



Court of Criminal Appeal

Hon. Judge Giovanni M Grixti LL.M., LL.D

Appeal Nr. 85/2021

The Police

(Insp. Lydon Zammit)

(Insp. Stephen Gulia)

vs

-omissis-

Metodija Popov

Sitting of the 1st July, 2021

The Court;

Having seen the charges brought against *omissis* and Metodija Popov, holder of Macedonian passport number B0850868 before the Court of Magistrates (Malta) as a Court of Criminal Inquiry with having together :

1. Committed theft of cash money and top up cards, which theft is aggravated, by violence, means, amount which does not

exceed two thousand and three hundred and twenty-nine euro and thirty seven cents (€2,329.37), and by time, to the detriment of Kameswara Rao and/or Larken Farrugia and/or other person/s or any other entity.

2. On the same date, time, place and circumstances without a lawful order from the competent authorities, and saving the cases where the law authorizes private individuals to apprehend offenders, arrested, detained or confined Kameswara Rao against him will and with the intent of extorting money or effects, or of compelling her to agree to any transfer of property.

And omissis with having :

1. On the 11th of December 2020 between 18:00 Hrs and 18:30 Hrs from the establishment "The Convenience Shop" situated in Constitution Street. Mosta at the time of committing a crime against the safety of the person or of theft. had on his person any arm proper or ammunition or any imitation thereof.

2. On the 4th of November 2020 between 13:30Hrs and 14:30Hrs from "Ochid Flats" flt 6. Triq 1-Imhalla, Naxxar Committed theft of objects, which theft is aggravated by means, amount which exceeds two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37), and to the detriment of Michael Orland and/or other person/s or any other entity.

3. On the 11th of January 2021 between 13:15Hrs and 13:30Hrs from building site 5, Triq il-Konventwali, San Pawl il-Bahar, committed theft of power tools, which theft is aggravated by means and to the detriment of Alexander Xuereb and/or other person/s or any other entity

4. On the 26th of January 2021 between 14:00Hrs and 20:00Hrs from the establishment "Trolees Supermarket" situated

in Triq il-Merluzz San Pawl il bahar, committed theft of a backpack, which theft is aggravated by means and to the detriment of Claudio Pattavina and/or other person/s or any other entity.

5. On the 26th of February 2021 between 09:45Hrs and 10:00Hrs from a vehicle bearing registration number DCO268 that was parked in Triq l-Imdina, Qormi committed theft of objects which theft is aggravated by, amount which does not exceed two thousand and three hundred and twenty-nine euro and thirty seven cents (€2,329.37) and by the nature of thing stolen to the detriment of Brian Anthony Christopher Azzopardi and/or other person/s or any other entity.

The Court was asked to condemn the accused for payment of the expenses incurred with to the appointment of experts and architects nominated in these procedures according to article 533 of Chapter 9 of the Laws of Malta.

The Court was also asked to apply the effects of article 383, 384, 385 and 412C of Chapter 9 of the laws of Malta for the security of the persons above mentioned;

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature by means of which it declared Metodija Popov guilty of the charges brought against him following his plea of guilt and condemned him to a term of imprisonment of eighteen (18) months;

Having seen the application of appeal of Metodija Popov filed in the registry of this Court on the 22 March 2021 requesting this Court to **confirm** that part of the judgement of the first Court by which the accused was declared guilty of the charges brought against

him and to **vary** that part of the judgement by which appellant was condemned to a term of imprisonment of eighteen (18) months and instead impose a punishment which is more appropriate to the circumstances of the case;

Having seen the updated conduct sheet of appellant filed in the records by order of this Court;

Having heard submissions by the parties;

Having seen the records of the case;

Having considered:

1. That appellant's application of appeal refers solely to the punishment proffered by the first Court against him on the singular ground that the said punishment should have been more equitable and proportionate to the circumstances of the case. Appellant argues that he should not have been condemned to an effective term of imprisonment as he collaborated with the police and entered a plea of guilt at an early stage of the proceedings; that he is a first-time offender; that he works in Malta and supports his mother who lives with him in Malta and needs to support his children living in Greece; that appellant's role in the commission of the offence was that of assisting the other accused and only received €100 from the theft which sum was returned to the co-accused and that local jurisprudence is in favour of a system of reparative justice which strikes a balance between the damage caused to society and the reform of the offender;

2. That prior to any further considerations, the Court must point out that in stating the facts of the case in accordance with article 419 of the Criminal Code, appellant makes a number of statements which do not result from the records of the case and which can not be considered as facts but are more of the nature of grounds of appeal. Although such practice no longer gives rise to nullity of the appeal application, it must be made clear that the **facts** of the case should be kept distinct from the **grounds of appeal** as the requirement of the law to state the facts is for this Court to understand what the case is about and any allegations which are not part of the records will have to be ignored at this stage of the proceedings;

3. Having stated the above, the punishment to be awarded for the offences for which an accused has been found guilty is subject to the discretion of the first Court and that therefore this Court, as a Court of Appeal does not, under normal circumstances, substitute that discretion unless the punishment awarded is not within the parameters prescribed by law and that this principle should be made clear from the outset;

4. That at the request of appellant, this Court ordered that a pre-sentencing report be drawn up by a Probation Officer and that such report was exhibited by the appointed Officer on the 24 of June 2021. The Court examined the said report and heard the Probation Officer under oath who recommended a non custodial sentence for the first charge and a Community Service Order for the second charge the aim of which was to provide an element of reparation and compensation to society, since the offence caused extreme fear to the victim. The report contains a detailed account of particulars pertaining to appellant, his family background, his

health and addictions and other details which will not be reproduced in this judgement, including his willingness to participate in mediation sessions with the victim;

5. That it has been stated many a time in judgements of this Court that an early plea of guilt does not automatically entitle the accused to a discount in the punishment meted out by the Court. This means that unless there has been an official plea bargain entered into by the accused and the prosecution, an accused can expect to be sentenced in accordance with the discretion afforded to the Court by the legislator. Now in this case, the accused entered an early plea of guilt to both charges being those of theft aggravated by violence, means, value and time and of having made an unlawful arrest which in plain language translate into a hold-up. From the pre-sentencing report it results that the passive subject of the offence, that is the person held-up in the shop in question has been left traumatised by the event which took place when he had just started working there and had to request a placement at a different location due to his fear from then on;

6. That in the process of considering the proper sanction to be meted out, a Court invariably takes into consideration the reparative aspect, the damage caused to society which in this case are evidently marked by the fear, insecurity and trauma experienced by innocent workers not expecting to have to go through such an experience when working for the livelihood, the balance which is fundamental between the latter, the element of deterrence and many other aspects. Now appellant considers that he is a first time offender and that his participation in the crime was only that of rendering assistance to the co-accused and that he only benefited from a €100 for his part which sum he returned

to the co-accused. The Court can not take into consideration the other pleas where appellant states that he needs to support his mother who lives in Malta and his children that live in Greece and that he only acted as a lookout in the crime. Neither can it consider his plea that due to the Covid-19 pandemic his salary was reduced as this should not serve as a form of justification for carrying out such an offence;

7. The Court sees no impending reason as to why a custodial sentence imposed by the first Court should be dismissed. As for the term of imprisonment, the Court considered the seriousness of the crimes to which appellant registered a plea of guilt, the punishment to which they are subject and that therefore the said punishment is a proportionate one and not exaggerated as alleged by appellant.

8. The Court therefore sees no reason why it should substitute the discretion exercised by the first Court and consequently dismisses the appeal.