

Kopja Informali ta' Sentenza



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

**MAGISTRAT DR.
EDWINA GRIMA**

Seduta tas-7 ta' April, 2011

Numru. 64/2010

**COURT OF MAGISTRATES (GOZO)
AS A COURT OF CRIMINAL JUDICATURE**

Magistrate Dr. Edwina Grima LL.D

Today the 7th of April 2011

The Police
(Inspector Frank Anthony Tabone)

Vs

Paul Stephen Debono 48 years, son of Charles and Anna Mary nee' Clarke, born in Bury U.K. on the 4 July 1962, residing at Blk 8, Flat 2, Xlendi Road, Xlendi l/o Munxar Gozo holder of identity card number 207085(M)

The Court;

Pagna 1 minn 6

Qrati tal-Gustizzja

Having seen the charges brought against the accused Paul Stephen Debono wherein he was charged with having on the 18th July 2010 and on the previous days at Blk 7, Flat 3, Rabat Road, Xlendi l/o Munxar, Gozo and in other places in Gozo:

1. committed theft of several items, which theft is aggravated by means, place and time. (Art.261(b)(e)(f) of Chapter 9)

2. and for having on the same date, place, time and circumstances committed any other violation of another persons' property, to the prejudice of the owner or holder thereof to the detriment of Georgia Schembri and other persons. (Art. 340(d) of Chapter 9)

3. and also for having on the same date, place, time and circumstances unlawfully entered into a house or other place or enclosure by any of the means mentioned in article 264, 265 and 266 of Chapter 9 of the Laws of Malta although there was no evidence of any act constituting an attempt to commit another offence. (Art.330 Chapter 9)

4. and also for having on the same date, place, time and circumstances willfully committed any spoil, damage or injury to or upon any movable or immovable property belonging to any other person which damage does not exceed the sum of one hundred and sixteen euro and forty-seven cents (€116.47) to the detriment of Georgia Schembri and other persons. (Art. 325 of Chapter 9)

Having seen the documents exhibited;

Having heard the evidence;

Having seen the articles of law sent by the Attorney General of the 20th October 2010;

Having heard the accused admit to the second, third and fourth charges brought against him, which admission of guilt was re-affirmed after having been given due time according to law to re-consider the same;

Having heard submissions by the parties;

Considers:

That it transpires from the note of the Attorney General of the 20th October 2010, that the accused is being charged mainly with committing the crime of theft, that of causing willful damage to property belonging to others and finally the crime of unlawful entry.

That during the course of these proceedings the accused filed a guilty plea to the second, third and fourth charges brought against him. However from a careful examination of the note of the Attorney General, whereby the said Attorney General sent the accused to be tried by this Court, it results that Article 340(d) of Chapter 9 of the Laws of Malta was not indicated in the said note. Consequently, although the accused, has filed a guilty plea to the second charge, however the Attorney General has deemed fit not to mention this article of law in his note and therefore this Court cannot but acquit the accused from this charge.

As to the crimes of wilful damage to property and the unlawful entry by accused into the apartment belonging to injured party Georgia Schembri, the accused filed a guilty plea with regards to the same and consequently the Court cannot but find him guilty of these offences. The Court also notes that during the hearing of the 28th October 2010, the accused paid the sum of €85 being the damages caused by accused in the property of injured party, which damages were caused by accused in order to gain access to the said property.

The accused however denies that he committed theft of the objects indicated by the injured party Georgia Schembri both when she filed her report with the police and later confirmed in her testimony before this Court. In the statement released by the accused to the police, accused denies that he stole a steam iron, towels, hammer and screw driver as indicated by injured party. He admits however to having drunk half a bottle of whisky

which he found in the premises. The accused declares that it was not his intention to cause any damage. He insists that he was undergoing financial difficulties and therefore decided to rent out his flat. Since he had no place to live in, he therefore decided to break into the flat owned by Schembri and reside in the same. He did so by breaking the back door and also breaking the lock of the front door. Accused admits that he resided in this flat between the 11th and 18th July 2010 and then left the premises since the tenants had vacated his flat and he could therefore return home.

It must be stated that our Criminal Code does not give a definition of theft. Carrara gives the following definition: “*Contrectatio* dolosa della cosa altrui, fatta invito domino, con animo di farne lucro.”¹ Professor Mamo in his notes on Criminal Law states:

“An analysis of this definition discloses no less than five ingredients necessary to constitute the crime of theft namely:-

1. The *contrectatio* of a thing.
2. belonging to others.
3. made fraudulently.
4. without the consent of the owner.
5. *animo lucrandi*.

With regard to the first ingredient listed above being the “*contrectatio*” or the taking of the object, it is clear that the intention of the person taking the object must be a permanent one, meaning that the intention of the thief must be to appropriate himself of an object belonging to another without the intention of returning it to him.

In a judgment delivered on the 30th January 2003 by the Court of Criminal Appeal in its inferior jurisdiction², the said Court emphasized the importance of the last ingredient necessary which constitutes the crime of theft, in default of which no guilty verdict may be delivered

¹ Vide Criminal Appeal The Police vs Mario Tanti 09.12.1944

² The Police (Inspector Paul Bond) vs John Galea and Paul Galea

against the person being accused. In delivering its judgment the Court makes a detailed exposition of the opinions given by various jurists including amongst others Carrara, Crivellari and Professor Mamo in his Notes on Criminal Law. Quoting Carrara the Court stated:

“Il dolo specifico del furto consiste nell’intenzione di procurarsi un godimento o piacere qualunque coll’uso della cosa altrui ... per lucro qui non s’intende un effettivo locupletazione ma qualsiasi vantaggio o soddisfazione procurata a se stesso.”

Quoting Crivellari the Court further added:

“l’elemento intenzionale nel furto non si cotruisce gia col solo animo di prendere ma’ coll’animo di lucrare.”

That the Court, after having examined in detail the acts of the case, concludes that the prosecution has failed to provide evidence that the accused actually stole the items indicated by injured party. Accused denies having taken the items and the said items were never found in his possession. That after gaining access to the apartment, the accused never locked the premises in such a way so as to prevent entry by third parties. Therefore the Court cannot conclude that accused necessarily stole the items found missing by injured party. Consequently not even the *animus lucrandi* in the commission of the crime, was proven and therefore the accused cannot be found guilty of theft as contemplated in Section 261 et.seq. of the Criminal Code.

That in considering the punishment to be inflicted the Court is taking into consideration the guilty plea filed by the accused to some of the charges brought against him, his criminal record which is relatively clean and above all the fact that accused has compensated the victim for the damages sustained.

Consequently the Court after having seen Sections 330(b) and 325(1)(c) of Chapter 9 of the Laws of Malta, whilst acquitting the accused from the first and second charges brought against him, finds him guilty of the third and fourth

Kopja Informali ta' Sentenza

charges and condemns him to a period of two months imprisonment, which term of imprisonment, in view of the above-made considerations and after having seen Section 28A of Chapter 9 of the Laws of Malta, is being suspended for a period of one year.

The Court, warns the accused with the consequences according to law should he commit another crime within the operative period of this judgment.

< Sentenza Finali >

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