



MALTA

**QORTI TAL-MAGISTRATI (GUDIKATURA
KRIMINALI)
KUMPILAZZJONIJIET - NORMALI**

**MAGISTRAT DR.
HAYMAN MIRIAM LL.D.**

Seduta ta' l-10 ta' Lulju, 2001

Numru 279/2000

**Il-Pulizija
(Sp. Angelo Caruana)**

vs

**Charles Sciberras ta' 24 sena, iben
Peter Paul u Maria Anna nee Cutajar,
mwieled Pieta' nhar id-9 ta' Lulju, 1975,
u residenti Block F, Flat 7, Triq il-Peprin,
Santa Lucia, detentur tal-karta ta' l-identita'
numru 324775 (M).**

Illum 10 ta' Lulju, 2001.

Il-Qorti,

Rat l-akkuza kontra l-hawn fuq imsemmi Charles
Sciberras li gie akkuzat talli:

(a) Fil-Belt Valletta, nhar l-20 ta' April, 2000 ghall-habta ta' 3.30 ta' wara nofsinhar ikkommetta serq ta' handbag kontenenti diversi oggetti u cioe camera tar-ritratti ta' taht il-bahar, nuccali tax-xemx, nuccali tal-vista, dokumenti u flus kontanti minn fuq il-persuna ta' Donna Cahill ta' nazzjonalita' Ingliza liema serq huwa aggravat bil-vjolenza u bl-ammont u li sehh ghad-dannu ta' l-istess Donna Cahill

(b) Talli fl-istess data, lok, hin u cirkustanzi, f'diversi lokalitajiet f'Malta saq vettura ta' l-ghamla Skoda bin-numru ta' registrazzjoni KAL-735, minghajr licenzja tas-sewqan b'hekk ma kienx kopert b'polza tas-sigurta' jew garanzija dwar ir-riskji ta' terzi persuni, u dan kollu 'ai termini' ta' l-Artikolu 3, tal-Kapitolu 104 tal-Ligijiet ta' Malta. Il-Prosekuzzjoni titlob illi f'kaz ta' kundanna l-imsemmi Charles Sciberras jigi skwalifikat milli jkollu jew igib licenzja tas-sewqan ghal zmien ta' mhux anqas minn sena.

(c) Talli huwa kiser il-provedimenti ta' l-artikoli 9 tal-kap 152 tal-ligijiet ta' Malta b'sentenza tal-Qorti ta' l-appell datata 9.10.98 li biha huwa kien gie misjub hati ta' reati u liberat taht kundizzjoni li ma jaghmilx reat iehor fi zmien tliet snin.

(d) Fl-ahhar nett akkuzat talli sar recidiv ai termini ta' l-artikoli 49, 50 u 289 tal-Kap 9 tal-Ligijiet ta' Malta, b'sentenzi moghtija mill-Qorti tal-Magistrati (Malta) datati 4/11/94 u 17/7/95 liema sentenzi saru definittivi u ma jistghux jigu mhassra.

Rat l-atti tal-kawza.

Semghet ix-xhieda.

Semghet it-trattazzjonijiet.

Il-vittma Donna Cahill xehdet li waqt li kienet ma' habiba taghha thares lejn il-bahar hdejn il-Fort Cafe "Suddenly, very suddenly from behind I was knocked on the right shoulder and as I turned to my right somebody snatched my bag from my left. I turned to my left and saw a face

very close to me. My bag was taken. It was taken by a man whom I saw running across the road.” Aktar tard wara li tilfu lil dan ir-ragel, ghax fil-fatt grew warajh qalet “... the older man had told us that the younger man had seen a car which he believed the man who had stolen my bag had gone into, and he had the registration number of the car.”

Dwar l-identification parade iddeskrivietha hekk:

“There were nine men lined up in the courtyard and I was taken in room number 13 behind a closed door. There was a space through which I could see. Therefore I could see the men but they could not see me. Outside I saw a man whom I identified as the man who took my bag. I also see the man in this Court and I identify the accused as the person who took my handbag as I have said.”

