



COURT OF CRIMINAL APPEAL

**HON. MR. JUSTICE
JOSEPH A. FILLETTI**

**HON. MR. JUSTICE
RAYMOND C. PACE**

**HON. MR. JUSTICE
DAVID SCICLUNA**

Sitting of the 6 th October, 2003

Number 23/2000

The Republic of Malta

vs

Ahmed Ben Taher

The Court,

Having seen the judgement delivered on the 16th January 2001 by the Honourable Criminal Court which reads as follows:

" The Court:

Having seen Bill of Indictment 23/2000;

Having heard the accused Ahmed Ben Taher plead guilty to the charges brought against him in the said Bill of Indictment, in which plea he persisted even after the Court warned him in the most solemn manner of the consequences of such a plea and allowed him a short time to retract it, as provided in Section 453 of the Criminal Code;

Declares the said Ahmed Ben Taher guilty of conspiring with another one or more persons in Malta or outside Malta for the purposes of selling or dealing in a drug in these Islands against the provisions of the Dangerous Drugs Ordinance, and of having promoted, constituted, organised or financed the conspiracy, and this according to the first count of the Bill of Indictment; declares him guilty of importing into Malta the drug heroin in breach of the law, according to the second count of the same said Indictment; and declares him also guilty of being in possession of the drug heroin in breach of the law under such circumstances which show that the said possession was not for his exclusive use, and this according to the third count of the Bill of Indictment;

Having seen the record of the proceedings; having considered all the circumstances of the case, including the nature and the amount of the drug involved, the period that the accused has spent in preventive custody in connection with this case, the fact that he has registered a plea of guilty in the very early stages of the proceedings before this court, the fact also that he co-operated fully with the police as stated on oath by Inspector Norbert Ciappara; having taken also into account the declaration by prosecuting counsel that in this case Section 29 of Chapter 101 is applicable; having also considered the principles laid down in its judgement of the 27 February, 1997 in the case *Ir-Repubblika ta' Malta v. Nicholas Azzopardi*;

Having seen sections 2, 9, 10(1), 12, 15(a), 22(1)(a)(f)(1A)(1B)(2)(a)(i) and 29 of Cap. 101, the Dangerous Drugs (Internal Control) Rules, 1939, and sections 11, 17(h), 22 and 533 of the Criminal Code;

Sentences the said Ahmed Ben Taher to imprisonment for nine (9) years (from which period is to be deducted the time he has already spent up to to-day in preventive custody), and to a fine (*multa*) of twelve thousand liri (Lm12,000), convertible into an additional one year imprisonment if it is not paid according to law; and further orders him to pay to the registrar, within three months from to-day, the sum of two hundred and forty five liri and twenty five cents (Lm245.25c) representing court experts' fees incurred in these proceedings;

Finally the court orders the destruction of the drug exhibited under its authority in these proceedings unless the Attorney General, by a note to be filed not later than a week from to-day, declares that such drug is required in connection with some other proceedings; the destruction of the said drug is to be effected by chemist Mario Mifsud, who is being appointed for the purpose; the said Mr. Mifsud is to file a proces-verbal in the record of these proceedings detailing the said destruction, and such proces-verbal is to be filed not later than a month from to-day."

Having seen the application of appeal of the said Ahmed Ben Taher filed on the 5th February 2001 wherein he requested that this Court varies the said judgement by confirming it in so far as applicant was convicted of all the charges preferred against him and revoking it where, in virtue of said judgement, applicant was condemned to nine (9) years imprisonment wherefrom the period of preventive arrest was to be deducted and to the payment of a fine (*multa*) of twelve thousand Maltese liri (Lm12,000) besides the relative Court expert fees and instead by imposing a penalty which is more appropriate to the circumstances of the case;

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Having seen all the records of the case and the documents exhibited;

Having heard the submissions made by counsel for appellant and counsel for the respondent Attorney General;

Considers:-

This is an appeal against punishment as appellant feels that the particular circumstances he mentions in his application of appeal and indicated during oral submissions militate in favour of a less severe punishment.

