MALTA

QORTI TAL-MAGISTRATI (MALTA)

BHALA QORTI TA' GUDIKATURA KRIMINALI

MAGISTRAT DR.

MIRIAM HAYMAN

Seduta tal-5 ta' Gunju, 2014

Numru. 490/2012

Il-Pulizija

Spettur Pierre Grech

VS

Nadia Rapinett, bint Carmen Rapinet, imwielda Attard nhar il-5 ta' Gunju, 1976, residenti fil-fond Jesmond Court, Flat 2, Triq l-Iskuna, San Pawl il-Bahar, detentrici tal-karta tal-identita' numru 282776M u passaport Malti numru 789254

Il-Qorti;

Rat l-akkuzi kontra ‘l hawn fuq imsemmija **Nadia Rapinett**, li giet akkuzata talli f’dawn il-Gzejjer u barra minn dawn il-Gzejjer, fit-8 ta’ Mejju, 2012 u matul l-ahhar gimghat qabel din id-data:

a. Assocjat ruhha ma’ xi persuna jew persuni ohra f’dawn il-Gzejjer, jew barra minn dawn il-Gzejjer, sabiex tbiegh jew tittraffika f’dawn il-Gzejjer, medicina (herojina) bi ksur tad-disposizzjonijiet tal-Ordinanza dwar il-Medicini Perikoluzi, Kap 101 tal-Ligijiet ta’ Malta, jew ippromwoviet, ikkostitwixxiet, organizzat jew iffinanzjat tali assoccjazzjoni;

b. U aktar talli saret recidiva wara sentenzi moghtija mill-Qorti tal-Magistrati (Malta), wahda ta’ nhar il-5 ta’ Gunju, 2007 moghtija mill-Magistrat Dr S Demicoli LL.D.,; u ohra ta’ nhar it-8 ta’ Ottubru, 2010 moghtija mill-Magistrat Dr A Mizzi LL.D., liema decizjonijiet saru definittivi;

c. U aktar talli ghamlet reat waqt perjodu operattiv ta’ sentenza sospiza moghtija lilha mill-Qorti tal-Magistrati (Malta), nhar it-8 ta’ Ottubru, 2010 mill-Magistrat Dr A Mizzi LL.D., liema decizjoni saret definittiva.

Rat illi moqrija l-akkuzi, l-imputata wiegbet illi ma kinitx hatja tal-istess;

Rat ukoll l-ewwel Ordni fil-proceduri Istruttorji, mibghuta mill-Avukat Generali u s-sussegwenti Kontro Ordni mibghuta mill-istess Avukat Generali u l-Artikoli taht il-Kapitolu 9 tal-Ligijiet ta’ Malta, u cioe’:

Rat ukoll il-kunsens tal-imputata hemm registrat ghall-istess proceduri sommarji.

Semghet fir-rispett tal-provi prodotti, kemm lill-**Ispettur Pierre Grech** u lill-**Ispettur Victor Aquilina**.

Grech minn naha tieghu xehed dwar informazzjoni li rceviet il-pulizija li kienet diehla persuna bi droga fuqha. Ghalhekk gabu Mandat ta’ Arrest kontra Nadia Rapinett li waslet Malta fl-MIA. Hemm skondtu giet osservata ghal zmien twil

fuq it-telephone. Qal, ghalkemm ghal dan hu ma kinx prezenti, illi hi giet ghalhekk imwaqqfa mill-pulizija minhabba suspett ta’ mportazzjoni ta’ droga. Qal illi gie rapurtat lilu li nstabu fuqha zewg blokok kontenenti plastic beige. Giet arrestata. Gie anke skondtu nfurmat il-Magistrat Inkwirenti u giet ghalhekk mibdija Inkjesta Magisterjali u gew mahtura d-debita esperti. Hadulha wkoll stqarrija wara li giet moghtija d-debita twissija u anke nghatat id-dritt tal-konsulenza legali.

Giet ezebita din l-ewwel stqarrija bhala Dok PG1. Din giet minnha rilaxxata fil-presenza ta’ PS 1174 Adrian Sciberras, kif aktar tard minnu kkonfermat.

Zied illi aktar tard l-istess Rapinett ghazlet illi tikkopera mal-pulizija u dan fir-rigward tal-Artikolu 30B tal-Kapitolu 9 101 tal-Ligijiet ta’ Malta (ukoll 24A tal-imsemmi Kapitolu).

