



THE COURT OF CRIMINAL APPEAL

His Honour the Chief Justice Dr Mark Chetcuti LL.D.

The Hon. Judge Dr Edwina Grima LL.D.

The Hon. Judge Dr Giovanni Grixti LL.D.

Sitting of the 20th of March 2024

Bill of Indictment No. 10/2021

The Republic of Malta

Vs

Michael Emmanuel

The Court,

1. Having seen the bill of indictment filed by the Attorney General on the 24th of May 2021 bearing number 10 of 2021 wherein Michael EMMANUEL was accused of having:

In the First Count, on the night of the fourteenth (14th) day of September of the year Two Thousand and Eighteen (2018), and before seven (7) o'clock of the fifteenth (15th) day of September of the year Two Thousand and Eighteen (2018), in Rahal Gdid (Paola), maliciously, with intent to kill another person (Maria-Lourdes Agius), or to put the life of such other person in manifest jeopardy, caused the death of such other person (Maria-Lourdes Agius).

In the Second Count, on the thirteenth (13th) day of September of the year Two Thousand and Eighteen (2018), at about half past five in the afternoon (17:30) in Rahal Gdid (Paola), with intent to commit a crime which was not completed in consequence of some accidental cause independent of the will of the

offender, manifested such intent by overt acts which were followed by a commencement of the execution of the crime of grievous bodily harm, that is, without intent to kill or to put the life of any person (his partner and co-habitant Maria-Lourdes Agius) in manifest jeopardy, caused harm to the body or health of such other person (Maria-Lourdes Agius). Moreover, this crime is aggravated in terms of law due to the fact that the said Maria Lourdes Agius was a person with whom the accused had two sons and with whom he had been residing in the same household for a period of four (4) years preceding the offence, and this against the provisions of Chapter 9 of the Laws of Malta.

In the Third Count, on the thirteenth (13th) day of September of the year Two Thousand and Eighteen (2018), at about half past five in the afternoon (17:30) in Rahal Gdid (Paola), with intent to commit a crime which was not completed in consequence of some accidental cause independent of the will of the offender, manifested such intent by overt acts which were followed by a commencement of the execution of the crime of grievous bodily harm, that is, without intent to kill or to put the life of any person (his partner's mother Maria Agius) in manifest jeopardy, caused harm to the body or health of such other person (Maria Agius), which person had attained had attained the age of sixty (60) years.

In the Fourth Count, on the thirteenth' (13th) day of September of the year Two Thousand and Eighteen (2018), at about half past five in the afternoon (17:30) in Rahal Ġdid (Paola), with criminal intent, committed the offence of slight bodily harm on the person of his partner Maria-Lourdes Agius, that is without intent to kill or to put the life of any person (his partner Maria-Lourdes Agius) in manifest jeopardy, caused harm to the body or health of such other person (Maria-Lourdes Agius), this, against the provisions of Chapter 9 of the Laws of Malta.

In the Fifth Count, on the thirteenth (13th) day of September of the year Two Thousand and Eighteen (2018), at about half past five in the afternoon (17:30) in Rahal Gdid (Paola), with criminal intent, committed the offence of slight bodily harm on the person of Maria Agius, a person who has attained the age of sixty years, that is, without intent to kill or to put the life of any person (his partner's mother Maria Agius) in manifest jeopardy, caused harm to the body or health of such other person (Maria Agius), which person had attained the age of sixty (60) years, this, against the provisions of Chapter 9 of the Laws of Malta.

In the Sixth Count, on the fourteenth (14th) day of September of the Year Two Thousand and Eighteen (2018), in Rahal Gdid (Paola), disobeyed the lawful orders of any authority or any person entrusted with a public service, or hindered or obstructed such person in the exercise of his duties, or otherwise unduly interfered with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any

manner whatsoever, this, against the provisions of Chapter 9 of the Laws of Malta.

In the Seventh Count, on the fifteenth (15th) day of September of the Year Two Thousand and Eighteen (2018) and / or during the previous months, in the Maltese Islands, committed forgery of any authentic and public instrument or any commercial document, or private bank document (a Residence Permit / '*Permesso di Soggiorno*' and a Greek driving licence) by counterfeiting or altering the writing or signature, by feigning any fictitious agreement, disposition, obligation or discharge, or by the insertion of any such agreement, disposition, obligation or discharge in any of the said instruments or documents after the formation thereof, or by any addition to or alteration of any clause, declaration or fact which such instruments or documents were intended to contain or prove, this, against the provisions of the Criminal Code, Chapter 9 of the Laws of Malta.

