MALTA

QORTI TAL-MAGISTRATI (MALTA)

BHALA QORTI TA' GUDIKATURA KRIMINALI

MAGISTRAT

ANTONIO GIOVANNI VELLA

Seduta tas-6 ta' Frar, 2014

Numru. 50/2013

Il-**Qorti;**

Wara li rat l-imputazzjonijiet migjuba kontra:

Jean Pierre Mamo ta' 30 sena bin Emanuel u Loisann xebba Robishear imwieled il-Pieta nhar 7 ta' Ottubru 1982, residenti gewwa 119, Portelli Crt, Flt 6, triq il-Kampanella, Fgura u detentur tal-karta ta' l-identita bin-numru 546182M.

Talli;

1. F’xi hin fil-lejl ta’ bejn il-31 ta’ Dicembru 2012 u l-1 ta’ Jannar 2013, gewwa residenza bl-indirizz Binja Imsierah, Ent B, Flat 5, triq Ismek tifhierek, San Gwann ikkommetta serq ta’ diversi oggetti liema serq hu kwalifikat bil-lok, mezz, hin u valur li jeccedi l-elefejn u tlett mija u disgha u ghoxrin Euro u sebgha u tletin centezmu (€2,329.37) liema serq sar ghad-dannu ta’ Fiona Zammit u/jew persuni ohra.

2. U aktar talli nhar it-3 ta’ Jannar 2013 u granet qabel, gewwa l-Fgura u f’dawn il-gzejjer xjentement laqa ghandu jew xtara hwejjeg misruqa, mehuda b`qerq, jew akkwistati b`reat. Sew jekk dan sar f’Malta jew bbara minn Malta, jew, xjentement, b’kull mod li jkun indahhal biex ibieghu jew imexxih liema oggetti huma laptop tal-marka Acer u Xbox li sar ghal detriment ta’ Fiona Zammit u/jew persuni ohra.

3. B’hekk sar recidiv b`diversi sentenzi tal-Qorti liema sentenzi saru definittivi u ma jistghux jigu mibdula jew imhassra u dan ai termini 49, 50 u 289 tal-Ligijiet ta’ Malta.

4. Ukoll talli naqas milli jhares xi wahda u/jew iktar minn wahda, mill-kondizzjonijiet imposti fuqu mill-Qorti tal-Magistrati (Malta) bhala Qorti Istruttorja, Magistrat, Dr. A. Demicoli LL.D b'digriet datat 24 ta' Settembru 2010, li permezz tieghu huwa nghata il-helsien mill-arrest that diversi kundizzjonijiet, fosthom li ma jikkommettix delitt iehor ta' natura volontarja.

Rat id-dokumenti kollha ezebiti;

Rat l-atti kollha tal-kawza;

Semghet ix-xhieda prodotta;

Ikkunsidrat;

Il-fatti li kienu taw lok ghal din il-kawza kienu, in succinct, is-segwenti. Kien sar rapport lill-Pulizija li bejn il-lejl tal-31 ta' Dicembru 2012 u l-1 ta' Jannar 2013, kienet saret serqa minn gewwa residenza fil-lokalita' ta' San Gwann, fejn kienu

gew misruqa diversi oggetti, fosthom ‘computer’ tat-tip ‘notebook’ tad-ditta ACER, apparat elettroniku tat-tip X-BOX, xi flus kontanti u oggetti ohra. Ftit tal-jiem wara, dahal rapport iehor minn ghand sid ta’ hanut tal-elettronika, li kien gie f’idejh ‘notebook’ li seta’ kien misruq. Mill-indagini li ghamlet il-Pulizija, gie identifikat in-‘notebook’ in kwistjoni li kien l-istess wiehed li nsteraq minn San Gwann ftit iljieli qabel. Il-Pulizija waslet ghall-imputat bhala l-persuna li kellu pussess ta’ dan in-‘notebook’, u li hu t-tfajla tieghu kien hadu f’dan il-hanut ghat-tiswija. L-imputat kien interrogat mill-Ufficjal Investigattiv u ttiehdet stqarrija tieghu, fejn hu kien ammetta li kien xtara dan in-‘notebook’ minn ghand wiehed ‘junkie’ ma jafx x’jismu, u li seta’ kien misruq. Ghalhekk il-Pulizija ressqitu fuq is-serqa u alternattivament fuq ricettazzjoni.

