MALTA

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

MAGISTRAT DR.
AUDREY DEMICOLI

Seduta tas-27 ta' Settembru, 2013

Numru. 440/2012

Pulizija
(Spettur Robert Said Sarreo)
vs
Oglive Grima

Il-Qorti;

Rat li l-imputat Oglive Grima ta' 21 sena, iben Anthony u Anna nee' Borg, imwieled Pieta' nhar is-26 ta' Marzu 1991 u residenti Blokk 8 Unit 1 Qasam tal-Bini tal-Gvern Rinella Kalkara u detentur tal-karta tal-identita' bin-numru 207891M gie mressaq quddiemha akkuzat talli :

B'diversi atti maghmulin fi zminijiet differenti, li kisru l-istess dispozizzjoni tal-Ligi, u liema atti gew maghmula b'rizoluzzjoni wahda u cioe:

Nhar il-21 ta' April 2012, minn gewwa l-Kalkara, ikkommetta serq ta' telefon cellulari, propjeta' ta' Rodrick Briffa u/jew persuni ohra liema serq huwa aggravat bil-

valur li jeccedi il-232.94 Ewro izda ma jeccedix l-2,329 Ewro kif ukoll bix-xorta tal-haga misruqa.

Fil-21 ta’ April 2012 gewwa dawn il-gzejjer, xjentement xtara jew laqa’ ghandu oggett misruq u cioe telefon cellulari tad-ditta Nokia, mehud b’qerq jew akkwistat b’reat sew jekk dan sar f’Malta jew barra minn Malta, jew xjentement, b’kull mod li jkun indahal biex ibieghu jew imexxih, liema oggett gej minn serq ikkwalifikat bil-valur li jeccedi il-232.94 Ewro izda ma jeccedix l-2329 Ewro, kif ukoll bix-xorta tal-haga misruqa.

Nhar is-16 ta’ April 2012, minn gewwa Bormla, ikkommetta serq ta’ telefon cellulari, propjeta ta’ Alexandra Calleja u/jew persuni ohra liema serq huwa aggravat bix-xorta tal-haga misruqa.

Fis-16 ta’ April 2012 gewwa dawn il-gzejjer, xjentement xtara jew laqa’ ghandu oggett misruq u cioe telefon cellulari tad-ditta Nokia li l-valur tieghu ma jeccedix il-232.94 Ewro, mehud b’qerq jew akkwistat b’reat sew jekk dan sar f’Malta jew barra minn Malta, jew xjentement, b’kull mod iehor li jkun indahal biex ibieghu jew imexxih, liema oggett gej minn serq ikkwalifikat bix-xorta tal-haga misruqa.

Fl-istess data, hin, lok u cirkostanzi kiser il-provvedimenti ta’ sentenza sospiza moghtija fil-konfront tieghu mill-Qorti tal-Magistrati (Malta) Magistrat Dr. Edwina Grima LL.D datata 23 ta’ April 2008, liema sentenza saret definittiva u ma tistghax tinbidel.

U finalment talli fl-istess perjodu ta’ zmien u cirkostanzi f’dawn il-gzejjer, irrenda ruhu recidiv ai termini ta’ l-artikoli 49, 50 u 289 tal-Kap. 9 tal-Ligijiet ta’ Malta wara li gie misjub hati b’diversi sentenzi mghotija mill-Qrati ta’ Malta liema sentenzi saru definittivi u ma jistghux jigu mibdula

Il-Qorti kienet gentilment mitluba sabiex f’kaz ta’ htija tikkundanna lill-akkuzati ghall-hlas ta’ spejjes li jkollhom x’jaqsmu mal-hatra ta’ esperti jew periti fil-proceduri hekk

kif ikkontemplat fl-Artikolu 533 tal-Kapitlu 9 tal-Ligijiet ta' Malta.

Il-Qorti kienet mitluba sabiex barra milli tapplika l-piena skond il-ligi, tapplika wkoll l-artikoli 383, 384 u 385 tal-Kap. 9 tal-Ligijiet ta' Malta ghas-sigurta ta' dawn il-persuni hawn fuq indikati.

Rat l-atti kollha ta' dan il-procediment u d-dokumenti esebiti, inkluz il-kunsens tal-Avukat Generali datat 3 ta' Mejju 2012 (esebit a fol. 10 tal-process) sabiex dawn il-proceduri jigu trattati bi procedura sommarja u decizi minn din il-Qorti.

