



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 19th of June 2024

Bill of Indictment No. 13/2023

The Republic of Malta

Vs

Paul Chime

The Court,

1. Having seen the Bill of Indictment filed by the Attorney General on the 16th of February 2023 bearing number 13 of 2023 wherein Paul CHIME was accused of having:

In the First Count, on the thirteenth (13th) June of the year two thousand and twenty (2020) and in preceding days, weeks, months and years, by means of several acts committed by himself, even if at different times, constitute violations of the same provision of the law, and have been committed in

pursuance of the same design, in Luqa, and in these islands, rendering himself guilty of engaging in non-consensual carnal connection, that is to say, vaginal or anal penetration of a sexual nature with any bodily part, and, or, any object, or oral penetration with any sexual organ of the body of another person, in that such crime is aggravated since it has been committed on the person of the current or former spouse, civil union partner or cohabitant, and on the person of another person living in the same household as the accused, and moreover, the offence, or related offences, were committed repeatedly.

In the Second Count, on the thirteenth (13th) June of the year two thousand and twenty (2020) and in preceding days, weeks, months and years, by means of several acts committed by himself, even if at different times, constitute violations of the same provision of the law, and have been committed in pursuance of the same design, in Luqa, and in these islands, rendering himself guilty of causing another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in article 222(1) of Chapter 9 of the Laws of Malta, when he knew or ought to have known that his course of conduct will cause the other so to fear on each of those occasions, provided that such crime is aggravated since it has been committed on the person of the current or former spouse, civil union partner or cohabitant.

In the Third Count, on the thirteenth (13th) June of the year two thousand and twenty (2020) and in preceding days, weeks, months and years, by means of several acts committed by himself, even if at different times, constitute violations of the same provision of the law, and have been committed in pursuance of the same design, in Luqa, and in these islands, rendering himself guilty of pursuing a course of conduct which amounts to harassment of Tsvetelina Gahina, and pursuing a course of conduct which he knows or ought to know amounts to harassment of such person, and subjecting her to an act of physical intimacy, provided that such crime is aggravated since it has been committed on the person of the current or former spouse, civil union partner or cohabitant.

In the Fourth Count, on the thirteenth (13th) June of the year two thousand and twenty (2020) and in preceding days, weeks, months and years, by means of several acts committed by himself, even if at different times, constitute violations of the same provision of the law, and have been committed in pursuance of the same design, in Luqa, and in these islands, rendering himself guilty of using violence, including moral and, or, psychological violence, and, or coercion, in order to compel Tsvetelina Gahina to do, suffer or omit anything or to diminish her abilities or to isolate her, or to restrict access to money, education or employment, provided that such crime is aggravated since it has been committed on the person of the current or former spouse, civil union partner or cohabitant.

In the Fifth Count, on the thirteenth (13th) June of the year two thousand and twenty (2020) and in preceding days, weeks, months and years, by means of several acts committed by himself, even if at different times, constitute violations of the same provision of the law, and have been committed in pursuance of the same design, in Luqa, and in these islands, rendering himself guilty of without a lawful order from the competent authorities, and saving the cases where the law authorises private individuals to apprehend offenders, arrest, detain or confine Tsvetelina Gahina against her will, provided that such crime is aggravated since it has been committed on the person of the current or former spouse, civil union partner or cohabitant.

In the Sixth Count, on the thirteenth (13th) June of the year two thousand and twenty (2020) and in preceding days, weeks, months and years, by means of several acts committed by himself, even if at different times, constitute violations of the same provision of the law, and have been committed in pursuance of the same design, in Luqa, and in these islands, rendering himself guilty of without intent to kill or to put the life of any other person in manifest jeopardy, causing harm to the body or health of Tsvetelina Gahina, which harm being certified as slight bodily harm, provided that such crime is aggravated since it has been committed on the person of the current or former spouse, civil union partner or cohabitant.

In the Seventh Count, on the thirteenth (13th) June of the year two thousand and twenty (2020) and in preceding days, weeks, months and years, by means of several acts committed by himself, even if at different times, constitute violations of the same provision of the law, and have been committed in pursuance of the same design, in Luqa, and in these islands, rendering himself guilty of uttering insults or threats not otherwise provided for in the Chapter nine (9) of the Laws of Malta, or being provoked, carrying his insult beyond the limit warranted by the provocation.

