



The Court of Criminal Appeal

His Honour the Chief Justice Mark Chetcuti
The Hon. Mr. Justice Joseph Zammit McKeon
The Hon. Mrs. Justice Edwina Grima

Sitting of the 27th May 2020

**In the acts of the proceedings regarding the allegation of insanity in
the names:**

The Republic of Malta

Vs

Michael Emmanuel

The Court,

1. Having seen the charges brought against Michael Emmanuel holder of document bearing number 74870A accused with having on the

night of the 14th September, 2018 and before seven o'clock (7am) of the 15th September, 2018 in Rahal il-Gdid:

i. Maliciously, with intent to kill or put the life of Maria-Lourdes Agius in manifest jeopardy, caused her death;

ii. Moreover, for having on the 13th September, 2018 at about half five in the afternoon (5.30pm) in Rahal il-Gdid with intent to commit grievous bodily harm on the person of Maria Agius, a person who has attained the age of sixty years and a person living in the same household, as well as on the person of Maria-Lourdes Agius, a person with whom he had a child in common and/or a person living in the same household and/or a person who had lived with within a period of three years preceding the offence, 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 his will;

iii. Moreover for having on the same day and in the same circumstances caused harm to the body or health of Maria Agius a person who has attained the age of sixty years and a person living in the same household, as well as on the person of Maria-Lourdes Agius, a person with whom he had a child in common and/or a person living in the same household and/or a person who had lived with within a period of three years preceding the offence, which harm is deemed to be of slight nature;

iv. Furthermore, for having on the 14th of September, 2018 and/or during the previous months, by several acts, even if committed at different times, which constitute violations of the same provisions of the law or of related provision of the law, and committed in pursuance of the same design, as a person who knows or ought to know that Maria Agius, a person of 64 years of age, is an elder or a dependent adult and who, under circumstances or conditions likely to produce grievous bodily harm or death, wilfully caused or permitted Maria Agius, a dependent adult to suffer, or inflicted on such person unjustifiable physical pain or mental suffering, or having the care or custody of the same elder or dependent adult, wilfully caused or permitted the person or health of the elder or dependent adult to be injured, or wilfully caused or permitted the

elder or dependent adult to be injured, or wilfully caused or permitted the elder or dependent adult to be placed in a situation in which her person or health is endangered.

v. Also accused of having on the 14th September, 2018 disobeyed the lawful orders of any authority or of any person entrusted with a public service.

vi. Also accused further of having in the past months, in these islands forged, altered or tampered with a Greek Identity Card or document, or used or had in his possession a Greek identity card or document, which he knew to be forged, altered or tampered with;

vii. Committed any other kind of forgery, or knowingly made use of any other forged document (Greek driving license);

viii. Forged any document or true copy of a document or an entry made in pursuance to Chapter 217, the Immigration Act, of the Laws of Malta;

ix. Without lawful authority used or had in his possession any document required for the purpose of Chapter 217, the Immigration Act, of the Laws of Malta.

The accused Michael Emmanuel replied that he was in a state of insanity when he committed those acts.

2. Having seen the application of the Attorney General filed before the Criminal Court wherein, in terms of article 402(5) of the Criminal Code, the issue of the alleged insanity of accused person was submitted to the said Court.

3. Having seen the verdict of the jury of the 5th July 2019 wherein:

First Charge:- The jury with eight (8) votes in favour and one (1) vote against, find Michael Emmanuel not to have been in a state of legal insanity in terms of the first charge brought against him.

Second Charge:- The jury unanimously find Michael Emmanuel not to have been in a state of legal insanity in terms of the second charge brought against him.

Third Charge:- The jury unanimously find Michael Emmanuel not to have been in a state of legal insanity in terms of the third charge brought against him.

Fourth Charge:- The jury unanimously find Michael Emmanuel not to have been in a state of legal insanity in terms of the fourth charge brought against him.

Fifth Charge:- The jury unanimously find Michael Emmanuel not to have been in a state of legal insanity in terms of the fifth charge brought against him.

Sixth Charge:- The jury unanimously find Michael Emmanuel not to have been in a state of legal insanity in terms of the sixth charge brought against him.

Seventh Charge:- The jury unanimously find Michael Emmanuel not to have been in a state of legal insanity in terms of the seventh charge brought against him.

Eight Charge:- The jury unanimously find Michael Emmanuel not to have been in a state of legal insanity in terms of the eight charge brought against him.

Ninth Charge:- The jury unanimously find Michael Emmanuel not to have been in a state of legal insanity in terms of the ninth charge brought against him.

