



QORTI TA' L-APPELL KRIMINALI

**ONOR. IMHALLEF
JOSEPH GALEA DEBONO**

Seduta tat-30 ta' Jannar, 2003

Appell Kriminali Numru. 229/2002

The Police
(Insp. I. Abdilla)
(Insp. N. Xuereb)
Vs
Taofik Garuba
Tajudeen Sanusi
Ajoke Adunmosu
Joyce Olutoyin Olaitan
Cassandra Caprice
Abike Famodun
Oluwatoyin Gawiat Masha

The Court,

Having seen the charges proffered against the appellants before the Court of Magistrates (Malta), whereby they were charged with:

1) having forged any schedule, ticket, order or other document whatsoever, upon the presentation of which

any payment may be obtained, or any delivery of goods effected, or a deposit or pledge withdrawn from any public office or from any bank or other public institution established by the Government, or recognized by any public act of the Government, and having knowingly made use thereof of any of the instruments specified above, and this in breach of Sec. 167 and 169 of Chapter 9 of the Laws of Malta;

2) having committed forgery of any authentic and public instrument or of any commercial document or private bank document, by counterfeiting or altering the writing or signature, by feigning any fictitious agreement, disposition, obligation or discharge, or by the insertion of any such agreement, disposition, obligation or discharge in any of the said instruments or documents after the formation thereof, or by any addition to or alternation of any clause, declaration or fact which such instruments or documents were intended to contain or prove, and having knowingly made use of any of the false acts, writings, instruments or documents mentioned above, and this in breach of Sec. 183 and 184 of Chapter 9 of the Laws of Malta;

3) to any advantage or benefit for themselves or others, in any document intended for any public authority, knowingly made a false declaration or statement, or gave false information, and this in breach of Sec. 188 of Chapter 9 of the Laws of Malta;

4) having by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, made a gain which exceeds LM50 but does not exceed LM1,000.00 to the detriment of Bank of Valletta plc, H.S.B.C. plc, and other persons and entities, and this in breach of Sec. 18, 308, 309, 310 of Chapter 9 of the Laws of Malta;

5) knowingly having received or purchased any property which has been stolen, misapplied or obtained by means of any offence, whether committed in Malta or abroad, or knowingly took part, in any manner whatsoever, in the

sale or disposal of the same, and this in breach of Sec. 334 of Chapter 9 of the Laws of Malta;

6) knowingly being in possession of a passport whether issued to them by a competent authority or not, transferred such passport to any other person or received a passport transferred to them by any other person, and this in violation of Article 3 of Chapter 61 of the Laws of Malta;

7) having during the same period, forged, altered or tempered with, or used or had in their possession passports issued by the United Kingdom of Great Britain and Northern Ireland which they knew to be forged, altered or tempered with and this in violation of Article 5 of Chapter 61 of the Laws of Malta;

and

8) Cassandra Caprice alone with having in her possession the resin obtained from the plant Cannabis, or any other preparation of which such resin formed the base, in terms of Section 8 (a) of the Chapter 101 of the Laws of Malta.

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature of the 7th October, 2002, whereby after having seen sections 167, 169, 183, 184, 188, 18, 308, 309, 310, 334 of Chapter 9, Article 3, 5 of Chapter 61 and section 8(a) of Chapter 101 of the Laws of Malta and also section 15 of Chapter 217 of the Laws of Malta, found the accused guilty of all the charges and sentenced them to one (1) year imprisonment from which the period of time they had spent in prison till then should be deducted, and declared them illegal immigrants in terms of section 14 of Chapter 217 of the Laws of Malta and ordered their immediate deportation from these islands after serving their sentence.

Having seen the application of appeal of the appellants Taofik Garuba, Ajoke Odunmosu, Oluwatoyin Ganiat Masha and Tajudeen Sanusi, filed by them on the 15th October, 2002, whereby they requested this Court to vary the sentence to the effect that whilst confirming that part of the sentence which found the appellants guilty as

charged and which ordered the deduction of the period of time they spent in prison, modifies and varies the same in the part which regards the period of imprisonment imposed reducing the same to the minimum permissible at Law.

