



QORTI TA' L-APPELL KRIMINALI

**ONOR. IMHALLEF
JOSEPH GALEA DEBONO**

Seduta tat-22 ta' Novembru, 2007

Appell Kriminali Numru. 257/2007

Il-Pulizija
(Spt. R. Cassar)
Vs
Joseph Scerri

Il-Qorti,

Rat l-akkuza dedotta kontra l-appellant quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli nhar is-16 ta' Mejju, 2007 u fil-granet ta' qabel, f'hinjiet differenti, f'San Pawl il-Bahar,

1. ikkommetta serq ta' apparat tal-aluminium u oggetti ohra, liema serq li huwa kkwalifikat bil-valur li jiskorri l-elf lira Maltin (LM1000) u bil-mezz, ghad-dannu ta' Antonia Bartolo u/jew persuni ohra;

2. fl-istess zmien, f'dawn il-Gzejjer, xjentement laqa' ghandu jew xtara hwejjeg misruqa, mehuda b'qerq jew akkwistati b'reat sew jekk dan sar f'Malta jew barra minn Malta, jew xjetnoment, b'kull mod li jkun indahal biex ibieghhom jew imexxihom, liema hwejjeg u cioe' apertura

tal-aluminium u oggetti ohra, gejjin minn serq ikkwalifikat bil-valur u bil-mezz;

3. fl-istess zmien, hinijiet, lok u cirkostanzi, volontarjament hassar, ghamel hsara, jew gharraq hwejjeg haddiehor, mobbli jew immobbli, liema hsara ma tiskorrix il-hames mitt lira Maltin (LM500), izda hija aktar minn hamsin lira Maltin (LM50);

4. sar recidiv ai termini tal-Artikoli 49, 50 u 289(1) tal-Kapitolu 9 tal-Ligijiet ta' Malta, b'diversi sentenzi moghtija mil-Qrati ta' Malta, liema sentenzi saru definittivi w li ma jistghux jigu mibdula.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tal-15 ta' Gunju, 2007, li biha, wara li rat l-artikoli 279(b), 280(2), 334, 325, 49, 50 u 289(1) tal-Kapitolu 9 tal-Ligijiet ta' Malta, fuq ammissjoni sabet lill-appellant hati w ikkundannatu ghal tlitt (3) snin prigunerija.

Rat ir-rikors tal-appellant minnu pprezentat fis-27 ta' Gunju, 2007, li bih talab li din il-Qorti joghgobha tirrifirma s-sentenza appellata billi tikkonfermaha fejn in forza tal-istess, l-appellant instab hati tal-akkuzi li fil-konfront taghhom huwa kien iddeduca ammissjoni w tirrevokaha fejn permezz tal-istes sentenza gie kkundannat tlett snin prigunerija w minflok timponi piena aktar idoneja ghal dan il-kaz.

Fliet l-atti kollha processwali.

Rat il-fedina penali aggornata tal-appellant esebita mill-prosekuzzjoni fuq ordni tal-Qorti.

Rat illi l-aggravji tal-appellant fil-qosor huma s-segwenti :-

Li hu kkoopera mall-pulizija, li rregistra ammissjoni bikrija, li hu jahdem ghar-rasu w bil-piena karcerarja ser jitlef il-klienti li ghandu; li hu ghamel li ghamel minnhabba d-djun li ggenera mill-vizzju tad-droga, li hu vittma tac-cirkostanzi w li l-piena karcerarja mhux adegwata ghax ser tnehhilu l-possibilita' li jsolvi l-problemi finanzjarji tieghu. Issa heles

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mill-abbuz tad-droga w qed jahdem iqieghed il-madum bla problemi.

Semghet it-trattazzjoni

Rat l-ordni taghha biex il-kawza tigi rikjamata ghas-seduta tal-lum ghas-sentenza;

Ikkonsidrat;

Illi dan hu appell limitat ghall-piena. Issa din il-Qorti kellha hafna okkazzjonijiet fejn ippronunzjat ruha li l-principju regolatur hu li mhux normali li tigi disturbata d-diskrezzjoni ta' l-Ewwel Qorti jekk il-piena nflitta tkun tidhol fil-parametri tal-ligi w ma jkun hemm xejn x'jindika li kellha tkun inqas minn dak li tkun fil-fatt. (Ara. "**Ir-Repubblika ta' Malta vs. David Vella**" [14.6.1999] , "**Ir-Repubblika ta' Malta vs. Eleno sive Lino Bezzina**" [24.4.2003] u ohrajn.). F'dan il-kaz il-piena decizament hija entro l-parametri tal-ligi.

Illi ghar-rigward tal-konsiderazzjoni li hu ammetta mill-ewwel mall-Pulizija u quddiem il-Qorti, l-insenjament tal-Qrati dwar tali ammissjoni bikrija huwa s-segwenti: Kif gie ritenut mill-Qorti tal-Appell Kriminali (kolleggjali) fis-sentenza taghha fil-kawza "**Ir-Repubblika ta' Malta vs. Mario Camilleri**" [5.7.2002] , l-ammissjoni bikrija mhux bilfors jew dejjem, jew b' xi forma ta' dritt jew awtomatikament , tissarraf f' riduzzjoni fil-piena.

