



**QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI**

**MAGISTRAT
ANTONIO GIOVANNI VELLA**

Seduta tal-31 ta' Mejju, 2007

Numru. 526/2004

**IL-PULIZIJA
SPETTUR CARMELO MAGRI
SPETTUR CHRISTOPHER PULLICINO**

KONTRA

FRANCIS CUSCHIERI

Il-Qorti;

Wara li rat l-imputazzjonijiet migjuba kontra Francis Cuschieri ta' 33 sena, bin Joseph u Carmen nee' Mizzi, imwieled Tal-Pieta' nhar it-18 ta' Awwissu, 1970, residenti fil-fond numru 56/2, Triq id-Dejqa, Valletta, detentur tal-karta tal-identita' numru 388070(M);

1. Akkuzat talli nhar il-21 ta' Awwissu, 2003 ghall-habta tas-7.15 ta' fil-ghaxija mill-hanut bl-isem 'Hi-Tech', sitwat fi Triq Tal-Hlas, Qormi, ikkommetta serq ta' kwantita' ta' apparat cellulari ghad-

Kopja Informali ta' Sentenza

dannu tad-dirigenti tal-imsemmi hanut, liema serq huwa kkwalifikat bil-vjolenza, bil-mezz, bil-valur li jeccedi l-elf lira maltin (Lm1,000.00), u bil-hin;

2. U aktar talli fl-istess data, hin, lok, u cirkostanzi, xjentement laqa' ghandu jew xtara hwejjeg misruqa, mehdua b'qerq, jew akkwistati b'reat, sew jekk dan sar f'Malta jew barra minn Malta, jew xjentement b'kull mod li jkun, indahal biex ibieghhom jew imexxiehomm;

3. U kif ukoll talli sar recediv ai termini tal-Artikoli 49, 50, u 289(1) tal-Kapitolu 9 tal-Ligijiet ta' Malta.

Ikkunsidrat:

Illi l-imputat tressaq fuq akkuzi ta' serq aggravat, fuq ricettazzjoni, u talli hu recediv. Mill-provi prodotti ma rrizultawx ippruvati l-ewwel (1) u t-tielet (3) imputazzjoni. Is-serqa in kwistjoni saret minn ragel twil u rqiq li kellu wiccu mghammad bi 'crash helmet'. Hu dahal fil-hanut indikat, armat b'arma tan-nar, u seraq flus f'kontanti u xi settijiet tat-telefon cellulari. Izda din il-persuna baqghet ma giet identifikata qatt, u lanqas ma gew prodotti xi provi indizzjarji li jistghu iwasslu ghal xi rabta mal-imputat. Ghalhekk il-Qorti qed tilliberah minn din l-imputazzjoni.

L-istess jista' jinghad ghar-rigward tat-tielet (3) imputazzjoni, dik tar-recidiva. Ma giex ippruvat l-identita' tal-imputat fuq is-sentenzi ezebiti, u ghaldaqstant din l-imputazzjoni ma tirrizultax u l-imputat ghalhekk qed jigi liberat minnha wkoll.

Mhux hekk jirrizulta, izda, ghar-rigward tat-tieni (2) imputazzjoni. Gie ampjament ippruvat li l-imputat kien fil-pussess tal-apparat cellulari misruqa xi jiem wara l-istess serqa. Hu ma ta l-ebda spjegazzjoni jew gustifikazzjoni ta' dan, fl-ebda staju. Anzi, fil-istqarrija hu ta verzonijiet nebuluzi u konfuzi ghall-ahhar ta' kif gew f'idejh dawn il-'mobile phones' li kienu ghadhom kif insterqu xi ffit zmien qabel. Dan mhux biss ma jghin xejn lill-imputat fid-difiza

tieghu, izda jkompli jsahhah il-provi mressqa mill-Prosekuzzjoni ghar-rigward tat-tieni (2) imputazzjoni.

