



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

**MAGISTRAT DR.
EDWINA GRIMA**

Seduta tas-16 ta' April, 2012

Numru. 705/2009

**Il-Pulizija
(Spettur Sandra Zammit)**

Vs

**Saviour Fenech iben Nazzareno u Mary nee' Piscopo
mwieled Pieta' fil-21 ta' Settembru 1972 u residenti
gewwa Ent C, Flt1, Triq Mro. Giuseppe Camilleri,
Birkirkara, detentur tal-karta ta'l-identita' numru
479772(M)**

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat Saviour Fenech akkuzat talli fil-11 ta' Gunju 2009 u fil-granet ta' qabel gewwa LIDL Stores, Tal-Handaq, Hal Qormi, ikkometta serq ta' diversi prodotti li jammontaw ghal madwar 48Euros, liema serq huwa ikkwalifikat bil-persuna u li seh ghad-detriment ta' LIDL Malta.

Kopja Informali ta' Sentenza

Rat il-kunsens ta' l-Avukat Generali tat-23 ta' Lulju 2009 sabiex dana l-kaz jigi trattat u deciz bil-procedura sommarja minn dina l-Qorti.

Rat id-dokumenti esebieti.

Semghet il-provi.

Ikkunsidrat,

Illi l-imputat Saviour Fenech jinsab akkuzat li seraq xi oggetti li jappartjenu lis-socjeta LIDL. Dawn l-oggetti jikkonsistu f'pakkett tal-fruit juice, borza tal-patata, boiler suit, tapit zghir roza, charger tal-battery sewda, pakkett dried food tal-qatates, roll tat-tape, zewg pakketti tissúes, termometru tat-trabi u flixkun ta' l-ispray. Dawn l-oggetti instabu fil-pussess ta' l-imputat u specifikament fil-vann li juza fl-impieg tieghu mas-socjeta Faranheit li tiehu hsieb taghmel il-konsenji tal-prodotti tal-LIDL mill-istores taghom gewwa tal-Handaq ghas-supermarkets.

Jidher illi fil-jum indikat fl-akkuzza l-imputat kien gie inkarigat jittrasporta xi merkanzija lejn is-supermarket gewwa San Gwann. Minn hemm tghabbew xi prodotti ohra u huwa irritorna bihom lejn l-istores gewwa Hal Qormi. Kif wasal jidher illi d-direttur tas-socjeta certu Massimiliano Silvestri u l-manager tas-socjeta certu David Anthony Gatt innotaw xi oggetti li allegatament kienu proprjeta tas-socjeta LIDL gewwa l-vann ta' l-imputat u gie irraportat dana l-fatt lill-pulizija.

Illi kemm fl-istqarrija rilaxxjata minnu lill-pulizija kif ukoll meta jixhed quddiem il-Qorti l-imputat jichad kategorikament li seraq dawn l-oggetti. Huma jammetti illi kien gabar xi affarijiet li kienu mormija fl-iskip li hemm vicin is-supermarket ta' San Gwann. Isostni illi meta xi oggetti ikunu skaduti jew inkella *damaged* dawn jigu mormija. Ighid illi dawn l-oggetti kienu it-tapit, ic-charger, l-ikel ta' l-annimali u l-borza tal-patata. Ghar-rigward tat-termometru tat-trabi li kien ghadu issiggillat huwa jikkontendi illi dan kien tahulu impjegat tal-LIDL stess li madanakollu ma xtaqx isemmi ismu. Isostni illi ma jistax

jaghti spjegazzjoni ta' kif l-oggetti l-oħra sabu ruħhom fil-vann tiegħu u jichad kategorikament illi huwa seraq dawn l-affarijiet.