4. Having seen the judgment of the Criminal Court of the same day wherein the said Court after having seen articles 33(a), 402, 620, 627 and 628 of the Criminal Code declared Michael Emmanuel not to have been in a state of insanity at the time of the commission of the acts. Thus, ordered that the acts of the proceedings be remitted before the Court of Magistrates (Malta) as a Court of Criminal Inquiry so that there may be the continuation of the compilation of evidence in his regard.

5. Having seen the appeal application filed by accused Michael Emmanuel on the 12th July 2019 wherein he requested this Court to revoke the judgment of the Criminal Court following a verdict by the jury dated 5 July 2019 which declared that appellant was not in a state of legal insanity on all counts proffered against him and in its stead declares that the appellant was in a state of legal insanity at the time of the offences proffered against him, with all the consequences contemplated at law.

6. Having seen the reply of the Attorney General of the 16th September 2019, 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.

7. Having seen the preliminary judgment of this Court of the 22nd January 2020 wherein the preliminary plea raised by the Attorney General was rejected and consequently the Court ordered the continuation of the proceedings relating to the merits of the appeal application filed by the accused Michael Emmanuel.

8. Having heard submissions by the parties.

9. Having seen all the acts of the case.

Considers,

10. It is an established principle at criminal law that the state of insanity of accused person amounting to exemption from criminal responsibility does not necessarily tally with the meaning attributed to

this state of mind in medical and psychiatric fields. Article 33(a) of the Criminal Code states that:

Every person is exempt from criminal responsibility if at the time of the act or omission complained of,¹ such person -

(a) was in a state of insanity;

11. In a judgment delivered recently by the Court of Cassation in Italy a two-tier test was established in determining whether the act or omission is attributable to a state of mental illness or some form of personality disorder:

È necessario, però, che sussistano due ulteriori requisiti: da un lato, il disturbo deve essere caratterizzato da consistenza, intensità e gravità, tali da escludere o scemare grandemente la capacità di intendere e volere; dall'altro, deve sussistere un nesso eziologico tra il disturbo riscontrato ed il fatto tipico posto in essere, vale a dire che il disturbo deve essere la causa della condotta criminosa tenuta dal soggetto agente².

12. This test therefore establishes that the insanity lamented must be serious, consistent and intensive. Also this must be present at the moment of commission of the offence and must be the cause of the act or omission eradicating the perpetrator's ability to understand the consequences of his actions. Infact Professor Anthony Mamo in his notes states:

¹ Emphasis of this court.

² Cassazione penale, sez. II, sentenza 07/01/2020 n° 188

“The question [of insanity], when it arises, is one of fact: it has, that is to say, to be decided whether the defendant had a mental disease and, if so, whether it was of such a character and degree as to take away the capacity to know the nature of his act or to help doing it.”

13. The oft-quoted judgment with regards to the plea of insanity, “Ir-Repubblika ta’ Malta vs David Norbert Schembri”, postulates:³

“Fi kliem iehor, persuna tista’ tkun marida mentalment fil-mument li tkun ghamlet l-att ta’ kommissjoni jew ommissjoni li jammonta ghall-element materjali tar-reat, izda dan ma jfissirx necessarjament li dik il-persuna kienet fi “stat ta’ genn” ghall-finijiet ta’ l-imsemmi Artikolu 33(a), cioe` tali li tkun ezenti minn responsabbilta` kriminali. Biex ikun hemm l-istat ta’ genn li jezenta mir-responsabbilta` kriminali jrid jirrizulta (imqar fuq bazi ta’ probabbilita`, meta d-demenza tkun giet eccepita mill-akkuzat jew imputat u allura l-piz ikun fuqu biex jipprova l-fatt⁴) li l-akkuzat jew imputat kien qed ibati minn marda tal-mohh li minhabba fiha, fil-mument tal-att ta’ kommissjoni jew ommissjoni, huwa kien privo⁵ (i) jew mill-kapacita` li jifhem in-natura u l-kwalita` ta’ dak l-att li qed jaghmel, jew (ii) mill-kapacita` li jifhem li dak li qed jaghmel hu hazin, jew (iii) mill-kapacita` li jaghzel jekk jaghmilx jew le dak l-att. Marda tal-mohh - disease of the mind bl-Ingiliz - mhux necesarjament tkun patologija lokalizzata fil-mohh - in the brain. Kif jispjega Lord Diplock fil-kaz ta’ Sullivan [1984] AC 156, u b’referenza ghall-M’Naghten Rules - regoli, li wiehed m’ghandux jinsa, jirreferu biss ghall-kapacita` di intendere, mentri l-ligi taghna tikkunsidra wkoll jekk kienx hemm il-kapacita` di volere -

³ *op.cit.* p.140, para. 8.13.

⁴ If on the other hand, the prosecution entertained the procedure by virtue of Article 402(5) of Chapter 9, that the accused was not insane at the time of the act, then the prosecution must prove this beyond reasonable ground.