Il-Qorti hawnhekk taghmel referenza ghal sentenza tal-Qorti tal-Appell Kriminali, datata 31 ta' Awwissu, 2006 fil-kawza fl-ismijiet 'Il-Pulizija (Spettur Angelo Gafa)', kontra Richard Spiteri'. Dik il-Qorti kienet qalet hekk dwar ir-reat ta' ricettazzjoni:

"Illi kif qalet din il-Qorti diversament preseduta (per V. De Gaetano J., fl-Appell Kriminali : "**Il-Pulizija vs. Emanuel Seisun et.**") [26.8.1998]); it-teorija Ingliza "of unlawful possession of recently stolen goods" issib ukoll applikazzjoni fis-sistema legali taghna, ghax in tema ta' "law of evidence" il-gurisprudenza taghna ssegwi hafna dik Ingliza. Din it-teorija ma hi xejn hlief l-applikazzjoni tal-buon sens ghal cirkostanzi partikolari li jkunu jirrizultaw pruvati, fis-sens li meta jigu ppruvati certi fatti, dawn jistghu wahedhom iwasslu ragjonevolment ghall-konkluzzjoni li persuna partikolari tkun hatja tar-reat ta' serq tal-oggetti misjuba ghandha jew, skond ic-cirkostanzi, tar-reat ta' ricettazzjoni ta' dawk l-oggetti.

F' dik is-sentenza din il-Qorti ccitat mill-**Archbold** : Criminal Pleading, Evidence and Practice, 1997, paras. 21-125, 21-126):-

"In R. v. Smythe, 72 Cr. App. R. & C.A., the court stressed that it is a misconception to think that recent possession is a material consideration only in cases of handling: it adopted the following passage from **Cross on Evidence**, 5th. ed., p.49 (now 8th. ed., p.35): "if someone is found in possession of goods soon after they have been missed, and he fails to give a credible explanation of the manner in which he came by them, the jury are justified in inferring that he was either the thief or else guilty of dishonestly handling the goods, knowing or believing them to have been stolen....The absence of an explanation is equally significant whether the case is being considered as one of theft or handling, but it has come into particular prominence in connection with the latter because persons found in possession of stolen goods are apt to say that they acquired them innocently from someone else. Where the only evidence is that the defendant on a charge of

handling was in possession of stolen goods, a jury may infer guilty knowledge or belief (a) if he offers no explanation to account for his possession, or (b) if the jury is satisfied that the explanation he does offer is untrue.”

“Every case depends on its own facts.It would be impossible to compile a definitive list of circumstances which might be relevant. They will include, however, the time and place of the theft, the type of property stolen, the likelihood of it being sold on quickly, the circumstances of the defendant, whether he has any connection with the victim or with the place where the theft occurred, anything said by the defendant and how that fits in or does not fit in with the other available evidence.”

Din il-Qorti taqbel pjenament ma' dan l-insenjament, u qiegħeda tagħmel tagħha dawn il-kunsiderazzjonijiet hekk magħmula. In vista' ta' dan kollu hawn fuq sottomess, u in vista' tal-provi prodotti, din il-Qorti ma għandhiex triq ohra hlief li ssib htija fl-imputat għat-tieni (2) imputazzjoni. Għar-rigward tal-piena, peress illi l-valur tal-apparat misruq gie indikat li jiswa madwar tminn mitt lira maltin (Lm800.00), din taqa' taht il-parametri tad-disposizzjonijiet tal-Artikolu 279(a) tal-Kapitolu 9 tal-Ligijiet ta' Malta.

Għal dawn il-motivi, il-Qorti, ma ssibx lill-imputat Francis Cuschieri hati tal-ewwel (1), u t-tielet (3) imputazzjonijiet u għaldaqstant tilliberah minnhom; Izda ssibu hati tat-tieni (2) imputazzjoni, u tikkundannah għal terminu ta' prigunerija ta' tlitt (3) snin.

< Sentenza Finali >

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