



MALTA

QORTI TA' L-APPELL KRIMINALI

ONOR. IMHALLEF

EDWINA GRIMA

Seduta tal-15 ta' Lulju, 2015

Appell Kriminali Numru. 299/2015

Appell numru 299/2015

Il-Pulizija

(Spettur Josric Mifsud)

Vs

Jeffrey Cassar

Il-Qorti,

Rat l-akkuzi dedotti kontra l-appellant Jeffrey Cassar, detentur tal-karta tal-identita Maltija bin-numru 258584M akkuzat quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli:

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F'dawn il-Gzejjer gewwa San Gilian fil-lejl ta bejn it-28 u id-29 ta' Mejju 2015 ghal habta tas-saghtejn u nofs (0230hrs) ta filghodu;

a. kiser il-kundizzjonijiet tal-liberta provizorja imposti mill-Qorti Kriminali (Malta) preseduta mill-Imhalef Dr Michael Mallia LLD nhar is-17 ta' Dicembru, 2013, f'dan illi naqqas jkun gewwa r-residenza tieghu bejn il-ghaxra u nofs (2230) ta filghaxija u s-sitta u nofs (0630) ta filghodu kontra l-limitazzjonijiet imposti f'dan id-digriet u dan bi ksur ta l'artikolu 579(2) tal-Kapitolu 9 tal-Ligijiet ta' Malta;

b. kiser il-kundizzjonijiet tal-liberta provizorja imposti mill-Qorti tal-Magistrati (Malta) preseduta mill-Magistrat Dr C Stafrace Zammit LLD nhar il-15 ta' Ottubru, 2012, f'dan illi naqqas milli jkun gewwa r-residenza tieghu bejn il-hdax (2300) ta filghaxija u s-sebgha u nofs (0730) ta filghodu kontra l-limitazzjonijiet imposti f'dan id-digriet u dan bi ksur ta l'artikolu 579(2) tal-Kapitolu 9 tal-Ligijiet ta' Malta;

c. kiser il-kundizzjonijiet tal-liberta provizorja imposti mill-Qorti tal-Magistrati (Malta) preseduta mill-Magistrat Dr T Micallef Trigona LLD nhar it-13 ta' Novembru, 2012, f'dan illi naqqas milli jkun gewwa r-residenza tieghu bejn il-hdax (2300) u s-sebgha u nofs (0730) kontra l-limitazzjonijiet imposti kontra il-l'ordni imposta f'dan id-digriet u dan bi ksur ta l'artikolu 579(2) tal-Kapitolu 9 tal-Ligijiet ta' Malta;

d. u aktar talli kiser ordni ta probation mahruqa mil-Qorti tal-Magistrati Malta, liema ordni ghadha fis-sehh;

e. u aktar talli irrenda ruhu recediv ai termini tal-artikoli 49, 50, u 289 tal-Kapitolu 9 tal-Ligijiet ta' Malta, wara li gie misjub hati b'diversi sentenzi moghtija mill-Qrati ta' Malta, liema sentenzi saru definittivi u ma jistghux jigu mibdula.

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Il-Qorti giet mitluba li f'kaz ta' htija, tirrevoka l-helsien mill-arrest ta' l-imsemmi Jeffrey Cassar, u tordna l-arrest mill-gdid ta' l-imsemmi imputat kif stipulat fl'artikolu 579(2) (3) tal-Kap 9 tal-Ligijiet ta' Malta.

Rat is-sentenza tal -Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali, tat-30 ta' Mejju, 2013, fejn il-Qorti, wara li rat l-artikoli 49, 50 u 579 tal-Kapitolu 9 tal-Ligijiet ta' Malta u l-artikoli 7 u 23 tal-Kapitolu 446 tal-Ligijiet ta' Malta, fuq ammissjoni sabet lill-imputat hati ta' l-imputazzjonijiet migjuba kontra tieghu u kkundannatu sitt xhur prigunerija; in oltre qed tirrevoka l-helsien mill-arrest mghoti lill-imputat bid-degrieti tas-17 ta' Dicembru 2013, tat-13 ta' Novembru 2012 u tal-15 ta' Ottubru 2012 rispettivament. Il-Qorti qed taghzel li ma titrattax ma' l-imputat ghar-reati li taghom instab hati u tpoqqa taht ordni ta' probation bis-sentenza datata 4 ta' April 2013.

Il-Qorti irrakkomandat lid-Direttur tal-Facilita Korrettiva ta' Kordin biex l-imputat ma jinzammx f' Division 6.

Rat ir-rikors tal-appell ta' Jeffrey Cassar pprezentat fir-registru ta' din il-Qorti fid-9 ta' Gunju, 2015, fejn talab lil din l-Onorabbli Qorti tirriforma s-sentenza appellata billi tikkonfermaha f'dik il-parti li sabet htija pero' thassarha f'dik il-parti fejn il-Qorti eroghat il-piena u minflok tikkundannah ghal piena aktar ekwa u gusta fic-cirkostanzi tal-kaz.