⁵ Take note of Pulizija vs Raymond Vella App. Krim. 2/8/1999.

*'The nomenclature adopted by the medical profession may change from time to time... But the meaning of the expression 'disease of the mind' as the cause of 'a defect of reason' remains unchanged for the purpose of the application of the M'Naghten rules... 'mind' in the M'Naghten rules is used in the ordinary sense of the mental faculties of reason, memory and understanding. If the effect of a disease is to impair these faculties so severely as to have either of the consequences referred to in the latter part of the rules⁶, it matters not whether the aetiology of the impairment is organic, as in epilepsy, or functional, or whether the impairment itself is permanent or is transient and intermittent, provided that it subsisted at the time of commission of the act.'*⁷

14. The House of Lords in the historic case R vs Mc'Naghten (1843) formulated the following guidelines when dealing in cases regarding insanity:

1. Every person is presumed to be sane, until the contrary is established.
2. To establish the defence of insanity, it must be clearly proved that at the time of committing the crime, the person was so insane as not to know the nature and quality of the act he was doing or if he did know it, he did not know that what he was doing was wrong.
3. The test of wrongfulness of the act is in the power to distinguish between right and wrong, not in the abstract or in general, but in regard to the particular act committed.

15. Therefore:

1. every type of insanity is not legal insanity; the cognitive faculty must be destroyed so as to render one incapable of

⁶ i.e. "...as not to know the nature and quality of the act he was doing...or...that he did not know he was doing what was wrong."

⁷ p. 172.

- knowing the nature of his act or that what he is doing is wrong or contrary to law;
2. the court shall presume the absence of such insanity;
 3. the burden of proof of legal insanity is on the accused, though it is not as heavy as the prosecution;
 4. the court must consider whether the accused suffered from legal insanity at the time when the offence was committed;
 5. in reaching such a conclusion, the circumstances which preceded, attended or followed the crime are relevant consideration; and
 6. The prosecution in discharging its burden of the plea of legal insanity has merely to prove the basic fact and rely upon the normal presumption of the law that everyone knows the law and the natural consequences of his act.⁸

16. Thus it was incumbent upon appellant to prove, and this on a basis of probability, that at the time of the commission of the offence he was incapable of understanding that his actions were contrary to law and that he was unable to will the consequences of the said actions. Now the events leading up to the present criminal proceedings, and the relative plea raised by the defense relating to the insanity of accused, were triggered as early as the 13th September 2018 when 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. Later on, during that same evening, the accused turned himself in to the police where he confirmed his involvement in the scuffle but implied that he had been provoked by

⁸ <https://www.lawteacher.net>

complainants. After complainants were further spoken to by the police, the accused was instructed to refrain from going to the residence in Paola and to report to the Fgura Police Station on the following day. Agenzija Appogg was contacted with regards to the case, owing also to the fact that Emmanuel had three young children, two of whom in common with Maria Lourdes Agius. Moreover, complainants changed the locks to their residence so as to prevent access by appellant to their property. Notwithstanding this, it transpires that despite the instructions handed down by the police to both parties, the accused returned to the residence in Paola on the 14th September 2018 and spent the night there in the same room as Maria Lourdes Agius.

17. On the 15th 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, Maria 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 some days earlier. The police then proceeded to the bedroom together with Maria 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. Maria Agius tried to wake up her daughter but to no avail, at which instant 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 injuries, which indicated that she had been strangled. Hence it was ruled out that she had died of natural causes. When the police spoke to Maria 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 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 also denied having had an argument with 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 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 in order for him 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 also he realized that she had passed.

20. On the 16th September 2018, accused was arraigned before the Court of Magistrates as a Court of Criminal Inquiry where he pleaded not guilty to the charges proffered against him. On the 24th September 2018 appellant was transferred from Corradino Correctional Facility to Mount Carmel Hospital owing to his aggressive behavior. Upon admission he was examined on the 26th September 2018 by Dr. Joseph Spiteri and Dr. Claire Axiaq and was found to be suffering from a psychotic disorder, living under the grandiose delusion that he had a special contact with God and his late biological father, which thoughts appellant believes also had a direct influence on the tragic outcome of this case. Also during the sitting of the 11th October 2018, the Court of Magistrates appointed Dr. Joseph Cassar to examine appellant and to report to the Court about his mental health. The said expert exhibited his report and testified during the sitting of the 22nd November 2018 where he concluded that after examining appellant on the 23rd October 2018 for the duration of one hour, he was of the opinion that appellant had *'no insight whatsoever into his actions and was driven by a psychotic delusion when he acted as he did in relation to deceased.'*⁹

