The Galati-Costagliola Appeal
to the
Supreme Court of Cassation
in the matter of
The People and Republic of Italy
against
Amanda Knox and Raffaele Sollecito

Translation note

First-pass translation into English
August 2012

Page numbers in the original Italian are shown thus: **[10]**.

[1]

Public Prosecutor's Office
attached to the Court of Appeal of Perugia

The Procurator-General, Dr Giovanni Galati, and
the Deputy Procurator-General, Dr Giancarlo Costagliola

Submit

Appeal to Cassation

relating to judgment No 4/2011, handed down on October 3, 2011, with reasons reserved under the 3rd paragraph of Article 544 CPC deposited in Registry on December 15, 2011 by the judges of the Criminal Division of the Court of Assizes - Court of Appeal of Perugia [the "CAA"], who partially adjusted the verdict by

which the Court of Assizes of Perugia [the "CA"] on 4,-December 5, 2009 had declared Knox, Amanda Marie, and Sollecito, Raffaele, guilty of the crimes, to wit:

(A) under Articles 110, 575, 576 paragraph 1(5), in relation to Article 609*bis* and *ter* of the Criminal Code and Article 577 paragraph 1(4), in relation to Article 61(1) and 61(5) of the Criminal Code

(B) under Articles 100 Criminal Code, 4 Statutes 110/1975;

(D) under Articles 110, 624 Criminal Code;

(E) under Articles 110, 367 and 61(2) Criminal Code;

[(F)] Ms Knox in addition also, the offence under Articles 81 CPV and 386 paragraph 2 and 61(2) Criminal Code and had sentenced Ms Knox to the penalty of 26 years of imprisonment and Mr Sollecito to the penalty of 25 years of imprisonment.

[2] The judgment under appeal had decreed Amanda Marie Knox guilty of the charge under heading (F), excluded aggravation under the second paragraph of Article 368 Criminal Code, sentencing her to the penalty of 3 years of imprisonment, has in addition acquitted both of the accused of the charges made against them under headings (A), (B), (C)[25], and (D) for not having committed the deed, and of the charge under heading (E) for the charge not being sustained.

POINTS OF THE JUDGMENT ON WHICH THE REASONS ARE GROUNDED:

1. **Order 18.12.2010 on the admission of the expert witness testimony by the Appeal Court – lack of reasoning; reasoning of the judgment on the point – contradictory nature and manifest illogicality. [Article 606(e) Criminal Procedure Code]**

2.1 Order 7.09.2011 on the rejection of new expert witness testimony – contradictory nature and manifest illogicality of the reasoning. Missing acquisition of a decisive element of proof [Article 606(e) and 606(d) Criminal Procedure Code]

---

[25] NdT – Charge (C), relating to sexual assault, was subsumed into the other charges earlier in the proceedings, during the trial at first instance.

2.2 Order 7.09.2011 on the rejection of the examination of the witness Aviello – violation of Articles 190, 238 paragraph 5 and 495 paragraph 2 Criminal Procedure Code, – violation of the right to proof – Article 606(c) and (d) Criminal Procedure Code, not least manifest illogicality of the judgment on the point through manifest illogicality of the reasoning [Article 606(c) and (d) Criminal Procedure Code]

3 Unreliability of the witness Quintavalle

Non-observance of the principles of law dictated by Cassation in matters of circumstantial cases and illogicality of the reasoning in the evaluation of the reliability if the witness – [Article 606(b) and (e) Criminal Procedure Code

4 Unreliability if the witness Curatolo

Illogicality and contradictory nature of the reasoning in the affirmation of the unreliability of the witness [Article 606 paragraph 1(e) Criminal Procedure Code]

5. Time of death of Meredith Kercher. – [3] **deficiency or manifest illogicality of the reasoning in contrast to the other court documents of the case. [Article 606 paragraph 1(e) Criminal Procedure Code]**

6. Genetic investigations
deficiency in the reasoning – contradictory nature and illogicality of the reasoning [Article 606(e) Criminal Procedure Code]

7. Analysis of the prints and traces.
deficiency in the reasoning. contradictory nature and illogicality of the reasoning [Article 606(e) Criminal Procedure Code]

8. Presence of Amanda and Sollecito at Via della Pergola on the night of the murder – misrepresentation of the evidence and illogicality of the reasoning – [Article 606 paragraph 1(e) Criminal Procedure Code] . Violation of procedural rules and illogicality of the reasoning [Article 606 paragraph 1(b) and (e) Criminal Procedure Code]

9. Simulation of crime
deficiency in the reasoning and manifest illogicality of the same [Article 606(e) Criminal Procedure Code]

10. Exclusion of aggravation in the *calunnia* offence
contradictory nature or manifest illogicality of the reasoning; defect resultant from the court documents of the case: from the declarations by Patrick Diya Lumumba, of those by the same accused Amanda Knox, and of the contents of the conversation between the latter and her

mother on November 10, 2007 – Article 606(e) last part, Criminal Procedure Code.

[4]

PREMISE

A reading of the judgment of the Court of Appeal of Assizes of Perugia[26] makes a critique of the method used necessary: the judgment at first instance is summarised in a few lines and in the prologue, in every case what is evaluated is almost exclusively the arguments of the defence consultants and the hypotheses reconstructed preponderantly favourable to the defence (for example, the greater attribution of reliability to the first rather than the second declarations of Ms Romanelli concerning the closure of the shutters). This appears to be in line with a kind of prejudgment, besides, enunciated at the beginning: the fact that nothing was certain save for the death of Meredith Kercher, an affirmation disconcerting in itself, inasmuch as it was put forward during the relation [of the case history] and, in vain, justified during judgment (cf. p 25) with the assumption that, – with all points of the first-instance judgment forming the object of appeal –, nothing could have been held to be certain, the which goes to reinforcing the perception of prejudgment, rather than denying it.

In following this path, the CAA has fallen into errors of method and in the substantially erroneous evaluation of acquired information which have influenced the correctness of the decision in a determinative way.

