



QORTI TA' L-APPELL KRIMINALI

**ONOR. IMHALLEF
DAVID SCICLUNA**

Seduta tal-15 ta' Gunju, 2007

Appell Kriminali Numru. 378/2006

Il-Pulizija

v.

**Adrian Vella
... omissis ...**

Il-Qorti,

Rat l-imputazzjoni migjuba mill-Pulizija Ezekuttiva kontra Adrian Vella talli fid-19 ta' Gunju 2003 u/jew fix-xhur ta' qabel gewwa l-Qawra bla hsieb li jisraq jew li jaghmel hsara kontra l-ligi, izda biss biex jezercita jedd li jippretendi li ghandu, bl-awtorita` tieghu nnifsu fixkel lil Mario Micallef proprju u/jew bhala direttur tas-socjetajiet Flipper Trading Co. Ltd. u Marang Holding Ltd. bhala socjeta` amministratrici u socjeta` proprjetarja rispettivament tal-hanut maghruf bhala "Flipper", Triq il-Qawra, Qawra;

Kopja Informali ta' Sentenza

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali ta' l-14 ta' Novembru 2006, li permezz taghha dik il-Qorti sabet lill-imsemmi Alfred Abela mhux hati tat-tieni imputazzjoni migjuba kontra tieghu u lliberatu minnha izda sabitu hati ta' l-ewwel u t-tielet imputazzjonijiet u kkundannatu ghal twiddiba;

Rat ir-rikors ta' appell ta' l-imsemmi Adrian Vella pprezentat fis-27 ta' Novembru 2006 li permezz tieghu talab li din il-Qorti tirriforma s-sentenza appellata fis-sens li fil-konfront tieghu tikkonfermaha in kwantu sabitu hati ta' l-imputazzjoni migjuba kontra tieghu u tirriformaha dwar il-piena billi timponi multa f'somma inferjuri ghal dik inflitta;

Rat l-atti kollha tal-kawza;

Semghet il-provi;

Semghet it-trattazzjoni tad-difensuri tal-partijiet;

Ikkunsidrat:

Dan l-appell jirrigwarda l-piena. L-appellant jghid li nonostante l-ammissjoni tieghu, huwa jhoss li l-piena hija esagerata fic-cirkostanzi tal-kaz peress illi meta qata' d-dawl ghall-fond in kwistjoni kien jaf li kien hemm kont pendenti ta' Lm900, li l-hanut kien ilu maghluq ghal madwar sentejn, li Mario Micallef ma kienx ser ihallas il-kont tant li hwejjeg Micallef kienu nbieghu bis-subbasta, li l-Enemalta stess sussegwentement qatghet il-provvista tad-dawl, u li fil-gurnata in kwistjoni l-fond in kwistjoni kien gie liberat favur l-istess appellant.

Issa fit-termini tal-gurisprudenza ormai kostanti tal-Qrati taghna, meta jkun hemm ammissjoni huwa xi ffit 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 jirimmetti 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.

Skond l-artikolu 85 tal-Kap. 9 il-piena hija dik ta' prigunerija minn xahar sa tliet xhur, b'dan li skond il-*proviso* ta' l-istess artikolu 85, il-qorti tista', fid-diskrezzjoni taghha, minflok tali piena taghti l-piena tal-multa. Il-multa f'dan il-kaz hija ta' mhux anqas minn ghaxar liri (Lm10) u mhux aktar minn hames mitt lira (Lm500) skond l-artikolu 11(1) tal-Kap. 9. Dan ifisser li l-multa nflitta mill-ewwel Qorti hija fil-parametri tal-ligi.

Ghal dak li jirrigwarda l-*quantum* tal-piena, ta' spiss gie osservat minn din il-Qorti kemm fil-gurisdizzjoni taghha superjuri kif ukoll dik inferjuri, li fuq appell mill-piena hija bhala regola ma tirrimpjazzax il-piena moghtija mill-ewwel Qorti b'dik li kieku hija – cioe` din il-Qorti – kienet taghti fic-cirkostanzi rizultanti kemm-il darba ma jkunx jirrizulta li l-piena moghtija mill-ewwel Qorti kienet b'xi mod "*wrong in principle*" jew "*manifestly excessive*". F'dan ir-rigward gie kemm-il darba citat b'approvazzjoni dak li jinghad f'**Blackstone's Criminal Practice 2004**:

"The phrase 'wrong in principle or manifestly excessive' has traditionally been accepted as encapsulating the Court of Appeal's general approach. It conveys the idea that the Court of Appeal will not interfere merely because the Crown Court sentence is above that which their lordships as individuals would have imposed. The appellant must be able to show that the way he was dealt with was outside the broad range of penalties or other dispositions appropriate to the case. Thus in *Nuttall* (1908) 1 Cr App R 180, Channell J said, 'This court will...be reluctant to interfere with sentences which do not seem to it to be wrong in principle, *though they may appear heavy to individual judges*' (emphasis added). Similarly, in *Gumbs* (1926) 19 Cr

App R 74, Lord Hewart CJ stated: ‘...that this court never interferes with the discretion of the court below merely on the ground that this court might have passed a somewhat different sentence; for this court to revise a sentence there must be some error in principle.’ Both Channell J in *Nuttall* and Lord Hewart CJ in *Gumbs* use the phrase ‘wrong in principle’. In more recent cases too numerous to mention, the Court of Appeal has used (either additionally or alternatively to ‘wrong in principle’) words to the effect that the sentence was ‘excessive’ or ‘manifestly excessive’. This does not, however, cast any doubt on Channell J’s dictum that a sentence will not be reduced merely because it was on the severe side – an appeal will succeed only if the sentence was excessive in the sense of being outside the appropriate range for the offence and offender in question, as opposed to being merely more than the Court of Appeal itself would have passed.”¹

Din il-Qorti ma tarax illi r-ragunijiet li l-appellant jghid li wassluh biex jitfi l-main ta’ l-elettriku jiggustifikaw il-varjazzjoni tas-sentenza moghtija mill-ewwel Qorti.

Ghal dawn il-motivi:

Tiddeciedi billi tichad l-appell u tikkonferma s-sentenza appellata fil-konfront ta’ l-appellant Adrian Vella fl-intier.

< Sentenza Finali >

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¹ Page 1695, para. D23.45