⁹ Evidence tendered by Dr. Joseph Cassar before the Court of Magistrates as a Court of Criminal Inquiry on the 22nd November 2018. See folio 70 et sequitur. The precise words of the conclusion in Dr. Cassar's report are

21. Subsequently during the sitting dated the 4th April 2019, defense pleaded insanity in accordance with articles 33(a) and 402(1)(a) of the Criminal Code. The Court of Magistrates consequently ordered that the Acts of the proceedings be suspended and sent to the Attorney General by virtue of Article 402(4) of the Criminal Code. Upon receipt of the acts of the case the Attorney General instituted proceedings before the Criminal Court in terms of article 402(5) of the Criminal Code for a panel of jurors to decide on the allegation of insanity brought forward by accused Michael Emmanuel. The matter therefore which the Criminal Court had before it, and which was to be determined by a jury empanelled in terms of article 627 of the Criminal Court, was whether at the moment of the commission of the offences brought against him, Michael Emmanuel was in a state of legal insanity in terms of article 33(a) of the Criminal Code. After hearing the evidence brought forward by the Attorney General, the jurors, by means of a verdict delivered on the 5th July 2019, unanimously found that appellant was not in a state of insanity when the incident occurred.

Considers:

22. Appellant feeling aggrieved by the verdict of the jurors and the judgment of the Criminal Court brings forward the following grievances before this Court requesting that the verdict of the jurors be annulled and that his plea of insanity be upheld.:

as follows: *'After taking into consideration Mr. Michael Emanuel's psychiatric history and after having examined Mr. Michael Emanuel I would like to present the honourable Court the following conclusions: (1) Mr. Michael Emanuel holder of ID card 74870A suffers from acute psychosis and is therefore insane according to the Criminal Code. (2) Mr. Michael Emanuel has no insight whatsoever into his actions and was driven by a psychotic delusion when he acted as he did in relation to the deceased.*

- (1) Appellant laments that relying on the report of the one and only court appointed expert Dr. Joseph Cassar who confirmed that appellant was insane at the time of the commission of the offence, the level of proof required at law by the defense had been reached and consequently the jurors arrived at a wrong decision at law. Since only one expert was appointed, the defence only needed to prove its thesis on the basis of probability through the same report. The evidence brought forward during the trial was not sufficient to eradicate this balance of probability as established through the evidence and report of the court appointed expert and in the light of the scientific evidence brought forward.
- (2) Appellant also refers to the principles laid out in terms of Article 653 of the Criminal Code and this in the light of the fact that Dr. Joseph Cassar stated that the accused was credible in his version of events. Appellant is of the opinion that there is no evidence which contradicts the conclusions reached by the court appointed psychiatric expert. Appellant also made reference to other reports which in their view tally with what appellant alleged and which the prosecution failed to adequately put into doubt. Therefore, in spite of the fact that the principles pertinent to this article of law, particularly with regards to instances when such reports can be refuted, were clearly explained to jurors by all parties concerned, the jury clearly didn't apply these principles correctly. Moreover the evidence relating to the facts of the case was to be used solely so as to verify or otherwise the version given by the appellant and nothing else.

(3) Finally according to appellant, the evidence brought forward by the prosecution to rebut the expert's report, is made up of assumptions and personal convictions.

23. On the other hand the Attorney General rebuts these grievances by affirming that the verdict should be confirmed and that the grounds of appeal should be rejected since they are contradictory, with appellant although affirming that the jurors were properly addressed by the Judge during the summing up, at the same time states that he was wrongly found to be sane on the basis of a manifest incorrect determination of fact and law. The issue of insanity must be determined from a legal point of view, not a medical one. In fact the Attorney General asserts that appellant confuses the concepts of medical and legal insanity in his appeal. In his opinion it is clear from the acts of the case that accused only alleged insanity at time of offence not of the trial. He was even fit to plead guilty or not guilty during the compilation of evidence. Effectively the demeanour of the accused after the crime was committed and during the police interview, together with the precise and intelligent answers which appellant gave during the said interrogation, galvanise in favour of the mental sanity of appellant and it is consequently the belief of the Prosecution that accused did in fact possess both the will and understanding to carry out the crimes with which he is being accused.

24. The Prosecution insists that the court appointed expert Dr. Joseph Cassar did not offer sufficient assurance to conclude otherwise. He only examined appellant for one hour during which time crucial facts were

ignored or not given the necessary importance and bearing. Appellant was diagnosed by Dr. Cassar one month after the case. Finally it was in the jurors' discretion to accept or discard the findings established through expert evidence and consequently the verdict is valid at law and should be confirmed.