Irrilaxxat it-tieni stqarrija, minnu ezebita bhala Dok PG2 (folio 36).

Ezebixxa wkoll l-Ispettur Dok PG li kienet id-dikjarazzjoni tar-rifjut ta’ parir legali tal-istess Rapinett (folio 31).

L-Ispettur Victor Aquilina qal illi hu fl-Awla kien jaghraf lil Nadia Rapinett. Qal illi harset lejh u donnha riedet tkellmu. Kienet tafu f’kazijiet familjari taghha meta hu kien fid-Distrett. Qal illi wrietu x-xewqa li taghti iktar informazzjoni, anke biex tibbenefika mill-Artikolu 29 tal-Kapitolu 101 tal-Ligijiet ta’ Malta. Qal illi hi kienet qed tibza’. Qal illi pero meta rega’ kellimha mhux talli riedet taghmel stqarrija guramentata, imma anke *controlled delivery*. Jghid illi ngab il-kunsens ghal dan minghand il-Magistrat Inkwirenti u pprocedew b’hekk.

Zied illi Rapinett lilu kienet qaltlu li certu Robert - ghal min hi kienet qieghda ggib id-droga, gia’ kien taha hames mitt Ewro (€500) biex taghmilha ta’ *courier* tal-istess sustanza, u kien wieghda li jaghtiha elf Ewro (€1,000) kif tikkonsenja lilu l-istess droga. Xehed illi din il-*controlled delivery* fil-fatt irnexxiet, tant illi dan Robert deher jghaddi xi haga lil Nadia, irrizultaw dawn l-elf Ewro (€1,000). Qal illi wara hadilha stqarrija (Dok PG2).

Zied illi Rapinett ikkonfermat iz-zewg stqarrijiet taghha quddiem il-Magistrat tal-Ghassa. Qal ukoll illi din fil-kors ta’ dan giet murija ritratt – Dok VA, illi gharfet bhala Robert Agius maghruf bhala l-Maksar.

Xehdu diversi pulizija, ukoll involuti fil-waqfa u arrest tal-imputata fl-Airport, u dawk involuti fil-konsenja kkontrollata.

Xehdet ghalhekk **WPC 237 Antonella Vella** li kienet l-Ajruport ma’ PS 1174, WPC 127 u WPS 12, li kienu qed jaghmlu osservazzjoni l-Airport. Ghamlu search fuq Rapinett wara li din inghatat is-solita twissija. Qalet illi din minn jeddha minn taht il-libsa ta’ stil Gharbi, harget blokka b’xi sustanza kannella fiha.

WPS 12 Andrea Grech ukoll ikkonfermat illi Rapinett tathom hi stess is-sustanza, gholliet il-libsa. Qalet ukoll illi maghha din tkellmet li xtaqet tikkopera mal-pulizija. Ikkonfermat din ix-xhud illi s-sustanza misjuba kienet zewg (2) kaxxi qishom blokok.

WPS 127 Carmen Gauci xehdet dwar il-fatt illi kellhom mandat ta’ tfittxija li nghataw fuq persuna gejja mill-Kajr, l-Egittu fuq titjira. Waslet u baqghet barra fuq il-mobile ghal hafna hin. Qalet illi wara hafna hin avvicinaw lil Nadia Rapinett, identifikaw ruhhom, tawha l-caution u saret tfittxija fuqha. Qalet illi matul din it-tfittxija Nadia harget pakkett minn gol-libsa. Qalet illi fil-fatt irrizultalha li Nadia tat lill-pulizija zewg pakketti.

Spjegat illi aktar tard – l-ghada, marru anke r-residenza ta’ Nadia gewwa Jesmond Court, Triq l-Iskuna, San Pawl il-Bahar, fejn hemm Rapinett cemplet lil certu Robert Agius ghall-habta tal-erbgha ta’ wara nofsinhar (4.00pm). Semaghtha tghid fuq il-mobile phone li kienet waslet id-dar u li kellha l-affarijiet. Ziedet illi Nadia qaltilha li Robert kien qallha li kellu jmur dak il-hin ma’ certu Pawlu.