Illi għandu jingħad mill-bidunett illi hadd mill-parti leza ma ingiebb jixhed sabiex jikkonferma illi l-oggetti in kwistjoni huma fil-fatt proprjeta tagħhom. Fil-fatt dawn l-oggetti lanqas gew esebieti in atti u jidher illi dawn gew ritornati lill-parti leza wara li gew iffotografati mill-pulizija. Il-Qorti għalhekk ma kenitx f'posizzjoni teżamina dawn l-oggetti sabiex tivverifika jekk dak allegat mill-imputat kienx minnu, u cioe' jekk xi prodotti kenux verament skaduti jew inkella kenux *damaged*. Ir-ritratt esebit ma jurix il-prodotti sew izda jidher illi wiehed mill-pakketti tat-tissues huwa miftuh u il-flixkun ta' l-ispray huwa nofsu mimli. Illi l-uniku xhud li gie prodott mill-prosekuzzjoni in rappreżentanza tal-parti leza huwa David Gatt li huwa il-persuna li għamel ir-rapport u li fiz-zmien ta' dana l-incident kien impjegat bħala manager mas-socjeta LIDL. Izda meta jixhed ighid illi ma jistax jitarx x'kienu l-oggetti li instabu għand l-imputat. Ikompli ighid illi kien wiehed mid-diretturi tas-socjeta certu Massimiliano Silvestri li induna b'dawn l-oggetti. Izda dana il-bniedem qatt ma ingiebb jixhed mill-prosekuzzjoni. Gatt ighid illi ma jiftakarx x'kienu l-affarijiet u li kien għamel ir-rapport lill-pulizija fuq talba tad-direttur tiegħu¹. Ovvjament ix-xhud ma setax jigi muri l-oggetti sabiex jikkonferma illi l-prodotti kienu dawk li instabu fil-vann misjuq mill-imputat u wisq anqas gie muri ir-ritratt Dokument SZ4 sabiex jikkonferma illi l-oggetti fir-ritratt kienu dawk mertu ta' dina l-kawza. Lanqas ma jikkonferma l-valur ta' l-istess. Illi għalkemm dana Gatt jikkonferma illi l-oggetti kienu jappartjenu lis-socjeta LIDL, madanakollu ma hemm l-ebda prova illi dawn l-oggetti fil-fatt insterqu mill-istess socjeta. Ma tingiebb l-ebda prova mill-parti leza illi dawn l-oggetti gew nieqsa mill-istock tal-kumpanija jew inkella illi sar xi telf minn naha tagħhom fil-valur indikat ta' €48. Gatt jikkonferma illi huwa minnu illi xi oggetti jintremew kif jallega l-imputat u ighid ukoll illi kien hemm xi oggetti minnhom li kienu oggetti promozzjonali. Kwindi il-Qorti tistqarr illi ma tressqitx l-aħjar prova mill-

¹ Ara xhieda a fol.37

prosekuzzjoni u mill-parti leza illi l-oggetti li instabu fil-pussess ta'l-imputat kienu fil-fatt oggetti misruqa kif gie allegat mill-parti leza li qatt ma gie jixhed f'dawn il-proceduri. Ix-xhud Gatt ghalkemm jikkonferma illi l-oggetti li instabu fil-vann ta' Fenech huma prodotti tas-socjeta LIDL, madanakollu ma jikkonfermax illi dawn l-oggetti huma oggetti li kienu ghal bejgh jew kienu jiffurmaw parti mill-istock taghhom u li gew nieqsa. Illi ghalhekk l-uniku prova li ghandha l-pulizija f'idejha hija l-fatt illi l-oggetti li jappartjenu lill-parti leza instabu fil-pussess ta'l-imputat u xejn izjed! Ma hemm l-ebda prova ohra li tista torbot l-allegat serq taghhom ma'l-imputat.

Illi anke fl-applikazzjoni tat-teorija tar-**recent possession of stolen goods** irid ikun hemm ness bejn il-fatt materjal tas-serq u is-sejbien tar-**res furtiva** fil-pussess ta'l-imputat ftit wara. Illi f'sentenza moghtija mill-Qorti ta'l-Appelli Kriminali (per.Imhallef Vincent Degaetano) deciza fis-26 ta' Awissu 1998, il-Qorti studjat fil-fond din it-teorija fejn gew ikkwotati diversi awturi inglizi u saret referenza ghal giurisprudenza ingliza:

Din il-Qorti wkoll ser tikkwota mill-ahhar edizzjoni ta' Archbold peress li hi tal-fehma li l-bran li gej jitratta bl-iktar mod konciz u preciz il-kwistjoni kollha marbuta ma' din itteorija:

There appears to have been widespread misunderstanding of the so-called doctrine of recent possession. The rule (for it is no more than the application of common sense) is, it is submitted, that where it is proved that premises have been entered and property stolen therefrom and that very soon after the entry the defendant was found in possession of the stolen property, it is open to the jury to convict him of burglary, and the jury should be so directed:(see R. v. Loughlin, 35 Cr.App.; R. v. Seymour, 38 Cr. App. R.68.) This of course applies equally to thefts other than in the course of a burglary, whether a pickpocketing or an armed robbery.