Rat li l-imputat waqt l-udjenza tal-11 ta' Mejju 2012 iddikjara li ma kellux 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 finali maghmula mill-Prosekuzzjoni u mid-Difiza ;

Ikkunsidrat:
Illi l-fattispeci ta' dan il-kaz jirrigwardaw zewg serqiet ta' telephones cellulari li sehhew fis-16 ta' April 2012 u fil-21 ta' April 2012 rispettivament. In kwantu jirrigwarda s-serqa tas-16 ta' April 2012 mill-provi rrizulta li certu Alexandra Calleja, sewwieqa ta' minibus tat-tfal tal-iskola ghamlet rapport li waqt li kienet bil-minibus wieqaf tistenna barra l-vann u bit-tfal fil-vann ghadda guvni u hadilha l-mobile phone tal-ghamla Nokia mudell 7020A kulur griz li kien jiswa €134.98 u li kien gewwa l-minibus u mbaghad telaq jigri. Din Calleja rrapurtat ukoll li l-ghada kien kellimha certu Leon Schiavone, tifel ta' tlelttax-il sena li kien jaf lil binha ghaliex kienu jmorru fl-istess skola qalilha li l-mobile taghha kien ghandu u li kien xtrah gurnata qabel ghal €20 minghand Oglive Grima. It-tifel flimkien ma' ommu kienu akkumpanjawha l-Ghassa meta marret taghmel ir-rapport. Leon Schiavone kkonferma dan kollu meta xehed f'dawn il-proceduri waqt l-udjenza tal-11 ta' Mejju 2012 fejn

spjega li f'gurnata f'April 2012 Oglive Grima kien mar fuqu waqt li kien il-Kalkara u qallu li kellu mobile phone ghall-bejgh ghall-prezz ta' €25 izda bieghulu ghal €20 ghaliex dak l-ammont biss kellu fuqu. Leon Schiavone spjega li meta mar id-dar sab li l-mobile kien illokjat izda meta dahhal il-memory card fil-mobile ta' ommu sab xi ritratti ta' tifel li kien imur l-iskola tieghu u huwa staqsih jekk kienx insteraq il-mobile t'ommu u meta dan irrispondih fl-affermattiv huwa kellem lil omm dan it-tifel u qalilha li l-mobile phone taghha kien qieghed ghandu. Leon Schiavone gharaf lill-imputat bhala l-persuna li minghandu xtara il-mobile phone in dizamina.

In kwantu jirrigwarda s-serqa tal-21 ta' April 2012 Roderick Briffa li xehed waqt l-udjenza tat-22 ta' Gunju 2012 spjega li fl-imsemmija data ghall-habta tal-4.00pm huwa kien qed jghabbi xi ghodda minn gewwa l-garaxx tieghu il-Kalkara, kellu l-vann miftuh u malli dahal fil-garaxx u rega' hareg sab il-mobile phone li kien halla fil-vann u li kien tal-marka Nokia 97 u jiswa €365 nieqes. Maverick Zammit li xehed f'dawn il-proceduri waqt l-udjenza tal-4 ta' Ottubru 2012 spjega li aktar kmieni f'dik is-sena waqt li kien qieghed barra d-dar tieghu l-Kalkara avvicinah l-imputat Oglive Grima u wrieh mobile phone li huwa identifika bhala dak li jidher fil-faxxikolu ta' ritratti a fol. 31 et sequitur u staqsih jekk riedx jixtrih u waslu fi ftehim li huwa jaghtih il-mobile tieghu u jzidu €26 u li kellu jghaddilu c-charger aktar tard. Zammit qal li l-ghada filghodu huwa biegh dan il-mobile li kien xtara minghand l-imputat lil certu Darren Abela. Mill-provi rrizulta li l-Pulizija waslet sabiex tirrintraccja dan il-mobile phone wara li nghatat informazzjoni mis-service provider[1] li dan ic-cellulari kien qed jintuza minn Darren Abela. Il-Pulizija mbaghad kellmu lil dan tal-ahhar li nfurmahom li kien xtara l-mobile phone minghand Maverick Zammit.

Ikkunsidrat:

[1] Ara xhieda ta' Stefan Balzan u dokument minnu esebit a fol. 89 sa 92 tal-atti processwali.

Illi f'dawn il-proceduri ma hemmx dubju li l-Prosekuzzjoni rnexxilha tipprova sal-grad rikjest mill-Ligi li l-imputat kien fil-pussess taz-zewg mobile phones in dizamina ftit taz-zmien biss wara li dawn insterqu u li huwa mbaghad bieghhom lil terzi persuni li lkoll identifikawh bhala l-persuna li kien bieghilhom il-mobile phones. L-imputat ma ta ebda spjegazzjoni accettabbli jew verosimili 'il ghala dawn il-mobile phones li kienu ghadhom kemm insterqu kienu fil-pussess tieghu. F'dan il-kaz irid ghalhekk jigi determinat jekk l-indizju wahdu tal-pussess huwiex bizzejjed sabiex jillegittima l-konkluzjoni ta' reita' fuq imputazzjoni ta' serq jew ricettazjoni. F'dan ir-rigward il-Qorti tixtieq taghmel referenza ghal dak li qalet il-Qorti tal-Appell Kriminali f'sentenza tal-11 ta' Marzu 1993 fil-kawza fl-ismijiet 'Pulizija vs Melchior Spiteri' fejn inghad is-segwenti dwar it-teorija tar-recent possession:-