In the Eighth Count, on the thirteenth (13th) June of the year two thousand and twenty (2020) and in preceding days, weeks, months and years, in these islands, rendering himself guilty of in order to gratify the lust of any other person, by the use of violence, compelled or, by deceit, induced Tsvetelina Gahina, to practice prostitution, the act being committed habitually or for gain.

In the Ninth Count, in the year two thousand and fourteen (2014) in these islands, rendered himself guilty of knowingly living, wholly or in part, on the earnings of the prostitution of any other person.

2. Having seen the verdict of the jury of the 1st of March 2024 wherein:

First Count: The jurors with 6 votes in favour and 3 votes against found the accused guilty according to the First Count of the Bill of Indictment that is to say the crime of aggravated rape on Tsvetelina Gahina.

Second Count: The jurors with 8 votes in favour and 1 vote against found the accused guilty according to the Second Count of the Bill of Indictment that is to say of the crime of causing others to fear that violence will be used against them.

Third Count: The jurors with 8 votes in favour and 1 vote against found the accused guilty according to the Third Count of the Bill of Indictment that is to say of the crime of harassment against Tsvetelina Gahina.

Fourth Count: The jurors with 8 votes in favour and 1 vote against found the accused guilty according to the Fourth Count of the Bill of Indictment that is to say of the crime of private violence against Tsvetelina Gahina.

Fifth Count: The jurors with 7 votes in favour and 2 votes against found the accused guilty according to the Fifth Count of the Bill of Indictment that is to say of the crime of illegal arrest, detention or confinement of Tsvetelina Gahina against her will.

Sixth Count: The jurors with 8 votes in favour and 1 vote against found the accused guilty according to the Sixth Count of the Bill of Indictment that is to say of the crime of slight bodily harm on Tsvetelina Gahina.

Seventh Count: The jurors with 8 votes in favour and 1 vote against found the accused guilty according to the Seventh Count of the Bill of Indictment that is to say of the contravention of uttering insults or threats to Tsvetelina Gahina.

Eighth Count: The jurors with 7 votes in favour and 2 votes against found the accused not guilty according to the Eighth Count of the bill of Indictment that is to say of the crime that in order to gratify the lust of any other person, by the use of violence, compelled or, by deceit, induced Svetelina Gahina, to practice prostitution, the act being committed habitually or for gain.

Ninth Count: The jurors with 7 votes in favour and 2 votes against found the accused not guilty according to the Ninth Count of the bill of Indictment that is to say of the crime of knowingly living, wholly or in part, on the earnings of the prostitution of Tsvetelina Gahina.

3. Having seen the judgment of the Criminal Court of the same day wherein the said Court declared Paul CHIME guilty under the First, Second, Third, Fourth, Fifth, Sixth and Seventh Count and not guilty of the Eighth and Ninth Count of the Bill of Indictment 13/2023 and thus acquitted him of the latter two Counts.

4. Having seen the sentence of the Criminal Court wherein after having seen articles 17(b), 18, 31, 86, 87(h), 198(1)(3), 202(h)(i)(v), 202(j), 214, 215, 221(1), 221(a), 251(1)(2), 251B(1), 251C, 251HA, 251(a)(b)(c), 339(1)(e), 383, 384, 385, 412C, 532A, 533 of the Criminal Code and condemned accused Paul CHIME to imprisonment for twenty-four (24) years. The Court bound the accused Paul Chime for a period of 1 year in terms of Article 383 of the Criminal Code not to molest, injure, threaten or harm Tsvetelina Gahina under a penalty of 2,000 Euros should he fail to abide by this Order. The Court also condemned accused Paul Chime in terms of Article 532A of the Criminal Code to compensate Tsvetelina Gahina for the damages sustained by her in the amount of 10,000 Euros. The Court abstained from taking cognisance of the demand made by the Attorney General in terms of Article 533 of the Criminal Code since no experts were appointed in this case. The Court also abstained from taking cognisance of the request made in terms of Article 412C of the Criminal Code since it decided that such protection order can only be given *pendente lite*.