In kontro ezami qalet:

“Asked if I could describe the nine men who were paraded by the Police I say that they all had dark hair. They were fairly close in height and fairly close in build.” Dwar l-incident qalet:

“It lasted about twelve seconds.”

Kompliet:

“Asked whether I watched his face for four seconds I say the whole incident would take four or five seconds. I looked at his face a second or two. He was very close to my face. I did not see any distinguishing features.”

Kompliet: “Asked whether I was excited or afraid I say that I was very angry.” (A fol 22-24)

Patricia Martin li kienet ma’ Donna Cahill ikkonfermat is-serqa kif saret. Dwar kif identifikat lill-akkuzat qalet hekk:

“We went to the Police Headquarters and there was an identity parade. There were nine men standing in front of us with their numbers. We looked at them full faced. Then they turned to both sides and then they turned their backs. I saw a man of the same build as the man who had taken the handbag because I only saw him from the back. I did not see his face.

In kontroezami xehdet:

“ I confirm that I recognise the accused from his build.”

“The other persons that had taken part in the parade were a mixture. Some were tall, some were short. There were various builds.”

L-Ispettur Angelo Caruana xehed illi dik il-persuna li fil-fatt akkompanjat lil Cahill u lil Martin l-ghassa kienet rat li persuna li kienet qed issegwi l-Ingliزي msemija tahrab b'karozza u kien ta r-registration number ta' din il-vettura lil dawn l-Ingliزي. Fil-fatt l-Ispettur Caruana sar jaf b'dan kollu minghand is-Surgent li ha r-rapport tas-serqa u cioe PS 57 Raymond Caruana li kkonferma dan kollu fix-xhieda tieghu (a fol 87-88). Dan qal li hu gie mgharraf li wara s-serqa kien hemm xi guvnott li ra l-incident u gera wara din il-persuna li hadet il-basket u li rah jirkeb go karozza bin-numru KAL-735 ta' l-ghamla Skoda ta' kulur ahmar. Xehed ukoll li dan il-guvnott li kien ra s-serqa ma riedx jikxef min hu u ma riedx jitla' l-Qorti. Dan il-guvnott tah anke d-deskrizzjoni ta' l-agent tas-serqa liema deskrizzjoni qeghda fir-rapport tieghu (a fol 92).

L-Ispettur Caruana xehed ukoll dwar l-Identity parade li saret, fejn Cahill u Martin identifikaw lill-akkuzat. Qal li l-imputat, li fl-ID parade kellu n-numru 4, gie identifikat b'certezza minn Cahill u Martin. Qal ukoll illi t-tnejn li huma, kemm Cahill kif ukoll Martin kienu konsistenti dwar l-identita' ta' Sciberras. Dwar kif saret l-ID parade, qal li hu kellem lil Cahill u lil Martin separatament. Dwar il-persuni li hadu sehem fl-identification parade qal li dakinhar li saret l-ID parade kienet il-festa ta' l-Ghid.

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Xehed dwar id-diffikulta' li kellu f'dan ir-rigward ghaliex l-akkuzat kien pjuttost ta' statura twila.

Esebixxa f'dan ir-rigward tlettax-il ritratt Dok AC1 u parade sheet immarkata bhala Dok AC2.

Dwar l-ID parade in kontroezami qal li din saret bin-nies li kellu. Xehed "Kif jidher f'diversi varjetajiet ta' strutturi fizici tan-nies li qed jippartecipaw fl-ID parade". (a fol 48). Xehed ukoll li meta gie mitkellem minn Cahill u Martin dawn kienu ndikawlu li r-ragel minnhom identifikat kien pjuttost twil. Qal dwar kriterji stabbiliti fis-sentenza tal-Qorti fl-ismijiet Pulizija vs Stephen Zammit, cioe fir-rigward tar-rekwiziti necessarji fl-identification parade, li hu ghamel li setgha fil-limitazzjonijiet li sab stante li ma sabx nies ohra biex jiehd u sehem fl-identification parade.

