MALTA

QORTI TAL-MAGISTRATI (MALTA)

BHALA QORTI TA' GUDIKATURA KRIMINALI

MAGISTRAT DR.

EDWINA GRIMA

Seduta tat-12 ta' Marzu, 2014

Numru. 373/2013

Il-**Pulizija**

(Spettur Godwin Scerri)

Vs

Martin Farrugia ta' 50 sena iben Joseph u Mary xebba Sapiano, imwieled il-Pieta' nhar 19/05/1963, u residenti Flat 16, Blk A, Triq Erbgha Imwiezeb, San Pawl il-Bahar u detentur tal-karta ta'l-identita' numru 290263(M)

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat Martin Farrugia akkuzat talli nhar il-15 ta' Mejju 2013 bejn it-8:00am u s-6:00pm minn gewwa l-Foss ta' Crownworks fil-Furjana ikkometta serq, ikkwalifikat bil-valur, bil-mezz u bix-xorta tal-haga misruqa, ta' stereo ta' karozza u dan bi ksur tal-***Kapitolu 9 Artikolu 261(b)(c) u (g) tal-Ligijiet ta' Malta***.

Akkuzat ukoll talli l-istess zmien, lok u cirkostanzi, xjentement laqa' ghandu jew xtara hwejjeg misruqa, mehuda b'qerq, jew akkwistati b'reat, kemm f'Malta kif ukoll barra minn Malta u dan bi ksur tal-***Kapitolu 9 Artikolu 334(a)***.

Il-Qorti giet mitluba li f'kaz ta' htija tikkonsidra lil Martin Farrugia bhala recidiv u dan ai termini ta' ***Artikolu 49, 50 u 289 tal-Kapitolu 9 tal-Ligijiet ta' Malta***.

Rat il-kunsens ta'l-Avukat Generali tas-17 ta' April 2013 sabiex 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 fil-15 ta’ April 2013 il-pulizija ircevew rapport minn ghand certu Mary Grace Spina illi hija kienet vittma ta’ serqa li sehhet minn gewwa il-vettura taghha meta kienet ipparkeggjata fil-Foss maghruf bhala Crown Works gewwa l-Furjana. Il-malviventi kisbu access ghal gewwa l-vettura billi kissru l-hgiega ta’ dina l-vettura tan-naha tal-passiggier u serqu stereo tal-marka Clarion, kulur iswed, mill-istess vettura. Illi hekk kif dahal dan ir-rapport il-pulizija li kienu on duty gewwa il-Furjana f’dik il-lejla osservaw lill-imputat li kien qieghed idur fl-akwati li kellu basket tac-carruta f’idejh. Fil-kumpanija tieghu kien hemm persuna ohra maghrufa mall-pulizija, certu Ivan Galea, maghruf bhala il-Giza. L-imputat gie imwaqqaf mill-pulizija u gie mistoqsi x’kellu f’dana il-basket u hu wiegeb li kellu l-ikel, izda jidher illi dan il-basket habat mal-vettura tal-pulizija fejn is-surgent 206 Brian Aquilina innota illi kien hemm xi haga iebsa fih u ghalhekk talab lill-imputat jurih il-kontenut tieghu fejn fost affarijiet ohra, f’dan il-basket, instab proprju stereo, kulur iswed tal-marka Clarion bin-numru serjali CLO73660029817. L-imputat u siehbu ghalhekk gew arrestati u mehuda gewwa l-ghassa tal-pulizija tal-Belt ghall-aktar stharrig. Illi wara li l-vittma kienet hadet il-vettura taghha gewwa id-Depot tal-Pulizija sabiex isiru l-ezamijiet forensici fuq l-istess, hija regghet giet imsejjha gewwa l-ghassa tal-pulizija, fen giet murija l-istereo li kien gie misjub fil-pussess ta’l-imputat fejn hi ikkonfermat quddiem il-WPC9 Abigail Pomroy illi dan l-istereo kien taghha u kien l-istess wiehed li kien insterqilha iktar kmieni fl-istess jum mill-vettura taghha. Illi jidher illi dana l-istereo baqa’ fil-pussess tal-pulizija u qatt ma gie esebiet in atti.

