22 ta' Mejju, 2013

Numru. 476/2011

**Il-Pulizija
(Spettur Kevin Farrugia)**

Vs

**Ismael Habesh ta' 42 sena imwieled Trili Libya nhar il-
01 ta' April 2011, bin Omar u Burnija nee' Xduri, u
presentement residenti fil-Facilita Korrettiva ta'
Kordin detentur tal-karta ta'l-identita' nru. 15771(A)**

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat Ismael Habesh akkuzat talli f'Marzu 2011 gewwa Birkirkara, Haz Zebbug, Malta u f'dawn il-Gzejjer Maltin:

01. ikkometta serq ta' oggetti minn gewwa vettura bin-numru tar-registrazzjoni KBE 531, ghad-dannu ta' Mitchell Micallef li ghandu numru ta'l-identita 531489(M), liema

serq hu ikkwalifikat bil-mezz, bil-valur u bix-xorta tal-haga misruqa, u dana ai termini tal-artikoli 261, 263, 267 , 271(g).

02. volontarjament hassar, jew gharraq hwejjeg haddiehor, mobbli jew immobbli, vettura bin-numru ta' registrazzjoni KBE 531 ghad-dannu ta' Mitchell Micallef li ghandu numru tal-karta ta'l-identita 531489(M), liema hsara ikun izjed minn elf mija u erbgħa u sittin euro u disgha u sittin centezmu (€1164.69) u dana bi ksur tal-artikolu 325(a) tal-kapitolu 9 tal-Ligijiet ta' Malta.

03. ikkometta serq ta' oggetti minn gewwa vettura bin-numru tar-registrazzjoni DQZ 097, ghad-dannu ta' Joseph Camilleri li ghandu numru ta'l-identita 741058(M), liema serq hu ikkwalifikat bil-mezz, bil-valur u bix-xorta tal-haga misruqa, u dana ai termini tal-artikoli 261, 263, 267 , 271(g)

04. volontarjament hassar, jew gharraq hwejjeg haddiehor, mobbli jew immobbli, vettura bin-numru ta' registrazzjoni DQZ 097 ghad-dannu ta' Joseph Camilleri li ghandu numru tal-karta ta'l-identita 741058(M), liema hsara ikun izjed minn elf mija u erbgħa u sittin euro u disgha u sittin centezmu (€1164.69) u dana bi ksur tal-artikolu 325(a) tal-kapitolu 9 tal-Ligijiet ta' Malta.

05. ikkometta serq ta' oggetti minn gewwa vettura bin-numru tar-registrazzjoni CBG 497, ghad-dannu ta' Philip Gatt li ghandu numru ta'l-identita 160073(M), liema serq hu ikkwalifikat bil-mezz, bil-valur u bix-xorta tal-haga misruqa, u dana ai termini tal-artikoli 261, 263, 267, 271(g).

06. volontarjament hassar, jew gharraq hwejjeg haddiehor, mobbli jew immobbli, vettura bin-numru ta' registrazzjoni CBG 497 ghad-dannu ta' Philip Gatt li ghandu numru tal-karta ta'l-identita 160073(M), liema hsara ikun izjed minn elf mija u erbgħa u sittin euro u disgha u sittin centezmu (€1164.69) u dana bi ksur tal-artikolu 325(a) tal-kapitolu 9 tal-Ligijiet ta' Malta.

07. ikkometta serq ta' oggetti minn gewwa vettura bin-numru tar-registrazzjoni JES 444, ghad-dannu ta' Jessica Chetcuti li ghandu numru ta'l-identita 14890(M), liema serq hu ikkwalifikat bil-mezz, bil-valur u bix-xorta tal-haga misruqa, u dana ai termini tal-artikoli 261, 263, 267 , 271(g).

08. volontarjament hassar, jew gharraq hwejjeg haddiehor, mobbli jew immobbli, vettura bin-numru ta' registrazzjoni JES 444 ghad-dannu ta' Jessica Chetcuti li ghandu numru tal-karta ta'l-identita 14890(M), liema hsara ikun izjed minn elf mija u erbgha u sittin euro u disgha u sittin centezmu (€1164.69) u dana bi ksur tal-artikolu 325(a) tal-kapitolu 9 tal-Ligijiet ta' Malta.

09. ikkometta serq ta' oggetti minn gewwa vettura bin-numru tar-registrazzjoni GBF 382, ghad-dannu ta' Joseph Cachia li ghandu numru ta'l-identita 293364(M), liema serq hu ikkwalifikat bil-mezz, bil-valur u bix-xorta tal-haga misruqa, u dana ai termini tal-artikoli 261, 263, 267 , 271(g).