The typology of the errors committed by the CAA, independent of the specific examinations which will be reserved for each reason, can, broad brush, be summarise thus:

1. – The method of reasoning, founded on the so-called "**petitio principii**", which resolves itself into the defect of reasoning in the form of lack of, or apparent, reasoning (Article 606(e) Criminal Procedure Code)

---

[26] Hereafter, abbreviated as CAA

2. – The non-observance of the principles of law dictated by the Cassation Court in the matter of circumstantial cases (Article 606(b)) in relation to Article 192 paragraph 2 Criminal [5] Procedure Code)
3. – The violation of the **principle dictated by Article 238 *bis* Criminal Procedure Code** in the matter of utility, and of recognised probative value for, irrevocable judgements acquired by the trial (Article 606(b) Criminal Procedure Code)
4. **The non-observance of the law under Article 237 Criminal Procedure Code** in relation to the acquisition by the trial of the so-called *memoriale* of Amanda Marie Knox that the CAA did not hold to any account[,] affirming facts contradictory to the contents of the aforesaid *memoriale*
5. **The defective acquisition of decisive evidence** consisting of:
    a. In the carrying out of the genetic analysis on the sample taken from the knife – Exhibit 36 – by the experts nominated by the Court in the hearing of the appeal, the which [experts] did not proceed with the analysis of this sample, violating a specific request contained in the conferment of that expert responsibility.
    b. In the defective hearing of the witness Aviello, who had already been examined at the request of the defence during the course of the appeal, and for whom the Prosecutor-General had requested a new examination, having the witness during the course of interview by the Public Prosecutor for the offence of *calunnia*, retracting the declarations made during oral testimony and proffering grave declarations regarding the homicide of Ms Kercher.
    Refer, on this point, to paragraphs 2.1 and 2.2
6. **Defect of the so-called "fulfilment of the evidence"**, realised, as will be seen in the following, multiple times by the CAA, which ignored the ascertainment of facts irremediably opposed to the proper reconstruction of the facts. In this manner, the judgment has run into the error of contradictory nature and manifest illogicality in its reasoning (Article 606(e) Criminal Procedure Code). On this point, see paragraphs no. 5, 8, and 10.

- - - - - - - - - - - - - - - - - -

1. Petitio principii

[6] Among the errors encountered in the reasoning of the CAA judgement, one is so common, as to give indication of a true and proper error of method. The fallacy (logical error, error of reasoning) in which the CAA fell on many occasions is that of the *petitio principii*, which is also known under the name of "begging the question" or "bootstraps" argument. "**Begging the question** [or committing ***petitio principii***]

refers to assuming the truth of that which one seeks to demonstrate, in attempting to demonstrate it"[27]

"This would seem an obvious error, evident to anybody – but when it is shocking or obvious, the error depends in large part of the way in which the premises of the argument are expressed. Their verbal formulation often obscures the fact that the self-same conclusion is buried inside one of the assumed premises".

"Those who fall into this error are often not aware of having assumed what is proposed to be demonstrated. The step from the assumption [to the conclusion] can become hidden by the presence of confusing synonyms and which are not recognisable as such, or by a chain of arguments that depend on each other. Every *petitio* is a ***circular argument***, but the circle that arises – if it is large enough or has vague outlines – is not recognised".[28]

This type of fallacy was noted in the judicial sphere even in ancient times. As witness, Simona C Sagnotti, in her *Rhetoric and Logic*[29] .

The authoress includes, in a section devoted to fallacies, exactly the *petitio principii*, specifying that "the argument that repeats the premise in its conclusion is not correct". It is a matter of, according to Sagnotti, of a "paralogism[30] [7] that derives from assuming the proposition that at the start is established to be proved"[31].

To clarify the concept, it is good to have a clear example of *petitio principii*, taking into account, though, that, usually, this type of fallacy is less apparent, and therefore requires a major hermeneutic and logical effort to be recognised. The example, which is also to be found in the already-cited volume by Copi and Cohen, is the following: "We cannot all be famous, because we cannot all be well-known"[32]. The

---

[27] M Copi, C Cohen, *Introduction to Logic*, Bologna, il Mulino 1997, p 141 [*NdT*: cf. the currently available edition, Irving M Copi and Carl Cohen, *Introduzione alla logica*, 3rd edition, (il Mulino, 2010), at p192.]

[28] Same authors, *Introduction to Logic*, Italian edition, Bologna, il Mulino 1997, p 142

[29] Ordinary Professor at the Università degli Studi, Perugia, where she also teaches *Logic and Legal Argument* in the course for the Jurisprudence Master's Degree, as well as *Theory and Techniques of Argumentation* at the Migliorini School for the Legal Professions at the Università degli Studi, Perugia.

[30] (*NdT*: Paralogism: in philosophy, 'a piece of false or fallacious reasoning, especially (as distinguished from *sophism*) one of whose falseness the reasoner is not conscious' – *Macquarie Dictionary*, 5th ed.)

[31] S C Sagnotti, *Rhetoric and Logic: Aristotle, Cicero, Quintillian, Vico*, op.cit. p. 83

[32] M Copi and C Cohen, *Introduction to Logic*, Italian edition, op.cit., pp 147 and 651. (*NdT* – The example, an exercise for the student, is a quote by Jesse Jackson, cited in *The New Yorker*, 12 March 1984. See p192 of the 3rd Italian edition, 2010.)

uselessness of a similar argument is evident. Of the facts, the conclusion is nothing other than a restatement of the premise, which had been assumed to be demonstrated. This is equivalent to saying that the pretend or apparent conclusion adds nothing – literally nothing – to the premise, which remains totally undemonstrated.

At this point, in anticipation of the close scrutiny of the individual grounds in the CAA reasoning, it is useful, by way of example, to foreshadow the argumentative methodology of the appealed judgment in relation of Ms Knox's accusation against Patrick Lumumba. An accusation – it is noted – for which Ms Knox was sentenced for the crime of *calunnia* on the basis of the decision made by the same CAA.

In this case, the jurisdictional Court [=the CAA] holds that Ms Knox had accused Lumumba because it was, in some way, put to her about a little texting occurring between the same Knox and Lumumba.

Analysing the reasoning of the judgment on this point, the Court reasons in this way: it supposes that Ms Knox accused Lumumba only because she was questioned about that phone message, therefore (conclusion) Ms Knox accused Lumumba because those listening to her made it known that there was a message conversation between herself and Lumumba.