Xehdet illi din Nadia nizlet isfel, stenniet, regghet telghet fuq, u cemplet lil dan Robert Agius. Staqsietu kemm kien ser idum ghax kienet is-shana. Ziedet illi dan wara ftit minuti regghet nizlet, meta telghet qaltilhom li Robert kien taha elf Ewro (€1,000). Qalet illi hi u WPC 23 kienu l-hin kollu fil-flat.

WPC 23 Geraldine Buttigieg xehdet ukoll li kienet ma’ WPC 127 fir-residenza ta’ Rapinett fejn ghall-habta tal-erbgha ta’ wara nofsinhar (4.00pm), din cemplet lil certu Robert Agius u semaghtha tghidlu li l-affarijiet kienu ghandha. Nizlet, regghet telghet, u wara li ghadda xi hin regghet nizlet. Qalet illi din Rapinett dejjem kellha basket tal-karti maghha kontenenti r-replacement tad-droga li kellha fuqha l-gurnata ta’ qabel. Xehdet illi ftit wara din Rapinett telghet bla basket u tathom elf Ewro (€1,000) li skondtha kien ghadu kif

jaghtieha Robert. Ziedet ix-xhud illi saret anke search fuqha u ma kellha xejn izjed.

Ikkonfermat ukoll illi kienet xhud ta’ stqarrija li tat Rapinett lill-Ispettur Victor Aquilina.

Minn naha tieghu **PS 1174 Adrian Sciberras** xehed li anke hu kien ircieva struzzjonijiet fit-8 ta’ Mejju, 2012 biex jistenna gewwa l-Ajruport lil certa Nadia Rapinett li kienet gejja mill-Kajr, l-Egittu. Qal illi kellu fil-konfront taghha arrest u search warrant. Qal illi Rapinett meta waslet harget hdejn it-taxis, baqghet hemm bla ma ghamlet kuntatt ma’ hadd. Hawn arrestawha. Saret tfittxija fuq il-persuna taghha li tat rizultat pozittiv ta’ zewg pakketti. It-tfittxija skondtu saret minn WPS 12 u WPC 237.

Zied illi anke kien xhud ta’ stqarrija ta’ Rapinett, rilaxxata fl-ufficju tal-Ispettur Pierre Grech.

Kien anke partecipanti fil-konsenja kontrollata. Qal illi l-pakkett decoy hemm uzat ghamlu hu stess.

Wara din il-controlled delivery hu kien involut fl-arrest ta’ Robert Agius, Joseph Pisani u Paul Anthony Pisani.

Dwar id-decoy qal illi wara li ra l-pakketti li giet bihom Rapinett, fid-9 ta’ Mejju, l-ghada mar il-garaxx tal-pulizija, akkwista bicctejn injama tal-istess daqs, dejjem tal-pakketti, dawwarhom bit-tape u ghamilhom go basket bil-logo tan-Next u ghaddiehom lil Rapinett.

Paul Anthony Pisani qal u xehed illi hu flimkien ma’ huh iz-zghir – certu Joseph, kienu ma’ Robert Agius. Sema’ lil dan Agius jistaqsi “*X’affarijiet huma?*” Baqghu sejrin San Pawl il-Bahar. Jghid illi dan Agius beda jidderigi lil huh iz-zghir minn fejn jghaddi bhala toroq. Hu kien riekeb wara. Ra lil Agius jaghti elf Ewro (€1,000).

Joseph Pisani wkoll ikkonferma li kienu fil-karozza flimkien. Daqq il-mobile ta’ Agius. Qal illi dan Agius beda jurih it-toroq minn fejn ghandu jghaddi. Xehed illi Robert rega’ cempel fejn qal lil wahda mara biex tohrog. Semaghha titkellem fuq it-telephone. Qal illi l-ewwel darba hi cemplet lil Robert Agius. Qal illi hu meta nizlet il-mara, minhabba l-livell tat-triq seta’ jara biss il-forma taghha. Ra lil Robert jaghtiha l-flus. Kif saq tefghet basket bejn saqajn Robert u

dan Robert ramieh minn got-tieqa. Qal illi l-forma tal-imputata kienet tixbah lil ta’ din li ra.

Gew ezebiti wkoll faxxikolu ta’ ritratti tad-droga, xi cellular elevati – Dok B a folio 118, redatt fuq nomina tal-Magistrat Inkwirenti minn **PC 910 Pace u PC 1392 Buhagiar**.

