

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

**MAGISTRAT DR. JOSETTE DEMICOLI LL.D**

**Seduta tat-Tnejn 19 ta' Jannar, 2015**

**Il-Pulizija  
(Spettur Fabian Fleri)**

**Vs**

**Aaron Cassar**

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat Aaron Cassar ta' 31 sena, bin John u Mary Grace nee' Mallia, imwieled Pieta' nhar il-20 ta' Frar 1980, residenti Flt 1, Blk G, Qasam tal-Menhir Kirkop u detentur tal-karta ta' l-identita' bin-numru 137880(M) :

1. Talli nhar it-Tnejn 19 ta' Dicembru 2011 u/jew matul il-gimghat ta' qabel din id-data, f'Malta, laqgha ghandu jew xtara hwejjeg misruqa, mehuda b'qerq jew akkwistati b'reat sew jekk dan sar f'Malta kif ukoll barra minn Malta u cioe' il-vettura ta' l-ghamla Hyundai Accent bin-numri tar-registrazzjoni BBJ 041 kontenenti diversi affarijiet u kif ukoll il-pjanci tar-registrazzjoni bin-numri FBL 529 jew xjentement b'kull mod li jkun indahal biex ibieghhom jew imexxihom;
2. u aktar talli rrenda ruhu recediv ai termini tal-artiklu 49, 50 u 289 tal-Kodici Kriminali Kapitolu 9 tal-Ligijiet ta' Malta b'diversi sentenzi moghtija mill-Qrati ta' Malta, diversament preseduti, liema sentenzi saru definittivi u ma jistghux jigu mibdula jew imhassra.

Semghet ix-xhieda.

Rat in-nota ta' l-Avukat Generali permezz ta' liema baghat lill-imputat biex jigi gudikat minn din il-Qorti bhala Qorti ta' Gudikatura Kriminali kif mahsub fis-segweni artikoli:

- (a) Fl-artikoli 334(a)(b)(c) tal- Kapitolu 9 tal-Ligijiet ta' Malta;
- (b) Fla-rtikoli 31, 49, 50, 289 u 533 tal-Kapitolu 9 tal-Ligijiet ta' Malta

Rat li l-imputat ma kellux oggezzjoni li l-kaz jigi trattat bi procedura sommarja.

Rat l-atti u d-dokumenti kollha.

Semghet it-trattazzjoni finali.

Ikkunsidrat

Illi l-imputat jinsab akkuzat bir-reat ta' ricettazzjoni in konnessjoni ma' karozza li allegatament insterqet fit-30 ta' Novembru 2011 mil-lokalita' ta' San Gwann.

Illi rrizulta li Robert Duncan Tarney kien mar jirrapporta fl-Ghassa ta' San Gwann li l-karozza tieghu tal-marka Hyundai Accent bajda bin-numru tar-Registrazzjoni BBJ 041 kienet insterqitlu. F'din il-karozza kien hemm diversi blalen tat-tennis. Eventwalment gie kkuntattjat mill-Pulizija li l-karozza kienet instabet. Il-pjanci tal-karozza kienu neqsin. Huwa kkonferma Dok FFI<sup>1</sup> li hija l-ircevuta li x-xhud kien qieghed jinghata lura l-karozza mill-Pulizija fil-31 ta' Dicembru 2011 minghajr pjanci pero'. Apparti l-fatt li kienu neqsin il-pjanci, il-karozza kellha hsarat in konnessjoni mas-serq<sup>2</sup>.

Illi rrizulta wkoll li fid-19 ta' Dicembru 2011 ghall-habta tad-9.30p.m. l-imputat gie arrestat fil-Belt Valletta minn zewg pulizija ossia PS1258 Carmel Debattista u PC1281 Keith Bugeja. PS1258 Carmel Debattista xehed<sup>3</sup> li huwa flimkien mal-kollega l-iehor kienu nezlin fi Triq Marsamxett fejn kien hemm diversi karozzi pparkjati u nnutaw guvni, li kien l-imputat, bil-*hood* f'rasu, fetah il-bieba tal-karozza u ntelat maghha speci qisu se jidhol fiha. Kif gie avvicinat minnhom, l-imputat hares lejhom, ghalaq il-bieba u telaq jigri. PC 1281 telaq jigri warajh u qabduh aktar tard. Mill-istharrig irrizulta li l-karozza kienet misruqa bi pjanci foloz li kienu jghajtu lil karozzi ohra tat-Topper Auto Dealer. Il-karozza kienet Hyundai Accent bajda bin-numru tar-Registrazzjoni FBL 529. Mill-istharrig pero' rrizulta li n-numru proprju tar-registrazzjoni tal-vettura huwa BBJ 041. Il-pjanci li kellha fuqha l-Hyundai Accent kien ta' karozza tal-marka Rover registrata fuq Topper Auto Dealer. Irrizultathom li l-persuna arrestata kien l-imputat Aaron Cassar. In kontroezami dan ix-xhud qal li meta ghamlulu t-tfittxija ma sabulux cwievet. Fil-

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<sup>1</sup> A fol 31 tal-process

<sup>2</sup> A fol 101 tal-process

<sup>3</sup> Seduta tas-26 ta' Marzu 2012

karozza kien hemm hsara fis-serratura ta' barra li kienet mifquga u hsara fil-parti tal-istearing. PC 1281 ikkonferma dak li qal il-kollega tieghu.

Anthony Tanti<sup>4</sup> xehed li huwa ghandu n-negozju Topper Auto Dealer u kellu vettura Rover bi pjanci FBL 529 li kienet gol-bitha tieghu biex tinbiegh u meta saru l-verifiki rrizulta li l-pjanci taghha ma kienux ghadhom hemm.

