

taken with the evidence that an unaccompanied bag was taken from KM180 to PA103A, the inference that that was the primary suitcase becomes, in our view, irresistible. As we have also said, the absence of an explanation as to how the suitcase was taken into the system at Luqa is a major difficulty for the Crown case but after taking full account of that difficulty, we remain of the view that the primary suitcase began its journey at Luqa. The clear inference which we draw from this evidence is that the conception, planning and execution of the plot which led to the planting of the explosive device was of Libyan origin. While no doubt organisations such as the PFLP-GC and the PPSF were also engaged in terrorist activities during the same period, we are satisfied that there was no evidence from which we could infer that they were involved in this particular act of terrorism, and the evidence relating to their activities does not create a reasonable doubt in our minds about the Libyan origin of this crime.

[83] In that context we turn to consider the evidence which could be regarded as implicating either or both of the accused, bearing in mind that the evidence against each of them has to be considered separately, and that before either could be convicted we would have to be satisfied beyond reasonable doubt as to his guilt and that evidence from a single source would be insufficient.

[84] We deal first with the second accused. The principal piece of evidence against him comes from two entries in his 1988 diary. This was recovered in April 1991 from the offices of Medtours, a company which had been set up by the second accused and Mr Vassallo. At the back of the diary there were two pages of numbered notes. The fourteenth item on one page is translated as "Take/collect tags from the airport

(Abdulbaset/Abdussalam)". The word 'tags' was written in English, the remainder in Arabic. On the diary page for 15 December there was an entry, preceded by an asterisk, "Take taggs from Air Malta", and at the end of that entry in a different coloured ink "OK". Again the word 'taggs' (sic) was in English. The Crown maintained that the inference to be drawn from these entries was that the second accused had obtained Air Malta interline tags for the first accused, and that as an airline employee he must have known that the only purpose for which they would be required was to enable an unaccompanied bag to be placed on an aircraft. From another entry on 15 December (translated as "Abdel-baset arriving from Zurich") it appears that the second accused expected the first accused to pass through Malta on that day. In fact the first accused passed through on 17 December and missed seeing the second accused. In his interview with Mr Salinger in November 1991, the second accused said that he had been informed by his partner Mr Vassallo that the first accused had spoken to him and asked him to tell the second accused that he wanted to commission him with something. On 18 December the second accused travelled to Tripoli. He returned on 20 December on the same flight as the first accused. The Crown maintained that the inference to be drawn from this was that on that date the first accused was bringing component parts of the explosive device into Malta, and required the company of the second accused to carry the suitcase through Customs as the second accused was well known to the customs officers who would be unlikely to stop him and search the case. This would be consistent with the evidence of Abdul Majid. Finally the Crown maintained that in order for the suitcase to get past the security checks at Luqa on 21 December and find its way on board KM180, someone would have to organise this who was very well acquainted with the security controls at Luqa and would know how these controls could be circumvented. As someone

who had been a station manager for some years, the second accused was ideally fitted for this role. Further, there was a telephone call recorded from the Holiday Inn, where the first accused was staying, to the number of the second accused's flat at 7.11am on 21 December. The Crown argued that this could be inferred to be a call arranging for the second accused to give the first accused a lift to the airport, and also it could be inferred that the second accused was at the airport from the fact that the first accused received special treatment both at check-in and at immigration control before departing on the LN147 flight to Tripoli.

[85] There is no doubt that the second accused did make the entries in the diary to which we have referred. In the context of the explosive device being placed on KM180 at Luqa in a suitcase which must have had attached to it an interline tag to enable it to pass eventually on to PA103, these entries can easily be seen to have a sinister connotation, particularly in the complete absence of any form of explanation. Counsel for the second accused argued that even if it be accepted that the second accused did obtain tags and did supply them to the first accused, it would be going too far to infer that he was necessarily aware that they were to be used for the purpose of blowing up an aircraft, bearing in mind that the Crown no longer suggest that the second accused was a member of the Libyan Intelligence Service. Had it been necessary to resolve this matter, we would have found it a difficult problem. For the reasons we are about to explain however we do not find it necessary to do so. The Crown attach significance to the visit by the second accused to Tripoli on 18 December 1988 and his return two days later in the company of the first accused. As we have indicated, we cannot accept the evidence of Abdul Majid that he saw the two accused arriving with a suitcase. It follows that there is no evidence that either of

them had any luggage, let alone a brown Samsonite suitcase. Whatever else may have been the purpose of the second accused going to Tripoli, it is unlikely that his visit was to hand over tags, as this could easily have been done in Malta. We do not think it proper to draw the inference that the second accused went to Tripoli for the purpose, as the Crown suggested, of escorting the first accused through Customs at Luqa. There is no real foundation for this supposition, and we would regard it as speculation rather than inference. The position on this aspect therefore is that the purpose of the visit by the second accused to Tripoli is simply unknown, and while there may be a substantial element of suspicion, it cannot be elevated beyond the realm of suspicion. The Crown may be well founded in saying that the second accused would be aware of the security arrangements at Luqa, and therefore might have been aware of some way in which these arrangements could be circumvented. The Crown however go further and say that it was the second accused "who was in a position to and did render the final assistance in terms of introduction of the bag by whatever means". There is no evidence in our opinion which can be used to justify this proposition and therefore at best it must be in the realm of speculation. Furthermore, there is the formidable objection that there is no evidence at all to suggest that the second accused was even at Luqa airport on 21 December. There were a number of witnesses who were there that day who knew the second accused well, such as Abdul Majid and Anna Attard, and they were not even asked about the second accused's presence. The Crown suggestion that the brief telephone call to the second accused's flat on the morning of 21 December can by a series of inferences lead to the conclusion that he was at the airport is in our opinion wholly speculative. While therefore there may well be a sinister inference to be drawn from the diary entries, we have come to the conclusion that there is insufficient other acceptable evidence to support or confirm such an

inference, in particular an inference that the second accused was aware that any assistance he was giving to the first accused was in connection with a plan to destroy an aircraft by the planting of an explosive device. There is therefore in our opinion insufficient corroboration for any adverse inference that might be drawn from the diary entries. In these circumstances the second accused falls to be acquitted.

