



**THE COURT OF CRIMINAL APPEAL**

**His Honour the Chief Justice Mark Chetcuti**

**The Hon. Judge Edwina Grima**

**The Hon. Judge Giovanni Grixti**

**Sitting of the 4th December 2024**

**Bill of Indictment No. 29/2023**

**The Republic of Malta**

**Vs**

**Lawrence Abina**

The Court,

1. Having seen the bill of indictment filed by the Attorney General on the 2<sup>nd</sup> of June 2023 bearing number 29 of 2023 wherein Lawrence Abina was accused of having:

**In the First and only Count**, on the twenty sixth (26th) of February of the year two thousand and twenty-two (2022), in Millenium Flats, Flat 10, Dun Frangisk Mizzi Road, Ghajnsielem, Gozo and/or these Islands, maliciously, with intent to kill another person, that is Rita Ellul, or to put her life in manifest jeopardy, caused the death, of the same Rita Ellul.

2. Having seen the verdict of the jury of the 20<sup>th</sup> of March 2024 wherein the accused Lawrence Abina was found guilty by a unanimous vote of the First and Only Count of the Bill of Indictment.

3. Having seen the judgment of the Criminal Court of the same day wherein the said Court declared Lawrence Abina guilty of the First and Only Count in the Bill of Indictment number 29/2023 and thus guilty of wilful homicide, namely that on the twenty-sixth (26<sup>th</sup>) of February of the year two thousand and twenty two (2022), in Millenium Flats, Flat 10, Dun Frangisk Mizzi Road, Ghajnsielem, Gozo and/or these Islands, maliciously, with intent to kill another person, that is Rita Ellul, or to put her life in manifest jeopardy, caused the death, of the same Rita Ellul.

4. Having seen the sentence delivered by the Criminal Court wherein, after having seen articles Articles 9, 17, 23, 23B, 31, 211(1), 211(2), 532A and 533 of the Criminal Code, Chapter 9 of the Laws of Malta, condemned the accused Lawrence Abina to imprisonment for life. Furthermore the Court condemned the said Lawrence Abina to pay, to the Registrar, the costs incurred in connection with the employment of experts in the proceedings, including such experts appointed in the examination of the *process verbal* of the inquiry, in the total sum of sixteen thousand, one hundred and eighty-four Euro and fifty-seven cents (€16,184.57), which sum shall be paid by the said Lawrence Abina within twenty-four months (24) months from the date of the judgement. In default, the said expenses are to be converted into a term of imprisonment according to law. The Court ordered the forfeiture of the objects, property of the person sentenced, exhibited in the proceedings.

5. Having seen the appeal application filed by accused Lawrence Abina on the 5<sup>th</sup> of April 2024 wherein he requested this Court to revoke and change the guilty verdict reached by the jury and the judgment of the Criminal Court delivered on the 20<sup>th</sup> of March 2024 and this by declaring appellant not guilty.

6. Having seen the reply of the Attorney General of the 10<sup>th</sup> of May 2024 wherein for the reasons brought forward in his reply, requested that the Court discard the grievance put forward by appellant in his application and thus confirm the judgment delivered by the Criminal Court.

7. Having heard submissions by the parties.

8. Having seen all the acts of the case.

**Considers,**

9. The Court is somewhat perplexed by the grievance brought forward by appellant who is of the opinion that there is reasonable doubt as to his guilt for the sole reason that although in his second and third statements released to the police upon his arrest he admitted that he had strangled the victim with both hands, this declaration conflicts with the evidence tendered by medico-legal expert Dr Mario Scerri who asserts that from his findings the marks found on the victim's neck indicate that this manual strangulation took place with the use of one hand. In his statements appellant stated and visually showed the investigators that he used two hands to strangle Rita Ellul, whereas in cross-examination Dr Mario Scerri concludes that from the forensic examination carried out, it was evident that Rita Ellul had been strangled with the use of one hand. Consequently, according to appellant, this amounts to a reasonable doubt which must be interpreted in his favour.

10. Now this Court of Appeal is not a Court of retrial. It does not re-hear the case and decide it afresh, nor does it interfere with the findings of facts 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 of Appeal (in its superior jurisdiction) is left with a lurking doubt as to whether an injustice has been made in view of the weaknesses of the Prosecution's evidence<sup>1</sup>.