[8] So here, as can be seen, in its conclusion, the judgment does nothing other than repeat that which was in the premise and which, for all that, remained undemonstrated. Since, at the level of juristic logic, this is not a *tautology*, but a fake inference, to conclude the reasoning correctly, the judgment would have had to, not least, demonstrate the veracity/certainty of the premise in the reasoning. Of this demonstration, not only is there no trace, but there is not even an attempt at proof. The hypothesis is presented like this, privy of any logical basis.

Its repetition in the conclusions produces nothing other than a "vicious circle" which leads nowhere.

Logic errors of this type are not infrequent throughout the reasoning of the CAA's judgment and will be highlighted individually.

It is starting with observations like the one just noted, that it must be pointed out that the entire footing of the CAA judgment is characterised by the fact of encountering that error that it says it finds in the reasoning of the final judgment of the Court of first instance. Basing its opinion not even on probability but on mere

possibility. Not one of the arguments in the first instance decision has been invalidated by the reasoning of the appeal judgment; in truth, the CAA has not contested the conclusions formulated by the first instance bench with logical reasoning and relative to the procedural outcome, but it has limited itself to "not rule out" hypotheses contrary to those submitted by the prosecution and accepted by the CA, through inconclusive, circular, and so, useless reasoning. They are inadequate, above all, to refute what, instead, the first instance court correctly argued regarding the culpability of the accused.

2. Violation of the principles of law governing circumstantial [9] trials

The testing of the prosecution case and the result of this testing, which jurists define as "procedural truth", can be seen in the course of the trial: with so-called direct evidence, which are facts or circumstances demonstrating the accused's culpability or innocence, or else with what is known as circumstantial evidence [*indizi*], which consist of certain definite circumstances by means of which one may reach the indefinite fact constituting the prosecution hypothesis.

Our legislator, via the disposition of Article 192 Criminal Procedure Code, has dictated the rules for the evaluation of evidence in the criminal trial. It concerns itself with circumstantial evidence in paragraph 2 of the Article, specifying that: "The existence of a fact may not be inferred from circumstantial evidence unless this evidence is of sufficient weight, precise and consistent".

The Court of Cassation, knowing the risks connected with a decision founded on elements as labile as circumstantial evidence, but re-affirming the correctness of a probative evaluation primarily based "on probability and the maxims of experience", has affirmed generally that the validity of a probability decision is verified only when "one may plausibly exclude every alternative explanation which invalidates the hypothesis which appears most probable".

In a decision from 1995[33], the validation jurisprudents [=Cassation] explained the logico-inductive operation dictated by the legislator through the 2nd paragraph of Article 192 Crim. Proc. Code. The Court specified that "the free convincing of the court, which becomes extrinsic at the moment of the evaluation of the evidence, is the correct outcome, in a circumstantial trial, of a logico-inductive operation by

[33] Decision 4503 of 26/04/1995 RV 201133

which the maxim from **[10]** experience is positioned as the major premise, the circumstantial item [*indizio*] is the minor premise, and the conclusion consists of the proof of the fact under examination, which one arrives at if the circumstantial evidence is of sufficient weight [*gravi*], which is to say able to withstand objection and so be convincing; precise [*precisi*] and so be not susceptible to a different interpretation, at least as likely; and concordant [*concordanti*], which is to say not conflicting amongst themselves and with other definite elements.

The adjective "concordant" signifies that each piece of circumstantial evidence, even if it has to be evaluated independently, must merge together with the others in a logical and coherent reconstruction of the unknown fact.

The validation jurisprudents, in addition to the specific characteristics laid down by the rule in question, have insisted on, as well, that a circumstance or fact may assume the quality of circumstantial evidence only in the case in which it holds the characteristic of certainty.

This requisite is to considered implicit in the precision of the precept of Article 192 Criminal Procedure Code: with the certainty of the circumstantial evidence, in fact, comes the procedural testing of the actual existence of the piece of circumstantial evidence itself: in fact, it cannot be allowed to found the (indirect) critical proof of a supposed or intuited fact that probably happened, by illegitimately evaluating – contrary to unarguable principles of judicial civility – personal impressions or imaginings of the court.

The evaluation of circumstantial proof, according to the latest pronouncements of the Full Court of Cassation[34], does not exhaust itself in a mere summary of the circumstantial evidence and cannot therefore disregard the precautionary assessment of each single piece of circumstantial evidence, each one in its own qualitative import and sufficiently precise and grave, to be then evaluated, in a global and unified perspective, tending to throw **[11]** light on the linkages and the mergings in the same demonstrative context.

But beyond these given definitions of the method of evaluating circumstantial evidence, the Supreme Court has also suggested to the deciding judge the modality of unfolding of the proceedings in evaluating a plurality of elements of a

---

[34] Cass. Sez. U criminal judgment 33748 of 20/09/2005 Rv. 231678

circumstantial nature. The Court established[35] that "the rule enunciated in the initial proposition of Article 192 CPC, according to which 'the existence of a fact cannot be inferred from circumstantial evidence' – anchored, at the level of rationality, on the ontological ambiguousness of the circumstantial evidence, which does indeed allow that circumstantial evidence may be placed in relationships of causality, direct or inverse, with a multiplicity of causes or effects – meaning that the circumstantial evidence considered in isolation unsuitable to ensure the ascertainment of the facts.

It acquires the status of proof only when multiple pieces of circumstantial evidence can all be brought back again to one single cause or one single effect. In practice, therefore, the court must proceed in the first place with an examination of each piece of circumstantial evidence, identifying all the logical links possible, and therefore ascertaining the weight, which is inversely proportional to the number of such links, as well as their precision, which correlates to the clarity of its outline, to the clarity of its representation, to the source of knowledge, direct or indirect, from which it derives, to the reliability of the same. It must, lastly, proceed to a final synthesis, ascertaining whether the examined circumstantial evidence is concordant, that is, whether it can all be linked to one sole cause or a sole effect, such that the existence or non-existence of the fact to be proved can be inferred.

