



In the Criminal Court

Onor. Madame Justice Consuelo Scerri Herrera, LL.D., Ph.D.

Bill of Indictment number: 64/2024

The Republic of Malta

vs

Jordanos Gabrhiwet

Today, 15th of May 2025

The Court,

Having seen the bill of indictment number sixty four of the year two thousand and twenty four brought against **Jordanos Gabrhiwet** of thirty-five (35) years, daughter of Gabrhiwet Tewelde, and Letekidan nee' Tesfay, born in Eritrea on the thirteenth (13th) of October of the year nineteen and eighty nine (1989), residing at Hal Far Open Centre, limits of Birzebbugia and holder of Refcom No. 25430/19, **wherein the Attorney General in the bill of indictment premised:**

FIRST (1) COUNT

Attempted Homicide of her minor daughter Milaher Zelalem

The facts of the case: -

On the eighth (8th) of July of the year two-thousand and nineteen (2019), the accused **Jordanos Gabrhiwet** (hereinafter referred to as 'the accused'), at around twenty to eight in the evening (19:40hrs) whilst at the Hal Far Family Centre at Birzebbugia, with intent to kill her minor daughter Milaher Zelalem or to put the minor's life in manifest jeopardy, manifested such intent by overt acts which were followed by the commencement of the execution of the crime which crime was not completed in consequence of some accidental cause independent of the accused Jordanos Gabrhiwet's will.

That the accused Jordanos Gabrhiwet, hit her minor daughter on the head and tried to choke the minor daughter by wrapping a cord/shoelace around the neck of her daughter Milaher Zelalem in order to kill her.

A certain Mohamed Al Darwish intervened in order to save the minor and removed the cord/shoelace from around the neck of the minor.

Subsequently at around half past eight in the evening (20:30) the Birzebbugia police received a telephone call from a certain Jesmond Briffa who works as a support worker within the Hal Far Family Centre in Hal Far limits of Birzebbugia whereby he requested the assistance of the police due to the fact that the accused Jordanos Gabrhiwet had wrapped a cord/shoelace around the neck of her daughter Milaher Zelalem and the accused Jordanos Gabrhiwet stated that she wanted to kill her minor daughter.

When spoken to in presence of the police, the accused Jordanos Gabrhiwet stated that she was angry with her daughter Milaher Zelalem and that the accused Jordanos Gabrhiwet wanted to kill her daughter because the daughter always made her angry whilst the accused Jordanos Gabrhiwet was at work, as according to the accused Jordanos Gabrhiwet the daughter does not obey and does not stay in her room. When subsequently the police informed the accused Jordanos Gabrhiwet that she was under

arrest, Jordanos Gabrhiwet informed the police that it was better to kill her daughter Milahem Zelalem instead of arresting her because she would lose her job.

The consequences:

That by committing the above-mentioned acts with criminal intent, the accused **Jordanos Gabrhiwet** rendered herself guilty of attempted willful homicide, namely that during the evening of the 8th of July 2019, at the Hal Far Family Centre at Birzebbugia and/or in the vicinity, maliciously, with intent to kill another person (minor daughter Milaher Zelalem) or to put the life of such other person in manifest jeopardy, the accused **Jordanos Gabrhiwet** manifested such intent by overt acts followed by a commencement of the execution of the crime, which crime was not completed in consequence of some accidental cause independent of the will of the accused **Jordanos Gabrhiwet**.

The accusation:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses **Jordanos Gabrhiwet** of being guilty of attempted **wilful homicide**, namely that on the eight (8th) of July of the year two thousand and nineteen (2019) at around twenty to eight (19.40 hrs), at the Hal Far Family Centre at Birzebbugia, **maliciously, with intent to kill another person (minor daughter Milaher Zelalem) or to put the life of such other person in manifest jeopardy, manifested such intent by overt acts followed by a commencement of the execution of the crime, which crime was not completed in consequence of some accidental cause independent of the will of the offender.**

The punishment demanded:

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused **Jordanos Gabrhiwet** be proceeded against according to law, and that she

be sentenced to the punishment of imprisonment for a term from **eight (8) years to forty (40) years** as is stipulated and laid down in articles 17, 23, 31, 41, 211, (1)(2), and 533 of the Criminal Code, Chapter 9 of the Laws of Malta, or to any other punishment applicable according to law to the declaration of guilt of the accused.

SECOND (2) COUNT

Slight Bodily Harm on the person of Her minor Daughter Milaher Zelalem

The facts : -

That with the incident referred-to in the First Count of this Bill of Indictment, namely that on the eight (8th) July of the year two thousand and nineteen (2019), at about twenty minutes to eight in the evening (19.40hrs) at the Hal Far Family Centre in Birzebbugia, the accused Jordanos Gabrhiwet caused slight injuries on the person of her nine (9) year old daughter Milaher Zelalem with whom she was residing when the offence was committed.