L-imputat jigi interrogat fejn jirilaxxja stqarrija u isostni illi l-istereo li kien instab fil-pussess tieghu kien xtrah ghal prezz ta’ €20, izda ighid illi ma jafx minn ghand min kien xtrah. Isostni li kien akkwista dana l-istereo bil-ghan li jerga’ ibieghu u jaghmel qligh minnu, izda ma kienx jaf li l-istess kien misruq. Jikkonferma illi huwa kien fil-kumpanija ta’ Galea maghruf bhala il-Giza u li kienu il-Furjana f’dik il-lejla ghaliex il-Giza kien mar izur lil kuginuh. Illi mill-istqarrija tal-imputat jirrizulta illi il-pulizija sabu stereo iehor fil-kamra ta’l-imputat x’aktarx wara li saret xi tfittxija, izda mill-provi akkwiziti ma jissemma xejn dwar dan it-tieni stereo u l-investigazzjonijiet ulterjuri li saru mill-pulizija

fir-residenza ta'l-imputat. Fl-ahharnett l-imputat jammetti illi huwa ghandu il-vizzju tad-droga u ilu afflitt minn dana l-vizzju ghal zmien twil[1].

Ikkunsidrat,

Illi l-prosekuzzjoni fid-dawl tal-provi migjuba quddiem il-Qorti qieghda tinvoka t-teorija elaborata minn gurisprudenza 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 gurisprudenza 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-prosekuzzjoni tallega illi l-oggett misruq, mertu ta' din il-kawza kien fil-pussess ta'l-imputat ftit tal-hin wara li kien gie misruq u li l-imputat siehbu instabu iduru fl-akwati fejn sehhet dina s-serqa ftit tal-hin wara. Illi f'sentenza moghtija mill-Qorti ta'l-Appelli Kriminali (per.Imhallef 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 gurisprudenza 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

[1] Ara stqarrija Dokument GS a fol.6

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)."

Ikkunsidrat,

Illi maghdud dana kollu, mill-provi migjuba, b'applikazzjoni tat-teorija hawn fuq citata, il-Qorti ma tistax tasal ghal konkluzjoni minghajr dubbju ragjonevoli illi l-imputat jista' jinstab hati ta'l-akkuza tas-serq u dana peress illi l-ebda prova fl-atti processwali ma tista' twassal ghal fatt illi l-imputat seta kien l-awtur jew komplici f'dana ir-reat. Dana qed jinghad peress illi l-malviventi ma gewx identifikati u provi indizzjarji fuq ix-xena tar-reat ma instabux. Ghalhekk ma gie ippruvat l-ebda ness bejn l-att tas-serq u l-imputat. Di piu ghalkemm jidher illi kienu saru ezamijiet forensici fuq il-vettura tal-parti leza, madanakollu dawn il-provi qatt ma gew esebieti in atti. Ma jirrizultax ghalhekk jekk gewx elevati xi impronti digitali minn fuq dina l-vettura li setghu jaqbblu ma' dawk ta'l-imputat. L-istess ma jistax jinghad, izda, ghall-akkuza tar-ricettazzjoni illi b'applikazzjoni tat-teorija hawn fuq indikata twassal lil Qorti ghal konkluzjoni illi l-imputat kien fil-pusess ta'l-istereo in kwistjoni ftit tal-hin wara li sehhet ir-reat u kien ben konsapevoli tal-fatt illi dan kien misruq, tant illi meta gie arrestat u interrogat huwa gideb u ivvinta storja li ma taghmilx wisq sens meta jistqarr li xtrah bil-ghan li ibieghu minn ghand xi hadd mhux maghruf. Inoltre meta mistoqsi mill-pulizija x'kellu fil-basket huwa gideb u qal li kellu l-ikel meta fil-fatt huwa kellu l-istereo misruq f'dana l-basket. Li kieku kien minnu illi l-imputat kien akkwista dana l-istereo bis-sewwa, ma kien ikollu l-ebda raguni 'il ghala jigdeb lill-pulizija. Kwindi l-Qorti ser issib htija ght-tieni imputazzjoni billi l-imputat kien fil-pussess ta'l-istereo misruq ftit tal-hin qabel mill-vettura tal-

parti leza u ma hemmx dubbju li hu kien konsapevoli tal-fatt illi l-istess stereo kien derivanti minn serq.

Illi mill-provi akkwiziti ukoll jirrizulta illi l-imputat huwa recidiv u dana kif jidher mis-sentenzi li gew esebieti in atti[2].

Ghaldaqstant l-Qorti wara li rat l-artikolu 334(a), 49, 50 u 289 tal-Kapitolu 9 tal-Ligijiet ta' Malta, filwaqt li tillibera lill-imputat mill-ewwel akkuza migjuba fil-konfront tieghu, issibu hati tal-kumplament u tikkundannah ghal perijodu ta' tmien xhur prigunerija.

< Sentenza Finali >

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[2] Ara sentenzi Dokumenti GS3 u GS4 a fols.52 et.seq.