



COURT OF CRIMINAL APPEAL

**THE HON. MR. JUSTICE
MICHAEL MALLIA**

Sitting of the 25 th January, 2010

Criminal Appeal Number. 428/2009

**The Police
(Insp. Joseph Hersey)**

Vs

Dodi Bright

The Court,

Having seen the charge brought against the appellant Dodi Bright before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having

1) on the 10th November, 2009, and in the previous days in Malta, with the intention of gain, helped, assisted, given advice or incited other people to attempt to enter or leave Malta against the Laws of Malta, or whether in Malta or outside Malta conspired with other people and this in breach of Article 337A of Chapter 9 of the Laws of Malta;

2) moreover he is also charged with under circumstances in these islands, associated himself

together with other persons in Malta or outside Malta (article 337A Chapter 9 of Laws of Malta) for which is punishable by imprisonment, and this in violation of Article 48A of Chapter 9 of the Laws of Malta.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 11th November, 2009, by which, after that Court had seen articles 337A of Chapter 9 and 48A of Chapter 9 of the Laws of Malta found the accused guilty as charged and condemned him to a term of one (1) year imprisonment.

The Court explained in clear words the terms of the judgement to the accused.

Having seen the application of appeal filed by appellant (in the Maltese Language) on the 23rd November, 2009, wherein he requested this Court to quash and revoke/reverse the appealed judgement and send the records of the case back to the First Court for the case to be tried according to law or alternatively quash the conviction and revoke the infliction of punishment of one year imprisonment and instead declare appellant not guilty and set him free.

Having seen the records of the case.

Now duly considers.

That the grounds of appeal of appellant can be briefly summarised as follows:-

1. That the judgement of the First Court is null due to the fact that the procedure set out in Article 392A and Article 452 and 453A of Chapter 9 were not adhered to as should have happened in a situation where there is an admission of guilt by the accused during the examination made in terms of Article 392 of Chapter 9 of the Laws of Malta;
2. That the First Court failed to observe another duty imposed on it by Article 392A(3) and 453(2) namely that nevertheless if there is good reason to doubt whether the

offence has taken place the Court shall, notwithstanding the confession of the accused, order that the case against the accused be proceeded with as if the accused had pleaded not guilty;

3. That the punishment inflicted was manifestly excessive and this for a number of reasons which shall be amplified in the course of the oral pleading of this appeal. At this stage appellant would like solely to point out that the First Court failed to apply section 17(H) of Chapter 9 which was applicable to this case.

Considers :

That appellant is basing his appeal on the interpretation of Art. 392A as applicable to Art. 453A of the Criminal Code. This last article states that when accused enters a guilty plea, “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” Whilst appellant admits that after the guilty declaration he was given a short time to reconsider he was not explained the legal consequences of his statement. This oversight by the Court renders the judgment null, more so after what Police vs Grech & Bonnici (10th January 2003) had said that “Il-Qorti ghandha timxi skrupolozament fuq dak li jghid 392A”.

Also that the First Court should have bypassed the admission of guilt because accused had no intention to make gain out of this operation and therefore one of elements for the commission of a crime is missing. In other words, this appeal is being based on the lack of procedural observances by the First Court.

Considers :

The Court went through the acts of this case and focused especially on what was recorded during the first sitting where appellant pleaded guilty.

It results that appellant was assisted by the advocate for legal aid, appellant pleaded guilty, the Court asked appellant to reconsider and gave him reasonable time to

do this after which he confirmed his original guilty plea. In its judgment the First Court declared that appellant “ appeared to fully understand the implications and consequences behind his actions”. Contrary to what appellant is claiming, this Court finds that reading this declaration in the context of the whole paragraph, the First Court is in fact affirming the knowledge that appellant had displayed in fully understanding the implications and consequences of his actions.

There is no doubt expressed here but an affirmation of the state of knowledge that appellant had manifested to the Court. The First Court also declared that appellant “...was ably represented by defense counsel for legal aid, who also explained to him what the consequences of his entering a guilty plea would be”. The Court finds nothing wrong here.

Considers :

Defence counsel is a Court official and as such in a position to assist the Court should the need arise. In this case he took over the role of explaining the legal consequences of a guilty plea. The important thing is that accused is aware of his rights as afforded by law and is in a position to take full benefit of them. Whether it was the Court or his own lawyer that explained the consequences makes no difference as the requirements of Article 453 would have been observed and no prejudice to the accused’s rights would have arisen.

Appellant is also claiming that the First Court failed to notice that from the appellants statement, it transpired that no crime was committed since it emerged that appellant was receiving no payment for his actions and thus one of the elements essential for the commissioning of the crime was missing, namely the element of gain. Appellant argued that this should have caused the Court to bypass the guilty plea and proceed to acquit the appellant because one of the formal elements of the crime was missing.

The Court does not agree with this argument.

Considers :

Although appellant declared in his statement that he did not receive payment for his actions, this does not mean that he made no gain. Gain in terms of law does not only mean financial gain but also any form of retribution in the widest possible term, similar in concept to the “ *farne lucro*.....” of Carrara’s definition of theft on which volumes were written and therefore no scope of going into the well researched issue here.

Once appellant declared himself guilty, he was implicitly declaring observance to all the formal elements of the crime including that of gain under whatever manner that gain was. Once appellant was informed of his rights and given due opportunity to exercise those rights, the Court was under no obligation to investigate any further and neither was the prosecution so obliged and it was not necessary for evidence to be given on the nature of the gain. When article 453(2) says that “.... If there is good reason to doubt whether the offence has taken place” should not be taken to mean “any reason”. The level of knowledge presented before the Court at that early stage should be above “*prima facie*” or just cursory. “Good reasons” means something much higher on a level of probability at least, that would immediately attract the Court’s attention and warrant further investigation. It is certainly not expected for the Court to raise doubts on any reason brought forward as this would stultify the very nature of an admission and make proceedings impossible to conclude. It is relatively easy to bring forward “any reason”, but not so much “a good reason”. This is precisely why the law qualified the reasoning in the terms above mentioned.

The First Court was therefore correct in proceeding for judgment once all the requirements of the law were adhered to.

Informal Copy of Judgement

This Court therefore finds no procedural deficiencies that could have negatively affected the first judgment.

Considers :

As regards punishment this Court finds that the First Court awarded a punishment within the range established for this kind of crime and under such circumstances it is not within the remit of this Court to disturb the discretion of the First Court once it results that that Court could legally and reasonably arrive to the conclusion that it did (*Police vs Amadeo Brincat et 6th June 1994*).

For these reasons, this Court dismisses the appeal and confirms the first judgment.

< Final Judgement >

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