2. Having seen the verdict of the jury of the 17th of July 2023 wherein:

First Count:- The jury with eight votes in favour and one vote against found the accused guilty according to the First Count of the Bill of Indictment.

Second Count:- The jury unanimously found the accused not guilty of the crime of attempted grievous bodily harm on the person of Maria-Lourdes Agius according to the Second Count of the Bill of Indictment

Third Count:- The jury unanimously found the accused not guilty of the crime of attempted grievous bodily harm on the person of Maria Agius according to the Third Count of the Bill of Indictment.

Fourth Count:- The jury with eight votes in favour and one vote against found the accused guilty according to the Fourth Count of the Bill of Indictment. They also found that Maria Lourdes Agius was also a person who had a child in common with the offender and who was living in the same household as the offender.

Fifth Count:- The jury with seven votes in favour and two votes against found the accused guilty according to the Fifth Count of the Bill of Indictment. They also found that Maria Agius was also a person having sixty years of age when the crime was committed. And they also found that the accused lived in the same household together with her

Sixth Count:- The jury unaminously found the accused guilty according to the Sixth Count of the Bill of Indictment.

Seventh Count:- The jury unanimously found the accused guilty of the crime of forgery of public, commercial, or private bank documents by a person not being a Public Officer as mentioned in the seventh count of the Bill of

indictment not as principal but as an accomplice to the principal in the commission of this crime.

3. Having seen the judgment of the Criminal Court of the same day wherein the said Court declared Michael EMMANUEL:

1. Guilty under the First Count of the Bill of Indictment as mentioned above (that is to say guilty of wilful homicide, that is, for having on the night of the fourteenth (14th) day of September of the year Two Thousand and Eighteen (2018), and before seven (7) o'clock of the fifteenth (15th) day of September of the year Two Thousand and Eighteen (2018), in Rahal Gdid (Paola), maliciously, with intent to kill another person (Maria-Lourdes Agius), or to put the life of such other person in manifest jeopardy, caused the death of such other person (Maria-Lourdes Agius));

2. Not Guilty under the Second Count of the Bill of Indictment, (that is guilty of having, on the thirteenth (13th) day of September of the Page 13 of 21 year Two Thousand and Eighteen (2018), at about half past five in the afternoon (17:30) in Rahal Gdid (Paola), with intent to commit a crime which was not completed in consequence of some accidental cause independent of the will of the offender, manifested such intent by overt acts which were followed by a commencement of the execution of the crime of grievous bodily harm, that is, without intent to kill or to put the life of any person (his partner and co-habitant Maria-Lourdes Agius) in manifest jeopardy, caused harm to the body or health of such other person (Maria-Lourdes Agius)) and therefore acquits him from the same count.

3. Not Guilty under the Third Count of the Bill of Indictment, (that is guilty of having, on the thirteenth (13th) day of September of the year Two Thousand and Eighteen (2018), at about half past five in the afternoon (17:30) in Rahal Gdid (Paola), with intent to commit a crime which was not completed in consequence of some accidental cause independent of the will of the offender, manifested such intent by overt acts which were followed by a commencement of the execution of the crime of grievous bodily harm, that is, without intent to kill or to put the life of any person (his partner's mother Maria Agius) in manifest jeopardy, caused harm to the body or health of such other person (Maria Agius)) and therefore acquits him from the same count.

4. Guilty under the Fourth Count of the Bill of Indictment, (that is guilty of having, on the thirteenth (13th) day of September of the year Two Thousand and Eighteen (2018), at about half past five in the afternoon (17:30) in Rahal Gdid (Paola), with criminal intent, committed the offence of slight bodily harm on the person of his partner Maria-Lourdes Agius, that is without intent to kill or to put the life of any person (his partner Maria-Lourdes Agius) in manifest jeopardy, caused harm to the body or health of such other person (Maria-Lourdes Agius), this, against the provisions of Chapter 9 of the Laws of Malta).

5. Guilty under the Fifth Count of the Bill of Indictment, (that is guilty of having on the thirteenth (13th) day of September of the year Two Thousand and Eighteen (2018), at about half past five in the afternoon (17:30) in Rahal Gdid (Paola), with criminal intent, committed the offence of slight bodily harm on the person of Maria Agius, a person who has attained the age of sixty years, that is, without intent to kill or to put the life of any person (his partner's mother Maria Agius) in manifest jeopardy, caused harm to the body or health of such other person (Maria Agius), which person had attained the age of sixty (60) years, this, against the provisions of Chapter 9 of the Laws of Malta).