Considers :

25. 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 there was no valid reason for the jury to discard the report presented by the court appointed expert Dr. Joseph Cassar wherein the conclusion was reached that appellant was insane according to law. Appellant is also of the firm opinion that all the evidence brought forward during the trial corroborate his version of events, which Dr. Joseph Cassar describes as credible and thus led to his diagnosis.

26. Appellant is therefore asking this Court to conduct a fresh appreciation of all the evidence found in the acts so as to determine whether the jurors, who were correctly directed by the Judge, could have legally and reasonably reached the conclusion which they ultimately reached.¹⁰ In order to conduct this exercise the Court

¹⁰ Vide the following Superior Criminal Court Judgements in this respect amongst others: 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; Ir-Repubblika ta' Malta v. Godfrey Lopez u r-Repubblika ta' Malta v. Eleno sive Lino Bezzina 24 ta' April 2003, Ir-Repubblika ta' Malta v. Lawrence Asciak sive Axiak 23 ta' Jannar 2003, Ir-Repubblika ta' Malta v. Mustafa Ali Larbed, 5 ta' Lulju 2002; Ir-Repubblika ta' Malta v. Thomas sive Tommy Baldacchino, 7 ta' Marzu 2000, Ir-Repubblika ta' Malta v. Ivan Gatt, 1 ta' Dicembru 1994; u Ir-Repubblika ta' Malta v. George Azzopardi, 14 ta' Frar 1989; u l-Appelli Kriminali Inferjuri: Il-Pulizija v. Andrew George Stone, 12 ta' Mejju 2004, Il-Pulizija

analyzed the acts of the proceedings, including the transcripts of evidence and the audio visual statements of appellant and audio visual evidence of some of the witnesses who also testified *viva voce* before the Criminal Court during these proceedings, apart from the documentary evidence produced, which include the report of Dr. Joseph Cassar as well as the appellant's psychiatric file which dates back to the 24th September 2018.

27. It results from the acts that the parties are not contesting the findings of the psychiatric witnesses and expert regarding the mental health of appellant after the acts took place. His precarious state of mind transpires from his first meeting with the resident psychiatrists at Mount Carmel Hospital, Dr. Joseph Spiteri and Dr. Claire Axiaq, on the 26th September 2018, wherein he was diagnosed to be suffering from delusions of grandeur, constituting psychotic behaviour which necessitated that he be prescribed medication over a protracted period of time. The question however remains whether or not accused/appellant was in fact insane when he allegedly performed the incriminating acts which he is accused of having committed, particularly with regards to the night of the 14th September into the early hours of the 15th September 2018, when Maria Lourdes Agius was murdered. It is also uncontested that appellant was receiving treatment for his condition and was fit to stand trial being capable of understanding the court proceedings being

v. Anthony Bartolo, 6 ta' Mejju 2004; Il-Pulizija v. Maurice Saliba, 30 ta' April 2004; Il-Pulizija v. Saviour Cutajar, 30 ta' Marzu 2004; Il-Pulizija v. Seifeddine Mohamed Marshan et, 21 ta' Ottubru 1996; Il-Pulizija v. Raymond Psaila et, 12 ta' Mejju 1994; Il-Pulizija v. Simon Paris, 15 ta' Lulju 1996; Il-Pulizija v. Carmel sive Chalmer Pace, 31 ta' Mejju 1991; Il-Pulizija v. Anthony Zammit, 31 ta' Mejju 1991.

conducted against him and also able to plead guilty or not guilty to the charges brought against him.

28. Now it is clearly evident from the verdict delivered by the members of the jury that the panel discarded the opinion given by psychiatric expert Dr. Joseph Cassar¹¹ regarding the psychotic disease afflicting appellant and the effect that this condition had on his ability to will and understand his actions in general. They are empowered to do so in virtue of article 656 of the Criminal Code although jurisprudence clearly indicates that in so doing, the jurors must have a sufficiently valid and motivated reason thereof.¹² Now it is true that a jury delivers a verdict which is always absent from any motive or reasoning. However, it is in the power of the Court to determine whether the conclusion reached by the jury is one which is founded at law and whether this discretion to discard the expert's conclusions was legally unfounded. Above all:

“The issue as to whether the accused's reason was alienated in relation to the crime in question is one for the jury to determine in the light of the evidence and their common sense. In Lord Strachan's terms, 'it is to be judged on the ordinary rules on

¹¹ Dr. Cassar was the only official court appointed expert out of all the psychiatrists who testified in these proceedings and who claimed to have referred to the notes concerning the appellant which Dr. Joseph Spiteri noted when seeing the appellant closer to the date of the offences allegedly committed by same.

