



MALTA

COURT OF CRIMINAL APPEAL

**HON. MR. JUSTICE
JOSEPH GALEA DEBONO**

Sitting of the 16 th November, 2006

Criminal Appeal Number. 337/2006

**The Police
(Insp. M. Mallia)**

vs.

**Sasa
Pavlovic**

The Court,

Having seen the charge brought against the appellant Sasa Pavlovic before the Court of Magistrates (Malta) as a Court of Criminal Inquiry for having, on the night between the 31st July and the 1st August of the year 2006, whilst at San Gwann, Malta, committed theft of several items from premises “Nidda”, situated in Triq il-Baltiku, which theft is aggravated by value in excess of one thousand Maltese Liri (LM1000), by means, by place and by time.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 18th October, 2006, whereby after the Court saw articles 261(a)(e)(f), 267, 269(g), 270, 279(b), 280(1) and 281(b) of Chapter 9 of the Laws of Malta, and took into consideration the accused's commitment to pay all damages suffered by the victim of his crime, condemned the accused Sasa Pavlovic to imprisonment for a period of eighteen (18) months.

Having seen the application of appeal filed by appellant on the 27th October, 2006, wherein he requested this Court to annul and revoke the appealed judgement due to a procedural irregularity and consequently place the appellant in the same position in which he was prior to having pleaded guilty to the charge brought against him, and subordinately, and only in the eventuality that this Court reforms the said judgement in the sense that it confirms the appellant's guilt to the charges brought against him, to modify the punishment inflicted to one which is just, reasonable and proportionate in the circumstances of the case, and this under any other provision which this Court may deem fit to impose.

Having seen the records of the case;

Having seen that appellant's grounds for appeal are briefly the following, i.e. (1) that the judgement is null and void because the first court did not follow the procedure laid down in section 392 A (2) as read together with Section 453 (1) of the Criminal Code ; (2) that the punishment inflicted by the First Court was excessive, considering that appellant admitted his guilt immediately and co-operated fully with the Executive Police and reiterated his admission before the First Court at the first opportunity. The appellant was a first time offender and bound himself to pay the value of the items stolen as valued by the victim himself.

Having seen appellant's criminal record exhibited by the Prosecution as ordered by this Court;

Having heard oral submissions by Counsel;

Having seen the minute entered by Counsel for the prosecution whereby he declared that the prosecution was agreeing with appellant's first ground of appeal and that the judgement appealed from should be annulled and the records of the case send back to the First Court.

Having duly considered:

That with regards to the first ground of appeal, it results from the minutes of the case that in the first and only sitting held before the First Court on the 18th. October, 2006, it is recorded that after the charge was read out by the Prosecuting Officer under oath, and after the examination of the accused, the Prosecuting Officer exhibited in Court accused's criminal record together with his passport "*animo ritirandi*". It is then minuted that accused pleaded guilty to all charges proffered against him. No reference is made to the Court giving the accused time to reconsider his plea and of his being warned about the legal consequences of such a plea and of his being asked again as to how he wanted to plead to said charges.

The minutes only record that after accused pleaded guilty, the Prosecuting Officer exhibited accused's statement and the occurrence report of the case. "*Dr. Robert Abela on behalf of the guilty person confirms that he obliges himself to pay the value of the two (2) computers and of the mobile phone stolen in this case.*" (Sic!) Then it is recorded that the injured party, Marquita Diacono, asked to intervene at that stage and informed the Court that the damages incurred by her amounted to LM1800. It is then recorded that judgement was passed and the case was decided.

In the judgement appealed from likewise there is no reference to the fact that after accused pleaded guilty, he was given time by the Court to retract his plea and that the Court warned him of the legal consequences of his plea. The judgement states simply :-

“Having heard the accused plead guilty, finds him guilty.”

Having considered that Section 392A of the Criminal Code lays down that where the accused in reply to the question in section 392 (1) (b) states that he is guilty of the offence charged, the Court has to proceed according to what is laid down in Section 453 (1) of the Criminal Code , namely :-

“If the accused , in answer to the question prescribed under section 450 , states that he is guilty of the offence, the court shall in the most solemn manner warn him of the legal consequences of such statement and shall allow him a short time to retract it , but if the accused persists in his statement, such statement shall be recorded and the court shall proceed to pass on the accused such sentence as would according to law be passed on an accused convicted of the offence.”

Having considered that appellant made reference to the judgement of this Court presided over by His Honour The Chief Justice in the case “The Police vs. Gary Grech” [10.1.2003] wherein it was held that according to Section 453 (1) , if the accused states that he is pleading guilty, the Court shall warn him in the most solemn manner of the legal consequences of his reply and shall accord him a short time to retract such a statement. It is only where the accused persists in his reply of guilty that the court can order that a guilty plea be registered and then pass on to give judgement according to law. The observance of this procedure, which the legislator considers important to safeguard the rights of the accused, should result from the records and, in particular, from the minutes of the sitting in which the examination of

the accused has been held. Failure to adhere to these formalities will bring about the nullity of the judgement.

That in the light of this interpretation of the law given in the above quoted precedent, this Court has no alternative but to uphold the appeal and declare the judgement appealed from null and void.

Accordingly the Court upholds the appeal and declares the judgement delivered by the First Court on the 18th. October, 2006, null and void and is accordingly sending back the records of the case to the First Court to rehear the case after placing the accused in the same position he was in after he pleaded guilty to the charges proffered against him for the first time and then to proceed strictly according to section 392A and section 453 (1) of the Criminal Code or in any other manner prescribed by law, as circumstances warrant, should appellant retract his guilty plea after being solemnly warned of the legal consequences of his reply and after being given time to do so.

< Final Judgement >

-----END-----