



MALTA

QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI
MAGISTRAT DR.
EDWINA GRIMA

Seduta tat-12 ta' Marzu, 2014

Numru. 1239/2010

Il-Pulizija

(Spettur Joseph Agius)

Vs

**Larken Marquette ta' 24 sena, iben Anthony Marquette u Carmela Giovanna
nee' Mifsud, imwieled ir-Rumanija fis-17 ta' Dicembru 1989 u detentur tal-
karta ta'l-identita' numru 0577089(M)**

Il-Qorti,

Kopja Informali ta' Sentenza

Rat l-imputazzjonijiet migjuba kontra l-imputat Larken Marquette akkuzat talli gewwa l-Marsa matul ix-xahar ta' Novembru u ix-xhur ta' qabel irrenda ruhu komplici fis-serq minn gewwa r-residenza nru.49, Triq Stiefnu Zerafa, Marsa, li hija r-residenza ta' Keith Pace liema serq huwa kwalifikat bil-valur billi l-valur jaqbez elfejn u disgha u ghoxrin euro u sebgha u tletin centezmu (Eur2329.37) u bil-lok.

U akkuzat ukoll talli dawn l-ahhar xhur fil-Marsa, matul ix-xahar ta' Novembru 2010 u matul ix-xhur ta' qabel din id-data, b'diversi atti maghmulin minnu ukoll jekk fi zminijiet differenti u li jiksru l-istess disposizzjonijiet tal-ligi, u li gew maghmulin b'risoluzzjoni wahda xjentement laqa' ghandu jew xtara hwejjeg misruqa, mehuda b'qerq, jew akkwistati b'reat sew jekk dan sar f'Malta jew barra minn Malta jew xjentement b'kull mod indahal biex ibieghhom jew imexxiehom billi accetta ghandu deheb misruq li jammonta ghal aktar minn 16305 EUR u 15000.00EUR fi flus kontanti ghad-dannu ta' Maria Rosaria Grixti u Keith Pace.

Rat in-nota ta' rinviju ghal gudizzju ta'l-Avukat Generali tas-17 ta' Marzu 2011.

Semghet lill-imputat jiddikjara illi huwa ma kellux oggezzjoni 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 minn qari tan-nota ta' rinviju ghal gudizzju ta' l-Avukat Generali jidher illi l-imputat qed jigi addebitat b'zewg reati, dak tal-komplicita fis-serq kif ukoll ir-reat tar-ricettazzjoni.

Illi fir-rigward tar-reat tal-komplicita fis-serqa ta' flus u deheb ghad-detriment ta' Keith Pace u Maria Grixti, jigi rilevat illi l-Avukat General fin-nota ta' rinviju ghal gudizzju ghalkemm jindika id-disposizzjoni ta' l-artikolu 42 tal-Kodici Kriminali li jitkellem dwar il-komplicita', madanakollu ma jindikax liema sub-inciz ta' l-istess disposizzjoni tal-ligi tapplika ghal kaz in dizamina. Il-Professor Mamo fin-noti tieghu ighid is-segwent i dwar 'l hekk imsejjah *concursum delinquentium*:

“A man may be held responsible for an offence, even though he may not have done the act which constitutes the offence, if he had done some other act which has helped towards the commission of the offence and had done the act in pursuance of a common design to commit that offence.” (sottolinjar tal-Qorti).

Ikompli:

“There cannot be a ‘concursum delinquentium’ without a common design to commit a specific offence. The general principle that a man is responsible for an offence only if the act was voluntarily and knowingly committed by him, applies to each of the parties to the offence. ...”

Illi l-Prosekuzzjoni f'dan il-kaz tallega illi kien l-imputat illi ikkummissjona jew stieden lil Ambra Grixti, li maghha allegatament huwa kellu relazzjoni amoruza,

sabiex tisraq il-flus ta' Keith Pace mid-dar ta' ommha kif ukoll sabiex tisraq id-deheb ta' ommha u tghaddiehom lilu. Illi l-unika prova li rressqet il-Prosekuzzjoni dwar dana il-fatt hija ix-xhieda ta' Ambra Grixti stess, li xehdet billi il-proceduri kriminali fil-konfront taghha fuq dana l-kaz kienu ghaddew in gudikat. Provi ohra fl-atti li jimplikaw lill-imputat fis-serq ta' dawn il-flus u l-oggetti tad-deheb ma hemmx.