¹² Roseanne Galea u John David Galea vs L-Avukat Ġenerali u L-Kummissarju tal-Pulizija, decided by the Constitutional Court on the 13th February 2017 (app no. 30/15MCH) - *Huwa ben risaput illi f'materja ta' prova peritali, l-insenjament ġurisprudenzjali huwa fis-sens li, għalkemm ir-rapport tekniku huwa kontrollabbli mill-ġudikant b'hal kull prova oħra u li l-Qorti mhijiex tenuta li taddotta l-konklużjonijiet peritali kontra l-konvinzjoni tagħha, jibqa l-fatt li l-Qorti m'għandiex tiskarta l-konklużjonijiet tal-esperti tekniċi, speċjalment fuq materja purament teknika, b'mod leġġer jew kapriċċjuż, u kwalsiasi ġudizzju li jmur kontra l-konklużjonijiet peritali għandu jkun motivat sewwa.*

which men act in daily life.' The jurors are the arbiters of insanity. They can take account of any medical evidence given by expert witnesses, but such evidence is not conclusive. The significance of medical evidence is severely limited by the fact that insanity is a legal rather than a medical concept. Further, a medical witness can only speculate as to the accused's state of mind at the time of the crime, since the information upon which his judgment is based will have been obtained subsequent to the crime being committed.¹³"

Considers:

29. The Prosecution, in this case, produced numerous witnesses including:

- (a) the police inspectors/investigating officers and the frontline police officers who spoke to appellant, amongst others, in the initial stages of the investigation, both a few days prior to and also on the very same day that Maria Lourdes Agius was found dead;
- (b) the two audio visual statements released by appellant on the 15th September 2018 a few hours apart, where in the first statement appellant makes no mention of what could be described as psychotic episodes or delusions prior to or during the acts which gave rise to the death of the victim in this case and where he repeatedly claimed that he didn't know how the victim came to pass, despite confirming that only he was in the room with her at the time of her death;

¹³ Timothy Jones and Michael Christie – Criminal Law – Sweet and Maxwell (Edinburgh) 1992, cited in the judgment *Ir-Repubblika ta' Malta vs Anthony Schembri* 04/03/2010 App.sup.

- (c) the Court appointed experts, particularly Dr. Mario Scerri and the pathologists in this case who concluded that the victim died due to asphyxia caused by manual strangulation, apart from noting also that same had considerable bruising and abrasions on her face and mouth as well as lesions to the scalp caused by blunt trauma;
- (d) Dr. Marisa Cassar who was appointed to analyse DNA samples and conduct comparisons with samples given by appellant and those taken from the victim and from numerous items, including a cross which was found at the residence of the victim and which appellant claimed to have used on victim's instructions and which led to her death, whilst allegedly being in a delusional state;
- (e) the mother and brother of the deceased who knew appellant prior to and up to the time of the alleged acts and who also tendered their evidence audio-visually on the day that Maria Lourdes Agius was found dead;
- (f) Dr. Joseph Cassar who examined appellant for the duration of one hour on the 23rd October 2018 and who based his report and his findings on what the appellant related and described to him, including the events which transpired on the night when Maria Lourdes Agius lost her life;
- (g) The evidence of psychiatrists Dr. Joseph Spiteri and Dr. Claire Axiaq who were entrusted with the care of appellant when he was transferred to Mount Carmel Hospital from Corradino Correctional Facility owing to his aggressive behaviour on the 24th September 2018 and who followed same in subsequent months, whilst monitoring and prescribing the medication to control appellant's condition,

(h) Other witnesses who encountered appellant in different settings in the days leading up to the acts at issue and even before that, and who may have also examined appellant with regards to his mental health, although not in an in-depth or psychiatric manner as others may have conducted.

30. Now the Court has examined in detail primarily the expert report drawn up by Dr. Joseph Cassar, who reached his conclusions after hearing appellant describe the incidents leading up to the death of Maria Lourdes Agius. Appellant referred back to an incident which occurred in February 2018, seven months prior to victim's demise, where he claimed that she had allegedly 'died' and when she came to, after he shook her back to her senses Maria Lourdes was not the same person anymore. He believed that she was becoming evil and she had special powers, in that she knew certain things pertinent to his past, apart from the fact that his children didn't want to stay with her anymore. He also referred to a woman from Marsaxlokk whom he had met and who he claimed Maria Lourdes Agius knew about also. He mentioned also a cross which he had found and which he put against Agius's neck upon her instructions adding that upon doing so the cross gave victim a shock. He also stated that Agius instructed him to put something around her mouth so that her mother wouldn't hear what was going on and appellant claimed to have put blankets, at which point Agius was already dead. Appellant also claimed that he had a special relationship with God and this from a young age in that He allegedly spoke to him on more than one occasion. Appellant claimed also that he smokes

marijuana every day but other than that he never consumed any other drugs. Neither appellant nor his family had any psychiatric history.