The appeal to Cassation's jurisprudence on the circumstantial case **[12]** originates from the fact the Assize Appeal Court did not deploy a unified appreciation of the circumstantial evidence and did not examine the various circumstantial items in a global and unified way. With its judgment it has, instead, fragmented the circumstantial evidence; it has weighed each item in isolation with an erroneous logico-judicial method of proceeding, with the aim of criticising the individual qualitative status of each of them; it was not therefore aware that, if it had followed the evaluative procedure dictated by Cassation, each item of circumstantial evidence would have slotted in with the others leading to an unequivocal clarification of the adduced evidence so as to reach the logical proof of the fact: that is, the responsibility of the accused for the homicide.

The District Court [= the CAA], holding the logical procedure followed to be correct, affirms in its judgment: "I*n short, the Court of Assizes of Perugia*[36]*, to be able to reconstruct the matter placed under its examination, has considered itself able to coordinate elements of fact, – themselves considered to be of a not quite unambiguous significance–, into*

---

[35] Sect. 6 criminal judgment 01327 of 14/05/1997 Rv. 208892

[36] Hereafter abbreviated CA.

a unified picture during the course of which each of those elements would be able to lead to a definitive clarification, and all of them, as a whole, to an unambiguous meaning, so as to rise to proof of guilt" (see the judgment p 137).

The appeal judges, in actual fact, deny that the probative reasoning and the decisive and cognitive proceeding of the court is to be found in the circumstantial evidence paradigm of the hypothetico-probabilistic kind, in which the maxims of experience, statistical probability and logical probability have a significant weight. The Court has to reach a decision, by means of the "inductive-inferential" method: it proceeds, by inference, from individual and certain items of data, through a series of progressive causalities, to further and fuller information, so arriving at a unification of them in the context of **[13]** the reconstructed hypothesis of the fact. This means that the data, informed and justified by the conclusions, are not contained in their entirety in the premises of the reasoning, as would have happened if the reasoning were of the deductive type, but are integrated with other known elements extraneous to the premises themselves[37]. A single element, therefore, concerning a segment of the facts, has a meaning that is not necessarily unambiguous. On its own it is insufficient. The reasoning already mentioned is required, characterised by a stepping through of the inferential syllogism in which the relationship that an individual element has with the others bears an extremely significant aspect; when all the various elements all point in the same direction, in particular in the sense of confirming the prosecutorial picture, it is evident that this will have an impact on the court's decision. It would be highly "improbable", both under the statistical framework as well as under the logical one, that the reality to be demonstrated, and on which the Court must promulgate its decision, will be different to the one signalled by the convergence of the various collected probative elements.

According to the legitimation jurisprudence [=Cassation], in fact, "*In evaluating evidence, the court must take into consideration each individual fact and their totality, not in a parcelled-out way and detached from the general probative context, verifying if they, reconstructed in themselves and placed together in rapport, can be organised into a logical, harmonic and consonant construction which allows, by means of the unified evaluation of the context, to attain to procedural truth, that is the limited truth, humanly ascertainable and humanly acceptable and satisfactory in the actual case.*"[38]

---

[37] Cass. Sezioni Unite 10 July 2002, Franzese.

[38] Cass. Pen. Sez. V 5 September 1996 n. 8314 (hearing 25 June 1996) Cotoli E.M.; Cass. pen. Sez. 1 29 May 1997 n. 5036 (hearing 3 April 1997) Pesce and others.

The Perugia Court of Appeal has opted, instead, exactly for the parcelled-out evaluation of individual probative elements, as if each **[14]** one of them must have had an absolutely unambiguous meaning and as if the reasoning to be followed were of the deductive type.

This error emerges from the text of the judgment itself, but the gravity of the error committed by the Court in it decision derives from the fact that even the individual element had been acquired by the cognitive-decisioning process in a totally partial manner, isolating the sole aspect that allowed the recognising of doubts and uncertainties in the element itself.

The appeal judgment has completely neglected all the other aspects congruent with the prosecution case, all the aspects that, instead, as seen in the reasons for judgment at first instance, were rigorously pointed out and considered by the CA in its decision.

In examining individual items of evidence, the appeal judgment fell into the error of deficient and manifest illogicality of the reasons inferable both in the text of the judgment as well as of the other court documents, in particular the first instance judgment, that is, of the error pursuant to letter (e) of Article 606 paragraph 1 Criminal Procedure Code, first and last parts.

During the course of examining the various points of the judgment, the errors of reasoning will be illustrated.

3. Violation of the principle required under Article 238 *bis* Crim Proc Code

The Court of Appeal granted the Prosecutor-General's request to acquire the procedural documentation, in the sense of, and for the effect of, Article 238 *bis* of the Criminal Procedure Code: Rudy Guede's first instance conviction judgment (appendix 1), appeal decision (see appendix 2) and that of Cassation (see appendix 3) for the murder of Meredith Kercher, from the moment that the conviction had already become definitive.

[15] In doctrine and in jurisprudence, a lively debate has arisen on the way to interpret the dictates of Article 238 *bis* of the Criminal Procedure Code:

"…judgments that have become irrevocable may be acquired to the ends of proving the fact by them ascertained…".

The legitimacy jurisprudence [=Cassation's rulings] has now settled definitively regarding the interpretation according to which finalised judgments can be acquired by the proceedings, as provided for by the indicated law, but they do not constitute full proof of the facts ascertained by them, but necessitate corroborations not differing from the declarations of the co-accused in the same proceeding or in a connected proceeding.

From this, it follows that the court cannot find the existence of the ascertained fact solely on the basis of the finalised decision, but has the obligation to identify an external confirmation of this, yet definitive, reconstruction[39].

Naturally, this confirmation is unnecessary when the finalised decision is not directly used for the purposes of proof but as corroboration of other circumstantial pieces of evidence or of evidence already acquired, not very different from what happens when declarations of collaborators with justice corroborate each other.

It is exactly for the corroborative function and not that of full proof of the finalised decision that Article 238 *bis* Criminal Procedure Code does not insist that the decision be pronounced in relation to the persons accused in those different proceedings in which it comes to be utilised.

It is not a case of legislative forgetfulness because the possibility of utilising proof formed under another proceeding against the accused, only when their defence counsel participated in its acquisition, is expressly **[16]** provided for by the rule preceding it (Article 238 Criminal Procedure Code, paragraph 2 *bis*) in the case of evidence argued during the *incidente probatorio* [preliminary hearing] or during the *dibattimento* [oral argument phase of a trial], and of evidence acquired in a finalised civil court decision with judgment passed in adjudication.