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<sup>1</sup> 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'

11. What perplexes the Court, however, is that although appellant laments that once the findings of the medico-legal experts contrast with his pre-trial statements, this is tantamount to reasonable doubt as to his guilt and thus should have led the jury to acquit him of the charge brought against him, nowhere in his appeal application does he contest the legality of the said statements. In fact, throughout the proceedings, he has never raised a plea in this regard, nor has he ever requested that his statements be expunged from the acts on the premise that they were not released according to law. Neither is he contesting the fact that he was the perpetrator of the offence of wilful homicide and thus of having caused Rita Ellul's death by strangulation. He is solely contesting that part of his statement where he stated that he used two hands to strangle Rita Ellul whereas Dr Mario Scerri stated that the victim was strangled with the use of one hand. This discrepancy, in his opinion, renders the verdict unsafe and unsatisfactory.

12. Now, from the evidence produced during the trial it clearly transpires that appellant, on three separate occasions, **voluntarily admitted** to murdering Rita Ellul by strangulation. The first admission occurred on the 1<sup>st</sup> of March 2022 whilst at the CID smoking area of the Police General Headquarters in Floriana, when he admitted before Deputy Commissioner, back then Assistant Commissioner, Sandro Gatt, Superintendent Joseph Hearsey and PC 296 Ryan Farrugia of having killed Ellul. Also, on the 1<sup>st</sup> of March 2022, during his second audiovisual interrogation he confessed his guilt in the presence of Inspector Kurt Zahra and PS 512 Josef Gerada. Appellant's third confession took place on the 2<sup>nd</sup> of March 2022 during his third and final interrogation in the presence of Inspector Kurt Zahra and Inspector Wayne Camilleri. Apart from admitting/confessing on three different occasions, appellant also made these admissions/confessions before different Police officers. Moreover, between one admission/confession and another appellant had ample time to grasp and comprehend the consequences of his admission, however he did not retract, and went on to reiterate his admission/confession of having strangled Rita Ellul and gave the

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Malta v. Etienne Carter, 14 ta' Dicembru 2004 Ir-Repubblika ta' Malta v. Domenic Briffa, 16 ta' Ottubru 2003; amongst others.

same details as to how he had attained his premeditated intention of causing her death by strangulation.

**13.** Furthermore, the evidence produced during the trial, through the testimonies and reports of the Court Experts, Police officers and other witnesses produced by the Prosecution, all go to corroborate appellant's statements and his version of events. To begin with, it transpires from the testimony of various witnesses, including that of the victim's daughter Jessica Ellul, that the amorous relationship between appellant and Ellul was fraught with episodes of domestic violence. Additionally, in their testimony during the trial, PC 2011 Zenia Azzopardi and PC748 Nathan Ciappara confirm that the victim had filed a police report relating to an incident wherein she had been beaten by appellant and that a risk assessment was drawn up by *Aġenzija Appoġġ*. As to the commission of the offence, the testimony and the reports drawn up by pathologists Dr Olaf Woods, Dr Michael Refalo and Dr Ali Sarfraz, and by medico-legal expert Dr Mario Scerri, confirm that Rita Ellul died of asphyxia due to manual pressure on the neck. Upon examination of the victim's corpse these experts found haemorrhages in the strap muscles, bruises in the neck area, petechial haemorrhages, cyanosis, and facial congestion compatible with manual pressure on the neck amounting to mechanical asphyxia. The cause of death of Rita Ellul, as established by the pathologists and the medico-legal expert, tallies with the version of events given by appellant during his three admissions/confessions of causing Rita Ellul's death by strangulation. Finally, it is undisputed that at the time of death of the victim, appellant was the sole person present at the scene of the crime. In fact, from the testimony of his employers Josef and Eucharistico Gauci, and the time sheet presented by these witnesses, it is evident that on the date of the murder appellant reported to work unusually late at 7:45a.m., instead of at 7:00a.m., a fact which his employers found strange since appellant was always invariably punctual, with this instance being the only occasion when he had reported so late.

**14.** During the second and third audiovisual interrogations held on the 1st of March 2022 and 2<sup>nd</sup> of March 2022 respectively, appellant confessed that, the day prior to the murder, whilst at Mgarr he was thinking about murdering Rita Ellul (fol. 742).