Ambra Grixti fix-xhieda taghha issostni illi hija kellha relazzjoni amoruza ma'l-imputat ghalkemm ma kenux johorgu flimkien. Tghid illi hija ma kenitx thobbu u taf illi hu fil-fatt kellu tfajla. Issostni illi l-imputat kien gharrafha li kellu problemi finanzjarji ghax kellu ihallas xi djun in konnessjoni mal-vizzju tiehu tad-droga u ghalhekk talabha tghinu. Tghid illi hija thassritu u ghalhekk serqet dawn il-flus u deheb mid-dar ta' ommha u ghaddiethom lilu. Mistoqsija mill-Qorti jekk kienx l-imputat li ordnalha tisraq dawn il-flus sabiex tghaddiehomlu hija twiegeb fin-negattiv u tghid illi huwa qatt ma talabha taghmel dan u tghid illi huwa kien talabha tisilfu dawn il-flus. Issostni ukoll illi l-imputat kien konsapevoli tal-fatt illi l-flus li ghaddietlu fl-ammont ta' €15000 kienu jappartjenu lis-sieheb ta' ommha Keith Pace, li f'dak iz-zmien kien qed jiskonta piena karcerarja fil-habs u ghalhekk ma kienx qed jirrisjedi maghhom. Tghid illi hija dawn il-flus u deheb ghaddiethomlu f'perijodu ta' xahar, bil-flus jigu mghoddija lill-imputat f'tlett pagamenti separati ta' €5000 il-wiehed. Issostni illi hija ma kienet tallbet xejn lill-imputat ghal dan il-"pjacir" u kienet ghamlitu minn jeddha u ghax kienet thassritu.

L-imputat minn naha tieghu kemm meta jigi interrogat ma'l-arrest tieghu, kif ukoll meta jixhed fil-Qorti jinnega illi Grixti kienet ghaddietlu dawn il-flus u deheb. Issostni illi hu u missieru kienu offrew li ihallsu lura xi flus lil Maria Grixti u lil Pace ghaliex hasbu illi dawn kienu xi ammonti zghar li kienet ghaddietlu Ambra biex jixtri il-playstation u meta l-imputat gie mgharraf illi kien hemm ammont kbir ta' flus involut, huwa innega kategorikament illi Grixti kienet qatt ghaddietlu xi deheb jew flus kif irrappurtat.

Illi ghalkemm kienet saret inkjesta magisterjali rigward dana l-kaz, madanakollu ir-rapporti ta'l-esperti fl-inkjesta ma jitfghux wisq dawl fuq dak li realment sehh u ma instabux provi indizzjarji ohra li jistghu b'xi mod jimplikaw lill-imputat fil-kummissjoni ta' dana ir-reat jew komplicita fl-istess.

Ghaldaqstant minn dawn il-provi fjakki l-Qorti tistqarr illi issibha ferm diffiċli tistabbilixxi jekk kienx jezisti il-*concursum delinquentium* li titkellem dwarha il-ligi u il-gurisprudenza bejn l-imputat u Grixti. Illi jekk ghal grazzja ta'l-argument il-Qorti kellha temmen il-verzjoni ta' Grixti u mhux ta'l-imputat, xortawahda mix-xhieda taghha ma jirrizultax illi kien l-imputat illi stieden lil Grixti tisraq ammont hekk kbir ta' flus u deheb u tghaddiehom lilu. Grixti tghid li thassritu u ghaddiehomlu, izda ma jirrizultax ir-raguni 'il ghala dina it-tfajla kellha tiehu riskju daqshekk kbir ghal guvni semplicement ghax tithassru, meta kif tghid hi stess la kienet thobbu u lanqas kellha xi infatwazzjoni warajh. Illi l-Prosekuzzjoni tallega ukoll illi bil-fatt illi l-imputat mal-arrest tieghu kien offra lil Maria Grixti li ihallasha lura xi flus huwa kien b'xi mod qed jammetti l-involvement tieghu. Illi bir-rispett kollu, dina l-prova ma tissodisfax il-vot li trid il-ligi fil-kamp penali. Ma twassalx lil Qorti sabiex tistabbilixxi lil hinn minn kull dubbju illi kien l-imputat li instiga il-kummissjoni ta' dana ir-reat u li ghalhekk kien jezisti dan l-hekk imsejha *common design* bejn l-imputat u Grixti. Kwindi fid-dawl ta' dawn il-provi prodotti l-Qorti ma tistax issib htija fl-imputat ghal komplicita fir-reat tas-serq.