6. Guilty under the Sixth Count of the Bill of Indictment, (that is guilty of having on the fourteenth (14th) day of September of the Year Two Thousand and Eighteen (2018), in Rahal Gdid (Paola), disobeyed the lawful orders of any authority or any person entrusted with a public service, or hindered or obstructed such person in the exercise of his duties, or otherwise unduly interfered with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any manner whatsoever, this, against the provisions of Chapter 9 of the Laws of Malta).

7. Guilty under the Seventh Count of the Bill of Indictment, (that is guilty of having on the fifteenth (15th) day of September of the Year Two Thousand and Eighteen (2018) and / or during the previous months, in the Maltese Islands, committed forgery of any authentic and public instrument or any commercial document, or private bank document (a Residence Permit / 'Permesso di Soggiorno' and a Greek driving licence) by counterfeiting or altering the writing or signature, by feigning any fictitious agreement, disposition, obligation or discharge, or by the insertion of any such agreement, disposition, obligation or discharge in any of the said instruments or documents after the formation thereof, or by any addition to or alteration of any clause, declaration or fact which such instruments or documents were intended to contain or prove not as principal but as accomplice with the perpetrator of the crime).

4. Having seen the sentence delivered by the Criminal Court wherein after having seen articles 17(a)(d)(h), 23, 31(1)(a), 42(a), 183, 211(1)(2), 214, 215, 221(1), 222A(1), 338(ee), 492(2) and 533 of the Criminal Code the Court condemned Michael EMMANUEL to imprisonment for life, as well as to the payment of the sum of nine thousand, eight hundred thirty nine euro ninety six cents (€9839.96) representing the costs incurred in connection with the employment in the proceedings of any expert or referee, including such experts appointed in the course of the inquiry, within one year.

5. Having seen the appeal application filed by accused Michael Emmanuel on the 3rd of August 2023 wherein he requested this Court to:

i. Confirm the not guilty verdict on the Second and Third Count of the Bill of Indictment.

ii. Revoke and change the guilty verdict reached by the jury on the 17th of July 2023 and confirmed by the judgment of the Criminal Court by declaring the appellant not guilty on all counts.

6. Having seen the reply of the Attorney General of the 21st of November 2023, wherein for the reasons brought forward in his reply, requested that the Court rejects the appeal filed by Michael Emmanuel and confirms the verdict and judgment of the First Court in its entirety.

7. Having heard submissions by the parties.

8. Having seen all the acts of the case.

Considers,

9. The one and only grievance put forward by appellant Michael Emmanuel is directed towards the analysis and assessment of the facts of the case made by the jury wherein he laments that he should not have been found guilty on the evidence brought forward during the trial. Appellant thus exercises his right of appeal on the basis of article 501(1)(a) of the Criminal Code alleging that he has been wrongly convicted on the facts of the case. He lists a series of unproven facts which lie at the basis of the conviction of the first, and the fourth to seventh counts to the Bill of Indictment. He criticizes the verdict because:

i. No medical evidence is found in the acts supporting the conviction of the fourth and fifth counts wherein he was found guilty of causing slight injuries on the person of Maria Lourdes Agius and her mother Mary on the 13th of September 2018. The allegation is not supported by Mater Dei records filed in court, although a police report regarding this incident was lodged at the Paola Police Station.

ii. Although appellant was found guilty of murdering his partner by strangling, however the medico-legal report filed by the court appointed expert Dr. Mario Scerri indicated no fresh and visible lesions on his body

and thus he could not have been the perpetrator of the murder and injuries suffered by the victim.

- iii. The only piece of evidence linking appellant to the murder was the fact that he was at the scene of the crime at the time the offence took place, although for some time he was on the roof of the residence where the said murder occurred. Furthermore, the line of argument put forward by the Prosecution that he was the only person present in the bedroom where Maria Lourdes Agius was murdered is purely an assumption.
- iv. Although in the report filed by the victims Maria Lourdes Agius and her mother on the 13th of September 2018 it is alleged that the locks of the residence in Paola where they lived had been changed, the scene of crime officers appointed during the magisterial inquiry did not verify this crucial fact.
- v. The medical facts do not support the allegations against him, although he does not indicate in his appeal application in what sense these fail to link him to the murder.
- vi. Although the Prosecution alleged that the guilty mind of appellant could be gleaned from his actions, however this would require a psychiatric evaluation in general, and even more so in this case where it was clear that he was in a confused state of mind at the time of the commission of the crime, and also when he released his statements to the police upon arrest. This was confirmed by three psychiatrists at the time.
- vii. Thus, the statements released by him together with his demeanour at the time, which could be indicative of an element of guilt, should have been assessed with circumspection keeping in mind the psychiatrists' reports and evidence which document the confused state of mind he was in at the time. In fact, the first statement clearly shows that he was not coherent in his assertions.