When the victim (Milaher Zelalem) was taken to the Paola Health Centre accompanied by police officers as well as a social worker, the medical doctor who examined the minor victim Milaher Zelalem certified her injuries as being of a slight nature with grievous consequences.

The consequences: -

That by committing the above-mentioned acts with criminal intent, the **accused Jordanos Gabrhiwet** rendered herself guilty of causing slight injuries on the person of her daughter Milaher Zelalem with whom she was residing when the offence was committed.

That moreover this crime was committed by a person who is living in the same household as the offender as well as being a parent of the victim.

The accusation: -

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses **Jordanos Gabrhiwet** of being guilty of having on the eight (8th) day of July of the year two thousand and nineteen (2019), at about twenty minutes to eight in the evening (19.40hrs) at the Hal Far Family Centre in Birzebbugia, with criminal intent, committed the offence of slight bodily harm on the person of her daughter (Milaher Zelalem) – a person who was living in the same household as the offender when the offence was committed as well as being a parent of the victim (Milaher Zelalem).

The punishment demanded: -

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused **Jordanos Gabrhiwet** be proceeded against according to law, and that she be sentenced to the punishment of imprisonment for a term not exceeding three (3) years¹ as is stipulated and laid down in articles 17, 31, 214, 215, 221 (1) , 222(1)(a), 202(h)(iii), 202(h)(v) and 533 of the Criminal Code, Chapter 9 of the Laws of Malta, or to any other punishment applicable according to law to the declaration of guilt of the accused.

Having seen that the accused, in terms of Article 449 of the Criminal Code, presented a note of preliminary pleas on the 4th of February, 2025 wherein the accused submitted:

1. That the accused requests the removal of the statement given to her by the Police and exhibited as Doc JG3 a folio 12 of the acts. This is being requested in

¹ Since Article 221(1) also makes reference to an alternative punishment of a fine (multa), and the circumstances of Article 222(1) subsist, the punishment of the fine (multa) becomes that of imprisonment for a term not exceeding three months as per article 31(1)(f) of Chapter 9.

view of the fact that although from the Declaration exhibited as JG4, it transpires that the accused accepted to be assisted by her lawyer during the taking of the same, no lawyer seems to have been present during its taking. Moreover, on the statement, itself the Inspector, only made reference to the fact that the accused consulted with her lawyer before the taking of the statement;

2. That there should be the removal of the testimony of the accused's daughter namely Milaher Zelalem, tendered on the 5th November, 2020, and this is because the Magistrate failed to warn the minor that she has the right not to testify against her mother, due to their affinity by consanguinity and this in terms of Section 633(2) of the Laws of Malta, as this means that the witness has been compelled to give her evidence notwithstanding her reluctance;

Having seen the Attorney General's note in terms of Article 438 of the Criminal Code where he submitted that with regards to the second (2nd) and third (3rd) point found in the list of witnesses are inadmissible and hypothetical because the same Jordanos Gabrhiwet did not specify the proof that she intends to produce with the testimony of such unknown witnesses and therefore such list of witnesses does not satisfy the requirements at law. Moreover, the Attorney General insists that such witnesses are inadmissible because the identity and number of these witnesses is unknown and therefore such list of witnesses does not satisfy the spirit of the law. The Attorney General also insists that such a vague and unknown list of witnesses violates the principle of equality of arms. The accused did not even specify what she intends to prove with the testimony of these witnesses and therefore these witnesses are not admissible according to law.

Having seen that during the sitting of the 27th of March, 2025 the parties both submitted that they have nothing further to add to their written submissions.

Having seen the acts of the proceedings, including those of the compilation of evidence before the Court of Magistrates as a Court of Criminal Inquiry.

Considers,

In her **first preliminary plea** the accused is asking this Court to expunge her statement from the acts of the proceedings since she accepted to be assisted by her lawyer while being interrogated by the police, however, no lawyer seems to have been present during the interrogation.

Primarily, this Court would like to refer to WPC 342 Francesca Formosa's testimony² before the First Court where she stated that when the accused was arrested, on the 8th July, 2019 at 21.00hrs, the police informed her about her rights and she refused to speak to a lawyer at the time. WPC 342 also exhibited a declaration which stated the following:

*'When I Jordanos Gabrhiwet Pass No. 18V-031 of was spoken to in connection with a crime of attempted murder and/or any other crimes which may arise during the course of investigation. I was informed by WPC 342/ PS 1042 that I have the right, if I ask so to speak to my lawyer or legal procurator before I will be investigated to be let alone in private, face to face, by telephone for no more than one hour before said investigation or by means of the lawyer being present during said interrogation. I declare to renounce from exercising this right.'*³

Following this, on the 9th of July, 2019, the accused was interrogated, and the following is reproduced in the statement:

*'I am being also informed that I have a right for a lawyer or a legal procurator and that I can ask for the lawyer to come and remain during the interrogation and in fact yesterday I spoke to legal aid lawyer by means of telephone Dr Mark Mifsud Cutajar.'*⁴

² Fol. 30 et seq of the acts of the proceedings.