Mill-provi prodotti ma hemmx ombra ta’ dubju li n-‘notebook’ in kwistjoni kien fil-pussess ta’ Mamo, u li kellu suspett li seta’ kien misruq. Dan jirrisulta ampjament mill-istqarrija tieghu, u minn provi ohra indizzjari prodotti f’din il-kawza. Fil-fatt, dan in-‘notebook’ kien inghata minn Mamo lill-gharusa tieghu, li min-naha taghha tatu lil huha biex ikun jista’ jissewwa ghad xi hadd, peress illi ma setghetx tixeghlu. Huha, Richard Deceles, hadu ghand hanut gewwa l-Fgura u meta gie spezzjonat, is-sid tal-hanut Glenn Vella induna li kien hemm xi haga mhux sewwa, u ghalhekk allerta lill-Pulizija. Kien f’dan il-mument, wara l-indagni li ghamlet il-Pulizija, li n-‘notebook’ instab li kien l-istess wiehed li nsteraq xi jiem qabel. Ghalhekk il-Pulizija rintraccjat l-origini tan-‘notebook’ ghal Jean Pierre Mamo, li fl-istqarrija tieghu, b’disinvoltura, qal li xtrah minn ghand ‘junkie’ u li ma kienx jinteressah kienx misruq jew le.

Issa, sabiex ir-reat ta' ricettazzjoni jissussisti, hemm elementi rikjesti mil-ligi li jridu jirrisultaw. l-Qrati taghna kienu espliciti u univoci f'dan ir-rigward. Hekk, per ezempju, il-Qorti tal-Appelli Kriminali kienet qalet fis-sentenza fl-ismijiet **"Pulizija v. Darren Debono",** deciza fil-15 ta' Jannar, 2009:

"Illi skond il-gurisprudenza sabiex persuna tinstab hatja ta' ricettazzjoni hu mehtieg li jikkonkorru is-segwenti tlitt rekwiziti u cioe' :

1. il-provenjenza llegittima tal-oggett in kwistjoni ossia li jkun insteraq, jew gie mehud b' qerq jew akkwistat b' reat iehor;
2. l-akkuzat irid ikun laqa' ghandu jew xtara tali oggett li ghandu provenjenza llegittima w
3. fil-mument tal-akkwist, l-akkuzat kien jaf bil-provenjenza llegittima tal-oggett in kwistjoni (ara App. Krim **"Il-Pulizija vs. Bugelli"** [24.1.1942]**; "Il-Pulizija vs. Giovanni Grima"** [25.10.2002])

L-element formali ta' dar-reat hu li l-akkuzat kien konsapevoli tal-provenjenza illecita tal-oggett suggett tar-ricettazzjoni. Dan ir-rekwizit jista' jigi pruvat kemm minn provi diretti kif ukoll minn provi indizjarji. Hekk fl-Appell Kriminali **"Il-Pulizija vs. John Briguglio"** [24.6.1961] (per Harding J.) kien gie ritenut li :-

"*Min jakkwista oggett taht cirkostanzi li fihom imissu jissuspetta li dak l-oggett kellu provenjenza illegittima, u ntant ma jaghmel xejn biex jikkontrolla dik il-provenjenza, u jaghalaq ghajnejh, huwa hati ta' din in-negligenza u kwindi ta' ricettazzjoni.*"

Gie ukoll ritenut li dan l-element formali tar-reat in dizamina ikun jissussisti anki jekk l-akkuzat ikun irceva jew xtara l-oggett fil-waqt li jkollu jew inkella

imissu kellu suspett li l-persuna li taghtu dak l-oggett setghet giet f' pussess ta' dak l-oggett b' mod illecitu w b' dana kollu xorta jilqa' ghandu jew jixtri tali oggett minghajr ma jaghmel xejn biex jivverifika u jaccerta ruhu li l-pussess ta' dik il-persuna l-ohra kien wiehed legittimu u mhux kif kien qed jissusspetta hu. (ara App. Krim. **"Il-Pulizija vs. J. Briguglio"** [24.6.1961]; **"Il-Pulizija vs. John Dimech"** [24.6.1961]; **"Il-Pulizija vs. George Tabone"** [24.6.1961] u "**Il-Pulizija vs. Tancred Borg"** [26.10.1998])