Issa mill-investigazzjonijiet tal-pulizija jirrizulta wkoll zewg fatti, li l-vettura KAL-735 tappartjeni lil missier l-akkuzat. Jirrizulta wkoll mix-xhieda ta' Jose Abela rapprezentant tad-Direttur tal-Licenzji illi l-akkuzat ma ghandu ebda tip ta' licenzja tas-sewqan.

Rat ukoll il-verbal tal-5 ta' Mejju, 2000 fejn l-avukat difensur talab li a bazi tal-kriterji stabbiliti fid-direzzjoni Pulizija vs Stephen Zammit mill-Qorti ta' l-Appell Kriminali, li jigu sfilzati u mnehhija r-ritratti u dokumenti relatati mill-atti tal-kawza. Hawn ghalkemm il-verbal ma kienx car fid-dicitura tieghu, l-Avukat Difensur kien qed jitkellem dwar ir-ritratti u dokumenti relatati ma' l-identification parade.

Rat ukoll ir-riserva tal-Qorti dwar it-talba ta' sfilz inkwantu f'dak l-istadju kienet ghadha Qorti Strutturja.

Rat ir-rinviju ta' l-Avukat Generali datat 25.07.00 fejn ntbaghtu l-artikoli taht liema l-Qorti b'kompetenza ta' Gudikatura Kriminali tista' ssib htija kontra Charles Sciberras.

Rat li l-akkuzat fil-verbal ta' l-4 ta' Awissu, 2000 irregistra n-nuqqas ta' oggezzjoni tieghu ghal proceduri sommarji.

Rat ukoll l-istqarrija ta' l-akkuzat anzi z-zewg stqarrijiet ta' Charles Sciberras (a fol 52-55) fejn huwa nnega l-involviment tieghu f'din is-serqa u fit-tieni stqarrija qal li perpetratur ta' din is-serqa kien wiehed li jghidulu l-banana u li hu kien lest jakkuzah b'dan f'wiccu. Min-naha tieghu, Jesmond Portelli, cioe l-banana, innega fix-xhieda tieghu l-involviment tieghu f'din is-serqa kif addebitat lilu mill-akkuzat (a fol 84-86).

Ikkonsidrat.

Illi kif gie ben riprodott fis-sentenzi tal-Qorti ta' l-Appell Kriminali Pulizija v Alfred Bugeja datata 25 ta' Frar, 2000 u l-Pulizija vs Stephen Zammit datata 15 ta' Lulju, 1998, fil-ligi taghna ma nsibu xejn li jindika kif ghandha tigi kondotta identification parade, cioe dik l-identifikazzjoni li ssir precedentement qabel ma l-akkuzat jitressaq il-Qorti, ghajr ghal artikolu 648 tal-Kap 9 liema artikolu jitkellem fuq dak li mhux mehtieg mhux fuq dak li hu, f'kaz ta' prova ta' identita'.

Iz-zewg sentenzi citati t-tnejn irrikorrew ghal Code of Practice D taht il-Police and Criminal Evidence Act 1984, li ghalkemm kif gie ben spjegat f'dawn iz-zewg gudizzji, mhux applikabbli ghall-ligi Maltija, pero' jservu bhala "guidelines" ghal dik li hi l-attendibilita' u l-piz probatorju ta' identifikazzjoni ta' l-akkuzat.

Il-Qorti mhux se tikkomenta fuq ir-regoli stabbiliti fis-sentenzi citati dwar ritratti li fuqhom isir l-identita'. Fil-fatt ir-ritratti wzati fl-identification parade kif gie premess gew debitament u korrettament esebiti mill-Ufficjal Prosekutur.

Il-Qorti pero' se tghaddi biex taghmel il-kummenti taghha dwar kif saret l-identification parade u hawn se tirrikorri ghal par 8 Annexe A, Code of Practice D taht il-Police and Criminal Evidence Act, 1984.

" The Parade shall consist of at least eight persons (in addition to the suspect) who so far as possible resemble the suspect in age, height, general appearance and position in life."