³ Fol. 34 of the acts of the proceedings.

⁴ Fol. 12 of the acts of the proceedings.

Furthermore, a fol 15 of the acts of the proceedings, one can find the declaration taken on the 9th of July, 2019 which stated the following:

*'When I Jordanos Gabrhiwet Pass No. 18V-031 of was spoken to in connection with a crime of attempted murder and/or any other crimes which may arise during the course of investigation. I was informed by PC 640 that I have the right, if I ask so to speak to my lawyer or legal procurator before I will be investigated to be let alone in private, face to face, by telephone for no more than one hour before said investigation or by means of the lawyer being present during said interrogation. I declare to **accept** from exercising this right.'*

WPC 370 Daniela Camilleri⁵ stated that on the 9th of July 2019, the accused accepted to exercise her right to speak to a lawyer, and this with reference to the document a fol. 15 of the acts of the proceedings. Moreover, PC 640 Silvan Camilleri⁶ stated the following, when asked by Superintendent Trevor Micallef regarding the declaration signed by the accused on the 9th of July 2019:

'Inspector Trevor Micallef: Ok. Now can you read the last part of the sentence?

PC 640 Silvan Camilleri: "I declare to accept from exercising this act"

Inspector Trevor Micallef: Which means in Maltese or in English? Better in English. She accept or not?

PC 640 Silvan Camilleri: Accept. Accept.

Inspector Trevor Micallef: Ehe? If you say so. No further questions.'

⁵ Fol. 182 et seq of the acts of the proceedings.

⁶ Fol. 185 et seq of the acts of the proceedings.

Superintendent Trevor Micallef⁷ in his testimony said that the accused was given the usual rights and did not speak to a lawyer.

This Court observes that the accused and some of the police officers are stating that by means of the declaration dated the 9th July, 2019,⁸ Jordanos Gabrhiwet declared that she accepted to exercise her right to a lawyer/legal procurator prior to her interrogation and *'to be let alone in private, face to face, by telephone for no more than one hour before said investigation or by means of the lawyer being present during the interrogation.'* Even though, it results from the statement that the accused spoke to Dr Mifsud Cutajar on the 8th of July 2019, Superintendent Trevor Micallef confirmed that the accused did not speak to a lawyer prior to the interrogation on the 9th of July, 2019. Furthermore, it does not result from the acts of the proceedings that a lawyer was present during the accused's interrogation.

Moreover, it results that the interrogation dated the 9th of July 2019 was not carried out according to law and this because the accused was not assisted by a lawyer during the interrogation when she had expressed her wish to exercise this right. The right to be assisted legally is a fundamental right of suspects and accused persons and so for this reason, this Court is upholding the accused's first preliminary plea, declaring the statement marked as Doc JG3 a fol. 12 et seq of the acts of the proceedings and any reference made to it as inadmissible and orders its removal from the acts of the proceedings.

In her second preliminary plea, the accused is asking this Court to remove the testimony of the accused's daughter tendered on the 5th November, 2020 and this because the Magistrate failed to warn the minor that she has the right not to testify against her mother in terms of Article 633(2) of the Criminal Code as this means that the witness has been compelled to give her evidence notwithstanding her reluctance.

⁷ Fol. 242 et seq of the acts of the proceedings.

⁸ Fol. 15 of the acts of the proceedings.

This Court notes that during the sitting of the 30th of October, 2019⁹ the minor Milaher Zelelem refused to communicate in any form or manner with the First Court and declined to answer any questions made by the Court or Ms Carmen Brincat and Ms Anthea Cutajar. The minor through very limited interaction and sign language indicated that she did not want to testify on that day or if brought forward again in the future.

That during the sitting of the 2nd of October 2010 it was agreed between the parties that the minor victim Milaher Zelelem will testify in the following sitting and for this purpose a suitable court hall was required.¹⁰

That on the 5th of November, 2020 the minor Milaher Zelelem was accompanied by social worker Anthea Cutajar and testified by means of video-conferencing.¹¹ It does not result from the acts of the case that the minor was asked whether she wanted to testify, given that the proceedings are against her mother.