[86] We now turn to the case against the first accused. We should make it clear at the outset that the entries in the second accused's diary can form no part of any case against the first accused. The entries fall to be treated as equivalent to a statement made by a co-accused outwith the presence of the first accused. If both accused had been proved by other evidence to have been acting in concert in the commission of the crime libelled, then these entries could perhaps have been used as general evidence in the case as against any person proved to have been acting in concert. As we are of opinion however that it has not been proved that the second accused was a party to this crime, it follows that the normal rule must apply and the entries cannot be used against the first accused. We therefore put that matter entirely out of our minds.

[87] On 15 June 1987 the first accused was issued with a passport with an expiry date of 14 June 1991 by the Libyan passport authority at the request of the ESO who supplied the details to be included. The name on the passport was Ahmed Khalifa Abdusamad. Such a passport was known as a coded passport. There was no evidence as to why this passport was issued to him. It was used by the first accused on a visit to Nigeria in August 1987, returning to Tripoli via Zurich and Malta, travelling at least between Zurich and Tripoli on the same flights as Nassr Ashur who was also travelling on a coded passport. It was also used during 1987 for visits to Ethiopia,

Saudi Arabia and Cyprus. The only use of this passport in 1988 was for an overnight visit to Malta on 20/21 December, and it was never used again. On that visit he arrived in Malta on flight KM231 about 5.30pm. He stayed overnight in the Holiday Inn, Sliema, using the name Abdusamad. He left on 21 December on flight LN147, scheduled to leave at 10.20am. The first accused travelled on his own passport in his own name on a number of occasions in 1988, particularly to Malta on 7 December where he stayed until 9 December when he departed for Prague, returning to Tripoli via Zurich and Malta on 16/17 December.

[88] A major factor in the case against the first accused is the identification evidence of Mr Gauci. For the reasons we have already given, we accept the reliability of Mr Gauci on this matter, while recognising that this is not an unequivocal identification. From his evidence it could be inferred that the first accused was the person who bought the clothing which surrounded the explosive device. We have already accepted that the date of purchase of the clothing was 7 December 1988, and on that day the first accused arrived in Malta where he stayed until 9 December. He was staying at the Holiday Inn, Sliema, which is close to Mary's House. If he was the purchaser of this miscellaneous collection of garments, it is not difficult to infer that he must have been aware of the purpose for which they were being bought. We accept the evidence that he was a member of the JSO, occupying posts of fairly high rank. One of these posts was head of airline security, from which it could be inferred that he would be aware at least in general terms of the nature of security precautions at airports from or to which LAA operated. He also appears to have been involved in military procurement. He was involved with Mr Bollier, albeit not specifically in connection with MST timers, and had along with

Badri Hassan formed a company which leased premises from MEBO and intended to do business with MEBO. In his interview with Mr Salinger he denied any connection with MEBO, but we do not accept his denial. On 20 December 1988 he entered Malta using his passport in the name of Abdusamad. There is no apparent reason for this visit, so far as the evidence discloses. All that was revealed by acceptable evidence was that the first accused and the second accused together paid a brief visit to the house of Mr Vassallo at some time in the evening, and that the first accused made or attempted to make a phone call to the second accused at 7.11am the following morning. It is possible to infer that this visit under a false name the night before the explosive device was planted at Luqa, followed by his departure for Tripoli the following morning at or about the time the device must have been planted, was a visit connected with the planting of the device. Had there been any innocent explanation for this visit, obviously this inference could not be drawn. The only explanation that appeared in the evidence was contained in his interview with Mr Salinger, when he denied visiting Malta at that time and denied using the name Abdusamad or having had a passport in that name. Again, we do not accept his denial.

[89] We are aware that in relation to certain aspects of the case there are a number of uncertainties and qualifications. We are also aware that there is a danger that by selecting parts of the evidence which seem to fit together and ignoring parts which might not fit, it is possible to read into a mass of conflicting evidence a pattern or conclusion which is not really justified. However, having considered the whole evidence in the case, including the uncertainties and qualifications, and the submissions of counsel, we are satisfied that the evidence as to the purchase of clothing in Malta, the presence of that clothing in the primary suitcase, the

transmission of an item of baggage from Malta to London, the identification of the first accused (albeit not absolute), his movements under a false name at or around the material time, and the other background circumstances such as his association with Mr Bollier and with members of the JSO or Libyan military who purchased MST-13 timers, does fit together to form a real and convincing pattern. There is nothing in the evidence which leaves us with any reasonable doubt as to the guilt of the first accused, and accordingly we find him guilty of the remaining charge in the Indictment as amended.

[90] The verdicts returned were by a unanimous decision of the three judges of the Court.

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