Having seen the other application of appeal of appellants Joyce Olutoyin Olaitan, Cassandra Caprice and Abike Famodun, filed by them on the 15th October, 2002 whereby they requested this Court to vary the appealed judgement by confirming that part of the judgement of the First Court whereby the appellants were :

a) found guilty of the charges as above stated,
b) declared to be prohibited immigrants and whereby it authorised the issue of a removal order against them,
c) and where it ordered the confiscation of all Maltese currency and ordered the return of the Sterling and other various international currencies to the accused.

and by modifying and varying it in that part where it condemned the appellants to a period of one (1) year imprisonment and imposing instead a more adequate punishment taking into consideration all the circumstances of the case, and this with the reduction of all time spent under preventive arrest, and subsidiarily, and without prejudice to the above, if this court deems the judgement of the First Honourable Court to be equitable and just, to inflict upon the appellants instead of a prison term, an order of probation or a suspended sentence in their regard.

Having seen that the grounds for lodging the appeal of the appellants Toufik Garouba , Ajoke Adumosu, Oluwatoyin Ganiat Masha and Tajudeen Sanusi concerning the sentence inflicted are briefly the following :- 1. That the Court of First Instance failed to take into account the circumstance that appellants pleaded guilty on the day of their first appearance in Court and at the first available opportunity and that no forged passports , driving licences or false credit cards or Maltese currency were found on the person of appellant Ajoke Adunmosu ; that appellants were first time offenders; that the two male

appellants are breadwinners for their families and the two female appellants are mothers of infant children ; and that appellants Sanusi and Garouba respectively suffer from deep vein thrombosis and spinal cord injury which need constant medical supervision ;

Having seen that the grounds for lodging the appeal of the other three appellants Joyce Olutoyin Olaitan, Cassandra Caprice and Abike Famodun are briefly the following :- that the punishment meted out by the First Court was excessive when one considers that appellants pleaded guilty when they first appeared before the Magistrates Court and that this should make them benefit from a reduction of punishment ; that accused were first time offenders and therefore the punishment awarded should have been a probation order or suspended sentence and not a prison term ; that the imposition of a prison sentence is going to change drastically their respective lives abroad , particularly with regards to their family life and children and their dwelling arrangements and that the modern approach to criminal proceedings is not one of retribution but one of restitution where the criminal should have the possibility to reform himself .

Having examined all the records of the proceedings;

Having heard submissions by learned Counsel for the Defence and for the Prosecution in the course of the sitting held on the 12th. December, 2002 ;

Considers

That the two applications of appeal lodged by the seven appellants concern the punishment meted out to appellants by the First Court after they had pleaded guilty to all the offences with which they had been charged .

The crimes to which the appellants pleaded guilty are those contemplated in section 167 of the Criminal Code , (forgery of documents liable to imprisonment for a period ranging from 13 months to four years with or without solitary confinement) ; section 169, (knowingly making

use of forged documents also liable to the same punishment, with the qualification that these offences were committed by several acts at different times, thereby making them a continuous offence under section 18 of the Criminal Code , with the possibility of said punishment being increased from one to two degrees therefore bringing up the punishment to a maximum of six years and a minimum of eighteen months for each of the two offences . Furthermore appellants were accused of forgery of authentic and public instruments and of knowingly having made use thereof , in violation of sections 183 and 184 of the Criminal Code respectively , where again the punishment for each of the two separate offences was a minimum of 13 months and a maximum of four years imprisonment. They were also found guilty of having gained an advantage or benefit for themselves or others by knowingly having made false declarations or statements or given false information in violation of section 188 of the Criminal Code which provides for a punishment of not more than two years imprisonment or a fine multa . Appellants also pleaded guilty of having made a fraudulent gain by means of unlawful practices or by the use of fictitious names or the assumption of false designations or by means of any other deceit , device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of an imaginary power, influence or credit to the detriment of Bank of Valletta Plc, HSBC Bank Malta Plc and other persons and entities in violation of section 308 of the Criminal Code , which provides for a punishment ranging from a minimum of five months to three years . Appellants were also found guilty , on their own admission , of the offence contemplated under section 334 of the Criminal Code , namely that of having knowingly received or purchased any property which has been stolen, misapplied or obtained by means of any offence committed in Malta or abroad or of knowingly having taken part , in any manner whatsoever , in the sale or disposal of same . This offence would likewise be subject to the punishment for fraudulent gain above mentioned , i.e. from five months to three years in terms of subsection (c) of section 334. Furthermore appellants were found guilty of knowingly having