5. Having seen the appeal application filed by accused Paul Chime on the 18th of March 2024 wherein he requested this Court to:

i. Confirm the not guilty verdict on the eighth and ninth Count of the Bill of Indictment.

ii. Revoke and change the guilty verdict reached by the jury on the 1st of March 2024 as confirmed by the Criminal Court by declaring appellant not guilty on all counts.

iii. Subsidiarily, but without prejudice to the above, accord a punishment to appellant more in keeping with the circumstances of the case and the verdict of the jurors.

6. Having seen the reply of the Attorney General of the 16th of April 2024, wherein for the reasons brought forward in his reply, requested that the Court discard the two grievances put forward by appellant in his application and confirm the judgment of the Criminal 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 Paul Chime 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 of all the counts to the Bill of Indictment, and not only the eighth and ninth count from which he was acquitted. Appellant thus exercises his right of appeal based on article 501(1)(a) of the Criminal Code alleging that he has been wrongly convicted on the facts of the case. Subsidiarily he laments that the punishment inflicted upon him by the Criminal Court was excessive in the circumstances of the case.

10. Appellant, Paul Chime, basis his grievance relating to the merits on the testimony of the alleged victim, Tsvetelina Gahina, since he considers that the various inconsistencies emerging from her version of events was not given due regard by the jurors. He lists the following discrepancies, in his opinion, lying at the heart of these crucial pieces of evidence:

- i. the discrepancy in the photographs submitted to the Court by the alleged victim taken over a period of time that portray a considerable amount of bruising which she allegedly suffered at the hands of her husband Chime. Appellant considers these photographs as having no probative force since they are not corroborated by any other piece of evidence, such as a medical certificate attesting to the injuries seen in the said photos. Also, although the victim alleges to have taken these photographs with her mobile phone, however, some are marked and others are not, and the reason she gives for this discrepancy, being that she changed mobile phones, is, in appellant's opinion, not credible. The timeline which the victim says emerges from these photos, in appellant's opinion, does not result since he believes that some of the photos were not taken by the *Xiaomi* phone belonging to the victim but from another phone, and thus no such timeline may result if a different phone was used once a break in the evidence will necessarily take place and thus cannot be chronologically correct.

ii. the fact that although victim alleges that she was repeatedly abused by her husband, however, when she left Malta and returned to Bulgaria, she decided to come back to her husband in Malta of her own free will, instead of trying to stay away from living a life of abuse.

iii. although victim alleges to have been unlawfully detained by her husband, however, it emerged from the evidence brought forward during the trial that there were two keys to the premises where she was being detained and to which she had access, a fact that was not confirmed by the Police during their investigations, which resulted in appellant being deprived of an important piece of evidence.

11. In appellant's opinion not only, was he surprised by the allegations brought forward by his wife against him as he states clearly in his statement, but also other witnesses like Rita Fenech and Rosaria Deguara expressed their disbelief by these accusations. These witnesses state that they never witnessed any injuries or bruising on the victim although they had known the couple for some time. Thus, in appellant's opinion there is reasonable doubt as to whether the allegations put forward by his wife Tsvetelina Gahina are in fact true. Hence, when analysing the victim's testimony, which consisted of various discrepancies and inconsistencies, as opposed to his version of events, as results from the statements he gave to the police, there is reasonable doubt as to his guilt, and in this case even more so when the whole case of the Prosecution rests solely on the said testimony of Tsvetelina Gahina.

12. The Attorney General from his part is of the opinion that all the above grievances are directed towards the credibility of the victim's testimony which the jurors could assess directly during the trial and when weighing her version of events with that of appellant's found in the two statements he released to the police, chose to believe the version of Tsvetelina Gahina rather than that of appellant. The Attorney General contends that the jurors assessed the victim's timeline as results from the photographs exhibited, established that the unmarked photos were selfies, taken by the front camera of the mobile phone, and that the bruises which appear on

the said photos were not fabricated, thus giving credibility to the testimony of the victim. Moreover, contrary to what appellant states in his appeal application, the Attorney General states that the witnesses Rita Fenech and Rosaria Desira corroborate the version of events as presented by the victim. Finally, the Attorney General submits that all the grievances brought forward by appellant in his application were exhaustively argued and brought to the attention of the jurors by the defence during the trial, however, having been properly directed by the presiding judge, the verdict reached was one of guilt for the first to the seventh counts to the Bill of Indictment.