Minn naha tieghu **Dr Martin Bajada** ezebixxa r-relazzjoni tieghu, senjalament dik koncernanti l-kuntatti li saru bejn Robert Agius u l-imputata, folio 198, Dok MB.

Minn naha taghha **Nadia Lanzon**, giet mahtura biex tittraduci mill-lingwa Gharbija ghal dik Maltija, il-messaggi (SMSs) li rrizultaw mill-ezamijiet tac-cellulari minn Dr Martin Bajada (relazzjoni Dok NL a folio 239).

L-Ispizjar Mario Mifsud minn naha tieghu ezamina s-sustanza elevata minn fuq Rapinett, u kkonkluda fir-relazzjoni tieghu hekk:

“*Ghaldaqstant, mir-rizultanzi miksuba, l-esponent Mario Mifsud, Manager tal-Laboratorju Forensiku, jista’ jikkonkludi li z-zewg blokki ta’ lewn kannella car li kien hemm fid-dokument 134/12/01, f’ammont nett totali ta’ 491 grammi, taw rizultat negattiv ghall-presenza ta’ sustanzi llegali. Fil-blokki nstabu s-sustanza Kafejina, li hija Xanthine Stimulant, u Paracetamol, li hija Analgesic. Dawn is-sustanzi mhux ikkontrollati bil-Ligijiet ta’ Malta.*” (Dok MM)

Kif gia’ ntqal, Rapinett irrilaxxat zewg stqarrijiet li ghazlet illi tigguramenta quddiem il-Magistrat Inkwirenti, ezebiti dawn a folio 43 et seq ta’ din l-Inkjesta.

Fl-istqarrijiet taghha **Nadia Rapinett** qalet illi kienet single mother u kellha zewgt (2) itfal. Kienet mizzewga f’Moskea. Qatt ma hadet droga. Ammettiet illi fuqha go l-Ajruport kellha d-droga li dahhlet maghha mill-Kajr, liema sustanza hi stess tat lill-pulizija. Ma kinitx taf is-sustanza x’kienet ghalkemm accettat illi kienet droga.

Spjegat illi hi kienet issiefer ta' spiss l-Egittu minhabba li missier it-tfal kien Egizzjan u kien jghix hemm.

Spjegat illi Robert - illi gie maqbud fil-konsenja kkontrollata u li kien maghruf bhala l-Maksar, kien gieli qallha biex tmur Sqallija biex iggiblu x-xoghol minn Spanja ghall-Italja. Tghid illi b'xoghol kienet qed tirreferi ghal droga u li hi kienet irrifjutat taghmel dan. Qalet ukoll illi qatt ma qallha x'tip ta' droga.

Qalet ukoll illi Robert kien sema' li kienet sejra l-Egittu biex tiltaqa' ma' missier it-tifel u kien cemplilha fuq wiehed miz-zewg cellular li kellha. Ma kinitx tiftakar fuq liema. Ziedet illi kien offrielha li taqla' lira. Accettat ghax ma kellhix flus. Kompliet illi xi hmistax qabel, ghal xit-tmienja ta' filghaxija, dan kien iltaqa' maghha fejn kienet tghix. Hawn mar San Pawl il-Bahar u taha hames mitt Ewro (€500) sabiex iggiblu d-droga. Qallha li malli kienet taghtieh id-droga kien ser jaghtieha elf Ewro (€1,000) ohra.

Ikkonfermat illi fil-fatt, waqt il-konsenja kkontrollata, kien taha dan Robert dawn il-flus fl-ammont ta' elf Ewro (€1,000) f'karti ta' hamsinijiet (50). Ghaddiet dawn il-flus lill-pulizija.

Qalet illi fuq ic-cellulari taghha dan Robert kien imnizzel fuq wiehed Rob u l-iehor Robert. Meta **ftehmu (enfasi tal-Qorti)** fuq id-droga, cemplilha fuq wiehed minnhom.