Later on, whilst lying down in bed he was contemplating this killing by means of strangulation (fol. 742 and 743). On the day of the murder, before going to work, he went to the bedroom where Rita Ellul was still sleeping and actually strangled her as he was motivated by jealousy since the day before Rita Ellul had told him that if they were to fight again, she would go straight to Malta and find refuge with a certain Stefan. Also, during his second and third audiovisual interrogations appellant confessed that he felt too much guilt and asked that everybody forgive him for his actions.

15. In his statement of the 2<sup>nd</sup> of March 2022 appellant describes the acts committed by him leading to the death of his partner Rita Ellul:

**“Lawrence Abina: I was on top of the her.**

**Inspector Kurt Zahra: On top of her. With your legs?**

**Lawrence Abina: With me legs.**

**Inspector Kurt Zahra: with my legs like a horse**

**Lawrence Abina: yes, exactly**

**Inspector Kurt Zahra: alright, alright. Did she try to turn?**

**Lawrence Abina: She was trying but did not. She could not.**

**Inspector Kurt Zahra: she could not, she could not try. So in order to recapitulate and have a clear picture of what exactly happened Okay? she was sleeping on her side.**

**Lawrence Abina: Yes**

**Inspector Kurt Zahra: She was looking towards the wardrobe.**

**Lawrence Abina: Yes.**

**Inspector Kurt Zahra: And then you went from behind.**

**Lawrence Abina: From behind yes**

**Inspector Kurt Zahra: you went on her like a horse. Went on top of her ...**

**Lawrence Abina: Yes.**

**Inspector Kurt Zahra: And with your fingers, started started to press on her neck**

**Lawrence Abina: Yes.**

...

**Lawrence Abina: At that time I was .... When I start immediately and she was struggling, she was trying to talk. I wish to stop but if I stop I, I will say in my mind .... If I stop still it is the same because she is going to report me and I am to jail.**

16. Now, it is undoubted that the cause of death as established by the pathologists and medico-legal expert of asphyxia due to manual pressure on the neck amounting to strangulation, concurs with the material act committed by appellant, and to which he admits, which led to the victim's demise. In fact, in his appeal application, appellant is not contesting the cause of death of the victim, neither is he contesting the fact that he was the perpetrator, but is trying to create some form of doubt simply because, although he admits to strangling Ellul with two hands, Dr Mario Scerri found marks compatible with strangulation by means of one hand, and not two, on the victim's neck. This piece of evidence, however, does not discredit the fact that the victim died from asphyxia caused by manual strangulation at the hands of appellant and no other person.

17. The main offence with which appellant is charged in the one and only count of the Bill of Indictment is one of the most heinous crimes contemplated at law being that of wilful homicide, the elements of the offence being laid out in subsection 2 to article 211 of the Criminal Code 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.**

18. 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:

**“ .... 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.”**

19. 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 hekk<sup>2</sup>:**

*“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.<sup>3</sup>”*

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

<sup>3</sup> Gerald Gordon, op. cit. para. 7.53, pp. 245-246.



20. 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.<sup>4</sup>”**

21. The Prosecution presented before the jury a case of domestic violence, with accused Lawrence Abina having been in a relationship with the victim for some time prior to the murder. 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 which in fact pre-dates the new law only by a few months.

22. In terms of article 211 of the Criminal Code the Prosecution, thus, had to prove beyond reasonable doubt that appellant caused the death of Rita Ellul. This element of the offence was indeed proven by the Prosecution, and it is immaterial as to whether appellant strangled Rita Ellul using one or two hands, since death ensued as a consequence of the material act of strangulation which appellant performed on the victim.

23. Now the Court at the outset expressed its perplexity at the ground of appeal brought forward by appellant who, as already pointed out, does not contest the fact that the material act leading to the death of Rita Ellul was executed by himself. Nor does he deny that he had the required positive intent to commit the crime. Moreover, the cause of death established by the pathologists tallies with appellant’s version of events as detailed in his statements to the police. Thus, there is absolutely no doubt as

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<sup>4</sup> Blackstone’s Criminal Practice 2015 B1.12

to his guilt, contrary to what he laments in his appeal application, which this Court deems to be totally frivolous and without any legal or factual context.

24. 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 ground of appeal put forward by appellant is completely unfounded in that the jurors could have legally and reasonably concluded that appellant was guilty of the offence of wilful homicide of Rita Ellul, and this beyond any doubt.

**For the above-mentioned reasons the appeal filed by accused Lawrence Abina 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**