It must be further emphasised that, in these cases, the participation of defence counsel in the acquisition allows the attribution of the efficacy of full proof to the evidence in question, while, in the case covered by Article 238 *bis* Criminal Procedure Code this efficacy does not exist, requiring the proof to be objectively corroborated. The diversity in procedure, therefore, is encompassed: if the defence

---

[39] Most recently, Cass sez. 4, 29 January 2008, n. 1234, RV 239299; sez. 1, 9 October 2007 n.46082, RV 238167.

participates in the acquisition, the proof is full; otherwise, objective corroboration is needed.

The CAA, instead, has affirmed, on pages 26 and 27, "*in truth, this judgment, acquired pursuant to Article 238 bis Criminal Procedure Code and so utilisable under the probative framework only when one amongst its evaluative elements pursuant to Article 192, paragraph 3 Criminal Procedure Code ……. already appears in itself a particularly weak element, from the moment that the judgment, which related to Rudy Guede, had been carried out under the fast-track procedure*".

With clear jurisprudence, which has not undergone change from the time that Article 238 *bis* was added to the procedural code, the Supreme Court had already affirmed, in 1994[40], that *"by its reference to 'decisions having become irrevocable' the legislature, in the disposition by which Article 238 bis applies, has intended to render usable for the purposes of proof of the fact ascertained thereby, not only decisions handed down after oral argument, but also those given following fast-track trial, or rather, of the penalty sought for; the 'ratio' of the law, in fact, is that of not squandering known acquired elements in* **[17]** *provisions that have however acquired the authority of adjudged matters."*

In the correct interpretation of the cited Article 238 *bis*, the Supreme Court has again further, and has affirmed[41] that even a plea-bargain verdict pronounced in another criminal proceeding, owing to the legislative levelling of a verdict of guilt, can well be acquired and evaluated in the sense of Article 238 *bis* Criminal Procedure Code.

The *"weakness of the finalised decision against Rudy Guede"*, affirmed in violation of one of the teachings of the Supreme Court, is not the result of an analysis informed by the affirmations contained within it and of their non-coinciding with the data acquired in the first-instance trial or on appeal.

The preliminary of the specific weakness in the verdict against R Guede, abstractly affirmed in the premise, has in effect authorised the CAA to not concern itself with the contents of the finalised decision, which has not been absolutely considered in the reasoning of the district Court even when the observations formed on the debatable nature of the first-instance Court's decision were in such contrast with the judgment reached in this decision, to render them unsustainable: On this unsustainability, the reasoning is completely deficient and the appeal judgment has

---

[40] Cass. Pen. Sez. 2 sent. n. 6755 of 19 May 1994 [Rv. 198107]
[41] Cass. Pen. Sez. 6 sent. n. 10094 of 25 February 2011 [Rv. 249642]

fallen into error pursuant to letter (e) of Article 606 paragraph 1 Criminal Procedure Code.

4. Non-observance of the law pursuant to Article 237 Criminal Procedure Code

A reading of the Perugia Court of Appeal judgment shows a blatant defect of reasoning arising from the lack **[18]** of evaluation of the *memoriale* written by Amanda: the arguments used against the spontaneous declarations [in court] are, in this case, not usable, while from this document it is possible to obtain fundamental elements that are contrary to the conclusions of the Court, and this divergence also is deficient in reasoning.

The Court of Cassation had already pronounced upon the usability of the *memoriale*[42] which, in rejecting the request made by Amanda Knox's defence relating to the order dated November 30, 2007 by the Tribunal of Perugia sitting in its capacity as the Re-examination Court [*giudice del riesame*] had contextually affirmed (page 7): "*Following from these principles, the declarations made by Amanda Marie Knox at 01:45 on the November 6, 2007, as a result of which the interview came to be terminated and the young woman [ragazza] was placed at the disposition of the presiding judicial Authority, there being evidence emerging against her, are utilisable only* contra alios [=against others], *while the 'spontaneous declaration' of 05:54 hours is not utilisable, neither against the accused nor in dealings with the other subjects accused of complicity in the same offence, inasmuch as it was made without the defensive guarantee on the part of a person who had already formally assumed the status of suspect. On the contrary, the* memoriale *written in the English language by Ms Knox and translated into Italian is fully utilisable, pursuant to Article 237 CPC, since it is a case of a document originating from the suspect, who was the spontaneous material author of it for defensive purposes. The disposition under examination allows the attribution of probative relevance to the document not only for this and for its representative content, but also by force of the particular link that ties it to the suspect (or accused), so illuminating the union of admissibility that the court is obliged to implement.*"

[19] The content of Ms Knox's written *memoriale* evidences that the young woman from the United States "had heard Amanda [*sic*] scream, of having positioned herself away in the kitchen and of having blocked her ears with her hands so as not to hear her friend's scream["] and of "*having seen blood on Sollecito's hand during dinner*".

---

[42] Sez. 1 pen. N. 990/08

In the appeal decision's reasoning, the position of the Court on the matter of the *memoriale* (pages 33 and 34) is absolutely contradictory. To negate the document's value it affirms: "*as regards the murder, not only can the spontaneous declarations not be used, but in reality neither can the memoriale written successively, although utilisable under a procedural aspect, merits no reliability under the substantive one, not representing the real outcomes of the case* " (page 33). Successively, on page 34, to affirm Ms Knox's responsibility for the *calunnia*, it contradictorily affirms that there are no "… *objective elements relevant to holding that Amanda Knox, with the spontaneous declarations made and the* memoriale *written, she found herself not only in a situation of notable psychological pressure and stress but even in conditions of no 'intent and volition', so having accused a person that she knew to be innocent of such a grave offence, she has to however answer to calunnia …"*

The CAA does not explain why the *memoriale* is not reliable even though it had been written by a person in possession of a full capacity of intent and volition, so as to be convicted of *calunnia* accusations, referred orally to the investigating authorities, but repeated also in various passages in the *memoriale*. It is inexplicable that the judgment does not place the contents of the *memoriale* under any examination, contradicting what was affirmed by Cassation, which concerned itself at the precautionary [i.e., bailment] stage; by so **[20]** doing, the judgment falls, as well, into the error of contradiction of reasoning (Article 606 paragraph 1 letter (e) Criminal Procedure Code) in addition to the violation of Article 237 CPC (Article 606 paragraph 1 letter (c) CPC).