S' intendi ix-xjenza mehtiega fir-ricettatur tirrigwarda l-provenjenza kriminuza generika u ma tirreferix ghad-dettalji specifici tar-reat principali. (Ara App. Krim. **"Il-Pulizija vs. Joseph Piscopo"** [21.3.1953]; "**Il-Pulizija vs. Nazzareno Zarb"** [16.12.1998] u ohrajn)

Kif jghid il-KENNY :

"The knowledge : The prisoner must have received the stolen goods with knowledge then of their having been stolen.. <u>Such knowledge may be presumed prima facie if he knew of circumstances so suspicious as to convince any reasonable man that the goods had been stolen - e.g. …when an unlikely vendor offers them for an unlikely price … His subsequent conduct may be evidence of such knowledge - e.g. .. selling them surreptitiously … or making no written entry of having bought them."</u>

Illi kif qalet din il-Qorti diversament preseduta (per V. De Gaetano J., fl-Appell Kriminali : "**Il-Pulizija vs. Emanuel Seisun et."[**26.8.1998]); it-teorija Ingliza *"of unlawful possession of recently stolen goods*" issib ukoll applikazzjoni fis-sistema legali taghna, ghax in tema ta' *"law of evidence"* il-gurisprudenza taghna ssegwi hafna dik Ingliza. Din it-teorija ma hi xejn hlief l-applikazzjoni tal-buon sens ghal cirkostanzi partikolari li jkunu jirrizultaw pruvati, fis-sens li meta jigu ppruvati certi fatti, dawn jistghu wahedhom iwasslu ragjonevolment ghall-

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.

F’ dik is-sentenza din il-Qorti ccitat mill-**Archbold** : Criminal Pleading, Evidence and Practice, 1997, paras. 21-125, 21-126):-

“In R. v. Smythe, 72 Cr. App. R. & 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 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 is satisfied that the explanation he does offer is untrue.”*

“Every case depends on its own facts. ….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.” (ara ukoll f' dan is-sens **:"Il-Pulizija vs.**

Carmel Debono" [1.11.1996], **"Il-Pulizija vs.Richard Spiteri "** [31.8.2006] u ohrajn).”

Ghalhekk jidher car illi, skond din l-istess gurisprudenza, il-fatt li l-imputat seta’ jippresumi li n-‘notebook’ kien misruq iqeghdu fl-istess keffa daqslikieku kien hu li seraq l-oggett in kwistjoni. Ghalhekk l-imputat ghandu jinstab hati tar-reat ta’ ricettazzjoni.

Kwantu ghar-reat ta’ serq aggravat, ma jidherx li gie ppruvat li kien l-imputat li dahal jisraq minn gor-residanza privata f’ San Gwann, izda zgur li kien fil-pussess ta’ oggett misruq. Ghalhekk il-Qorti sejra ssibu hati tar-reat ta’ ricettazzjoni. L-addebitu tar-recidiva giet ukoll ippruvata, u ghalhekk il-Qorti sejra taghti piena ta’ prigunerija effettiva.

Ghal dawn il-motivi l-Qorti;

Wara li rat l-Artikoli 263, 267, 269, 270, 278, 280(2), 334, 579 (1),(2),(3), 533, 17, 31, 49, 50 u 289 tal-Kapitolu 9 tal-Ligijiet ta’ Malta;

Din il-Qorti qieghda issib lill-istess imputat hati ta' l-akkuzi indikati bhala numru tnejn (2), tlieta (3) u erbgha(4) u tikkundannah ghall-piena ta' hmistax (15)-il xhar prigunerija,

Ma ssibux hati tal-ewwel (1) imputazzjoni, u ghalhekk qieghda tilliberah minnha.

Il-Qorti spjegat il-portata ta' din is-sentenza lill-imputat.

DR ANTHONY G VELLA BA. LL.D. M.A.

MAGISTRAT

< Sentenza Finali >

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