10. volontarjament hassar, jew gharraq hwejjeg haddiehor, mobbli jew immobbli, vettura bin-numru ta' registrazzjoni GBF 382 ghad-dannu ta' Jessica Chetcuti li ghandu numru tal-karta ta'l-identita 293364(M), liema hsara ikun izjed minn elf mija u erbgha u sittin euro u disgha u sittin centezmu (€1164.69) u dana bi ksur tal-artikolu 325(a) tal-kapitolu 9 tal-Ligijiet ta' Malta.

11. aktar talli f'dawn il-Gzejjer Maltin fix-xahar ta' Marzu 2011, b'diversi atti maghmulin b'resoluzzjoni wahda li jiksru l-istess dispozzizzjoni tal-ligi xjentement laqa' ghandu jew xtara hwejjeg misruqa, mehuda b'qerq, jew akkwistati b'reat jew xjentement b'kull mod li jkun indahal sabiex ibiegh jew imexxi dawn l-oggetti, ai termini tal-artikolu 334(a) tal-Kodici Kriminali, Kap.9 tal-Ligijiet ta' Malta liema serq hu ikkwalifikat bil-mezz, bil-valur, u bix-xorta tal-haga misruqa, u dana ai termini tal-artikoli 261, 263, 267, 271(g).

Kopja Informali ta' Sentenza

Aktar talli sar recidiv b'sentenzi tal-Qorti liema sentenzi saru definittivi u ma jistghux jinbiddu.

Rat in-nota ta' rinviju ghal gudizzju ta'l-Avukat Generali tat-12 ta' Lulju 2012.

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

Rat id-dokumenti esebieti.

Semghet il-provi.

Semghet trattazzjoni.

Ikkunsidrat,

Illi l-imputat jinsab rinfaccjata b'akkuzi dwar serq, hsara volontarja u anke ricettazzjoni u dana in konnessjoni ma' hames serqiet li kollha sehew bejn it-30 u il-31 ta' Marzu 2011. Illi f'dawn is-serqiet insterqu diversi oggetti fosthom, mobile phone, Internet key, GPS, stereos, camera, chargers, Bluetooth transmitter, sd card adapter, cigarette lighter, nuccali tax-xemx, PVC tad-dawl, torch fost diversi affarijiet ohra. L-oggetti kollha gew irrapurtati nieqsa wara serq li seh minn diversi vetturi matul il-lejl. Joseph Camilleri jirraporta illi minn gol-vettura tieghu fil-lejl ta' bejn it-30 u l-31 ta' Marzu 2011 insterqitlu xi ghodda li juza ghax-xoghol tieghu mal-GO plc u tlett fluorescent vests. Inltre ighid illi sabiex il-malvivent kiseb access ghall-vettura tieghu, kisser il-hgiega tan-naha tal-passiggier tal-vettura tieghu. Iktar tard meta l-imputat jigi intercettat mill-pulizija b'diversi oggetti fil-vettura tieghu, Camilleri jerga' jingieb l-ghassa fejn huwa igharaf Sheath Connector Assembly, PVC tape ta'l-elettriku, torch u tray tas-sigaretti tal-karrozza bhal proprjeta tieghu. Mitchell Micallef ukoll jirraporta lill-pulizija illi fl-istess lejl mill-vettura tieghu insterqulu diversi oggetti. Mill-oggetti misjuba fil-pussess ta'l-imputat Mitchell igharaf mobile phone tad-ditta Motorola, nose trimmer kif ukoll tessera tal-Partit Nazzjonalistali li kienet tghajjat lil Mario Micallef bhala