10. The Attorney General from his part is of the opinion that all the above grievances brought forward by appellant in his appeal application have been exhaustively argued and brought to the attention of the jurors by the defence in its final submissions as well as in its re-joinder, however the verdict returned was still one of guilt.

11. Now this is not a court of retrial, in that it does not re-hear the case and decide it afresh, nor does it interfere with the findings of fact by the trial judges, unless the verdict is one which is deemed to be unsafe and unsatisfactory, or where from an overview of the case this Court is left with a lurking doubt as to whether an injustice has been made in view of the weaknesses of the prosecution evidence¹. The Court examined all the acts of the case, including all the evidence and documents presented to the jury during the trial, as well as the evidence found in the compilation of evidence in order to address the grievances brought forward by accused Michael Emanuel.

12. The main offence with which appellant is charged in the first count of the Bill of Indictment is one of the most heinous crimes contemplated at law being that of wilful homicide as envisaged in Section 211 of the Criminal Code, the elements being laid out in subsection 2 wherein it is stated that:

A person shall be guilty of wilful homicide if, maliciously, with intent to kill another person or to put the life of such other person in manifest jeopardy, he causes the death of such other person.

13. The law therefore contemplates both the positive direct intention to kill and also the indirect intention resulting when the *actus reus* is such that a reasonable man could reach the conclusion that his actions were likely to result in the death of his victim. Sir Anthony Mamo thus considers this intention:

¹ The Republic of Malta vs Eleno sive Lino Bezzina- 24/04/2003; The Republic of Malta vs Lawrence Asciak sive Axiak – 23/01/2003; The Republic of Malta vs John Camilleri – 24/04/2008, Ir-Repubblika ta' Malta v. Rida Salem Suleiman Shoaib, 15 ta' Jannar 2009; Ir-Repubblika ta' Malta v. Paul Hili, 19 ta' Gunju 2008; Ir-Repubblika ta' Malta v. Etienne Carter, 14 ta' Dicembru 2004 Ir-Repubblika ta' Malta v. Domenic Briffa, 16 ta' Ottubru 2003; amongst others.

“ from the point of view of wickedness, having regards to the consequences ensuing there is nothing to distinguish between a man who with the positive clear intent of killing proceeds to do an act which in fact causes death, and the man who, although without positively desiring to kill, yet does an act which inherently and obviously is likely to kill and in fact causes death. The knowledge that the act is likely to kill, or the recklessness whether death clearly foreseen as probable, shall ensue or not is properly treated by law on the same footing as the positive intention to kill.”

14. In both cases, for the *actus to be reus* there must result a direct and positive or an indirect intention to kill. Through such actions the perpetrator therefore clearly signifies his will to cause the death of his victim or proceeds toward the material act of the offence knowing fully well that his action could lead to death, being aware of the risks undertaken by him in completing the act.

“The Criminal Law of Scotland fil-kuntest tal-kuncett ta’ “recklessness” (li fil-ligi Skocciza “is advertent and involves foresight of the risk” u li ghalhekk hu tista’ tghid identiku ghall-kuncett taghna ta’ intenzjoni pozittiva indiretta) tghid hekk²:

“When the reasonable man is used as a test of subjective recklessness the position is that if the reasonable man would have foreseen the risk, it will be accepted as a fact that the accused foresaw it, unless there is strong evidence to the contrary. But if the accused can show that in fact he did not foresee the risk, then it is illogical to characterise him as reckless on the ground that a reasonable man would have foreseen it. As Hall says, ‘In the determination of these questions, the introduction of the “reasonable man” is not a substitute for the defendant’s awareness that his conduct increased the risk of harm any more than it is a substitute for the determination of intention, where that is material. It is a method used to determine those operative facts in the minds of normal persons’.