transferred a passport or received such passport in violation of Section 3 of Chapter 61 of the Laws of Malta , which offence is subject to a term of imprisonment of not more than two years , and of having forged, altered or had in their possession passports issued by the United Kingdom which they knew to be forged , altered or tampered with , in violation of Section 5 of the said Chapter 61 , an offence subject to imprisonment from six months to two years .

Furthermore appellant Cassandra Caprice was also found guilty of possession of resin obtained from the Plant Cannabis in violation of Section 8 (a) of Chapter 101 of the Laws of Malta , an offence subject to a punishment of imprisonment of not less than three months and not more than twelve months or a fine of not less than LM200 but not more than LM1000 or both such imprisonment and fine according to section 22 (2) (b) (ii) of Chapter 101. However in its judgement , the First Court expressly declared that it was “specifically ignoring” her possession and the punishment meted out included punishment for that drug possession.

From a cursory examination of the above, it results that - taking into account the various punishments for the various offences of which appellants were found guilty upon their admission, the formal and material concursus as well as the elements of the continuous offence - appellants, at worse, faced a maximum sentence of nineteen years imprisonment and a minimum of three years and four months imprisonment and not with due respect the punishment which was mentioned “obiter” in the judgement of the First Court, i.e. a minimum of six months and a maximum of four years, a range of punishment with which Counsel for the defence agreed , but which, as ably pointed out by Counsel for the Prosecution, was clearly erroneous .

As such, it is obvious that in meting out the punishment inflicted upon the appellants, the First Court awarded a punishment far below the minimum prescribed by law for the offences to which appellants pleaded guilty . And

although the First Court failed to declare the special and extraordinary reasons for having done so as it was bound to do in terms of section 21 of the Criminal Code - a failure which this Court is observing in many judgements of the Magistrates Courts, where punishment below the minimum prescribed by law is being awarded - it is obvious that in handing out the punishment appealed from, the First Court must have taken into account the grounds for mitigation being raised by the appellants before this Court, otherwise there would have been absolutely no justification whatsoever for the First Court to have awarded a punishment which is less than one third (1/3) of the minimum prescribed by law.

It is the accepted practice of this Court not to modify the punishment inflicted by the Court of First Instance unless this goes beyond the parameters of the law or it is manifestly disproportionate. As has been seen above, this is certainly not the case with regard to the guilt admitted by all the appellants and their conviction of the offences with which they were charged.

Furthermore, this Court has no reason to fault the motivation of the First Court in meting out a sentence of imprisonment, albeit considerably below the minimum prescribed by law, particularly where it stressed that the accusations indicated an "organisation of premeditated fraud at the expense of Maltese Society" committed by persons who came into the country with forged passports, with false credit cards and other forged documents and who came to Malta, knowing that they were coming here specifically to break the law.

With regard to appellants' pleas in mitigation, this Court finds that such pleas especially those regarding their being first offenders (at least in Malta!) and regarding their filing of an early plea of guilty, were adequately addressed by the Court of First Instance in meting out a punishment which is far below the minimum prescribed by law, even though this is not expressly stated in the judgement appealed from as should have been done. Other pleas regarding the disruption of the appellant's

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family life back home and the state of health of two of the appellants, even if taken as proven, which they were not before the first Court , in no way justify or call for more leniency than that already shown by the First Court in the judgement appealed from .

This Court however enjoins the Director of Prisons to ensure that the appellants Garouba and Sanusi receive all necessary medical care and attention during their period of detention in Malta , according to the usual practice prevailing in the Corradino Correctional Facility , including any period of hospitalisation if necessary.

In view of the above, This Court is rejecting the appeals of all seven appellants and is confirming the judgement appealed from.

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