appartenenti lilu. Philip Gatt huwa l-uniku wiehed mid-derubati illi qabad lill-imputat fil-fatt meta sema xi hsejjes gejjien minn hdejn il-vettura tieghu filwaqt li kien gewwa f'daru. Meta hareg huwa ra lill-imputat hdejn il-vann tieghu, telaq jigri warajh, izda ighid illi l-imputat harab f'vettura li ha in-numru ta' registrazzjoni taghha u ghaddieh lill-pulizija. Mill-oggetti misjuba fil-pussess ta' l-imputat huwa ighid li gharaf il-GPS bhala tieghu. Joseph Cachia jirraporta ukoll li sehhet serqa fil-vettura tieghu fil-lejl ta' bejn it-30 u l-31 ta' Marzu 2011 minn fejn insterqulu diversi oggetti. Ighid illi l-malvivent ipprova jisraqlu l-istereo ukoll izda ma irnexxielux bil-konsegwenza illi l-istess stereo sofra xi hsara. Mill-oggetti irkuprati minn ghand l-imputat Cachia ighid illi l-SD adapter micro SD card, charger tal-karozza ghal mobile, FM transmitter, Bluetooth kit u cigarette lighters huma tieghu. Derubata ohra Jessica Chetcuti ukoll tirrakonta illi fl-istess lejl kienet vittma ta' serqa mill-vettura taghha minn fejn insterqu pakkett sigaretti, erba euros f'muniti u internet key tal-Vodafone. Minn dawn l-oggetti instabet ghand l-imputat l-Internet key proprjeta ta' Chetcuti.

Illi fil-31 ta' Marzu 2011 ghal habta tat-3 ta' wara nofs in-nhar il-pulizija kienu sabu lill-imputat mitluq f'vettura tal-ghamla KIA bin-numru ta' registrazzjoni BBW237, mitluf minn sensieh. F'dina il-vettura instabu ammont sostanzjali ta' l-affarijiet. Meta mistoqsi ta' min kienu l-oggetti huwa iwiegeb li bicciet mill-affarijiet kienu tieghu u ohrajn kien sabhom. L-imputat jigi arrestat u interrogat billi minn investigazzjonijiet li ghamlu l-Pulizija jirrizulta illi l-oggetti li instabu ghand l-imputat kollha kienu gew irrappurtati misruqa fil-lejl ta' qabel. Fl-istqarrija rilaxxjata minnu lill-pulizija l-imputat ighid illi l-oggetti li kellu fil-vettura huwa kien hadhom minn ghand certu AbdulSalam Ben Hamed ghaliex dan ta' l-ahhar kellu jaghtih is-somma ta' €200. Ghalhekk huwa ighid illi fil-jum ta' qabel u cioe' fil-31 ta' Marzu 2011 iltaqa' mieghu ghal habta tal-hdax jew nofs in-nhar fejn huwa qabad u ha l-oggetti li kienu fil-vettura ta' dan Hamed u dana sakemm ighaddhielu is-somma li kellu jaghtih. L-Ufficjal Prosekutur ghalhekk jinvestiga ukoll lil AbdulSalam Ben Hamed, izda minn dak kollu li ighid l-imputat ma jirrizulta xejn.

Ikkunsidrat,

Illi fil-kors tat-trattazzjoni orali taghha, id-difiza iddikjarat li l-akkuza dwar ir-ricettazzjoni qed tigi amMESSA u dana fid-dawl tal-fatt illi diversi oggetti li kienu ghadhom kemm insterqu instabu fil-pussess ta'l-imputat. Dana huwa fatt mhux ikkontesta. Id-difiza, madanakollu tikkontendi illi ma hemm xejn li jorbot lill-imputat mas-serqiet li sehheW billi ma ingiebet l-ebda prova mill-Prosekuzzjoni la diretta u lanqas indizzjarja kontra l-imputat. Illi huwa biss f'serqa wahda cioe' dik li sehhet fil-31 ta' Marzu 2011 mill-vann proprjeta ta' Philip Gatt, illi id-derubat jikkontendi li gharaf lill-imputat bhala il-persuna li ra fil-jum tas-serqa vicin l-vann tieghu. Ighid illi osserva din il-persuna mill-vicin, telaq jigri warajh fejn rah jirkeb f'vettura u anke ha in-numru ta' registrazzjoni ta' dina l-vettura, li kienet Toyota Tercel kulur bajda bin-numru ta' reistrazzjoni CBG497. Minn stharrig li ghamlet il-pulizija irrizulta illi din il-vettura kienet giet misruqa u kienet giet osservata vicin id-Detox Centre fil-Pieta'. Madanakollu meta l-ghada jinsab l-imputat mitluq f'karozza mitluf minn sensieh huwa ikun f'vettura ohra u mhux fl-istess wahda li giet osservata minn Gatt u cioe' vettura tal-ghamla Kia bin-numru ta' registrazzjoni BW237.

Illi r-regoli illi tfasslu f'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 fl-examination-in-chief tieghu, Philip Gatt mal-ewwel jiddikjara li qed igharaf lill-imputat bhala l-malvivent li ikkometta s-serqa mill-vettura tieghu, izda in kontro-ezami, imbaghad id-difensur ta'l-imputat jaghmillu affermazzjoni illi din il-persuna ma kenitx l-imputat, ix-xhud iwiegeb:

“Jien l-uniku wiehed li qed nara jixbhu go din l-awla huwa hu.”