“Since evidence of the accused’s state of mind must normally consist of objective facts from which the jury will draw an inference as to his state of mind, the more careless the accused’s behaviour the more likely it is that he will be regarded as reckless, since the more likely it will be that he foresaw the risk involved. A man who kills another by punching him on the jaw may be believed when he says that he did not foresee the risk of death; but a man who kills another by striking him on the skull with a hatchet will be hard put to it to persuade a jury that he did not realise that what he was doing might be fatal.³”

² Ir-Repubblika ta’ Malta vs Brian Vella – App.Sup. – 28/11/2011

³ Gerald Gordon, op. cit. para. 7.53, pp. 245-246.

15. Having thus premised, however:

“(a) Murder requires intention and nothing less will suffice, i.e. it is a crime requiring specific intent, and, while foresight of virtual certainty may be evidence of intention, it is not to be equated with it.

(b) Grievous bodily harm should be given its ordinary and natural meaning, i.e. really serious bodily harm and is not restricted to harm likely to endanger life. (Cunningham (1982) AC566)...

(c) Murder, like any other crime requiring proof of intention, involves proof of a subjective state of mind on the part of accused.⁴”

16. The Prosecution presented before the jury a case of domestic violence, with accused Michael Emanuel having been in a relationship with the victim which ended due to a history of alleged physical abuse perpetrated by Emanuel on his partner Maria Lourdes Agius. Now, although the legislator has by means of Act X of 2022 introduced the crime of femicide, where the victim is of the female sex and amongst other instances mentioned in article 211A of the Criminal Code, the victim is also a partner of the perpetrator, however, this new offence does not find application in the present case, since appellant is charged with the crime of murder occurring before the promulgation of the new law. In fact, the alleged offences with which appellant is charged occurred in the year 2018, when on the 13th of September at approximately 19:30hrs, Maria Lourdes Agius and her mother Mary Agius filed a police report whereby they alleged that earlier in the day, at approximately 17:30hrs they were victims of an incident of domestic violence at 12, Triq F. Tortell, Paola, perpetrated by the live-in partner of Maria Lourdes Agius, a certain Michael Emanuel, being the appellant in these proceedings. In this incident they had both sustained injuries and were subsequently hospitalized. This report was filed after appellant, during that same evening, had himself reported to the police together with three children, two being in common with victim Maria Lourdes Agius, alleging that it was not safe for the kids to remain with their mother after a scuffle had occurred between him and Maria Lourdes Agius, with her mother Mary Agius also being involved in the same

⁴ Blackstone's Criminal Practice 2015 B1.12

argument. He denied physically abusing these two women and implied that he had been provoked by complainants, who started throwing hard objects in his direction. After complainants were further spoken to by the police, appellant was instructed to refrain from going to their residence in Paola and to report to the Fgura Police Station on the following day, and this after the police unsuccessfully tried to contact *Agenzija Appogg*. Moreover, complainants allegedly changed the locks to their residence to prevent access by appellant to their property. This is confirmed by John Agius, the victim's brother in his testimony before the jury. Notwithstanding this, it transpires that despite the instructions handed down by the police to both parties, appellant returned to the residence in Paola on the 14th of September 2018 and spent the night there in a bedroom with Maria Lourdes Agius.

17. On the 15th of September 2018 at around 7:00am the Paola Police station received a report, this time from appellant claiming that when he woke up that morning, he tried to wake up his partner Maria Lourdes Agius, but she was unresponsive. The police accompanied appellant to the residence in Paola where they met Maria Lourdes's mother, Mary Agius, who when questioned if she had made contact with her daughter that morning, claimed that her daughter was still asleep since she didn't have the strength to wake up after the beating, she had received at the hands of Michael Emanuel a day earlier. The police then proceeded to the bedroom together with Mary Agius where upon entering Maria Lourdes Agius was found lying on the bed on her right-hand side facing the wall with her left arm covering her face, whilst being fully covered by a quilt. Mary Agius tried to wake up her daughter but to no avail, at which instance the police realized that Maria Lourdes Agius was unresponsive and in fact was dead.

18. An inquiry relating to the *in genere* was launched by the duty Magistrate and when the court appointed experts arrived on site it was noted that Maria Lourdes Agius had visible injuries consisting in bruising around the neck as well as bruising on the face, amongst other lesions and wounds, which indicated that she had been strangled. Hence it was ruled out that she had died of natural causes. When the police spoke to Mary Agius, she recalled hearing an argument between her late daughter

and appellant at around 2a.m. and subsequently hearing Michael Emmanuel pacing repeatedly up and down the roof during that same night.