13. 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 Paul Chime, with a special focus on the testimony of the alleged victim Tsvetelina Gahina and the documents presented by her, being the subject of this appeal.

14. The Prosecution presented before the jury a case of domestic violence, with appellant Paul Chime being accused of a serious of incidents of abuse both physical as well as psychological with the most serious of crimes being the alleged rape committed on his wife, injured party Tsvetelina Gahina, on more than one occasion. Now it is true that the only witness to the alleged abuse is the victim herself, with only the two minor children of the couple, Jonathan and Romina, who at the time

¹ The Republic of Malta vs Eleno sive Lino Bezzina- 24/04/2003; The Republic of Malta vs Lawrence Axiak 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.

were five and two years respectively, being present during some of the incidents of violence and abuse. Appellant chose not to testify during the trial, as is his right at law, his version of events found in the two statements released to the police upon his arrest one dated the 13th of June 2020 and the other released the day after on the 14th of June, wherein he denies all allegations.

15. The victim Tsvetelina Gahina, on the other hand, testifies at length and in detail with regards to the alleged abuse and states that the episodes of domestic violence date back several years, the first episodes taking place immediately after her marriage to appellant in the year 2014. Gahina, a foreigner of Bulgarian nationality, testifies that she got acquainted with appellant sometime after arriving in Malta, and since she was finding it difficult to settle down, she accepted the help offered to her by appellant. They started co-habiting with the intention of getting married so that appellant would be able to obtain the necessary documentation to be able to continue living in Malta. However, she fell pregnant with her son Jonathan soon after and this put a strain on the couple's relationship since appellant believed they could not afford this financial burden, especially due to the fact that he had just lost his job, with appellant developing an addiction to alcohol, and gambling after this event. Injured party states that in her late stages of pregnancy, appellant abused her physically so much so that one night, a few days prior to giving birth to their son, the first episode of marital rape occurred. After their marriage, which took place three days after the birth of their son Jonathan, their relationship took a turn for the worse, with appellant becoming dominant over her, and turning violent on several occasions, beating her up, threatening her and calling her names, and during certain incidents even exercising violence on the children. The abuse worsened after injured party fell pregnant with their second child, so much so that injured party devised an excuse to be able to return to her country and her family in Bulgaria, suggesting to appellant that she needed to go back home to be able to apply for a passport for their son and to register their marriage in her country of origin. Appellant was convinced, and Gahina travelled to Bulgaria with the intention of never returning to Malta. However, appellant started begging her to return and promised that he would change and that the abuse would stop. Whilst in Bulgaria, injured party gave birth to

a daughter, Romina, and believing appellant that he would change his ways, and also for the sake of their two children, she decided to return to Malta, about a year after she had left. However, soon after, the abuse started again, with appellant locking his wife and children in the house whilst he was out at work and leaving his family in need without enough money for food and medicine, the only source of help for injured party being her two friends Rosaria Desira and Rita Fenech whom she had met soon after her arrival in Malta when she joined their prayer group. After an episode of violence which occurred on the night of the 12th of June 2020, where appellant threatened to kill his wife by sitting on her chest so that she could hardly breathe, and after receiving a severe beating at the hands of her husband, Gahina decides to leave the matrimonial home and seek help from the Police, who then proceed to arrest appellant. She describes this episode in detail when she states:

“However, in the morning, maybe around 2 or 2:30, or 3 o’clock in the morning something like that, while I was sleeping, I felt a drag from my neck because I have my necklace and part of my clothes. He pulled me out of the bed, and he told me that we must have sex, however, I explain to him that he should have pity of me because Romina was not sleeping in the afternoon, because every time he goes to work, she always wakes up so that means she is waking up really early in the morning and she stays till 11 o’clock in the evening awake and does not sleep. And I did not sleep a lot, and I tell him I need to sleep because I am very tired, from there he slapped me and then he pushed at me, and then I fell down to the floor. He told me tonight you’re going to sleep. Then I tried to get up from the floor but then he starts to kick me even more, so during when I was on the floor, he sits down on my chest, he put my hands between his legs, and then he starts to punch me on both sides of my head, I do not know, maybe I was crying or maybe I was screaming, I do not know, but the children wake up. Jonathan did pipi on the bed, and he was sitting on the bed and crying mummy, mummy, mummy, Romina started to scream, and I was trying to calm them down, and started saying that mummy is okay, mummy is okay, and daddy is just playing with mummy. Then he told me that he had to go to the bathroom² and that I had to go there too, and I had to put the children to sleep right now, then he waits for me in the bathroom and I was trying to put the children to sleep, but the children did not want to sleep, they kept on crying. When he came out of the bathroom and see that the children are not sleeping, he gets even more angry, he told them to shut up otherwise he would go for him and he is going to make him shut up. And then Jonathan made pipi a second time, and Romina continued to scream. Then he came up to me again and started to beat me, he sits down on my chest again with the same position with my hands between his legs and he started to punch me again on either

² From Gahina’s testimony it results that appellant used to rape her in the bathroom, which was the only other room in the apartment besides the main room where they slept, cooked and ate.

side of my face. Then he put his finger on my nose and he told me that tonight I was going to get it and then he started with his hands around my neck and started to push... and he put his face really close to me and started to laugh in my face, he was pressing my neck and I could barely breath and he was telling me that I would pray to him the way I pray to God, and that tonight I have to pray for my life. I tried to speak but I couldn't because he was pressing too much on my throat and he started to laugh even more, and I then he told me that he was going to make me famous like Maria Lourdes Agius. He told me that once he is finished with me, they will hear about me even in my country. Then he moved himself from me because I started to be unresponsive, he goes near the children, and he tells them to shut up because they had to sleep. On that day, he was not drunk, he was with his full mind, and he knows what he did."

This version of events which emerges for the testimony of injured party during the trial tallies with that given by her during the compilation of evidence, and also with what she reported to the police *a tempo vergine*, as results from the testimony of Inspector Kylie Borg, such that this Court, has no doubts with regard to the veracity of its contents.

16. Now contrary to what appellant alleges, the victim's testimony is in actual fact corroborated by the testimony of the two women who offered her assistance throughout her stay in Malta, Rosaria Desira³ and Rita Fenech⁴, being members of a Christian prayer group which injured party formed part of. These two women witnessed the bruises on the victim's body, were conscious of the allegations made by Gahina of abuse at her husband's hands, were even privy to the fact that appellant used to go to work and lock his wife and their children inside their apartment, to the extent that when Gahina reached out to these women for help since her son was sick and needed medicine, there was no way for them to give Gahina the said medicine except with the help of a neighbour who passed it on from her balcony to injured party. There were other occasions when these witnesses called at the couple's residence and had to wait for appellant to return home from work so that they could be granted access to the apartment and thus to the victim. Thus, appellant's allegation in his appeal application that these two independent witnesses were surprised by the victim's accusations towards her husband, is completely

³ Testified during the sitting of the 28th of February 2024

⁴ *Ibid.*

unfounded, their testimony clearly indicating the contrary. Moreover, although appellant alleges that there were two keys to the apartment where they lived in Ħal Farruġ, the building administrator of *Polidano Group* providing the said accommodation to their employees, Vanessa Pace, declared during the Criminal Court's onsite inspection⁵ that the tenant would be given only one key to the apartment wherein they were to reside.

17. To further corroborate injured party's version of events a medical certificate was exhibited in the acts with regards to the last incident that occurred between the couple, after which incident Gahina left the matrimonial home. This certificate was confirmed in the testimony of Dr. Stefan Camilleri who attests to the injuries he found upon examination, which injuries, in this Court's opinion, are compatible with the narrative portrayed by injured party when she recounts the incident of the 13th of June 2020, as cited above.

Yes, as in the documents I found small marks on the front of the neck and small bruises at the top of the left thigh towards the side. She was also complaining of tenderness, that means pain on compression, at the side of the head, but there were no external marks of injury.

