



CRIMINAL COURT

**HIS HONOUR THE CHIEF JUSTICE
VINCENT DE GAETANO**

Sitting of the 23rd February, 2010

Number 43/2009

The Republic of Malta

v.

Joseph Feilazoo

(Bill of Indictment 43/2009)

To-day, Tuesday 23rd February 2010

The Court:

Having seen the Bill of Indictment of the 4th November 2009 preferred by the Attorney General against Joseph Feilazoo (son of Festos and Uche nee Okere, born in Benin City, Nigeria, on the 15th December 1975 and holder of passport A3586884 issued in Nigeria) whereby the said Joseph Feilazoo was charged (1) in count one with having on the 27th August 2008 and during the

previous days, conspired for the purpose of selling or dealing in drugs (to wit cocaine, heroin and cannabis leaves) in Malta in violation of the law, or with having promoted, constituted, organised or financed such conspiracy in breach of the said law; (2) in count two, with having on the 27th August 2008 imported, or caused to be imported, or with having taken any steps preparatory to importing into Malta a dangerous drug, to wit cocaine, in breach of the law; (3) in the third count, with having on the 27th August 2008 imported, or caused to be imported, or with having taken any steps preparatory to importing into Malta a dangerous drug, to wit heroin, in breach of the law; (4) in the fourth count, with having on the same said day been in possession of cocaine in breach of the law under such circumstances denoting that it was not for his personal use; and (5) in the fifth count, with having, always on the 27th August 2008, been in possession of heroin in breach of the law under such circumstances denoting that it was not for his personal use;

Having heard, during the sitting of the 16th February 2010, the said Joseph Feilazoo, duly assisted by counsel Dr Arthur Azzopardi, plead guilty to all the charges preferred against him, in which plea he persisted even after the Court, in the most solemn manner, warned him of the legal consequences of such statement and allowed him a short time to retract it in accordance with Article 453(1) of the Criminal Code;

Having heard submissions by counsel for Joseph Feilazoo and by prosecuting counsel on the punishment to be applied in this case; having taken in consideration all the circumstances of the case, including Feilazoo's early guilty plea; considers:

The punishment applicable under each count of the Bill of Indictment includes that of life imprisonment. The Court, however, is of the view that such life imprisonment is not appropriate given the circumstances of this case and, in particular, given accused's early plea of guilty and the fact that he is clearly a minor pawn in an otherwise big operation to transport illegal drugs from Spain to Malta.

Nevertheless, in spite of the fact that others are effectively exploiting people like accused for their own criminal purposes, the accused, as evidenced by his statement to the police, knew exactly what he was doing, that is, that he was importing illegal drugs into Malta. He must therefore suffer the consequences. The drugs in question – 25.04 grams of heroin, 912.88 grams of cocaine and 5.83 grams of cannabis – were contained in capsules (65 in all) the majority of which were ingested orally and carried in accused's stomach, while some were inserted in the rectum. Moreover it is clear – and the prosecution agrees on this score – that a number of the offences with which Feilazoo was charged and to which he pleaded guilty fall to be considered as a means to an end within the meaning of paragraph (h) of Article 17 of the Criminal Code. What this Court cannot understand is why, given the fact that accused was caught red-handed, he did not plead guilty upon arraignment, which would have meant that he would have benefitted more in terms of the reduction in punishment, apart from the fact that court experts' fees (which ultimately the accused has to pay and which, in default, will be converted into imprisonment) or at least some of them would have been avoided.

The Court, having seen Articles 2, 9, 10(1), 12, 22(1)(a)(f)(2)(a)(i)(3A) of the Dangerous Drugs Ordinance (Cap. 101), regulations 2 and 9 of Government Notice 292 of 1939, and Articles 11, 17(h), 22, 23 and 533 of the Criminal Code (Cap. 9), sentences the aforementioned Joseph Feilazoo **to imprisonment for twelve (12) years and to a fine *multa* of fifty thousand euro (€50,000) which will be converted into a further eighteen (18) months of imprisonment if the said fine is not paid according to law**; the Court is not ordering the forfeiture in favour of the Government in terms of paragraph (d) of sub-article (3A) of Article 22 of Cap. 101 since in all five counts the Attorney General's request is for the forfeiture of the moveable and immoveable property "in which the offence took place as described in the bill of indictment" – a clear reference, therefore, to paragraph (a) of Art. 22(3A), which is not applicable in this case, and not to paragraph (d) – apart from the fact that accused's

stomach and rectum are clearly not forfeitable!. The Court further **orders that the accused pay to the Registrar the sum of one thousand two hundred and sixty-nine euro and ninety cents (€1269.90) by way of court experts' fees, and this within one month from the day on which this judgment shall have become final.** Finally, the Court orders the destruction of all the drugs involved in this case and exhibited under the authority of the courts unless the Attorney General shall, within three weeks from to-day, indicate by means of a note that the said drugs are required in connection with other proceedings; this destruction is to be effected by the Registrar and a *process-verbal* detailing the destruction is to be drawn up and exhibited by him in the record of these proceedings.

< Final Judgement >

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