



MALTA

COURT OF CRIMINAL APPEAL

THE HON. MR. JUSTICE -- ACTING PRESIDENT

DAVID SCICLUNA

THE HON. MADAM JUSTICE

ABIGAIL LOFARO

THE HON. MR. JUSTICE

JOSEPH ZAMMIT MC KEON

Sitting of the 23 rd October, 2014

Number 34/2007

The Republic of Malta

v.

Rita Bugeja

The Court:

1. Having seen the bill of indictment filed by the Attorney General on the 3rd September 2007 wherein the said Rita Bugeja was accused of having (1) with another one or more persons in Malta, and outside Malta, conspired for the purpose of committing an offence in violation of the provisions of the Medical and Kindred Professions Ordinance (Chapter 31 of the Laws of Malta) and specifically of dealing illegally in any manner in ecstasy pills and of having promoted, constituted, organized and financed such conspiracy; (2) meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (Ecstasy), being a drug restricted and controlled under the provisions of Part A , Third Schedule, of the Medical and Kindred Professions

Ordinance, when not in possession of any valid and subsisting import authorization granted in pursuance of said law; (3) knowingly having been in possession of a dangerous drug (Ecstasy pills), being a drug restricted and controlled under the provisions of Part A , Third Schedule, of the Medical and Kindred Professions Ordinance, when not in possession of any valid and subsisting import authorization granted in pursuance of said law so, however, that such offence was under such circumstances that such possession was not for the exclusive use of offender;

2. Having seen the judgement delivered on the 2nd May 2011 whereby the Criminal Court, after having heard the said Rita Bugeja's guilty plea to all counts of the Bill of Indictment, a plea she persisted in even after having been warned by that Court in the most solemn manner of the legal consequences of such statement and allowed her a short time to retract it, and this in terms of article 453 of Chapter 9 of the Laws of Malta, declared the said Rita Bugeja guilty of all three counts of the Bill of Indictment, namely:

1. in May 2006, with another one or more persons in Malta, and outside Malta, conspired for the purpose of committing an offence in violation of the provisions of the Medical and Kindred Professions Ordinance (Chapter 31 of the Laws of Malta) and specifically of dealing illegally in any manner in ecstasy pills and of having promoted, constituted, organized and financed such conspiracy, and this according to the First Count of the Bill of Indictment;

2. in May 2006, meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (Ecstasy), being a drug restricted and controlled under the provisions of Part A , Third Schedule, of the Medical and Kindred Professions Ordinance, when not in possession of any valid and subsisting import authorization granted in pursuance of said law, and this according to the Second Count of the Bill of Indictment;

3. in May 2006, knowingly having been in possession of a dangerous drug (Ecstasy pills), being a drug restricted and controlled under the provisions of Part A , Third Schedule, of the Medical and Kindred Professions Ordinance, when not in possession of any valid and subsisting import authorization granted in pursuance of said law so, however, that such offence was under such circumstances that such possession was not for the exclusive use of offender, and this according to the Third Count of the Bill of Indictment;

3. Having seen that by the said judgement the first Court, after having seen articles 2(1), 120A(1)(f), 120A(2)(a)(i)(2A)(2B) and 121A(1)(2) of Chapter 31,

Legal Notices 22/85 (regulation 10(2)), 70/88 and 183/99 as well as sections 22A, 22B, 22E, 27, 28 and 30 of the Dangerous Drugs Ordinance Chapter 101 and in sections 20, 22, 23 and 533 of the Criminal Code; sentenced the said Rita Bugeja to a term of imprisonment of twelve (12) years, and to the payment of a fine (multa) of twenty three thousand five hundred euros (€23,500), which fine (multa) shall be converted into a further term of imprisonment of eighteen months according to Law, in default of payment;

further condemned her to pay the sum of one thousand four hundred and ninety six euros and nine cents (€1,496.09) being the sum total of the expenses incurred in the appointment of court experts in this case in terms of Section 533 of Chapter 9 of the Laws of Malta; furthermore, ordered the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which she has been found guilty and other moveable and immovable property belonging to the said Rita Bugeja; and finally ordered the destruction of all the objects exhibited in Court, consisting of the dangerous drugs or objects related to the abuse of drugs, which destruction shall be carried out by the chemist Mario Mifsud, under the direct supervision of the Deputy Registrar of that Court who shall be bound to report in writing to the same Court when such destruction has been completed, unless the Attorney General files a note within fifteen days from the date of the judgement declaring that said drugs are required in evidence against third parties.