Ziedet illi ma semmitx lil dan Robert ghax kienet tibza' minnu. Qalet ukoll illi f'din il-bicca xoghol kellimha biss Robert. Qalet ukoll illi meta ltaqghet ma' Robert waqt il-konsenja, hu kien riekeb fuq in-naha tal-passiggier, u li fil-vettura kien hemm persuna fuq in-naha tax-xufier u iehor wara. Tghid illi bil-biza' ma gharfithomx. Qalet illi x'hin waqaf ghaddietlu x-xoghol – id-droga, u hu staqsieha jekk kollox marx sew, u taha l-flus. Qallha "*Dawn li wieghdtek.*" Qal lill-iehor biex isuq u qallha wkoll illi kellu jerga' jcempillha. Telaq.

Dwar l-arrangament ta' kif kellha tircievi d-droga qalet illi dan kien infurmaha li kellu jkun hemm wiehed jistennieha l-Ajruport. Tghid fil-fatt illi meta waslet il-Kajr, harget normali mill-arrivals hdejn it-taxis, mar Egizzjan fuqha, qallha li kien habib tal-Malti u ta l-affarijiet ghalih. Taha zewg blokok puliti go basket. Hadithom, wara cemplet lill-Malti (li fit-tieni stqarrija identifikat bhala Robert Agius) u nfurmatu li kollox kien mar sew.

Qalet ukoll fl-ewwel stqarrija li barra dan il-Malti kien hemm involuti Malti iehor u Egizzjan mizzewweg Maltija.

Dwar dan l-operat taghha spjegat illi hi ghamlet dan darba u ghax kellha bzonn il-flus anke ghall-medicini u hwejjeg.

Dawn huma l-provi mressaqa. Ma tressqu ebda provi in difesa.

Ikkunsidrat:

Illi bla dubbju ta’ xejn jirrizulta li Nadia Rapinett, bi ftehim ma’ Robert Agius, gabret mill-Egittu u dahhlet f’Malta zewg blokok bil-hsieb illi kienu droga. Dan sar minnha versu l-korrispettiv ta’ elf u hames mitt Ewro (€1,500), moghtija lilha kif miftiehem minn Robert Agius ghal dan l-operat taghha. Tghid illi ghamlet dan ghax kienet hekk miftehma ma’ dan Robert Agius. Ghalkemm tghid li dan ghamlitu darba, ziedet illi dan Agius drabi ohra kien talabha taghmilha ta’ courier ta’ droga.

Ir-rizultanzi tal-Ispizjar gia’ gew esposti, taw rizultat ta’ sustanza wzata bhala cutting agent, kif jghid fix-xhieda tieghu, pero mhux sustanza kkontrollata ai termini tal-Kapitolu 101 tal-Ligijiet ta’ Malta.

Issa, ir-reat li giet addebitata Nadia Rapinett kien dak ta’ assoccjazzjoni biex tbiegh u tittraffika f’dawn il-Gzejjer id-droga herojina.

Tghaddi ghalhekk il-Qorti biex tezamina principalment dak li qalet a tempo vergine Rapinett fiz-zewg stqarrijiet taghha, biex tara jekk jirrizultawx l-elementi kostituttivi ta’ dan ir-reat qalet:

- illi sabha ragel Malti u staqsieha jekk tridx taqla’ lira ghax issiefer ta’ spiss;
- illi qallha biex iggib l-affarijiet minn Spanja ghall-Italja. Fehmet b’affarijiet li kienu droga, pero qatt ma semmielha xi droga kienet u hi tghid illi ma kinitx tifhem fid-droga.
- wegbitu li qatt ma kienet ghamlet dawn l-affarijiet u li kellha tistaqsi lil missier it-tfal, ghalkemm qatt ma qalet lil missier it-tfal – tghid illi wzzatu dan bhala skuza;
- rega’ cemplilha dan il-Malti u staqsieha la kienet sejra lejn l-Egittu biex tiltaqa’ ma’ persuna l-Ajruport ta’ hemm u jaghtieha xi affarijiet – taha

hames mitt Ewro (€500) talli taghmel dan. wieghdha elf Ewro (€1,000) mal-konsenja;

- tghid a tempo vergine li ghalkemm taf illi kellha ggib minn hemm – mill-Egittu, id-droga ma kinitx taf liema tip ta’ droga;
- lanqas il-persuna li taha l-pakkett gewwa l-Egittu ma semmielha droga (tip);
- fit-tieni stqarrija tikkonferma li giet moghtija l-flus biex iddahhal id-droga f’Malta;
- talabha dan Robert biex iggiblu x-xoghol minn Spanja, b’dan hi fehmet li ggib id-droga. Qatt ma qallha liema tip ta’ droga;
- wieghda li malli tghaddilu d-droga jaghtieha elf Ewro (€1,000);
- b’kollox tghid illi ghat-trasport tas-sustanza rceviet is-somma ta’ elf u hames mitt Ewro (€1,500).