19. When accused was arrested and spoken to by the police on the 15th of September 2018 he released two statements, in the first statement confirming that he did spend the night with Maria Lourdes Agius and that they were the only two people there. He was unaware of what caused Maria Lourdes's death and denied having had an argument with the victim in the early hours of the morning, as had been alleged by the victim's mother. During his second interrogation, requested by Michael Emmanuel himself whilst he was still under arrest, he explained to the police that he often had visions and that God often spoke to him. He also said that Maria Lourdes had already 'died' in February 2018 when she became unresponsive and resumed consciousness only once appellant shook her violently a few times. Moreover, he added that from then on Maria Lourdes Agius was no longer the same person and she also smelt differently, apart from the fact that his children didn't want to spend time with her anymore. He then started watching her closely, even because he suspected that she may have been taking his kids to whereabouts without his knowledge. With regards to the night of the 14th of September 2018, he claimed that Maria Lourdes Agius herself told him to press a cross to her neck so that appellant would be free of her so as to be able to pursue his future which included marrying someone else. He claimed that he barely pressed her neck and then noticed that after a short while Agius wasn't moving anymore, at which point he realized that she had passed.

20. That from the grievances brought forward by appellant it is therefore clear that he is in no way contesting the Judge's summing up and the legal directions given therein but claims that the jury made a wrong assessment of the facts of the case and this for the reasons outlined by him in his appeal application, as indicated by the Court earlier.

21. Now, to begin with, the report of the pathologists as well as that of medico-legal expert Dr. Mario Scerri confirm that the victim died of asphyxia caused by manual strangulation. The description of the injuries and trauma which Maria Lourdes Agius suffered during her ordeal, indicate that the victim was manually

strangled with two hands and with particular force, and prior to the strangulation she was beaten in the face and other parts of her body, resulting in considerable bruising especially in the face and neck area, together with abrasions, described as scratch marks around the victim's mouth, the latter compatible with manual pressure on the mouth, and which injuries were all inflicted at around the same time and during the same ordeal when her life was taken. When Dr. Scerri was questioned before the Criminal Court, he added also that the victim was struck on the head with a blunt object, causing internal haemorrhage in the scalp, which injuries he opined, may have rendered her unconscious prior to the strangulation, even owing to the fact that no defensive wounds were found on the victim's body. He also attests to the fact that there was no evidence of a commotion in the bedroom where the victim was found. Dr. Scerri also estimates that the victim lost her life at approximately 1:15am on the 15th of September 2018, approximately eight (8) hours prior to her medico-legal examination.

22. This eradicates one of the grievances put forward by appellant regarding the fact that no fresh and visible injuries were found on his body. Once the victim did not put up a resistance it would have been impossible for appellant to have suffered any injuries since no scuffle took place between him and Agius, the latter having been struck by a blunt object on the head and the eye, thus losing consciousness and unable to put up a defence whilst being strangled. Further evidence that there had been some form of physical contact between appellant and the victim may be found in the testimony and report of court appointed expert Dr. Marisa Cassar who confirms that on exhibit marked 18CEE205 consisting of a sample of a nail cutting belonging to appellant Michael Emanuel, a DNA sample of victim was found⁵. The same expert also states that the wooden cross which was seized from the bedroom where the murder took place, and which Emanuel states in his second statement to have pressed against the victim's neck, contained no DNA pertaining to Michael Emanuel, with only that of the victim found on the said cross. In fact, Dr. Mario Scerri clearly states

⁵ Report exhibited in process verbal found in volume 1 of the acts of the compilation of evidence.

in his testimony that “**definitely this, (having been shown the cross by the Prosecutor) did not constitute the death of the patient. There are no marks compatible to this and the cause of death of Maria Lourdes is strictly suffocation through obstructed airways and manual pressure on the neck which is not produced by this instrument.**”

23. Moreover, this time frame given by Dr. Scerri tallies with the approximate timing given to investigators, and tendered in her evidence in court, by the victim’s mother who claims that she heard an argument at around 2 o’ clock in the morning between the victim and appellant and then all of a sudden everything went silent. Mary Agius claimed that she peeped into the victim’s room a while later when she saw the victim ‘asleep’ in the same position as she was then found in the morning by the police, and at which point appellant was not in the room. She also recalled having heard appellant pacing repeatedly up and down the roof after this argument occurred. This witness also referred to the days leading up to the death of her daughter as well as referring to the incidents of domestic violence which took place two days prior, and which also form part of the merits of these proceedings. From this testimony, therefore, it is evident that, contrary to what appellant implies, there was no other person involved in this incident. There is not one shred of evidence that a third party gained access to the premises where the murder occurred apart from appellant himself. Mary Agius herself confirms that appellant had returned to the house after being granted access to the same by the victim herself. Not only, but she confirms that there was an argument between these two people at approximately the same time of death indicated by the medico-legal expert, thus leaving no doubt as to the guilt of accused, as the perpetrator of the killing.