4. Having seen the application of appeal of the said Rita Bugeja filed on the 12th May 2011 wherein she requested that this Court confirm the finding of guilt and

having seen all the records of the case and the documents exhibited; having heard the submissions made by counsel for appellant and counsel for the respondent Attorney General; considers:-

5. This is an appeal against the punishment awarded as appellant feels that she should have been awarded a less severe punishment. She states that she is aware that it is not the norm for a Court of Appeal to revise what was done by the first Court. However, she says that she is also aware of the fact that the Court of Appeal is in duty bound to investigate whether a punishment awarded is fair and just. She says that she is also aware that the punishment is within the parameters provided by law but that in the particular circumstances of the case a ten-year prison term would have been fairer. She draws this Court's attention to the following factors:

Informal Copy of Judgement

“Firstly, the accused submits that she did in effect file a guilty plea in a considerably early stage in the proceedings. The appellant in actual fact filed her guilty plea on her second showing before the Criminal Court. During the first appointment the First Court was informed that there were no preliminary pleas to be tendered, and subsequently on the second showing the accused filed her guilty plea. Consequently this fact in itself should be reflected in the judgement awarded.

“The accused has a clean criminal conduct apart from this case. Now this fact is also important for two different reasons. Firstly the Attorney General quoted a number of judgements given by our courts in cases having a similar scenario. The punishment handed down was at times higher than that given to the accused. However, what the Attorney General failed to point out to the First Court was the fact that the judgements quoted were mostly given to individuals who are notorious criminal offenders with a much tainted criminal conduct. Moreover, this case also distinguishes itself from cases where we have foreign drug couriers, because even there we have a clean criminal conduct, however, of persons who would have just entered our islands as contrary to the accused who spent most of her life living here in Malta. Consequently over here in this particular case the Criminal Court was faced with someone who genuinely had a clean criminal conduct. This fact in itself should have landed a different punishment, since its one thing having a reputed drug dealer being caught and it is something totally different having a person who is fifty-five years old with no past criminal conduct at all.

“Also the fact that the accused is a person of fifty-five years as said, who suffers from a number of delicate health conditions. It is true that these conditions can be well catered for within the prison facilities. However, one has to bear in mind that the accused is a very frail person who has a very severe diabetes condition and whose records even at the Correctional Facility indicate that because of this case she is suffering from mental infirmity to the extent that she has tried to commit suicide on a number of occasions. It is absolutely true that our Courts have to find a balance between the interests of society at large and those of the accused, but in this particular case the accused humbly submits that the First Court could have been more lenient when handing down judgement.”

6. Now, this Court has had occasion to remark several times that appeals against punishment following the entering of a guilty plea will only be considered favourably in exceptional cases. It is not the function of this Court as a Court of appellate jurisdiction to disturb the discretion of the First Court as regards the *quantum* of punishment unless such discretion has been exercised

outside the limits laid down by the law or in special circumstances where a revision of the punishment meted out is manifestly warranted.

7. It is to be stated at the outset, and as agreed by appellant, that the punishment awarded is well within the parameters set out by law. Indeed the punishment requested by the Attorney General in the Bill of Indictment in terms of law was that of imprisonment for life, and, in addition, a fine (*multa*) of not less than one thousand Maltese liri (Lm1,000) – now equivalent to two thousand three hundred and thirty euro (€2,330) – and not more than fifty thousand Maltese liri (Lm50,000) – now equivalent to one hundred and sixteen thousand and five hundred euro (€116,500). Seeing that the Criminal Court awarded a punishment of imprisonment of twelve (12) years, and to the payment of a fine (*multa*) of twenty three thousand five hundred euros (€23,500), it is evident that that Court thought fit to apply article 120A(2)(a)(i)(aa) of Chapter 31 of the Laws of Malta which states that “where the court is of the opinion that, when it takes into account the age of the offender, the previous conduct of the offender, the quantity of the drug and the nature and quantity of the equipment or materials, if any, involved in the offence and all other circumstances of the offence, the punishment of imprisonment for life would not be appropriate ... then the Court may sentence the person convicted to the punishment of imprisonment for a term of not less than four years but not exceeding thirty years and to a fine (*multa*) of not less than two thousand and three hundred and twenty-nine euros and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euros and sixty-seven cents (€116,468.67).” In other words the Criminal Court exercised its discretion, based on the circumstances of the case, not to award the maximum punishment provided by law, and to award a punishment that fell within the lower parameters of four to thirty years imprisonment plus a fine (*multa*).