Ikkunsidrat:

Il-Qorti, in ezami tal-akkuza tal-conspiracy, assoccjazzjoni giet mistiedna mid-Difiza li ma ssibx htija dwar l-istess, mankanti skondtha l-element ta’ “*consensus ad idem*”. Ifisser dan li t-tezi tad-Difiza tistrieh fuq il-fatt illi Rapinett fil-kaz in kwistjoni ma waslitx fi ftehim mal-parti l-ohra, ftehim li jwassal ghall-istess hsieb u modalitajiet.

Huwa fid-dawl ta’ din id-difiza lill-Qorti qieghda tezamian dak Lilha rizultanti minn dak li qalet l-imputata fl-istqarrijiet guramentata taghha.

L-Artikolu 22(1)(f) tal-Kapitolu 101 tal-Ligijiet ta’ Malta jghid illi jkun hati ta’ reat kontra l-Ordinanza kull min:

“*Jassocja ruhu ma’ xi persuna jew persuni ohra f’Malta jew barra minn Malta biex ibiegh jew jittraffika medicina f’Malta kontra d-disposizzjonijiet ta’ din l-Ordinanza, jew li jippromwovi, jikkostitwixxi, jorganizza, jew jiffinanzja l-assocjazzjoni.*”

Skont l-Artikolu 22(1A) tal-Kapitolu 101 tal-Ligijiet ta’ Malta:

“*L-assoccjazzjoni ta’ persuni msemmija fil-paragrafu (d) u (f) tas-sub artikolu precedent tezisti malli jigu kkombinati jew miftehma l-mezzi, ikunu li jkunu, li bihom dawk il-persuni ghandhom jimxu.*”

Fid-decizjoni tal-Qorti Kriminali fil-kawza fl-ismijiet "Ir-Repubblika ta' Malta vs Simon Xuereb", deciza mill-Imhallef Dr Joseph Galea Debono nhar il-5 ta' Jannar, 2004, Nru 15/2003, il-Qorti qalet hekk dwar l-elementi kostituttivi ta' dan ir-reat tal-assoccjazzjoni li jridu jirrizultaw:

"*1. iz-zmien li fih ikun sar ir-reat ; 2. li jkun hemm mill-inqas persuna ohra , kienet minn kienet f' Malta jew barra minn Malta , li tkun involuta , 3. sabiex tigi traffikata d-droga; u 4. li jkun hemm il-ftehim dwar il-mod kif din id-droga ser tigi traffikata. It-traffikar ghandu definizzjoni wiesgha u din tinkludi mhux tfisser kwalsiasi movement ta' droga minn id ghal id kemm versu korrispettiv kif ukoll b' mod gratuwitu . U ma hemmx ghalfejn elementi ohra bhal per ezempju prova li id-droga tkun effettivament ghaddiet minn id ghal id jew li giet importata, ghax anki semplici offerta hija bizzejjed.*"

Aktar dwar il-ftehim li sahhet hafna fuqu d-Difiza, il-"*consensu ad idem*", taghmel ukoll referenza din il-Qorti ghas-segwitu:

"***…..the understanding of the terms", it-terminologija citatata li trid il-Ligi taghna – "ikkombinati jew miftehma l-mezzi." (op. cit.), giet ben ezaminata mill-Qorti tal-Appell Kriminali fid-decizjoni fl-ismijiet "Ir-Repubblika ta' Malta vs Godfrey Ellul" deciza nhar is-17 ta' Marzu, 2005, fejn il-Qorti ghamlet ampja referenza ghal dak illi jghid l-Archbold dwar hekk. Gie ghalhekk citat mill-Archbold's Crimimal Pleading, Evidence and Practice 2003:***

"The essence of conspiracy is the agreement when two or more agree to carry their criminal scheme into effect, the vary plot is the criminal act itself: Mulcahy vs R (1868) L.R. 3H.L 306 at 317: R v WARBURTON (1870) L.R. 1 C.C.R 274; R v Myrick and Ribuffi; 21 CR App. R. 94, CCA. Nothing need be done in pursuit of the agreement: O'Connell vs R (1844) 5 St. Tr (NS.) 1."