Documents referrable:

Appendix 00: Judgment of the Perugia Court of Assizes, n. 7/2009 of 4-5 December 2009, deposited March 4, 2010

Appendix 01: The Perugia GUP [Committal Hearing] judgment, October 28, 2008

Appendix 02: The Perugia Court of Appeal judgment n. 7/2009 of December 22, 2009 of the conviction of Rudy Guede for the murder of Meredith Kercher.

Appendix 03: Cass. pen. Sez. 1, judgement n 1132-2010 of December 6, 2010 [Supreme Court appeal] – Rudy Guede.

1 – The order of December 18, 2010 Admission of the expert witness report into the appeal judgment
Defect of reasoning of the December 18, 2010 order; contradictions and manifest illogicality of the judgment reasoning on this point (Article 606 (e) Criminal Procedure Code)

The CAA has explained the admission of the genetic expert examination requested by the defence and rejected by the first instance Court like this: "*The observance of the rule laid down by Article 533 Criminal Procedure Code (pronouncement of sentence only if the accused is found guilty beyond all reasonable doubt of the charge brought against him) does not allow the complete concurring of the first instance Court of Assize's decision around the preliminary hearing submissions by the defence counsel for the accused. The identification of DNA on various exhibits and their attribution to the accused becomes, in truth, particularly complex through the objective difficulty on the part of subjects not having the scientific awareness to formulate evaluations and opinions on* **[21]** *particularly technical matters without the assistance of an* ex officio *expert examination, hence the necessity to order an* ex officio *expert examination."* (page 17 of the order December 18, 2010).

That the reasoning on the point be completely missing is a circumstance that jumps out immediately, being the decision exclusively supported from the pleonastic argument relative to the particular complexity of particularly technical matters, without taking into account what emerged during oral argument at first instance, characterized by an ample debate on the results of the genetic analyses – with particular reference to the DNA found on the biological traces collected by the Scientific Police from the knife seized from Sollecito's house (Exhibit n. 36) and on the clasp of the bra (Exhibit 165b) worn by the victim at the time of the murder – by the bio-technicians of the Scientific Police, on the one hand, and by the distinguished[43] party consultants, on the other hand.

The position of the Supreme Court is, on the matter, firm in holding that: *"The renewal of oral argument in the appeal phase has an exceptional aspect, having to overcome the presumption of the completeness of the probative investigation by the court at first instance. It may, therefore, make use of it only when the court holds it necessary for the*

[43] *NdT* – Or, in an ironic sense, "thorough", or "first-class".

purposes of deciding" (Cass. Sez. 3 n.24294 of April 7, 2010) and that, exactly in consideration of the principle of the completeness of the hearing carried out at first instance: "*the decision to proceed to reopen must be specifically justified, it being required to account for the use of the discretionary power, deriving from the conscious admission of the relevance of the probative acquisitions"* and of the impossibility if deciding as to the state **[22]** from the court documents.[44]

It cannot be cast in doubt that the order that is here censured does not satisfy, even remotely, the exigency shown by the decisions referred to above: certainly not with the generic reference to the competing theses set out at first instance by the parties; certainly not with improper reference to the disposition accounted for by Article 533 Criminal Procedure Code, that must be referred to and applied by the court at the evaluative moment of the evidence and not already in the, – different and logically antecedent –, moment of deliberation of the admission of a means (which is the expert examination) of the evaluation of the evidence.

In other words, the CAA ought to have indicated what were the (possible, but non-existent) gaps in the genetic findings carried out at first instance; what were the themes that were insufficiently developed; what were the aspects of the genetic investigations that merited further enlightenment. None of this has been written down, limiting the Court to holding itself unfit to autonomously evaluate the (apparently exhaustive) conclusions reached by the professionals which were opposed to each other at first instance; by this, explicitly and inadmissibly asking the expert to choose which thesis they preferred.

And that this was the fallacious mental path followed by the judges, is evidenced by the reasoning of the judgment that – far from obviating the defect of reasoning in the order – renders the error more obvious: "*… Already at first instance, the accuseds' defences, through their consultants, censured the correctness of the Scientific Police's procedures in multiple aspects for their recovery*[45] *methodology and for their genetic analyses and the unreliability of the conclusions* **[23]** *formulated by them, but having unsuccessfully requested the Court, to remove doubt on the issue, to order a technical examination: hence the reiteration of the request subject to renewal of oral argument. This Court, via order of December 18, 2010, in ordering the expert examination, had already explained the exigency*

---

[44] Cass. Sez. 6 n.5782 of 18 December 2006, referred to in the already cited Cass. Sez. 3 n.24294 of 7 April 2010

[45] *NdT* – reading *repertazione* for the text's *refertazione* (~ "referral by a doctor to the police of a reportable matter").

underlying this provisioning: the identification of the DNA on various exhibits and its attribution to the accused becomes, in truth, particularly complex for the objective difficulty, on the part of subjects not having scientific knowledge, of formulating evaluations and opinions on particularly technical matters without the assistance of an ex officio *expert*[“] (page 67 of the judgment appealed from).

The argument just mentioned superimposes, on top of the already deduced error of lack of reasoning for the admission order, that of the manifest illogicality of the reasons for judgment, falling into the grave error of holding it possible to delegate to others the evaluation of evidence already acquired at first instance, contrary to the principles which inform the unfettered deliberation of the court, referred to also by that same Supreme Court: “*On the topic of judgment, the evaluation of admitted evidence is an exclusively judicial competency, it being exercised according to the principle of unfettered deliberation and with forbidding of its delegation to outside scientific persons, who have an exclusively instrumental and integrative value in the judicial awareness.*[46]

Much more grave appears the misunderstanding in which the second instance Court [the CAA] fell, when one focuses attention on the abnormal critique aimed at the first instance judgment which rejected the request, already formulated by the defence pursuant to Article 507 Criminal Procedure Code, holding that the nomination of an expert would not have removed from the adjudicating Court the onus of identifying the most congruent interpretation **[24]** amongst those offered by the various experts (which, in substance, resolve themselves into affirming or denying the attribution of the DNA analysed by the Scientific Police to the victim and to Ms Knox – as for the traces found, respectively, on the blade and on the handle of the knife – and to Sollecito – as for the trace found on the bra-clasp).

