MALTA

QORTI TA' L-APPELL KRIMINALI

ONOR. IMHALLEF
DAVID SCICLUNA

Seduta tal-5 ta' Mejju, 2006

Appell Kriminali Numru. 325/2005

Il-Pulizija

v.

... omissis ...
Hakim Medi Mohammed

Il-Qorti,

Rat l-imputazzjonijiet migjuba mill-Pulizija Ezekuttiva kontra Hakim Medi Mohammed talli:

1) fit-12 ta' Gunju 2004, ghall-habta tat-tlieta ta' wara l-ikel gewwa Haz-Zebbug ikkommetta serq ta' erbat elef, mitejn u hamsin Dollaru Amerikan (4250) ghad-dannu ta' Mourad G. Erhuma passaport numru 415652, liema serq huwa aggravat bil-lok, ammont u vjolenza;

2) fl-istess data, hin, lok u cirkostanzi, bla ordni skond il-ligi ta' l-awtorita` kompetenti, zamm jew issekwestra lill-

imsemmi Mourad kontra l-volonta` tieghu jew ta post biex fih din il-persuna tigi arrestata, mizmuma jew issekwestrata;

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tad-9 ta’ Novembru 2005 li permezz taghha dik il-Qorti sabet lill-imsemmi Hakim Medi Mohammed hati ta' l-imputazzjonijiet dedotti kontra tieghu u kkundannatu ghall-piena karcerarja ta’ sentejn u disa’ xhur;
Rat ir-rikors ta’ appell ta' l-imsemmi Hakim Medi Mohammed pprezentat fit-18 ta’ Novembru 2005 li permezz tieghu talab li din il-Qorti joghgobha tilqa’ dan l-appell limitatament ghall-piena nflitta u tirriforma s-sentenza appellata fis sens li thassarha u tirrevokaha fil-parti tal-piena billi minflok tigi mposta piena aktar gusta ghall-kaz odjern u tikkonfermaha fil-bqija;

Rat l-atti kollha tal-kawza;

Semghet it-trattazzjoni tad-difensuri tal-partijiet;

Ikkunsidrat:

Dan huwa appell mill-piena. L-appellant jilmenta mis-severita` tal-piena nflitta mill-Ewwel Qorti. Jghid li minkejja li dik il-Qorti nnutat li huwa ghandu fedina penali netta u kondotta nadifa, naqset milli taghti konsiderazzjoni xierqa ghal dan il-fatt meta giet biex tinfliggi l-piena. Inoltre jghid li l-Qorti naqset milli tapplika *discount* ghall-ammissjoni bikrija ta’ l-appellant. Isostni li huwa ghandu *a legitimate expectation* li jinghata riduzzjoni fil-piena bis-sahha ta’ l-ammissjoni tieghu li minghajrha, skond l-appellant, il-Pulizija ma kellhiex provi sufficjenti kontra z-zewg imputati.

Issa fit-termini tal-gurisprudenza ormai kostanti tal-Qrati taghna, meta jkun hemm ammissjoni huwa xi ftit jew wisq odjuz appell minn piena sakemm din tkun tirrientra fil-limiti li tipprefiggi l-ligi. Dan huwa hekk peress illi min jammetti jkun qieghed jassumi r-responsabilita` tad-decizjoni li jkun ha u jirrimetti ruhu ghal kull decizjoni dwar piena li l-Qorti

tkun tista' tasal ghaliha. Naturalment dan ma jfissirx li din il-Qorti u Qrati ohra ta' appell ma jidhlux f'ezami akkurat tac-cirkostanzi kollha biex jaraw jekk il-piena nflitta kenitx eccessiva jew le. Mhuwiex normali pero`, li tigi disturbata d-diskrezzjoni ta' l-Ewwel Qorti jekk il-piena nflitta tkun tidhol fil-parametri tal-ligi u ma jkun hemm xejn x'jindika li kellha tkun inqas minn dik li tkun inghatat.

Fil-kaz in ezami, il-piena ghas-serq aggravat bil-vjolenza, valur u lok skond l-ewwel imputazzjoni hija ta' prigunerija ghal zmien minn sena sa erba' snin (artikolu 275 tal-Kap. 9) li ma tinghatax fil-*minimum* (artikolu 277(a) tal-Kap. 9). Jigifieri l-piena nflitta mill-Ewwel Qorti taqa' fil-parametri tal-ligi.