8. Appellant states that she filed a guilty plea fairly early in the proceedings. It is true that the guilty plea was registered before the impanelling of the jury. However, it cannot be said to have been registered fairly early in the

proceedings. Indeed, following her notification with the Bill of Indictment she filed a statement of defence¹ wherefrom it is amply clear that she was still contesting the charges brought against her and that it was not her intention to plead guilty. At the first hearing held on the 15th November 2007, these pleas (not being preliminary pleas) were withdrawn as they related to the merits of the charges brought against her, and the case was adjourned *sine die* to be heard by a jury. The second hearing at which appellant appeared was on the 2nd May 2011, and this because in the meantime she had absconded, being returned to Malta under escort on the 31st March 2011 (see Attorney General's note of the 1st April 2011). Even had this to be considered a case of an early admission, as was retained in "**Ir-Repubblika ta' Malta vs. Mario Camilleri**" decided by this Court differently composed on the 5th July 2002, "l-ammissjoni bikrija mhux bilfors jew dejjem, jew b'xi forma ta' dritt jew awtomatikament, tissarraff f'riduzzjoni fil-piena".

9. The principles which have been considered to guide these Courts when there is a guilty plea have been described by the Criminal Court in its preliminary judgement **Ir-Repubblika ta' Malta v. Nicholas Azzopardi** decided on the 24th February 1997 and the judgement of the Court of Criminal Appeal (inferior jurisdiction) in its judgement **Il-Pulizija vs. Emmanuel Testa** decided on the 17th July 2002. In the latter case reference was made to an excerpt from Blackstone's Criminal Practice, 2001, para. E1.18, p.1789²:

"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 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

¹ On the 20th September 2007.

² Today in the United Kingdom, guidelines have been issued by the Sentencing Guidelines Council.

given evidence against a co-accused (*Wood*[1997] 1 Cr App R (S) 347) and/or given significant help to the authorities (*Guy* [1999] 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* (1988) 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) 82 Cr App R (S) 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 facts at odds with that put forward by the prosecution, requiring the court to conduct an enquiry 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 might 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 had been caught red-handed and a plea of guilty was practically certain. It was also established in *Costen* that the discount may be reduced where the accused pleads guilty to specimen counts.” (Blackstone’s Criminal Practice, 2001, para. E1.18, p.1789).

10. In the present case, one could talk of a “tactical plea” as much as it could be stated that appellant was caught “red-handed” with the ecstasy pills in her possession. Consequently this Court does not see how appellant could expect a discount for an early guilty plea. The first Court could only take into consideration the fact that she pleaded guilty before the impanelling of the jury thereby saving time and costs.

11. Appellant also states that she has a clean criminal conduct record. In the records of the case the prosecution exhibited a conviction record issued by the Malta Police. Prior to this case there were no convictions. That document is the only evidence adduced by the prosecution and it is therefore on the basis of that document alone that the Court can assess whether appellant has a clean conduct record or not. The same applies with couriers who have no ties with Malta and who have come to Malta for the first time with the intention of importing drugs. The Court cannot make any assumptions as to what their conduct might be in their country of origin. *Quod non est in actis non est in mundo*. So the first Court clearly had to decide on the basis of the clean

conduct record exhibited before it. In this Court's opinion, the fact that appellant had absconded could have had no bearing on the punishment awarded. Appellant was not charged before the Criminal Court with having been in breach of bail conditions.

12. Appellant also refers to her age, 49 at the time of the offence, now 58. In this Court's opinion, at the time of the offence she was already of a mature age, sufficiently so to make her realise that she should not have engaged in this illicit activity, no matter who had encouraged her to do so.

13. Appellant also complains about the fact that she has a number of health problems, but herself states that her conditions "can be well catered for within the prison facilities". Any further comment by this Court would be superfluous.