Ikompli:

“Jekk iqum bil-wieqfa wkoll inkun cert.”

Ikompli isostni illi huwa kien ifokka fuq il-persuna li ra vicin il-vettura tieghu u kien rah sew.

Meta mbaghad mistoqsi mill-qorti jekk hux cert dwar il-persuna jew inkella jekk jixbuhx biss, iwiegeb:

“L-uniku wahda li tixbhu hawn gew hux, m'ghandi lil hadd samrani, b'xaghru qasira hekk, Malti nghidlu jien fis-sens ..”

Illi l-Qorti hija tal-fehma illi din il-prova wahedha hija wisq fjakka biex tasal torbot lill-imputat mal-persuna illi Gatt ra fil-jum in kwistjoni. Di piu' il-vettura li arab go fiha l-imputat ma hijiex l-istess vettura li l-ghada instab go fiha. Il-Prosekuzzjoni naqqset milli tressaq provi indizzjarji ohra bhal per ezempju l-impronti digitali illi gew elevati minn fuq il-vettura ta' Gatt sabiex tkun tista tistabilixxi jekk dawn jaqblux ma' dawk ta'l-imputat, kif del resto ma jigux ipprezentati l-impronti digitali elevati mill-vetturi l-ohra kollha li minnhom nsterqu l-oggetti. Illi l-Qorti izda ghandha l-prova illi l-oggetti instabu fil-pussess tieghu l-ghada wara nofs in-nhar.

Ikkunsidrat,

Illi fid-dawl tal-provi migjuba quddiemha ghalhekk il-Qorti qieghda tinvoka t-teorija elaborata minn giurisprudenza 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 giurisprudenza taghna u dana peress illi kif inghad f’diversi 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 l-provi migjuba mill-prosekuzzjoni fil-fatt jindikaw biss illi l-oggett misruq, mertu ta’ din il-kawza kien fil-pussess ta’l-imputat. Illi f’sentenza moghtija mill-Qorti ta’l-Appelli Kriminali (per.Imhallel 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 giurisprudenza 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 therefrom 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 pickpocketing 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,(sottolinjar tal-Qorti), 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 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 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 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 s-serqiet mertu tal-kawza kollha sehnew fil-lejl bejn it-30 u il-31 ta' Marzu 2011. Illi l-imputat gie intercettat mill-Pulizija fil-31 ta' Marzu 2011 ghal habta tat-tlieta ta' wara nofs in-nhar bl-oggetti misruqa fil-pussess tieghu u ghalhekk ftit sghat biss wara. Illi l-ispjegazzjoni li jaghti l-imputat illi dawn kien gabhom minn ghand certu AbdulSalam Ben Hamed hija wahda fjakka u ma titwemminx. Inoltre meta jigi arrestat jaghti verzjoni differenti u cioe' illi uhud mill-oggetti kienu tieghu u kien hemm ohrajn li sabhom. Dana iwassal lil din il-Qorti ghal konkluzjoni wahda u cioe' illi l-imputat kien il-persuna involuta f'din is-sensiela ta' serqiet. Il-Qorti hija tal-fehma illi kien ghadda ftit hin wisq biex l-imputat kien gie fil-pussess ta' din ir-res *furtiva* jekk mhux ghax kien involut fis-serq ta'l-istess u kwindi abbazi tat-tejorija hawn fuq elaborata, l-Qorti ser issib htija fil-konfront ta'l-imputat ghall-akkuzi tas-serq li huma addebitati lilu.

Illi meta tigi biex tqies il-piena li ghandha tigi inflitta l-Qorti ma tistax tinjora il-fedina penali piuttost voluminuza tal-imputat u il-fatt li huwa recidiv.

Ghaldaqstant il-Qorti wara li rat l-artikoli 18, 261(b)(c)(g), 263, 264, 265, 266, 267, 271(g), 279, 280, 281, 325(1)(a), 49, 50, 289, 17(h) tal-Kapitolu 9 tal-Ligijiet ta' Malta, filwaqt li tastjeni milli tiehu konjizzjoni ta'l-akkuza dwar ir-recidiva billi din hija alternattiva ghal dik tas-serq, issibu hati tal-kumplement ta'l-akkuza migjuba fil-konfront tieghu u tikkundannah ghal perijodu ta' sentejn prigunerija.

< Sentenza Finali >

-----TMIEM-----