18. Furthermore, from a risk identification assessment carried out by *Aġenzija Appoġġ* it resulted that Tsvetelina Gahina and her children were at a high risk of abuse at the hands of appellant. All police officers, including Inspector Kylie Borg who assisted Gahina after she filed the police report all indicate, that she showed signs of fear and agitation, further corroborating her testimony.

19. Finally, although appellant tries to put into doubt the photographs exhibited by his wife attesting to the violence suffered at his hand, however Tsvetelina Gahina confirms that she took the photos herself over the years as evidence of the injuries she was receiving from appellant. She states that she then sent these photos to her mother's Facebook page, and to other people so that she would be able to delete them from her mobile phone lest her husband discovers that she was documenting the abuse. She also maintains that she had taken the photos in order to threaten her

⁵ Onsite inspection in Ħal Farruġ carried out on the 29th of February 2024

husband, telling him that she had evidence of the abuse and that she would expose him should he carry on with this violent behaviour towards her. She states upon cross-examination:

Before I escaped, I spoke to Paul about these pictures. I used to tell him that I have pictures, I used to warn him that he needs to stop, stop beating, start to respect me a little bit at least because of our children. I told him that I have the pictures and if he was not ready to change, I'm going to show them out, but he never believed me, but he told me that who is going to care about you?

20. The Court finds no reason to doubt the veracity of the content of these documents, which documents were verified by the jurors themselves who even put questions to the victim, and this in view of the doubts raised by the defence with regard to the same, in that some of the photos indicate that they were taken by a *Xiaomi Redmi* mobile phone whilst others give no such indication, and thus appellant tries to put into doubt the timeline indicated on the said photos. Now, the Court has examined the documents exhibited, the originals marked as document KB9 and found at folios 105 to 131 of the records of the compilation of evidence. This document is a set of photographs with each one of them indicating a date on them being the following, 8th of July 2015, 26th of July 2015, 10th of January 2016, 19th May 2016, 14th of June 2016, 25th of October 2019, 9th of November 2019, 14th of April 2020, and the 13th of June 2020. The photos dated after the 9th of November 2019 are marked as having been shot on *Redmi7 AI dual Camera*. There are other photos however, after this date which are not thus marked. In her testimony injured party explains that she used to make use of a *Samsung* mobile phone, but then bought another phone whilst in Bulgaria which was a *Xiaomi Redmi 7*. She states that she travelled to Bulgaria when she was already pregnant with her daughter Romina and in fact gave birth to her in Bulgaria on the 9th of January 2018, returning then to Malta over a year later in 2019. In fact, in one of the photos dated the 9th of November 2019 her daughter Romina may be seen in the photo together with her.

21. This timeline matches injured party's testimony and sequence of events. Also the fact that some photos are marked as having been shot with injured party's *Xiaomi*

phone whilst others taken in the same period of time are not, may be due to the fact that as explained by the victim herself, these were 'selfies' taken by the front camera and not the back camera of her mobile phone, as pointed out by one of the jurors during his questioning of the victim's account regarding these photographs.

22. Finally, appellant also tries to put doubt into injured party's version of events by claiming that had she truly been suffering abuse at his hands, she would never have returned to Malta from Bulgaria after having left him. Tsvetelina Gahina upon cross-examination gives the following reason for her return:

I mentioned already, that he used to call me every night to see my son and then to see my daughter and every time he was showing me that he was at home, so he was promising that he was going to change, he will never go to Marsa or drink alcohol, he was never put his hand upon me again and he was pressing me and telling me that he deserved to be a father to these children and that he deserved a second chance and that he deserved to see his daughter Romina who was born in Bulgaria. And as I was mentioning already, I grew up without a father, because he died when I was still a baby, so I wanted my children to have a father in their lives, even my mum was suggesting giving him a second chance, but unfortunately, he never changed.

23. Once again Gahina remains consistent in all the replies she gives and in her version of events both at the time when she reported the abuse to the police, as well as in her testimony both before the Court of Criminal Inquiry, as well as before the Criminal Court. The jurors, properly directed by the Judge presiding the jury, chose to believe her version of events, and this Court finds no reason to vary the discretion exercised by the members of the jury who had the opportunity to hear the victim testify during the trial and to put to her all the pertinent questions relating to her testimony.