In his application of appeal, appellant outlines his grievances as follows:

"That notwithstanding the fact that the applicant admitted his guilt at the very earliest possible stage of the legal proceedings which unfolded following his apprehension, which is one of the pre-conditions laid down by the Criminal Court in 'The Police vs Nicholas Aquilina [**recte**: Azzopardi]' in order that the accused might benefit from a mitigation of punishment (vide sitting of the 29th February 1997 before the Criminal Court) and having regard also to the fact that the Attorney General's office involved [**recte**: invoked] the provision of section 29 of Chapter 101 of the Laws of Malta, in the light of the co-operation of the applicant which as stated supra is likely to give rise to the apprehension of a 3rd party by the Drug Squad, the penalty inflicted on the applicant was excessive inasmuch as the punishment was within the parameters of the punishment imposed on other persons, by the Criminal Court, accused with similar offences, who had either contested the relative Bill of Indictment or pleaded guilty but with regard to whom the provision of Section 29 of Chapter 101 of the Laws of Malta had not been invoked.

The nature of the penalty inflicted on the applicant is consequently inconsistent with the nature of the punishment inflicted on other persons by the Criminal

Court when the nature of the punishment in similar cases should be uniform".

This Court has had occasion to remark several times that appeals against punishment following the entering of a plea of guilty will only be considered favourably in exceptional cases. It is not the function of this Court as a Court of appellate jurisdiction to disturb the discretion of the First Court as regards the quantum of punishment unless such discretion has been exercised outside the limits laid down by the law or in special circumstances where a revision of the punishment meted out is manifestly warranted.

In the present case the First Court, in meting out punishment to the accused, considered "all the circumstances of the case, including the nature and the amount of the drug involved, the period that the accused has spent in preventive custody in connection with this case, the fact that he has registered a plea of guilty in the very early stages of the proceedings before this court, the fact also that he co-operated fully with the police as stated on oath by Inspector Norbert Ciappara ... the declaration by prosecuting counsel that in this case Section 29 of Chapter 101 is applicable ... [and] ... the principles laid down in its judgement of the 27 February, 1997 in the case *Ir-Repubblika ta' Malta v. Nicholas Azzopardi*".

It is clear, therefore, that the fact that appellant admitted to the charges brought against him at a very early stage of the proceedings before the Criminal Court and the applicability of section 29 of Chapter 101 of the Laws of Malta were expressly taken into consideration by the First Court for the purpose of punishment. Indeed the judgement even makes specific reference to the said section 29 as one of the sections of law considered for the purpose of determining punishment.

Nonetheless appellant feels that the punishment inflicted on him was excessive as he maintains that it was within the parameters of punishment imposed on other persons who had contested the charges or who had pleaded guilty

and in respect of whom the aforesaid section 29 was not applied. It has often been repeated that comparisons are odious. Indeed the determination of punishment depends on due consideration being given to the particular circumstances of the case before the Court. This Court has no doubt that the First Court did take into consideration "all the circumstances of the case" as quoted above.

This Court too, after considering the seriousness of the crimes committed by appellant, that the drug involved (heroin) was a potentially lethal drug, that the amount involved was not an inconsequential one (400 grams), that its purity was around 65% as stated in the forensic expert's (pharmacist Mario Mifsud) report exhibited in the records of the compilation proceedings, and that the appellant agreed to import it because, as he himself stated when he gave evidence before the Honourable Criminal Court, he "was in need of money" and therefore chose to break the law of this country, and after considering that the punishment that had been originally requested by the Attorney-General in the bill of indictment was, *inter alia*, that of imprisonment for life, finds that the punishment imposed by the First Court was in fact warranted.

Having also considered that during oral submissions made by learned counsel for appellant, it was submitted that in view of the fact that since the appeal was lodged appellant gave evidence during compilation proceedings, a further reduction in punishment would be in order.

This Court cannot agree with such submission as it is certainly not the letter nor the spirit of section 29 of Chapter 101 of the Laws of Malta. Once a person has benefitted from that section of law, and such benefit is clearly reflected in the punishment meted out to him, he cannot expect to benefit further each time he gives evidence confirming his previous evidence; he would be simply performing his duty. Considerations of fear for personal security, also mentioned by counsel for

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appellant, should have been made by appellant before he decided to undertake his criminal deeds.

Appellant's grievances are consequently dismissed.

For these reasons:

This Court rejects the appeal and confirms the judgement given by the Honourable Criminal Court on the 16th January 2001 in its entirety saving that the three-month period for the payment of the Court experts' fees amounting to two hundred and fortyfive Maltese liri and twentyfive cents (Lm245.25) is to start running from today.

< Final Judgement >

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