Well then, the CAA, distorting the significance of the argument given by the court of first instance, criticises the decision in this guise: “In addition, *the Court of Assizes at first instance has decided to resolve a scientific controversy, recognised as particularly complex, via an evaluation of a scientific nature directly formulated by the same Court. On the contrary, this second instance Court of Assizes* [i.e., the CAA itself] *has not held that the personal knowledge of the judges, professional and lay, are such as to allow the resolution of an, in substance, scientific controversy, to resolve it, therefore, on fundamentally scientific criteria, without the assistance of trustworthy experts, nominated by it, and who are able to carry out the task in the full cross-examination of the parties.*” (page 68 of the appealed

---

[46] (for all Cass. Pen. Sez. 3 n.42984 of 4 October 2007).

judgment). The second instance Court has therefore confused, through a gross misreading, the principle of unfettered deliberation [*libero convincimento*], positioned at the foundation of the decision of the first court regarding the superfluousness of an expert, with the presumed assumption on the part of this latter of the power to formulate their own hypotheses of a scientific nature.

The falseness and illogicality of the assumption is quite glaringly evident: it is false because the first instance Court specifically examined all the proposed theses, taking into account at length the reasons that led to it holding the findings of the Scientific Police reliable; it is illogical, because (to follow the logic of the second instance Court) if one admits affirming that even in the evaluation of an expert's conclusions, **[25]** – like those of the investigation taskforce's assistants and the parties' consultants, having as their object scientific arguments –, the court must avail itself of yet another expert. And so on, *ad infinitum*. By leave of the principle of the unfettered deliberation of the court.

As much as what has so far been covered would seem sufficient to confirm the absolute defect of reasoning of the order and the illogicality of the "additive" reasoning contained, on the point, in the judgment. But the reference to "full cross-examination of the parties" contained in the last sentence quoted above, tends to suggest another argument supporting the complete lack of reasoning in the order by which the expert examination had been made. And in truth, nothing was said of the fact that the findings of a scientific nature, the evaluation of whose reliability had been remitted to the experts, with the arguable questions formulated by the CAA, had been carried out by the relevant sections of the Scientific Police in the form of non-repeatable technical findings pursuant to Article 360 Criminal Procedure Code, with the guarantees therein provided for under the rubric of cross-examination, without there having been any emphasis [on it] during the course of all the phases of the operations and without the suspects and their defenders having reserved a preliminary hearing. The second instance Court lays out no argument in the December 18, 2010 order to sustain the absolute necessity of the expert examination, notwithstanding the report by Dr Stefanoni, who is the technician responsible for the biological section of the Scientific Police, forming part of the *dibattimento* file in terms of Article 492 Criminal Procedure Code, was fully usable for the purposes of the decision[47].

---

[47] for all Cass. Pen. Sez. 3 n.42984 of October 4, 2007.

Even in this case, the late inclusion of reasoning of the judgment (stimulated by the summing-up of the Procurator-General), not only does not plug **[26]** the evidential lacuna, but adds error to error and merits being quoted in full: "*Nor is the power to order an expert examination to resolve problems too complex for the given knowledge of the Judges, lay and professional, lessened only because, during the course of the investigations, the tests by the Scientific Police had been effected in unrepeatable-test mode, without there having been a probative objection raised; in the first place, because the unrepeatability does not derive from the method used but from being a truly unrepeatable test; in second place, because, in any case, the methods used do not fill the gaps of the judge of the debate, who does not become less ignorant only because the test had been effected via a particular method. But for the rest, it is exactly for this [scenario] that Article 224 Criminal Procedure Code permits the Judge to order even an* ex officio *expert examination"*.

The passage constitutes an exceptional mass of illogicality, contradiction and of erroneous interpretations of procedural rules. If one cannot agree on the fact that the unrepeatable nature of an act happens whenever the testing is unrepeatable, and that the "*particular methods*" to be followed derive from the unrepeatability of the testing, and not the other way round, one does not understand what motivational efficacy could redress a similar tautology which nothing explains concerning the substantive, preventative and prejudicial mistrust in the test results, notwithstanding the procedural rule confers an unconditional utility on it, evaluated by the first instance Court of Assizes, not without the critical evaluations put forward by the consultants for the suspects having been examined at length, and rejected with reasoning.

The second instance Court refused *a priori* to examine the Scientific Police's findings, which, in their words, does not leave them "less ignorant" **[27]** through the fact that they had been carried out in cross-examination as Article 360 Criminal Procedure Code requires and imposes.

The evaluation of evidence has been confounded with the sources of knowledge; the power of the first instance court has been confounded with that – circumscribed by the disposition pursuant to Article 603 paragraph 1 Criminal Procedure Code – of the appeal court; the reasoning obligation has been ignored also in relation to Article 224 Criminal Procedure Code, improperly cited; the principles governing unrepeatable technical findings have been ignored; any reasoning on the point has been omitted; confirming in the end, a willingness to delegate to the expert all evaluation of the genetic analysis results, which in effect, as will be seen, is what happened.

Documents referrable:

Appendix no 4: CAA order of December 18, 2010.

2.1 The Order of September 7, 2011 – Rejection of fresh expert examination

Contradiction and manifest illogicality of the reasoning. Missing acquisition of decisive piece of evidence – Article 606(e) and (d) Criminal Procedure Code

The CAA, by the order of September 7, 2011 has rejected, amongst other things, the Procurator-General's request to provide a supplement of expert testimony with the aim of carrying out genetic analysis on the quantity of human DNA extracted from the new trace sampled by the experts on the blade of the **[28]** knife (*trace 1* according to the Vecchiotti-Conti report) in proximity to the point in which Dr Stefanoni of the Scientific Police had sampled the trace from which she had extracted the DNA attributed to Meredith Kercher.

Although the first question formulated by the CAA inherently encompassed new samplings and analyses of probable DNA found, Dr Vecchiotti had considered not proceeding with the analysis of the extracted DNA and its consequent attribution in as much, on her advice, the quantity was not sufficient to carry out a reliable analysis. It was a case, that is, of *low copy number*, a term used in the literature in the field to indicate, in fact, a small quantity of DNA.