31. Dr. Cassar also referred to the notes entered into appellant's medical file by Dr. Spiteri and Dr. Axiaq which notes, he claims, confirm the above. He also adds that these notes confirm that patient holds multiple religious, grandiose delusions, while believing that his partner killed herself. The expert thus concluded that appellant *'suffers from acute psychosis and is therefore insane according to the Criminal code. Mr. Michael Emmanuel has no insight whatsoever into his actions and was driven by a psychotic delusion when he acted as he did in relation to the deceased'*. The delusion was classified by the expert as multiple religious and grandiose, meaning that appellant had an over-inflated sense of worth, power, knowledge or identity, in fact claiming that he had contact with God and that he had been instructed by the victim herself to eliminate her due to the fact that she had a bad omen surrounding her and thus wanted him to get rid of her so that he could move on with his life. This, he affirms, led him to apply pressure on victim's neck with a cross after which she became unresponsive.

32. In his testimony before the First Court Dr. Cassar testifies that he felt that appellant was truthful in his deposition since he genuinely believed what he was claiming, although same added that there exists no specialisation to establish whether a person is lying or not, other than using one's own experience in such a field. Moreover he was not in a position to conduct a character assessment of appellant since this is a process which takes a number of months, hence requiring encounters

with appellant over a period of time and on more than one occasion. He also said that psychosis is evidenced by various indicators, one of them being the delusional state of mind which appellant was allegedly experiencing. Dr. Joseph Cassar however confirms that he only had a meeting with appellant on one occasion and that he based his conclusions solely on what appellant told him on that occasion, whilst also referring to the notes drafted by Dr. Spiteri and Dr. Axiaq who from their part saw appellant on and after the 26th September 2018, meaning eleven days after Maria Lourdes Agius was murdered. When asked whether it could be possible that appellant developed this psychosis after the incident, as a consequence of the trauma he experienced, the expert replies in the affirmative.

33. Whilst Dr. Joseph Spiteri and Dr. Claire Axiaq concur to a large extent in their testimonies with what Dr. Joseph Cassar eventually concluded in his report¹⁴, they also add however that appellant was able to understand the accusations against him *'but he believes that his partner died on her own in a way.'*¹⁵

34. It is therefore clear that the jurors were faced with a medical diagnosis which was formulated days after the commission of the offence with the psychiatric doctors entrusted with care of appellant

¹⁴ Which report was drafted and exhibited in the Court of Magistrate after Dr. Spiteri and Dr. Axiaq tendered their evidence.

¹⁵ Folio 29 of the acts of the proceedings before the Court of Magistrates which were reconfirmed in full before the Criminal Court. See also the evidence of Dr. Joseph Spiteri tendered before the Criminal Court which includes his deposition as tendered and reconfirmed by same before the Court of Magistrates as a Court of Criminal Inquiry.

examining him eleven days later, and the court-appointed expert finding appellant delusional more than a month after the murder. The Court therefore finds that there is not sufficient evidence in the acts to indicate that appellant was suffering from this delusional state when the victim was murdered, and this on a balance of probability. There is no evidence in the acts of a psychotic history on the part of appellant or of genetic traits in this regard. No record of admissions to a mental hospital exist or of appellant receiving treatment for a mental condition during the ten years he resided in Malta. Neither was he suffering from hallucinations as the said expert himself concludes. Not only but the expert's replies upon examination by the Prosecution are inconclusive and lead the Court to understand that the said expert based his diagnosis solely on what appellant was recounting without any sound or conclusive evidence indicating that what appellant was stating was true and correct. He even states that the psychosis could have resulted after the commission of the crime and as a consequence of the said trauma. And even if the Court, *gratia argomenti*, were to accept the diagnosis that appellant was suffering from a delusional psychosis at the time of the commission of the offence, this does not make him insane in terms of law, since he himself asserts that he wilfully pressed a cross on victim's neck knowing that this could lead to her death, even though he was instructed to do so by victim herself since she was a bad omen and therefore had to be eliminated for him to be able to carry on with his life! He was therefore fully conscious of his actions and to the danger that these could pose to victim's life.

35. There is evidence, however, of appellant's state of mind both prior to the commission of the offence and also during the same not only from the testimony of the various witnesses whom he came into contact with in the days prior to the murder, but also from the first statement released by him on the 15th September 2018 at around 1p.m. where the accused makes no mention whatsoever of these psychotic episodes. He only refers briefly to the February event when the inspectors confronted him with the fact that victim didn't kill herself in that he claimed that she had 'died' on her own in February whilst in bed after an argument she had had with her mother. He said that he tried to wake her but she was unresponsive and only woke up after he shook her forcefully a few times. When questioned about the incident forming the merits of this case, he repeated that he didn't know what caused Maria Lourdes's death whilst confirming however that he was the only person with her in the room at the time of her demise, as already pointed out.