24. Consequently, for all the above-mentioned reasons the first grievance put forward by appellant relating to the merits of the case is being rejected as completely unfounded both in fact and at law.

Considers further,

25. In his second and final grievance appellant laments that the punishment inflicted upon him was excessive. He criticizes the judgment of the Criminal Court which did not, in his opinion, elaborate on the manner in which it reached the

punishment of 24 years imprisonment, and this in view of the fact that although he was found guilty of the first seven counts to the Bill of Indictment, however the offences found in counts two to seven should have been considered as a means designed to further the commission of the offence of rape with which he was charged in the First Count, and this by applying the rule embodied in article 17(h) of the Criminal Code. Moreover, in appellant's opinion, the Criminal Court did not take into consideration the fact that the verdict of guilt reached by the jury was of a ratio of 6:3 with the minimum punishment contemplated at law being that of seven years imprisonment.

26. The Attorney General rebuts that the Criminal Court motivated its decision when considering the punishment to be inflicted and which reflects the verdict reached by the jury, wherein the finding of guilt for most of the Counts was nearly a unanimous one, barring the first and fifth count with a verdict of 6:3, and 7:2 respectively. The punishment was a fair one which reflected the gravity of the case with the Attorney General disagreeing that in calculating the *quantum* of the punishment the Criminal Court should have applied article 17(h) of the Criminal Code since the offences, which appellant was found guilty of, could never fall under the requisites established in the said article of law. Moreover, the punishment meted out by the Criminal Court is within the parameters established at law and consequently should not be varied.

27. The Criminal Court reached its decision with regards to the punishment to be inflicted upon appellant for the finding of guilt by the jury of the first to the seventh counts to the Bill of Indictment after making the following considerations:

The verdict of the jury was very clear. From the acts of the proceedings and from this trial it emerged that these crimes were committed in a very callous and in a treacherous manner. The accused abused his wife on many occasions and merely to satisfy his lust whilst disregarding her emotions and needs.

Violent crimes, like the ones proved in this case, are absolutely not acceptable, no matter who committed them, and no matter who the victim happened to be. More so when they were committed on his wife and in the presence of his two (2) minor children. They are even more reprehensible

due to the fact that no remorse was shown. More so when the Court considers as happened in this case that the accused deceived his wife when he told her that he would change his ways and brought her back to Malta, only to repeat his abusive and animalesque behaviour.

Violent behaviour like that shown by Paul Chime hits at the very heart of the peace, prosperity and tranquillity that Maltese society deserves. Such behaviour leaves a trauma on the victim and also on their minor children. Their lives will never be the same again

28. Now, appellant was found guilty of the First to the Seventh Counts to the Bill of Indictment, with the First Count contemplating the offence of rape which carries a punishment for a term between six to twelve-years imprisonment, which punishment is aggravated in terms of article 202(h)(i)(v) of the Criminal Code thus contemplating an increase by one to two degrees. The punishment may be increased by a further one or two degrees since appellant was charged with the crime of rape as a continuous offence. Thus, the maximum punishment which could have been inflicted by the Criminal Court was that of forty years imprisonment together with solitary confinement for not more than twelve terms, as envisaged in article 33(1)(e) of the Criminal Code. This means that the punishment of 24 years imprisonment, taking into account solely that to which he could have been condemned with regards to the offence contained in the First Count, was well within the parameters of the law, even were the Court to uphold appellant's argument that the remaining offences found in the second to the seventh counts are to be considered as a means to the commission of the more serious offence being the crime of rape. This Court, however, begs to differ. It is true that in this case there is a concurrence of offences which are distinct and separate the one from the other. Although the material act in the commission of the crime of rape by appellant on more than one occasion could give rise to a multiple of offences, however the offences of harassment, slight bodily harm, illegal arrest, threats and insults occurred on other occasions not solely in the commission of the offence of rape. Consequently, although appellant could benefit from article 17(b) of the Criminal Code, however, article 17(h) would not find application in his regard since each and every separate count envisages a different offence committed at different times and places. Thus, it cannot be said that the offences found in the second to the seventh count were directed towards the

commission of the offence of rape, since from the testimony rendered by injured party there were several occasions besides those where the rape was committed where appellant was violent towards her resulting in the commission of the other offences with which he was charged and found guilty.