24. Moreover, there is also evidence that accused caused slight injuries both to Maria Lourdes Agius as well as to her mother a day prior to the murder, as indicated in the medical certificate exhibited as Document PHD2. Furthermore, the examination of the victim on the 13th/14th of September 2018 is also attested to in the medical file from Mater Dei Emergency Department exhibited in the acts of the compilation of

evidence, contrary to what appellant alleges in his appeal application⁶. Dr. Nicholas Vella's testimony given during the compilation of evidence on the 22nd of November 2018 during the trial was read out to the jurors, wherein Document JG6 found at folio 41 of the acts of the compilation of evidence being a medical certificate issued in respect of Mary Agius, confirms that she suffered from a 3cm laceration wound over her left temporal area, which injury was classified as "slight save complications." Furthermore, from the stills extracted from close circuit cameras in the area on the evening of the 13th of September 2018, the victim Mary Agius may be seen outside in the street waiting for the ambulance holding a cloth to her head. This may be found in the report exhibited by court appointed expert Dr. Martin Bajada, as shown to the jurors. Also, Dr. Luke Zammit testifies with regard to the injuries suffered by the victim Maria Lourdes Agius in the incident of the 13th of September 2018 and confirms the medical certificate issued by him marked as Document JG4 and found at folio 39 of the acts of the compilation of evidence, describing the injury as a partial nail avulsion of the right ring finger, which injury was examined by him during his night shift between the 13th and 14th of September. The injury was classified as slight with no need for a follow up. Dr. Luke Zammit testifies that Maria Lourdes Agius had also informed him that she had been punched over her right ear and neck, although there were no external visible injuries compatible with the same.

25. Now the matter regarding appellant's state of mind at the time of the murder as well as at the time when he released his statements to the police was already dealt with in the jury held with regard to the plea of insanity raised by appellant, when the jury rejected this plea as completely unfounded, which verdict was confirmed by this Court in its judgment of the 27th of May 2020. It was examined once again by the Criminal Court after the accused raised a further plea that he was not fit to stand trial, which plea was also denied by the said Court, and from which decision appellant filed

⁶ Document MD2 – original exhibited at folio 470 et seq in the acts of the compilation of evidence

no appeal. Appellant was examined once again by three psychiatrists⁷ before the Criminal Court who concluded that although appellant could have suffered from episodes of psychosis, however, he is capable of understanding between right and wrong and between the difference between pleading guilty and not guilty. This means that appellant is not suffering from legal insanity. Thus, although appellant's statements at the time of questioning could appear to indicate a confused state of mind, however, it was decided that at the time of the commission of the offence he was not in a state of insanity and that he was delusional only after the occurrence of the crime. It was also decided that even if appellant's psychotic state of mind was present, this did not impair his ability to will and understand the course of his actions. This is especially indicative from the fact that only a day before the killing, appellant had already manifested violence towards his victims when he accused Maria Lourdes Agius of not being a fit mother to take care of his children, arguing also with her regarding the money he was passing on to her as maintenance. In fact, when spoken to by the police during the incident of the 13th of September 2018, appellant showed no signs of psychosis or of this confused state of mind that he now alleges to have possessed at the time. The police officers involved all attest to the fact that appellant was coherent when being spoken to and understood perfectly the instructions given to him by the police who in fact managed to find a solution, with his cooperation, to the domestic situation which had arisen between him and his partner. Appellant in fact accepted to hand over the three children which were in his custody to their mother and although being instructed to return the next day to the police station, he however opted not to do so and instead returned to Agius's residence, the victim unknowingly letting him in once again.