36. Appellant then released a second statement at around 7p.m. on the 15th September 2018 after he himself requested to speak to the investigating officers where he mainly referred to the psychotic episodes that he allegedly started experiencing from a young age and where he claimed that the victim had instigated her own death in order to help him move on with his life. Apparently, the victim had asked the appellant to stay the night in that she would explain to him everything once he did. She fell asleep after they had intercourse and told him that she would explain things to him in the morning. He added that at around 4a.m. victim awoke and told him to place a cross on her neck, which he claimed to have done. She then instructed him to press it onto

her neck. Appellant alleged that he did as she asked, barely putting any force and after that she passed away. He also said that he used his left hand when pressing down the cross since his right hand was injured and whenever he does something unclean, he uses his left hand, according to Biblical scriptures, this affirmation clearly indicating that appellant was capable of understanding his actions and the consequences thereof.¹⁶

37. The report of the pathologists and 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 victim was manually strangled with two hands and with particular force, 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 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 about the use of a cross in the course of the strangulation, he excluded this categorically, adding that if this were the case there would have been visible marks to indicate the use of this object. 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

¹⁶ Reference is made to this also by Inspector James Grech in his evidence before the Criminal Court at folio 231 of transcripts of evidence. Hear also 1st and second audio visual statements released by appellant marked as Dok JG8 & Dok JG9 at folio 43 and 44 respectively in the Acts of the Compilation of evidence.

her unconscious prior to the strangulation, even owing to the fact that no defence wounds were found on the victim's body. Dr. Scerri also estimates that the victim lost her life at approximately 1:15am on the 15th September 2018, approximately eight (8) hours prior to her medico-legal examination.¹⁷

38. 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 2a.m. 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.

39. Consequently, after having examined all of the above 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

¹⁷ See evidence tendered by Dr. Mario Scerri before the Criminal Court at folio 256 et sequitur of transcripts of evidence.

unfounded in that the jurors could have legally and reasonably concluded that between the 13th and the 15th September 2018, appellant was not in a state of insanity according to the Criminal Code for the following reasons:

i. the report tendered by psychiatric expert Dr. Joseph Cassar is dated more than one month after the crimes took place and there is no official medical or psychiatric record indicating that appellant suffered from a mental pathology prior to that date or at the time of the alleged murder. He speaks of religious delusions when he was a child, the expert however is unable to establish if this episode occurred again prior to the murder, other than from what appellant himself asserts that his wife had asked him to remove a bad omen that was afflicting her, thus indicating that he was capable of understanding the course of his actions and willing the same.

ii. This was also the case with Dr. Spiteri and Dr. Axiaq, whose notes were the only other point of reference for Dr. Cassar to reach his conclusions. Apart from this, the acts which appellant maintains to have performed on the person of Maria Lourdes Agius whilst allegedly being delusional do not tally with the scientific *modus operandi* of the acts committed and this with particular reference to what was described by medico-legal expert Dr. Mario Scerri.

iii. Appellant brings forward no evidence to indicate or even suggest, and this on a balance of probabilities, that there was a past medical history of psychosis in his family or that there existed a genetic trait in this sense. There are no records to indicate such a

medical history at least during the ten years appellant resided in Malta prior to the alleged murder.

iv. There is a history of domestic violence with episodes being reported to the police prior to the actual murder, indicating the violent nature of appellant.

v. None of the lay witnesses and police officers who testified mention that appellant had indicated to them these delusions as he did after the commission of the crime, all attesting to the fact that appellant was always coherent in his words and actions.

vi. Finally even if the jurors had to accept that Maria Lourdes Agius lost her life in the manner as described by appellant, which is however not backed up scientifically as already mentioned, the jurors could not exclude that appellant was aware that his actions were wrong since he himself confirmed that he used his left hand, whilst cognitively being aware that his actions were 'unclean'.

vii. The court appointed expert could not exclude that the psychosis could have developed after the commission of the offence as a consequence of the trauma suffered by appellant through his deeds.

40. These probative facts therefore indicate that although appellant was delusional after the commission of the offences with which he is charged, however he does not manage to prove, and this on a balance of probabilities, that this delusional state was present both before and during the acts with which he is being indicted. Even if this psychotic mental state was present, the Court cannot conclude that this impaired his ability to will and understand the course of his actions.

Consequently for the above mentioned reasons, the appeal is being rejected and the Court confirms the verdict and judgment of the Criminal Court of the 5th July 2019. Orders that the acts of the case be remitted to the Court of Magistrates as a Court of Criminal Inquiry for the compilation of evidence to proceed according to law.

(sgnd) Judges

True Copy

Joyce Agius

Deputy Registrar