29. It is not the function of this Court as a Court of Appellate Jurisdiction to disturb the discretion exercised by the Criminal Court with regards to the *quantum* of punishment unless such discretion has been exercised outside the limits laid down by law or in special circumstances where a revision of the punishment meted out is manifestly warranted⁶.

30. Appellant further laments the lack of motivations given by the Criminal Court in its judgment which led to the computation reaching 24 years imprisonment. In this respect reference is made to the judgement of this Court, as otherwise composed, of the 25th August 2005 in names “**The Republic of Malta v. Kandemir Meryem Nilgum and Kucuk Melek**” which held:

“... the Criminal Court is not obliged to give detailed reasons explaining either the nature or the quantum of the punishment being meted out, or to spell out any mathematical calculations that it may have made in arriving at that quantum. Although the determination of the nature and the quantum of the punishment is, of its nature, the determination of a question of law – see Sections 436(2) and 662(2) of the Criminal Code – all that is required is that the Court state the facts of which the accused has been found guilty (or, as in the present case, the facts to which he/she has pleaded guilty), quote the relevant provision or provisions of the law creating the offence (which provisions generally also determine the punishment applicable), and state the punishment or other form of disposal of the case. Unless expressly required by law to spell out in detail something else – as for instance is required by Section 21 of the Criminal Code or by the first proviso to subsection (2) of Section 7 of the Probation Act, Cap. 446 – the above would suffice for all intents and purposes of law. The principle *nulla poena sine lege* does not mean or imply that a Court of Criminal Justice has to go into any particular detail as to the nature and quantum of the punishment meted out, or, where the Court has a wide margin of discretion with various degrees and latitudes of punishment, that it has to spell out in mathematical or other form, the logical process leading to the quantum of

⁶ The Republic of Malta v. Ahmed Bem Taher : Court of Criminal Appeal : 6th October 2003

punishment. This is also the position in English Law. As stated in Blackstone's Criminal Practice 2004 [OUP (2003) at p 1546, para. D18.34].

"Save where the statutory provisions mentioned below apply, there is no obligation on the judge to explain the reasons for his sentence. However, the Court of Appeal has encouraged the giving of reasons, and has indicated that that should certainly be done if the sentence might seem unduly severe in the absence of explanation...It has been held that failure by the sentencing court to give reasons when required to do so does not invalidate the sentence...although the failure may no doubt be taken into account by the appellate court should the offender appeal. Where the sentencer does give reasons and what he says indicates an error of principle in the way he approached his task, the Court of Appeal sometimes reduces the sentence even though the penalty was not in itself excessive. Similarly a failure by the judge to state expressly that he is taking into account any guilty plea, although contrary to [statutory provision], does not oblige the Court of Appeal to interfere with what is otherwise an appropriate sentence...'

"This Court is in full agreement with the principles stated above. Indeed, it is highly recommendable that, when the law provides for a wide margin of discretion in the application of the punishment, reasons, possibly even detailed reasons, be given explaining how and why the court came to a particular conclusion."

31. Although the Criminal Court does not indicate in its judgement any detailed computations regarding the *quantum* of punishment inflicted upon appellant, however it contains sufficient reasons why that Court considered that the punishment should not be a lenient one. This Court concurs fully with the reasoning of the Criminal Court in this regard, especially when taking into account that the domestic abuse injured party suffered at the hands of her husband lasted a number of years, sometimes even in front of and towards their children, with appellant showing no remorse for his actions towards his family.

32. When considering all factors, this Court is of the view that the punishment imposed by the Criminal Court is neither wrong in principle nor manifestly excessive, that it is proportional to the circumstances of the case, and therefore a fit and proper one. It therefore finds no reason to disturb the Criminal Court's discretion in determining the *quantum* of punishment, and thus even the second grievance put forward by appellant is hereby being rejected.

For the above-mentioned reasons the appeal filed by accused Paul Chime 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