"The agreement may be proved in the usual way or by proving circumstances form which the jury may presume it : R v Parsons (1763) 1 W.B1 392; R vs Murphy (1937) 8 C and p. 297" Proof of the existence of a conspiracy is generally is a matter of inference, deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them" : R v Bresac (1803) 4 East 164 at 171, cited with approval in Mulcahy v R (1868) L.R. 3 H.L> 306 at 317"

Fil-fatt fil-kawza citata, il-Qorti kienet hemm waslet ghall-konkluzjoni li ma kinx hemm dik il-prova **univoka ta' ftehim (enfasi tal-Qorti),** mehtiega ghall-htija.

Fil-kawza fl-ismijiet "Il-Pulizija (Spettur Dennis Theuma) vs Simon Deguara" deciza mill-Qorti tal-Magistrati bhala Qorti ta' Gudikatura Kriminali, nhar il-11 ta' Gunju, 2010, intqal hekk, u hawn il-Qorti qieghda tiehu in konsiderazzjoni dak konkluz mill-Ispizjar Mario Mifsud, illi s-sustanza kkontrollata ma kinitx droga:

"*A person may be found guilty of, say, conspiracy to import heroin into Malta, even though the stuff that he eventually brings into Malta turns out to be baking powder. It all depends on what was actually agreed between the conspirators, and more specifically, on the object of the conspiracy.*" (The Republic of Malta vs Steven John Lewis Marsden, 23rd October, 2008).

Tkompli hekk il-Qorti:

"*Iżda wara li wieħed ikun stabilixxu dan il-prinċipju, wieħed irid jara li jekk il-Prosekuzzjoni ġabitx prova li saret tali assoċjazzjoni.*"

Bhala kaz li zviluppa fuq dan il-punt, il-Qorti hawn tirreferi ghal dak deciz mill-Qorti tal-Appell Kriminali fil-5 ta' Marzu, 2003, fil-kawza fl-ismijiet "The Republic of Malta vs Steven

"*Under our law the substantive crime of conspiracy to deal in a dangerous drug exists and is completed from the moment in which any mode of action whatsoever is planned or agreed upon between two or more persons (Section 22(1A) (Chapter 101). Mere intention is not enough. It is necessary that the persons taking part in the conspiracy should have devised and agreed upon the means, whatever they are, for acting, and it is not required that they or any of them should have gone on to commit any further acts towards carrying out the common design. If instead of mere agreement to deal and agreement as to the mode of action there is a commencement of the execution of the crime intended, or such crime has been accomplished, the person concerned may be charged both with conspiracy and the attempted or consummated offence of dealing, with the conspirators becoming co-principals or accomplices. Even so, however, evidence of dealing is not necessarily going to show that there was (previously) a conspiracy, and this for a very simple reason namely that two or more persons may contemporaneously decide to deal in drugs without there being between them any previous agreement.*

The First Court correctly stated that the three elements that had to be proved for the crime of conspiracy to result were:

(i) The agreement between two or more persons

(ii) the intention to deal in drugs

(iii) The agreed plan of action.

It is irrelevant whether that agreement was ever put into practice.

…….

The whole point is, however, that we are here dealing with a conspiracy where there must be the meeting of at least two minds.. In order to reach such a conclusion, it was necessary for the Prosecution to prove, by direct or circumstantial evidence, and beyond reasonable doubt that his conspirators, or at least one of them, <u>were also intending to import illegal drugs</u>." (enfasi ta' din il-Qorti).

Huwa vera issa, illi l-imputazzjoni addebitata lil Rapinett titkellem fuq assoccjazzjoni ta' droga u tispecifika "eroina" pero' daqstant huwa vera li l-imputata Nadia Rapinett baqghet insistent li hi, ghalkemm fehmet illi kienet qed tigi ngaggjata minn Agius biex iddahhal f'Malta xi droga, qatt ma semmielha x'tip ta' droga kienet. Anke li darba li kienet go l-Ajruport tal-Egittu, ghalkemm inghatat xi sustanza li kienet droga ghaliha, ma gitex moghtija nformazzjoni dwar x'kienet qed tircievi. Ma hemmx dubbju pero' li Rapinett kienet taf li kienet qed taghmel xi haga llecita, u li bi droga fehmet illi kienet sustanza llegali.