Article 633 of the Criminal Code provides the following:

‘633. (1) No objection to the competency of any witness shall be admitted on the ground that he was the party who laid the information or made the complaint, or that he was the party who made the report or the application in consequence of which proceedings were instituted, or that he is, by consanguinity or affinity, or by reason of any contract, employment or otherwise, in any manner related to or connected with the party above referred to, or with the person charged or accused; but in every such case, the witness shall be heard, and those who have to judge of the facts, being fully persuaded and convinced of the veracity of the testimony, shall act upon such testimony in the same full and

⁹ Fol. 101 of the acts of the proceedings.

¹⁰ Fol. 207 of the acts of the proceedings.

¹¹ Fol. 213 et seq of the acts of the proceedings.

ample manner, as if such facts had been proved by an extraneous person not related or connected as aforesaid.

(2) Nevertheless, it shall lie in the discretion of the court, regard being had to the degree of consanguinity, the reluctance to give evidence against the husband or wife, his civil union partner or against his cohabitant, against an ascendant or a descendant, or against a brother, sister, uncle, or nephew, and to other particular circumstances of the case, not to compel a witness to give evidence if he be unwilling to depose against a person related to him in any of the said degrees.'

According to the abovementioned Article, the Court has the discretion to decide whether to compel a witness to testify. However, before doing so, the Court must caution the witness in accordance with the law. In this case the proceedings were against the witness' mother. While it is true that the parties had agreed between them that the minor was to testify, the Court was still bound by law to ask the accused's minor daughter whether she wished to testify against her mother. This was particularly more important in view of what the minor had stated on the 30th of October 2019 that she did not want to testify on that day or in the future. Therefore, it can be stated that Milaher Zelelem's testimony was not taken according to law and for this reason, this Court is also upholding the accused's second preliminary plea and declares Milaher Zelelem's testimony, both in written and CD format as inadmissible and orders its removal from the acts of the proceedings

This Court observed the note of the Attorney General of the 6th of February, 2025 where he claimed the inadmissibility of the second (2nd) and third (3rd) points found in the list of witnesses of the accused because the witnesses are hypothetical, vague and unknown. This violates the principle of equality of arms. The accused did not even specify what she intends to prove with the testimony of these witnesses and therefore the Attorney General insists that these witnesses are not admissible according to law.

With regards to the 3rd point of the list of witnesses of the accused, this Court states that it agrees with the Attorney General. The term '*Saving any other competent and admissible witness at law*' is too vague and generic. The accused did not even produce any names and hence why this is not admissible. It would have been different had the accused mentioned names and left out just particular details. The law provides a specific procedure and timeframe for the accused to file the list of witnesses. However, point three (3) as stated in the list of witnesses indicated by the accused, goes against the principle of equality of arms. Furthermore, Article 440(3) of the Criminal Code, entitled *Inadmissibility of witnesses, etc., without leave of court* also provides the following:

'No witness, document or exhibit, which is not indicated in the lists or filed as provided in article 438, may be produced at the trial, without special leave of the court.'

In relation to the second point found in the list of witnesses of the accused, that is that the latter '*reserves the right to cross-examine the witnesses indicated by the Attorney General who may not testify during this Honourable Court in the jury*', this Court states that the accused has the right to cross-examine the witnesses of the Attorney General. If the latter decides not to call a witness indicated in his list of witnesses, it has to be minuted in the acts of the proceedings and both the parties should be in agreement in this regard.

This Court is therefore upholding the Attorney General's request with regards to the 3rd point found in the list of witnesses provided for by the accused and declaring the same third point as inadmissible. Consequently, the words '*3. Saving any other competent and admissible witness at law*' shall be removed from the list of witnesses of the accused. Moreover, with regards to the 2nd point in the list of witnesses of the accused, this Court is reserving its right to provide further prior to the celebration of the trial by jury should the Attorney General decides not to call a witness indicated in his list of witnesses.

In view of the above this Court is upholding the first preliminary plea brought forward by the accused and is hereby declaring the statement marked as Doc JG3 a fol. 12 et seq of the acts of the proceedings and any reference made to it as inadmissible and orders its removal from the acts of the proceedings. Secondly, this Court is also upholding the second preliminary plea brought forward by the accused and is therefore declaring Milaher Zelelem's testimony, both in written and CD format as inadmissible and orders its removal from the acts of the proceedings. Furthermore, this Court is also upholding the Attorney General's request with regards to the 3rd point found in the list of witnesses provided for by the accused and declaring the same third point as inadmissible. Consequently, the words '*3. Saving any other competent and admissible witness at law*' shall be removed from the list of witnesses of the accused. Moreover, with regards to the 2nd point in the list of witnesses of the accused, this Court is reserving its right to provide further prior to the celebration of the trial by jury should the Attorney General decide not to call a witness indicated in his list of witnesses.

Consuelo Scerri Herrera
Madame Justice

Maria Grech
Deputy Registrar