Ikkunsidrat,

Illi l-imputat jinsab ukoll akkuzat bir-reat tar-ricettazzjoni. Illi l-elementi legali li isawwru dana ir-reat gew studjati *funditus* b'sentenza moghtija mill-Qorti ta'l-Appell Kriminali (sede inferjuri) fil-kawza fl-ismijiet Il-Pulizija vs Darren Debono¹. F'din is-sentenza, il-Qorti ta'l-Appell ezaminat ukoll it-tejorija elaborata minn giurisprudenza u awturi inglizi dwar "***the unlawful possession***

¹ Per Imhalled Joe Galea Debono deciza 15/01/2009

of recently stolen goods." jew 'l hekk imsejjha "**theory of recent possession**". Il-Qorti ser tirriproduci testwalment dak li qalet dik l-Qorti dwar dana ir-reat:

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

1. il-provenjenza lilegittima 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 lilegittima w
3. fil-mument tal-akkwist, l-akkuzat kien jaf bil-provenjenza lilegittima 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 tant 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.. 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."

Illi ukoll 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.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.”

Illi ma hemmx dubbju illi Ambra Grixti serqet l-ammont ta' €15000 appartenenti lil Keith Pace u ukoll li hadet id-deheb ta' ommha. Madanakollu hemm konfliggenza fil-provi dwar dak illi ghamlet b'dawn l-oggetti. Dana qed jinghad ghaliex l-imputat jinnega illi din Ambra qatt ghaddietlu dawn il-flus jew deheb u li kwindi irceva l-istess minn ghandha. Illi anke jekk ghal grazzja ta' l-argument il-Qorti kellha temmen lil Grixti dwar il-fatt illi hija ghaddiet dawn l-oggetti lill-imputat, ma hemmx prova fl-atti li tista tindika illi l-imputat kien jaf bil-provenjenza illegrittima ta' dawn il-flus ghajr ghal dak li issostni l-istess Ambra Grixti fix-xhieda taghha illi l-imputat kien jaf illi dawk il-flus u deheb ma kenux jappartjenu lilha izda lil ommha u lil Pace. Illi f'dana il-kaz, il-Qorti lanqas tista' tapplika it-tejorija hawn fuq indikata dwar *the recent possession of stolen goods*, billi *r-res furtiva* qatt ma instabet u ma jirrizultax illi l-pulizija ghamlet xi investigazzjoni sabiex tara jekk l-istess kenux ghadhom fil-pussess ta' l-imputat. Mix-xhieda tal-pulizija li investigaw dana il-kaz fosthom l-Ufficjal Prosekutur, ghalkemm jidher illi saret inkjesta magisterjali dwar il-kaz, madanakollu ma jidhirx illi saret xi tfittxija fir-residenza ta' l-imputat sabiex jigi mistharreg jekk huwa kienx ghadu fil-pussess ta' dawn l-oggetti, izda strahu unikament fuq dak li allegat Grixti minghajr ma saru investigazzjonijet ulterjuri dwar per ezempju l-allegat vizzju tad-droga ta' l-imputat, jew l-allegat bejgh ta' l-oggetti tad-deheb lil persuna maghruf bhala "il-bojja", habib ta' l-imputat. Ghalhekk lanqas dina l-akkuza ma tirrizulta sodisfacentement ippruvata.

Ghaldaqstant ghal motivi hawn fuq migjuba il-Qorti qed tillibera lill-imputat mill-akkuzi migjuba fil-konfront tieghu fuq nuqqas ta' provi.

< Sentenza Finali >

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