26. This Court also examined the statements released by appellant. In his first statement he gives a lot of detail explaining how he met the victim when she was already pregnant and even explains that he had the child's DNA examined in order

⁷ Dr. Jean Pierre Giorgio, Dr. Aloisia Camilleri and Dr. Kristian Sant who consulted with Dr. Joseph Saliba and Dr. David Cini and all medical and psychiatric files at Mount Carmel Hospital– vide report at folio 66 of the acts

to confirm that she was not his daughter. He even explains that when his sons were born, he also had their DNA tested and confirmed that they were his children. He further explains that the relationship with the victim was a very tumultuous one and they used to argue a lot especially with regards to the financial aspect. He complains that he worked hard and handed money over regularly to the victim who, from her part, always demanded more money, and that is why they ended up arguing continuously. He even recalls the details of the incident of the 13th of September 2018 and what had transpired whilst he was at the police station and what the police told him. He confirms that on the evening prior to the homicide he was actually at the victim's residence having gone there at 10 o'clock to collect some of his belongings. He confirms that when he went inside, he realised that his children were not there but were in the custody of the victim's brother. He objected to this and angrily demanded that his partner contact her brother to bring over his children. The victim's mother confirms this fact when she states that Emanuel had gone to the house and started shouting from outside that he wanted to see his son, and this was why her daughter had let him in.

27. Appellant goes on to explain that he went out to buy a pizza later in the evening, returned, ate with the victim, then they spoke for a while and went to bed. And when he woke up in the morning, he found her lifeless. He denies that he argued with the victim during the night, and he confirms that he was the only person with her that night. When pressed further by the investigating officer and confronted with the allegation that he had actually strangled his partner, appellant starts inventing facts which do not make sense and invents the story that she had already died on a previous occasion and resurrected. In his second statement which he released upon his request, he then admits to killing the victim, however he says that he did this by pressing a cross to her neck after the victim herself asked him to do so.

28. Thus, from the evidence which was presented to the jury during the trial, it is undisputed that between appellant and the victim there was a history of domestic violence. The victims' mother testifies with regards to these incidents and appellant's

attitude even towards her when he used to throw her out of her house and send her to her mother's place in Sliema. It is also undisputed that two days prior to the murder there was another incident of domestic violence after an argument between appellant and the victim with regards to the money appellant used to pass on to the victim as maintenance. In this incident both Maria Lourdes Agius as well as her mother sustained injuries, as already pointed out, with two doctors testifying to these injuries. Appellant was warned by the police not to approach the victim, which orders he did not abide by, and approached the victim once again who unknowingly let him in the house only to end up involved in another violent argument which led to her demise. Also, appellant does not manage to bring forward any evidence, and this on a balance of probabilities, that there was another person in the house on the night of her murder apart from himself. *Ex admissis* he states that he was the only person with the victim in the bedroom where she was found dead. The victim's mother Mary Agius also confirms that apart from herself there was no other person in the house apart from Michael Emanuel. Thus, even where the Court to ignore all that appellant declared in the two statements he released to the police, it has no doubt that it was appellant who murdered Maria Lourdes Agius, and this intentionally after hitting her and subsequently strangling her, fully aware that his actions would lead to her death. From the conclusions reached both by the pathologists as well as the medico-legal expert it results that appellant hit the victim on the head so that she could not put up a fight and then proceeded to strangle her. In fact, no visible injuries were noted on appellant and there was no sign of a commotion in the bedroom where she was murdered. Furthermore, Mary Agius, in her testimony, attests to the fact that appellant and the victim argued on the evening of the murder. She confirms that she heard them arguing before she went to sleep, and she heard him threatening her daughter that he would kill her.

29. Finally although appellant tries to create some sort of doubt with regard to the fact that the locks to the house had been changed, which fact he maintains was not established by the scene of crime officers after the murder, this piece of evidence does not hold weight since it is evident that appellant gained access to the residence

because the victim opened the door when appellant went back the morning after the incident of the 13th of September, and this after he created a commotion outside demanding that he be allowed inside to see his children.

30. Consequently, after having examined all of the evidence in detail as well as all the other evidence brought before the jurors sitting in the Criminal Court, and considering that the jurors were adequately directed by the judge presiding the jury in the summing up, this Court is of the opinion that the grounds of appeal put forward by appellant are unfounded in that the jurors could have legally and reasonably concluded that appellant was guilty both of the offence of wilful homicide of Maria Lourdes Agius, as well as that of bodily harm on the persons of both Maria Lourdes Agius and Mary Agius. Since no grievance was put forward by appellant regarding the guilty verdict reached by the jury with regard to the sixth and seventh counts to the bill of indictment, this verdict will also be confirmed.

For the above-mentioned reasons the appeal filed by accused Michael Emanuel is being rejected and the verdict and sentence of the Criminal Court confirmed in its entirety.

The Chief Justice Mark Chetcuti

Judge Edwina Grima

Judge Giovanni Grixti