Ir-regoli generali li ghandhom jiggwidaw lill-qrati meta jkun hemm ammissjoni gew imfissra mill-Qorti Kriminali fis-sentenza preliminari taghha "**Ir-Repubblika ta' Malta vs. Nicholas Azzopardi**", [24.2.1997]; u mill-Qorti tal-Appell Kriminali fis-sentenza "**Il-Pulizija vs. Emmanuel Testa**" , [17.7.2002]. F'din l-ahhar sentenza dik il-Qorti kienet irriproduciet il-bran segwenti mill-**BLACKSTONE'S CRIMINAL PRACTICE** , (Blackstone Press Limited – 2001 edit. ecc.) :-

“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 himself 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. (S) 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. (S) 24). Where an offender has been caught red handed and a guilty plea is inevitable , any discount may be reduced or lost (*Morris* [1998] 10 Cr. App. R. (S) 216; *Landy* [1995] 16 Cr. App. R. (S) 908) . 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] 85 Cr. App. R. 281; *Okee* [1998] 2 Cr. App. R. (S) 199.) Similarly , some or all of the discount may be lost where the offender pleads guilty but adduces a version of the facts at odds with that put forward by the prosecution , requiring the court to conduct an inquiry into the facts (*Williams* [1990] 12 Cr. App. R. (S) 415.) The leading case in this area is *Costen* [1989] 11 Cr. App. R. (S) 182 , where the Court of Appeal confirmed that the discount may 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 has been caught red-handed and a plea of guilty was practically certain

Ikkonsidrat;

Illi fil-kaz in ezami l-Ewwel Qorti qieset il-fatt li l-appellant ammetta "**fl-aktar stadju bikri ta' dawn il-proceduri**" u x' aktarx li kien dan il-fattur ewlieni li minhabba fih, f' kaz fejn il-piena massima bl-addebitu tar-recidiva kienet wahda ta' disgha (9) snin prigunerija w dan ghall-ewwel reat ta' serq biss, apparti xi zieda fil-piena ghall-konkors tar-reati in kwantu hu nstab hati ukoll ta' danni volontarji, w minghajr ma wiehed jiehu in konsiderazzjoni xi zieda ulterjuri fil-massimu tal-piena skond l-art. 289 (1) tal-Kodici Kriminali li ukoll gie citat mill-Ewwel Qorti, dik il-Qorti erogat piena karcerarja li hija ferma aktar vicin il-minimum ta' tmintax il-xahar prigunerija mill-massimu ta' disa' snin u aktar kif fuq intqal.

Illi l-fatt li l-appellant b' din il-piena ser jitlef ix-xoghol li ghandu , jekk veru ghandu dax-xoghol, zgur li ma jistax iservi ta' xi attenwanti, ghax kieku kull minn ghandu xoghol remunerat fil-pajjiz ikun ezenti mis-sanzjonijiet kriminali.

Il-fatt li meta ghamel dawn ir-reati l-appellant kien taht il-vizzju tad-droga zgur li mhux attenwanti ghax kif gie ritrenut mill-Qorti Kriminali fis-sentenza taghha "**Ir-Repubblika ta' Malta vs. Louis Mallia**" [7.11.2007], il-Qorti "*....ma tista' qatt tqis li ttehid tad-droga mill-hati, li huwa delitt gravi fih innifsu, jista' b'xi mod iservi bhala attenwanti fil-kommissjoni tar-reati addirittura aktar gravi. Jekk hu minnu dak li allega d-difensur li kemm ilu taht arrest preventtiv, il-hati irnexxielu jinfatam mill-vizzju tad-droga, dan ghalkemm pass lodevoli, fl-ewwel lok hu pass fl-interess tal-istess sahha tal-hati w xejn aktar.*"

L-istess f' dan il-kaz, ghalkemm jekk l-appellant verament irnexxielu johrog mill-vizzju tad-droga, dan hu pass lodevoli w pozittiv li bih l-ewwel ma ser jibbenefika ser ikun hu stess, ma jistax jippretendi li b' daqshekk jista'

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jhassar ir-responsabbilta' krminali tieghu w s-sanzjoni li din bil-fors trid iggib maghha

Illi f' dan il-kaz l-appellant ghandu fedina penali mill-aktar refrattarja w sal-lum hu ssubixxa mhux inqas minn dsatax (19) il-kundanna mill-Qrati ghall-reati li jvarjaw minn , serq ripetut, ghal reati tat-traffiku w diga' gie kundannat hames (5) darbiet ghall-piena karcerarja, apparti diversi sentenzi ohra fejn hu jew gie liberat b' kundizzjoni, jew tpogga taht probatioin jew gie immultat. B' dana kollu, matul dawn is-snin kollha hu ma wera ebda sinjal ta' riforma anzi kompla jirranka fil-hajja kriminuzza tieghu, b' mod li llum huwa recidiv plurimu w jidher li jirraprezenta minaccja ghas-socjeta'. Dan kollu ma jistax ma jigix rifless fil-piena li giet erogata mill-Ewwel Qorti.

Ghal dawn il-motivi l-aggravji li ressaq l-appellant huma kollha bla bazi u qed jigu respinti.

Konsegwentement din il-Qorti qed tichad l-appell u tikkonferma s-sentenza appellata.

< Sentenza Finali >

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