Rat l-atti u d-dokumenti kollha.

Rat il-fedina penali aggornata tal-appellant esebita mill- prosekuzzjoni fuq ordni tal-Qorti.

Rat illi l-aggravji tal-appellant Jeffrey Cassar li huma s-segwenti w cioe':-

Illil-appellant jaghmilha cara li huwa ammetta l-imputazzjonijiet kif gew migjuba kontrih u qieghed jassumi l-konsegwenzi tal-ammissjoni tieghu. Illi pero' bir-rispett kollu lejn l-Qorti tal-Magistrati il-piena li giet erogata hija

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piena li fic-cirkostanazi kollha tal-kaz hija wahda harxa u zgur mhux diretta ghar-riforma tal-appellant;

Illi l-appellant ghandu bzonn l-ghajjnuna u mhux perjodu ta' prigunerija. Fil-fatt l-appellant kien qiegħed fid-direzzjoni t-tajba qabel dan l-incident zvinurat. Dan xehdu l-ufficjal prosekutor stess meta qal li huwa baqa cçassat ghax l-appellant mexa b'mod l-aktar risponsabbli f'dawn ic-cirkostanzi. L-istess ufficjal prosekutor zied jghid li ma setghax jemmen li kein l-istess Jeffrey Cassar ta' qabel.

Illi jidher car li l-Qorti tal-Magistrati, ghalkemm sar accenn għal ammissjoni bikrija tal-appellant ma ikkunsidratx li l-appellant kif fit-triq it-tajba għar-riforma tieghu. Għalhekk ghalkemm il-Qorti ikkalibrat il-perjodu ta' prigunerija lejn il-minimu, xorta wahda l-piena kienet wahda esagerata u li tmur kontra l-principju tar-riforma tal-hati.

Ikkunsidrat,

Illi l-gravam sottopost għal gudizzju ta' din il-Qorti jikkoncerna biss l-piena inflitta fuq l-appellanti u dan għar-reati lilu addebitati u ammessi minnu *in toto*. Illi jilmenta mill-fatt illi l-Ewwel Qorti kienet wisq harxa mieghu meta giet erogata il-piena ta' sitt xhur prigunerija u dana ghaliex ma haditx in konsiderazzjoni zewg fatturi ewlenin. Fl-ewwel lok isostni illi kien hu stess li ikkostitwixxa ruhu f'idejn il-pulizija u dan meta baqa' ma irrinkazax sal-hin lil ordnat fid-digriet mogħtija minn diversi qrati għall-ghoti tal-helsien mill-arrest. Ukoll ghaliex il-fatt li ma irrinkazax sal-hin mogħti ma kenitx htija tieghu izda rizultat ta' cirkostanzi lil hinn mill-kontroll tieghu. Inoltr lanqas ma hadet in konsiderazzjoni is-sentenza impunjata, ir-riforma tieghu u kwindi il-piena karcerarja inflitta fuqu tista' isservi biss ta' detriment u mhux deterrent.

Illi gie stabbilit b'mod kopjuz fil-gurisprudenza illi qorti ta' revizjoni bhala regola ma tirmppjazzax il-piena mogħtija mill-ewwel Qorti b'dik li kieku hija –

cioe` din il-Qorti – kienet taghti f`dawk ic-cirkostanzi kemm-il darba ma jkunx jirrizulta li l-piena moghtija mill-ewwel Qorti kienet b`xi mod “*wrong in principle*” jew “*manifestly excessive*”.

“...The principle *nulla poena sine lege* does not mean or imply that a Court of Criminal Justice has to go into any particular detail as to the nature and quantum of the punishment meted out, or, where the Court has a wide margin of discretion with various degrees and latitudes of punishment, that it has to spell out in mathematical or other form, the logical process leading to the quantum of punishment. This is also the position in English Law. As stated in Blackstone’s Criminal Practice 2004:

“Save where the statutory provisions mentioned below apply, there is no obligation on the judge to explain the reasons for his sentence. However, the Court of Appeal has encouraged the giving of reasons, and has indicated that that should certainly be done if the sentence might seem unduly severe in the absence of explanation...It has been held that failure by the sentencing court to give reasons when required to do so does not invalidate the sentence...although the failure may no doubt be taken into account by the appellate court should the offender appeal. Where the sentencer does give reasons and what he says indicates an error of principle in the way he approached his task, the Court of Appeal sometimes reduces the sentence even though the penalty was not in itself excessive. Similarly a failure by the judge to state expressly that he is taking into account any guilty plea, although contrary to [statutory provision], does not oblige the Court of Appeal to interfere with what is otherwise an appropriate sentence...”