In R.V.Symthe, 72 Cr.App R 8 C.A., the court stressed that it is a misconception to think that recent possession is a material consideration only in cases of handling: it adopted the following passage from Cross on Evidence 5th ed. (now 8th ed.p.35): “If someone is found in possession of goods soon after they have been missed,(sottolinjar tal-Qorti), and he fails to give a credible explanation of the manner in which he came by them, the jury are justified in inferring that he was either the thief or else guilty of dishonestly handling the goods, knowing or believing them to be stolen ... The absence of an explanation is equally significant whether the case is being considered as one of theft or handling, but it has come into particular prominence in connection with the latter because persons found in possession of stolen goods are apt to say they acquired them innocently from someone else. Where the only evidence is that the defendant on a charge of handling was in possession of stolen goods, a jury may infer guilty knowledge or belief (a) if he offers no explanation to account for his possession, or (b) if the jury are satisfied that the explanation he does offer is untrue.”

Every case depends on its own facts, there is no magic in any given length of time. However, it is submitted that in many cases where the only evidence is that of recent possession, it will be impossible to exclude the possibility that the defendant was merely a receiver of the stolen property: in such cases a count of burglary ought not to be left to the jury. However, that applies where recent possession is literally the only evidence. The reality, is that in the great majority of cases there are other pieces of evidence which tend to point the case one way or the other. It would be impossible to compile a definitive list of circumstances which might be relevant. They will include, however, the time and place of the theft, the type of property stolen, the likelihood of it being sold on quickly, the circumstances of the defendant, whether he has any

connection with the victim or with the place where the theft occurred, anything said by the defendant and how it fits in or does not fit in with the other available evidence.” (Archbold: Criminal Pleading, Evidence and Practice, 1997 paras.21-125, 21-126).”

Illi maghmula dina l-esposizzjoni legali ghalhekk jidher car illi l-fatt materjali wahdu illi l-imputat instab fil-pussess ta' dawn l-oggetti ma jistax iwassal ghal kundanna fil-konfront tieghu u dana peress illi l-prosekuzzjoni naqqset qabel xejn milli tipprowa illi effettivament kienet sehhet is-serqa ta' l-oggetti in kwistjoni. Ghalhekk huwa diffiċli biex jigi stabbilit jekk l-imputat kienx hu li materjalment ha l-oggetti jew inkella jekk l-istess gew mghoddija lil minn terzi.

Illi fix-xhieda tieghu l-imputat jichad li seraq dawn l-oggetti u ighid illi xi uhud minnhom gabarhom minn skip, filwaqt li l-ohrajn ma jistax jaghti spjegazzoni kif spicaw fil-vann tieghu ghaliex dana kien gie issiggilat minn impjegat tal-LIDL hekk kif telaq minn San Gwann, liema vann imbaghad infetah mal-wasal tieghu gewwa tal-Handaq minn rapprezentanti tal-LIDL stess. L-imputat isostni illi huwa illarga ghal xi ftit tal-hin minn hdejn il-vann tieghu u mar ighin lil certu Kevin Buttigieg sabiex ihott xi trailer u kwindi ma jistax ighid x'gara f'dana it-trapass tal-hin. Ghalhekk kif diga inghad l-uniku prova li hemm huwa l-presenza ta' dawn l-oggetti fil-vann misjuq mill-imputat u xejn izjed. Ma hemm l-ebda prova ohra fl-atti, ghajr ghal dak li ighid l-imputat stess, dwar l-provenjenza ta' dawn l-oggetti.

Illi ghaldaqstant fid-dawl tal-provi li hemm fl-atti il-Qorti ma tistax tasal sabiex tistabilixxi ness bejn l-allegat serq ta' dawn l-oggetti u l-persuna ta' l-imputat. Illi huwa principju ben stabbilit illi l-provi fil-kamp penali iridu ikunu tali li iwasslu ghal sejbien ta' htija lil hinn minn kull dubbju dettat mir-raguni, liema grad ta' prova ma intlahqitx f'dana il-kaz

Ghaldaqstant fid-dawl ta' dawn ir-risultanzi processwali l-Qorti ma tistax hlief tillibera lill-imputat mill-akkuzi migjuba fil-konfront tieghu fuq nuqqas ta' provi.

Kopja Informali ta' Sentenza

< Sentenza Finali >

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