Taqbel ukoll din il-Qorti li “certament ma jfisserx li jekk hawn Malta ma jigux segwiti dawn il-metodi ta' identifikazzjoni ghalkemm ferm desiderabbli kemm fil-kaz ta' ritratti, kif ukoll fl-identification parades, allura dawk l-identifikazzjoni ma jkunux ammissibli bhala prova valida. Ikun ifisser biss li dik l-identifikazzjoni tista ma tkunx attendibbli jew attendibbli bizzzejjed. (Pulizija Spettur R. Cilia vs Alfred Bugeja).

Fid-decizjoni Pulizija v Stephen Zammit giet kwotata l-kaz ta' Turnbull (1977) QB 224. Din il-Qorti se tikkwota biss estratt minnha rilevanti ghall-kaz in dizamina.

“Secondly the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under the observation? At what distance? In what light? Was the observation impeded in any way, as for example, by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance ? ...”

Mill-provi jirrizulta illi l-Ufficjal Prosekutur kien kostrett minhabba li kienet il-festa ta' l-Ghid li juza n-nies li jidhru fl-identification parade. Jirrizulta wkoll illi l-akkuzat ghandu statura korpuza. Tant li jispikka minn fost l-ohajn li jidhru fl-istess ritratt. Zgur fil-fatt li l-ID parade ma ssegwix ir-rekwiziti gia msemmija u cioe “eight persons who so far as possible resemble the suspect in age, height, general appearances and position in life.”

Jigi premiss ukoll li Cahill rat lill-akkuzat ma' wiccha biss ghal ftit sekondi, fi kliemha bejn four or five seconds. Sussegwentement ratu biss minn wara meta kienet qed tigrari warajh. Ix-xhud Martin ratu biss minn wara, jirrizulta li

huma gharfu biss il-hwejjeg u l-istatura tighu. Oltre hekk il-persuna li fil-fatt rat l-akkuzat jikkommetti s-serq u jirkeb fil-karozza ghazlet li ma titlax tixhed f'din il-kawza.

Bla ma l-Qorti trid b'xi mod titfa xi kritika lejn l-Ufficial Prosekutor, se tikkwota minn A. A. S. Zuckerman "The Principles of Criminal Evidence" 1989 page 178 biex turi biss il-piz li ggorr il-prosekuzzjoni meta tibbaza l-prova taghha fuq visual evidence u dan ghax l-istess gudikant hija ben konsapevoli tal-limitazzjonijiet li jahdmu fihom il-prosekuzzjoni.

"As the trial procedure cannot provide altogether adequate safeguards against mistaken identification, more needs to be done during pre trial stages. It may be possible to improve the techniques of identification, but there will be cases where the identification is not a product of investigative procedures. Where the evidence consists of a bare account of what a witness saw, prosecution authorities should refrain from adducing the evidence unless it is of sufficient quality. Greater pre-trial quality control will improve the present position where everything depends on a judicial discretion and the jury's ability to follow it."

Premess dana kollu l-Qorti hija ghalhekk tal-fehma li l-prova ta' identita' mressqa u cioe l-identification parade mhux attendibbli bizzejjed biex twassal ghal dak il-grad ta' konvinciment ta' prova li tmur beyond a reasonable doubt li l-akkuzat kien fil-fatt dik il-persuna li fil-fatt ikkommettiet s-serqa li biha gie addebitat dan nonostante l-prezenza tieghu fil-post ta' l-incident u n-negazzjoni ta' Jesmond Portelli ta' involviment f'dan l-incident, u ghaldaqstant qed tilliberah mill-istess akkuza.

Issibu hati b'ammissjoni tieghu stess fit-tieni stqarrija tieghu talli saq il-vettura KAL 735 bla ma kellu licenzji ghas-sewqan u dan wara li rat l-art 3 tal-Kap 104, tikkundannah hames mitt lira multa (Lm 500) u tiskwalifikah milli jkollu jew izomm licenzji tas-sewqan ghal zmien sena mil-llum. Dwar ir-reati addebitati lilu taht ir-

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rekwizit (c) tar-rinviju ta' l-Avukat Generali, tqis li dawn ma gewx pruvati u qed tilliberah mill-istess.

Magistrat Dr Miriam Hayman LL. D.