Huwa l-kaz li jigi sottolineat ukoll li skond il-gurisprudenza kostanti tal-Qrati taghna, ammissjoni bikrija mhux bil-fors jew dejjem, jew b'xi forma ta' dritt jew awtomatikament, tissarraf f'riduzzjoni fil-piena. F'**Blackstone's Criminal Practice 2001** (para. E1.18 pagna 1789) naqraw:

"Although this principle [that the length of a prison sentence is normally reduced in the light of a plea of guilty] is very well established, the extent of the appropriate 'discount' has never been fixed. In Buffery (1992) 14 Cr. App. R. (S) 511 Lord Taylor CJ indicated that 'something in the order of one-third would very often be an appropriate discount', but much depends on the facts of the case and the timeliness of the plea. In determining the extent of the discount, the court may have regard to the strength of the case against the offender. An offender who voluntarily surrenders to the police and admits a crime which could not otherwise be proved may be entitled to more than the usual discount *(Hoult* **(1990) 12 Cr. App. R. (S) 180;** *Claydon* **(1993) 15 Cr. App. R. (5) 526) and so may an offender who, as well as pleading guilty himself, has given evidence against a co-accused** *(Wood* **[1997] 1 Cr. App. R. (S) 347) and/or given significant help to the authorities** *(Guy* **[1992] 2 Cr. App. R. (5) 24)…. Occasionally the discount may be refused or reduced for other reasons, such as**

where the accused has delayed his plea in an attempt to secure a tactical advantage *(Hollington* **(1985) 82 Cr. App. R. 281;** *Okee* **[1998] 2 Cr. App. R. (5)199)…. The leading case in this area is** *Costen* **(1989) 11 Cr. App. R. (5) 182, where the Court of Appeal confirmed that the discount might be lost in any of the following circumstances: (i) where the protection of the public made it necessary that a long sentence, possibly the maximum sentence, be passed; (ii) cases of 'tactical plea', where the offender delayed his plea until the final moment in a case where he could not hope to put up much of a defence, and (iii) where the offender had been caught red-handed and a plea of guilty was practically certain. "**

Issa, fis-sentenza taghha l-Ewwel Qorti qalet li l-appellant "ammetta l-htija tieghu mal-ewwel" u rreferiet anke ghas-sentenza moghtija mill-Qorti Kriminali fl-ismijiet **Ir-Repubblika ta' Malta v. Nicholas Azzopardi** fl-24 ta' Frar 1997. Dak li sfugga lill-Ewwel Qorti u lill-partijiet pero` huwa illi ghalkemm meta sar l-interrogatorju lill-appellant fit-13 ta' Gunju 2004, ghall-mistoqsija jekk iridx u xi jrid iwiegeb fuq l-akkuzi huwa wiegeb li "qed jammetti" (ara fol. 7), mill-verbal ta' dakinhar stess (ara fol. 9) jirrizulta li huwa rtira tali ammissjoni. Difatti nsibu verbalizzat hekk:

"Il-Qorti f'dan l-istadju a tenur tal-artikolu 453 tal-Kap. 9 wissiet lill-imputat Hakim Mohammed bil-konsegwenzi legali bl-ammissjoni tieghu u wara li taghtu zmien biex jikkonsidra jekk iridx jerga' lura mit-twegiba huwa issa ddikjara ruhu li mhux hati."

Din il-Qorti fliet il-process kollu biex tara jekk gietx sussegwentement verbalizzata ammissjoni da parti tieghu izda minn imkien ma tirrizulta xi dikjarazzjoni simili.

Nonostante dan, il-htija tieghu tirrizulta abbondantement kemm mix-xiehda ta' Mourad G. Erhuma kif ukoll mill-ammissjoni inekwivoka li huwa ghamel mal-Pulizija, ma' min indika anke l-involviment tal-ko-imputat. Dan jirrizulta mix-xiehda ta' P.S. 585 Joseph Baileys (ara fol. 37 *et seq.*) u minn dik ta' l-Ispettur Raymond D'Anastas (ara fol.

72 *et seq.*) li rrakkontaw, *inter alia*, dak li qallhom l-appellant dwar is-sehem tieghu fir-reati addebitati lilu.

Din il-Qorti ma tistax lanqas tonqos milli tosserva illi, ghalkemm qabel dan il-kaz il-kondotta ta' l-appellant kienet nadifa, fil-mori ta' dawn il-proceduri b'sentenza tal-Qorti tal-Magistrati tas-7 ta' Settembru 2005 gie kkundannat ghal xahar prigunerija u ntrabat b'obbligazzjoni skond l-artikolu 383 tal-Kap. 9 wara li nstab hati talli fis-6 ta' Gunju 2005 gewwa Triq San Gorg, Paceville ghall-habta tat-3.00 a.m. waqt li kien qed jigi arrestat ghall-ghemil ta' xi delitt instab fil-pussess ta' sikkina ghal xi ghan illegittimu, talli kellu fil-pussess tieghu din is-sikkina minghajr ma kien awtorizzat jew illicenzjat mill-Kummissarju tal-Pulizija, u talli hedded lil Stephen Ciangura bil-kliem u bl-istess sikkina.

Mehudin ic-cirkostanzi kollha msemmija, din il-Qorti ma ssib l-ebda raguni biex tvarja l-piena nflitta mil-Ewwel Qorti u ghalhekk l-appell ma jimmeritax li jigi milqugh.

Ghal dawn il-motivi:

Tiddeciedi billi tichad l-appell u tikkonferma s-sentenza appellata.

< Sentenza Finali >

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