Qajla tista' titwemmen li s-sustanza li kienet qieghda ggorr taht il-libsa kienet wahda legali, ghax dak illi hu legali u permess ma jidholx f'Pajjizna hekk. Il-fatt biss illi hi fl-ewwel stqarrija tghid li kienet reticenti taghmel dak mitlub lilha mill-Malti (Agius) juri li kienet taf ben sew illi azzjonietha ma kinitx sancita bil-Ligi.

Hija tal-fehma l-Qorti li fil-fatt illi bejn Agius u Rapinett kien hemm ftehim kristallizzat li hi kellha ddahhal id-droga f'Malta, miftehmin anke "l-modus operandi" anke l-korrispettiv (ghalkemm dan tal-ahhar mhux necessarju).

Ma taqbilx hawn il-Qorti ghalhekk ma' dak espress mid-Difiza – illi manka l-"consensus ad idem", dan kien prevalenti zgur biex tigi mportata d-droga, u din il-Qorti temmen li kemm Agius u Rapinett kien jafu li kienet illegali.

Taghmel anke referenza hawn ghal dak illi qalet il-Qorti tal-Appell Kriminali (Superjuri) fit-2 ta' Novembru, 2008 fil-kawza fl-ismijiet "The Republic of Malta vs Stevens John Lewis Marsden":

"

28. The whole point is, however, that we are here dealing with a conspiracy where there must be the meeting of at least two minds. If appellant knew all along that the pills were not illegal and the agreement was for him to transport such pills, then he could not have been found guilty of the charge brought against him. On the other hand, if the contention that he knew that they were not illegal is disbelieved, it does not necessarily mean that he is consequently to be found guilty. In order to reach such conclusion, it was necessary for the prosecution to prove, by direct or circumstantial evidence, and beyond reasonable doubt that his conspirators, or at least one of them, were also intending to import illegal drugs. Such evidence is clearly lacking. Appellant's statement about the agreement to import the pills (with the generic reference to the word "ecstasy") raises a strong suspicion that the object of the agreement was illegal drugs – and indeed had MDMA pills actually been found or had no pills at all been found, the jury could reasonably have come to the conclusion that the object of the conspiracy was, in fact, illegal drugs by relying on appellant's statement. But in this case drugs were found which were (at the time) not illegal, and therefore, as has already been explained, it was still incumbent upon the prosecution to prove that at least one other conspirator had illegal drugs in mind."

Ghaldqstant, issib il-htija wara li rat l-Artikoli 22(1), 22(1)(A), 22(2)(b) tal-Kapitolu 101 tal-Ligiijet ta' Malta;

Tilliberaha pero mill-addebiti tar-recidiva u ta' ksur ta' sentenza sospiza, in kwantu qatt ma gew pruvati.

Dwar il-piena, il-Qorti qieset illi Nadia Rapinett ghandha tibbenefika mill-Artikolu 29 tal-Kapitolu 101 tal-Ligijiet ta' Malta, ghaliex mhux talli ghenet fit-tieni stqarrija, mhux talli gguramentat l-istess, imma anke ppartecipat b'success f'konsenja kontrollata b'success, tant illi giet imressqa persuna ohra b'akkuzi relatati. Qieset ukoll dak illi minn jedda xehdet Nadia Rapinett meta telghet tiddeponi fuq il-bail. Ma tridx tiftiehem hawn il-Qorti, illi din, ghax nieqsa mill-flus, kienet gustifikata tassocja ruhha li timporta droga f'Pajjizna (jew f'pajjiz iehor jekk nigu ghal dan). Ghalhekk tenut kont ta' dak kollu espress, qieghda tikkundanaha ghal piena karcerarja effettiva ta' tlitt(3) snin;

U ghal multa ta' elfejn Ewro (€2,000).

Rat ukoll l-Artikolu 533 tal-Kapitolu 9 tal-Ligijiet ta' Malta, u tikkundannaha ukoll ghall-hlas tal-ispejjez peritali ammontanti ghal tminn mija erbgha u tmenin Ewro u tnax-il centezmu (€884.12).

< Sentenza Finali >

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