Illi l-imputat xehed f'dawn il-proceduri li dak iz-zmien tal-kaz kien joqghod il-Belt, kien juza' d-droga u sab din il-karozza miftuha, u fetahha ghaliex kellha xi blalen tat-tennis li kien se jehodhom biex ibieghhom izda huwa ma lahaq ha xejn ghaliex kif ra lill-pulizija arab. In kontro-ezami xehed li l-karozza ma kellhiex il-bieba miftuha izda ma kinitx illokkjata.

Illi fit-teorija elaborata minn guriprudenza u awturi inglizi dwar "*the unlawful possession of recently stolen goods*." jew 'l hekk imsejjha "*theory of recent possession*", liema teorija giet applikata anke minn guriprudenza taghna, jinghad f'diversi sentenzi illi din it-teorija mhi xejn ghajr l-applikazzjoni tal-"buon sens" ghac-cirkostanzi partikolari li jkunu jirrizultaw pruvati; fis-sens li meta jigu ppruvati certi fatti dawn jistghu wahedhom iwasslu ragjonevolment ghal konkluzzjoni li persuna partikolari tkun hatja tar-reat ta' serq tal-oggetti misjuba ghandha jew, skond ic-cirkostanzi, tar-reat ta' ricettazzjoni ta' dawk l-oggetti. Illi l-provi migjuba mill-prosekuzzjoni fil-fatt jindikaw biss illi l-oggett misruq, mertu ta' din il-kawza kien fil-pussess ta' l-imputat u dana peress illi jidher car illi ma hemmx prova wahda li tindika illi l-imputat kien involut fis-serq. Fil-fatt l-imputat huwa akkuzat biss bir-reat tar-ricettazzjoni.

Illi f'sentenza moghtija mill-Qorti ta' l-Appelli Kriminali (per. Imhallel 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 guriprudenza 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 it-teorija:

*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*

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<sup>4</sup> Seduta tal-10 ta' April 2013

*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 tenut kont ta' dawn l-insenjamenti, f'dan il-kaz irrizulta li l-karozza Hyundai Accent ta' kulur abjad bin-numru ta' Registrazzjoni BBJ041 kontenti diversi affarijiet kienet insterqet minn San Gwann fit-30 ta' Novembru 2011. Ma jirrizultax min kienet il-persuna li effettivament wettqet ir-reat ta' serq. Inkwantu ghar-reat li bih jinsab akkuzat l-imputat, din il-Qorti tqis li l-Prosekuzzjoni rnexxilha tipprova din l-imputazzjoni sal-grad rikjest mil-ligi. Il-versjoni moghtija mill-imputat mhix wahda kredibbli. Huwa ma jitwemminx meta jixhed li kien hdejn il-karozza ghaliex ra l-blalen

tat-tennis fiha u kien se jidhol fiha biex jiehu lilhom biss. Huwa jixhed li ra l-karozza miftuha u l-mistoqsija hija kif induna li l-karozza hija miftuha? Din il-Qorti hija moralment konvinta lil-karozza inkwistjoni kienet fil-pussess ta' l-imputat. Meta l-Pulizija rawh huwa kien se jiftah il-bieba tal-karozza u kien se jidhol fiha. Kien proprju minhabba li ra lill-Pulizija li huwa harab minn fuq il-post. Li kieku verament ma kien ghamel xejn hazin ma kienx jahrab minn fuq il-post u wisq anqas ma kien ikun bil-hood u aktar minn hekk il-karozza kellha pjanci differenti, misruqa wkoll, mill-pjanci li verament jappartjenu lill-istess karozza. Tenut kont tal-fatt li jirrizulta mil-fedina penali tieghu li mhux l-ewwel darba li l-imputat kellu x'jaqsam mal-gustizzja ma setax ma jirrealizzax li l-karozza inkwistjoni kienet rizultat ta' illecita'. Dan qed jinghad billi s-serratura tal-bieba kienet imkissra kif ukoll anki l-isteering kellu xi hsarat.

Illi inkwantu ghat-tieni imputazzjoni ossija dik tar-recidiva, il-Prosekuzzjoni ma ressqet l-ebda prova dwar l-istess hlief il-fedina penali li mhix prova inkonfutabbli. Ghaldaqstant l-imputat ghandu jigi liberat minn tali imputazzjoni.

Illi inkwantu ghall-piena din il-Qorti hadet in kunsiderazzjoni n-natura tar-reat li tieghu qieghed jinstab hati l-imputat u l-fedina penali tieghu li hija wahda pjuttost ikkulurita. Madankollu din il-Qorti xorta wahda tqis li f'dan il-kaz m'ghandhix timponi piena karcerarja effettiva.

Ghal dawn il-motivi din il-Qorti wara li rat l-artikoli 334, 49, 50 u 289 tal-Kapitolu 9 tal-Ligijiet ta' Malta filwaqt li ma ssibx htija inkwantu ghat-tieni imputazzjoni u ghaldaqstant tillibera lill-imputat mill-istess, issib lill-imputat hati ta' l-ewwel imputazzjoni u tikkundannah ghal hmistax-il xahar (15) prigunerija li bl-applikazzjoni ta' l-artikolu 28A tal-Kapitolu 9 tal-Ligijiet ta' Malta qeghdin jigu sospizi ghal zmien sentejn millum.

Il-Qorti wissiet lill-imputat bil-konsegwenzi jekk jikkommetti reat waqt il-perjodu operattiv ta' din is-sentenza.

Dr Josette Demicoli LL.D.  
Magistrat