"Illi fuq id-dottrina fuq 'recent possession' jezistu diversi sentenzi ta' din il-Qorti u sejra ssir riferenza ghal sentenza minnha moghtija kif presjeduta fit-3 ta' Ottubru, 1985 in re: Il-Pulizija kontra Anthony Gatt. F'dik is-sentenza kif ukoll anke f'ohrajn gie rilevat illi skond gurisprudenza kostanti ta' dawn il-Qrati, ghad li huwa indubitat illi l-pussess tal-haga misruqa huwa indizju ferm qawwi ta' reat ta' serq jew ta' ricettazzjoni, irid ikun hemm elementi ohra ta' prova li b'xi mod isahhu l-prova li tigi minn dak l-indizzju. Imbaghad meta l-oggett misruq huwa haga li tghaddi facilment minn id ghal ohra, il-pussess irid ikun ukoll recenti u aktar ma l-oggett ikun tali li jghaddi malajr minn id ghal ohra, aktar il-pussess, biex ikun indizzju ta' serq, ghandu jkun recenti b'mod illi certu perjodu jista' jkun ricenti ghal certu xorta ta' oggetti u mhux recenti ghal xorta ohra ta' oggetti aktar facilment zmercjabbli. (ara ukoll sentenza ta' din il-Qorti: Il-Pulizija vs C.Costa VOL. XXXII.pt.,4 pag. 723)."

Il-Qorti taghmel ukoll referenza ghal dak li qalet l-istess Qorti tal-Appell Kriminali fis-sentenza tas-26 ta' Awissu 1998 fil-kawza fl-ismijiet 'Pulizija vs Emanuel Seisun et' fejn intqal is-segwenti:-

"*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-ahjar edizzjoni ta' Archbold peress li hi tal-fehma li l-bran li gej jittratta 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 aso 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 fron* <u>*Cross on Evidence*</u>*, 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 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 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 the other available evidence" (*Archbold: Criminal Pleading, Evidence and Practice, 1997, paras. 21-125, 21-126);

U aktar 'il quddiem jinghad:

What consistutes "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 judgement 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 l-Qorti jidrilha li l-fatt li gie pruvat li fil-granet immedjatament wara li nsterqu l-oggetti misruqa

kienu fil-pussess tal-imputat u huwa ma ta l-ebda spjegazzjoni l-ghala dawn kienu fil-pussess tieghu kif ukoll il-fatt li n-natura tal-oggetti misruqa hija ta' oggetti facilment smercjabbli l-Qorti jidrilha li l-indizju tal-pussess jista' jwassalha sabiex tasal ghar-reita' tal-imputat odjern ghal ricettazzjoni izda mhux ghal serq.

Il-Qorti jidrilha li l-Prosekuzzjoni rnexxilha tipprova wkoll li l-imputat ikkommetta reat waqt perijodu operattiv ta' sentenza sospiza u li huwa recidiv (ara sentenzi inseriti a fol. 77 sa 84) u huwa ser jinstab hati anki ta' dawn l-imputazzjonijiet.

Ghal finijiet ta' piena l-Qorti kkunsidrat il-fatt li l-imputat huwa recidiv u li huwa diga' nghata l-opportunita' minn dawn il-Qrati sabiex jirriforma ruhu u dan f'aktar minn okkazzjoni wahda u fic-cirkostanzi jidrilha li ghandha timponi piena karcerarja effettiva u li ghandha tirrendi operattiva s-sentenza sospiza moghtija fil-konfronti tal-imputat fit-23 ta' April 2008.

Ghal dawn il-motivi u wara li rat l-Artikoli 334(a), 279(a), 17, 31, 49, 50, 28A sa H u 289 tal-Kodici Kriminali, il-Qorti ssib lill-imputat hati tat-tieni(2), tar-raba'(4), tal-hames(5) u tas-sitt(6) imputazzjoni migjuba fil-konfronti tieghu u tikkundannah tlettax(13)-il xahar prigunerija. Il-Qorti inoltre tordna li l-perijodu ta' sittax(16)-il xahar prigunerija sospizi li gie kkundannat permezz tas-sentenza tat-23 ta' April 2008 jigu fis-sehh b'effett millum sabiex b'hekk l-imputat ghandu jiskonta perijodu kumplessiv ta disgha u ghoxrin xahar(29) prigunerija. In vista tal-fatt li l-ewwel(1) u t-tielet(3) imputazzjoni nghataw bhala alternattiva ghat-tieni(2) u r-raba'(4) mputazzjoni li taghhom l-imputat qed jinstab hati l-Qorti qed tastjeni milli tiehu konjizzjoni ulterjuri ta' dawn l-imputazzjonijiet.

< Sentenza Finali >

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