14. This Court also wishes to point out that appellant cannot in any way benefit from a reduction in punishment on the basis of article 29 of Chapter 101 of the Laws of Malta (rendered applicable here by article 120A(2B) of Chapter 31 of the Laws of Malta as she did not in any way "help the Police to apprehend the person or persons who supplied her with the drug". Moreover ecstasy is a psychotropic drug which is known to have deleterious consequences on the health of the consumer. Several known *short-term effects* are: *"increased heart rate and blood pressure, dehydration, overheating, teeth-grinding and jaw clenching. Short-term effects include psychological difficulties, including confusion, depression, sleep problems, drug craving, severe anxiety and paranoia – during and sometimes weeks after taking MDMA, physical symptoms such as muscle tension, nausea, blurred vision, rapid eye movement, faintness, and chills or sweating."*³ Studies by the American National Institute on Drug Abuse show that ecstasy can cause brain damage: *"A NIDA-supported study has provided the first direct evidence that chronic use of MDMA, popularly known as 'ecstasy', causes brain damage in people. Using advanced brain imaging techniques, the study found that MDMA harms neurons that*

³ <http://www.gdcada.org/statistics/ecstasy.htm>.

*release serotonin, a brain chemical thought to play an important role in regulating memory and other functions. In a related study, researchers found that heavy MDMA users have memory problems that persist for at least 2 weeks after they have stopped using the drug. Both studies suggest that the extent of damage is directly correlated with the amount of MDMA use.”*⁴

15. In *Ir-Repubblika ta' Malta v. Basam Mohamed Gaballa Ben Khial*, decided by this Court differently composed on the 19th February 2004, it was said: “fejn si tratta ta' traffikar tad-droga (inkluza importazzjoni) l-element tad-deterrent ġenerali fil-piena hija konsiderazzjoni ewlenija li kull Qorti ta' Ġustizzja Kriminali għandha żżomm f'mohha fil-ghoti tal-piena, basta, s'intendi, li jkun hemm element ta' proporzjonalita` bejn il-fattispeċi partikolari tal-każ u l-piena erogata (ara f'dan is-sens is-sentenza ta' din il-Qorti tas-16 ta' Ottubru, 2003 fl-ismijiet *Ir-Repubblika ta' Malta v. Thafer Idris Gaballah Salem*).” In fact in *Ir-Repubblika ta' Malta v. Thafer Idris Gaballah Salem*, it was said: “Ma hemmx dubbju li l-element ta' deterrent, speċjalment fil-każ ta' reati premeditati (a differenza ta' dawk li jiġu kommissi “on the spur of the moment”) hi konsiderazzjoni legittima li Qorti tista', u hafna drabi għandha, iżżomm quddiem għajnejha fil-ghoti tal-piena.... S'intendi, hemm dejjem l-element tal-proporzjonalita`: qorti ma tistax, bl-iskuża tad-“deterrent”, taghti piena li ma tkunx ġustifikata fuq il-fatti li jirrizultaw mill-provi.”

16. In the light of all these considerations, this Court believes the punishment that was awarded by the Criminal Court was proportionate to the circumstances and finds that there is no reason to disturb that Court's decision as to the *quantum* awarded.

17. This Court has, however, noted that on condemning appellant to a fine (multa) of twenty three thousand five hundred Euros (€ 23,500), the first Court stated that, in default of payment, said fine (multa) shall be converted into a further term of imprisonment of eighteen months. However, the *proviso* of subarticle (3) of article 11 of the Criminal Code now⁵ provides that

⁴ NIDA Notes – Vol. 14, No. 4.

⁵ Per article 45 of Act XXI of 2011 which came into force after judgement was delivered by the Criminal Court.

imprisonment in substitution of a fine shall not exceed one year if the fine is not higher than thirty thousand euros (€30,000).

18. For these reasons this Court reforms the judgement delivered by the Criminal Court on the 2nd May 2011 in the names **The Republic of Malta v. Rita Bugeja** in that it revokes it in so far as it ordered that the fine (multa) of twenty three thousand five hundred Euros (€23,500) shall be converted into a further term of imprisonment of eighteen months according to Law, in default of payment and instead orders that the fine (multa) of twenty three thousand five hundred Euros (€23,500), shall be converted into a further term of imprisonment of one year according to law, in default of payment; furthermore, it confirms the remainder of the judgement in its entirety, save that the period of fifteen days within which the Attorney General is to declare by means of a note whether the drugs are required in evidence against third parties shall commence to run from today.

< Final Judgement >

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