As is stated in Blackstone’s Criminal Practice 2004 (supra):

“The phrase ‘wrong in principle or manifestly excessive’ has traditionally been accepted as encapsulating the Court of Appeal’s general approach. It conveys the idea that the Court of Appeal will not interfere merely because the Crown Court sentence is above that which their lordships as individuals would have imposed. The appellant must be able to show that the way he was dealt with was outside the broad range of penalties or other dispositions appropriate to the case. Thus in Nuttall (1908) 1 Cr App R 180, Channell J said, ‘This court will...be reluctant to interfere with sentences which do not seem to it to be wrong in principle, though they may appear heavy to individual judges’ (emphasis added). Similarly, in Gumbs (1926) 19 Cr App R 74, Lord Hewart CJ stated: ‘...that this court never interferes with the discretion of the court below merely on the ground that this court might have passed a somewhat different sentence; for this court to revise a sentence there must be some error in principle.’ Both Channell J in Nuttall and Lord Hewart CJ in Gumbs use the phrase ‘wrong in principle’. In more recent cases too numerous to mention, the Court of Appeal has used (either additionally or alternatively to ‘wrong in principle’) words to the effect that the sentence was ‘excessive’ or ‘manifestly excessive’. This does not, however, cast any doubt on Channell J’s dictum that a sentence will not be reduced merely because it was on the severe side – an appeal will succeed only if the sentence was excessive in the sense of being outside the appropriate range for the offence and offender in question, as opposed to being merely more than the Court of Appeal itself would have passed.”

This is also the position that has been consistently taken by this Court, both in its superior as well as in its inferior jurisdiction.¹

Issa minn harsa lejn id-disposizzjoni tal-artikolu 579(2) tal-Kapitolu 9 tal-Ligijiet ta' Malta ghandu johrog illi l-piena marbuta mar-reat addebitat lill-imputat huwa dak:

... ta' multa jew ta' prigunerija ghal zmien ta' erba' xhur sa sentejn, jew ghal multa u prigunerija flimkien u l-ammont stabbilit fil-helsien mill-arrest taht garanzija ghandu jigi konfiskat favur il-Gvern ta' Malta."

Issa l-piena inflitta f'dan il-kaz kienet wahda iktar li tqarreb lejn il-minimu indikat fid-disposizzjoni tal-ligi fir-rigward. Inoltre l-Ewwel Qorti ghamlet il-konsiderazzjonijiet taghha b'mod ghaqli meta giet biex tikkalibra il-piena u hadet in konsiderazzjoni diversi fatturi fosthom illi din ma kenitx l-ewwel darba illi l-appellanti kien instab hati ta' reati simili. Mhux biss izda anke applikat mitigazzjoni u dana meta hadet in konsiderazzjoni il-fatt illi l-imputat kien ikkopera mal-pulizija u anke ammetta l-akkuzi migjuba fil-konfront tieghu fi stadju bikri. Illi fil-fatt il-qrati taghna, fejn ikun hemm l-ammissjoni tal-persuna akkuzata, kienu tal-hsieb illi:

Meta jkun hemm ammissjoni huwa xi ftit jew wisq odjuz appell minn piena sakemm din tirrientra fil-limiti li tipprefigi l-ligi. Dan huwa hekk peress illi min jammetti jkun qiegħed jassumi r-responsabilita` tad-decizjoni li jkun ha u jirrimetti ruhu ghal kull decizjoni dwar piena li l-Qorti tkun tista' tasal ghaliha. Naturalment dan ma jfissirx li din il-Qorti u Qrati ohra ta' appell ma jidhlux f'ezami akkurat tac-cirkostanzi kollha biex jaraw jekk il-piena nflitta kenitx eccessiva jew le. Mhuwix normali pero`, li tigi disturbata d-diskrezzjoni ta' l-ewwel Qorti jekk il-piena nflitta tkun tidhol fil-parametri tal-ligi u ma jkun hemm xejn x'jindika li kellha tkun inqas minn dik li tkun inghatat.²

¹ The Republic of Malta vs v. Kandemir Meryem Nilgum and Kucuk Melek tal-25 ta' Awissu 2005

² Ir-Repubblika ta' Malta vs Serag F.h. Ben Abid deciza 04/12/2003

Kopja Informali ta' Sentenza

Stabbiliti ghalhekk dawn il-gwidi gurisprudenjzali u applikati imbaghad ghal kaz in dizamina, din il-Qorti ma tara l-ebda raguni valida 'il ghala ghandha tiddisturba id-diskrezzjoni ezercitata mill-Ewwel Qorti li hadet in konsiderazzjoni il-fattispecje kollha tal-kaz u erogat piena fil-parametri dettati mill-ligi.

Ghal dawn il-motivi l-appell qed jigi michud u s-sentenza appellata ikkonfermata.

< Sentenza Finali >

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