

Kopja Informali ta' Sentenza



MALTA

**QORTI KRIMINALI
MALTA**

**ONOR. IMHALLEF
GALEA DEBONO JOSEPH**

Seduta tas-6 ta' Jannar, 2003

Numru 20/2002

Republic of Malta

vs.

Divina Alacon Ortiz

The Court ,

Having seen the Bill of Indictment number 20/2002 against the accused Divina Alacon Ortiz ;

Having seen all the records of the case, including those of the compilation of evidence before the Court of Magistrates (Malta) as a Court of Criminal Inquiry;

Having seen the Note filed by the said accused on the 4th. December, 2002, whereby she declared that she was

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filing a guilty plea for the accusations put forward in her regard in the above referred Bill of Indictment ;

Having seen the corrections to the bill of Indictment ordered by the Court "Ex Officio" and having seen the Prosecution's request to amend the Bill of Indictment and the accused's consent to the said corrections being made and her waiver of the right to the adjournment of the trial to another day;

Having seen that in today's sitting the accused, in answer to the question as to whether she was guilty or not guilty of the charges preferred against her under the three counts of the Bill of Indictment, stated that she was pleading guilty thereto ;

Having seen that this Court then warned the accused in the most solemn manner of the legal consequences of such statement and allowed her a short time to retract it , according to Section 453 (Chap. 9);

Having seen that the accused being granted such a time, persisted in her statement of admission of guilt ;

Having heard submissions of Defence Counsel and of Counsel for the Prosecution regarding the plea in mitigation for the purposes of punishment;

Having heard the evidence of Police Inspector Sandro Gatt, Inspector Neil Harrison and the accused herself;

Having considered in the accused's favour, 1. the fact that she admitted her involvement and knowledge of the drug importation- albeit of one kilo of heroin and not two, possession and conspiracy to traffic in drugs at a very early stage of the Police investigations; 2. her co-operation with the Police in trying to contact her mandatory or accomplice abroad over the phone and to assist the Police in the identification of her would-be contact in Malta- even though this cooperation was neutralized if not indeed unintentionally sabotaged by the untimely and premature broadcasting of the news of a drug interception

at Luqa Airport; 3. her admission of guilt before this Court at the first available opportunity , namely upon being served with the Bill of Indictment ; 4. as well as the fact that her criminal record in Malta is clean;

Having on the other hand considered that : - 1.the accused had offered her services for the illegal importation into these Islands of a very substantial consignment of heroin , i.e. 2019.4 grams of heroin of a purity of 29% with a street (retail value) value in the region of LM88,000, with the dire consequences that this would have caused among the local population had it not been intercepted by the Customs and the Police at the Airport ; 2. that she did this purely for financial gain, as from her statement to the police it results that she had a steady job in Turkey ; 3. that this involvement of accused in this drug trafficking ring had been planned weeks in advance , so much so that she had already been to Malta on a reconnaissance visit to familiarize herself with the terrain ; 4. having also considered that the punishment should also serve as a deterrent to like-minded persons who are involved in similar operations of drug importation and trafficking in these Islands ;

Having considered the relevant case law of our Courts and of foreign courts regarding pleas in mitigation of punishment in cases of an admission of guilt at an early stage of the proceedings;

Declares Divina Alacon Ortiz guilty of all three counts in the Bill of Indictment , namely of having on the 12th. July, 2001 at Malta International Airport :-

1. been guilty of importing, causing to be imported or taking any steps preparatory to importing a dangerous drug (heroin) into Malta , other than in pursuance of and in accordance with the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) , that is without a license or authorization issued in terms of the said Ordinance authorizing the importation of that dangerous drug, as stated in the first count of the Bill of Indictment ;

2. been guilty of being on the same date, place and circumstances in possession of a dangerous drug (heroin) when she was not in possession of an import or export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of Part IV and VI of the Dangerous Drug Ordinance (Chapter 101 of the Laws of Malta) nor licensed or otherwise authorized to manufacture or supply such drug nor otherwise licensed by the President to be in possession of such drug, and of not having proved that such drug was supplied to her for her use in accordance with a prescription issued under the said rules, which drug was found under circumstances which indicate that it was not intended for her exclusive use, as stated in the second count of the Bill of Indictment; and

3. been guilty of having, on the said day and in the previous months in Malta and abroad, of the offence of conspiracy that is of having together with one or more persons in Malta or outside Malta conspired for the purpose of selling or dealing in a drug (heroin) in Malta against the Provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or promoted, contributed, organized or financed the conspiracy and this as stated in the third count of the Bill of Indictment;

Having seen Sections 9, 10, 10(1) 12, 14, 14 (1)(5), 15A, 20, 22 (1) (2) (a) (f) (1A) (1B) 2 (a) (i) (ii) (3A)(c)(d), 22 (b) (i), 23, 26 and 29 of the Dangerous Drugs Ordinance (Chap.101); Regulation or Rule 8 of the Dangerous Drugs (internal Control) Rules, 1939 (G.N. 292/1939) and Sections 17, 20, 22, 23, 23A, 26, 31, 492 and 533 of the Criminal Code;

Having considered that the Prosecution and Defence agreed that, for purposes of punishment, the Second and Third Counts of the Bill of Indictment regarding the crimes of possession and conspiracy respectively, should be absorbed in the offence of unlawful importation of drugs contemplated in the First Count of the Bill of Indictment as they served as a means to an end for the commission of the offence under the said First Count of the Bill of

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Indictment in terms of Section 17 (h) of the Criminal Code (Chap.9) ;

Having considered that although Section 29 of the Dangerous Drugs Orders (Chap. 101) technically speaking does not apply to the accused's case as no arrests were made of the person or persons who supplied her with the drugs in question, she nonetheless did help the Police as aforesaid albeit with negative results;

Condemns the said Divina Alacon Ortiz to a term of imprisonment of thirteen (13) years, from which term shall be deducted any time she has spent in preventive custody in connection with this case and to the payment of a fine (multa) of twenty thousand Maltese Liri (LM 20,000) , which fine (multa) shall be converted into a further term of imprisonment of one (1) year according to Law, in default of payment ;

Furthermore condemns her to pay the sum of two hundred and eleven Maltese Liri and seventy five cents (LM211.75c) being the sum total of the expenses incurred in the appointment of Court Experts in this case in terms of Section 533 of Chapter 9 of the Laws of Malta;

Furthermore, orders the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which she has been found guilty and other moveable and immovable property belonging to the said Divina Alacon Ortiz ;

And finally orders the destruction of all the objects exhibited in Court, consisting of the dangerous drugs or objects related to the abuse of drugs, which destruction shall be carried out by the chemist Mario Mifsud, under the direct supervision of the Deputy Registrar of this Court who shall be bound to report in writing to this Court when such destruction has been completed.

(ft) Joseph G. Galea Debono
Imhallef

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John Farrugia
Dep. Registratur

06.01.2003