The prosecution consultant, Prof. Giuseppe Novelli (undisputed luminary of human genetics), on the contrary, had evidenced during the course of his depositions (cf. hearing transcript of September 6, 2011, pp52 and following) how, just like at the time the unrepeatable technical tests carried out by Dr Stefanoni (2007/2008), it was possible to analyse *low copy number* DNA traces with totally reliable results and how, with the new machines introduced in the meantime and amply tested, one could have successfully proceeded with the extraction, amplification and attribution of DNA having at one's disposition even just one cell (10, 15 picograms) and, therefore, of a quantity a great deal less than that sampled by the experts (approximately 100 picograms). The CAA, inexplicably, rejected the request, holding that "*To leave aside*

the sustainability or otherwise of the gaps set out by the Procurator General, and shared by the civil parties, the tests effected by the experts and the evaluative elements proposed by the parties' consultants allow this Court to form its own reasoned **[29]** *conclusion".*

It is quite true that the Supreme Court's jurisprudence holds the second instance court's reasoning to a less stringent standard when it is deciding to reject a preliminary investigation submission, but it is also true that, in the case with which we are occupied, the reasoning can be said to exist exclusively under a graphic profile and therefore purely apparent.

Given, in fact, the expert examination requested by the defence, a new element had appeared at the completion of the technical investigations susceptible of biochemical analysis, that is, further traces of DNA, not collected before.

The discovery ought to have induced the CAA, in concordance with the prior decision, to order new tests, to widen the scientific enquiry for a more complete evaluation of the traces, in particular those found during the course of the expert examination.

The Procurator-General, in this regard, had, as already mentioned, evidenced that new biogenetic investigative techniques would have allowed the analysis of this unexpectedly occurring piece of evidence, even if of scanty quantity; this was shown to the Court with total precision and by the authority of consultant Prof. Novelli, and on the basis of the declarations of this latter, the public prosecutor had requested a supplementary expert examination.

In the face of the discovery of new evidence and a request to test it, specifically argued under the scientific and procedural aspect, the Court adopted a provision to reject, privy of any real reasoning and in obvious contradiction to the necessity of further biological understanding explicitly affirmed in the dispositive order for the expert examination.

In the first place, because if the reasoned and full deliberation involves **[30]** the outcomes of expert tests, it cannot be based on the guidance of elements that have not been acquired by the experts' unilateral decision and not shared with the parties' consultants. It would otherwise, in fact, have been the case if the experts would have reported not having found any biological trace and the Procurator-General's request had been that of proceeding to with a fresh sampling: in this case, in fact, a reasoning that would have rejected the request for a consideration of the value of the already-obtained negative result would have been congruent. But the case before us is quite

different: the fresh biological trace exists, but there was no proceeding to go to an analysis of it and to extract the respective profile from it.

In the second place, because the second instance Court [the CAA] negates the relevance of a test that it itself has disposed with the first of the formulated questions: "*the College of experts to ascertain: whether, by means of new technical testing, the attribution and the level of reliability of the probable attribution of the DNA present on exhibits 165b (bra-clasp) and 36 (knife) is possible; if it is not possible to proceed with a new technical test, to evaluate, on the basis of the record, the level of reliability of the genetic tests carried out by the Scientific Police on the above-mentioned exhibits, with reference also to probable contaminations*". With the experts recovering a new trace containing human DNA on the blade of the knife (a certainly odd presence, if one has in mind the ordinary use of the utensil, and overall significant – even of itself, and to leave aside the attribution – and useful to compare with what was found by Forensics on the same blade), they could not exempt themselves from carrying the test to a conclusion, so being able to evaluate the unreliability or otherwise of the result only on completed procedures, just as the same question was explicitly suggesting. The refusal is even further unjustified if one considers **[31]** the state of technology at the time of the experts' response to the questions and the trenchant declarations of Prof. Novelli, never contradicted by anyone, if not the same second instance Court [the CAA], which affirms in judgment, contrary to the truth and to what emerges from the hearing transcripts, that the procedures of which Prof Novelli spoke are still in an experimental phase (page 84 of the judgment). Apart from the obvious error of having held the concepts of "leading edge" and "in experimental phase" to be identical when, in reality, they refer to completely separate situations: a technical certainty is experimental when its reliability has not yet been confirmed; it is at the leading edge when the method is innovative with respect to those preceding it; what counts more, though, is that Prof Novelli defined leading edge techniques as those with which: "*we are able to analyse, to produce profiles, with respect to the standard kits, in the order of 10 picograms, so we are already beyond the famous 100 picograms which people talk about today*.

Procurator-General: So below the quantity which has been found in these traces?

NOVELLI: It's possible, see, even I, in my field of geneticist I often find myself analysing small traces of DNA even as regards diagnostic questions, diseases, diagnoses on human embryos where we would have one cell only, we're speaking of 7 or 8 picograms, you can see how we have to be precise and accurate" (page 53 of the hearing transcript of September 6, 2011 already referred to).

It is clear, therefore, from the thrust of Prof Novelli's declarations, the techniques, which he described as leading edge –and for this reason put into practice by well-equipped and qualified laboratories – which allow the analysis of quantities of DNA at levels well below those with respect to which **[32]** was recovered by the experts appointed by the Court, whose reasoning on the specific point is, therefore, clearly illogical.

As can be quite well seen, the non-acquisition of an item of evidence that the Court itself had considered necessary, disposing the re-opening of oral argument and formulating that specific question for the experts, vitiates the judgment not only under the reasoning aspects placed into evidence so far, but also under the separate aspect of the non-acquisition of a decisive element of proof: and in truth, if the DNA sampled by the experts had been attributed to the victim, the decisive value of this result would have been obvious, it would have totally negated the experts' conclusions on the unreliability of the analyses carried out by the Scientific Police on the murder weapon. And, on the other side, it is the Court of Cassation's instruction the parties' recourse as of right to contrary evidence, even in cases where the evidence that is intended to be tested has been *ex officio* acquired by the court. The relevant jurisprudence, with a constant line, on this point has affirmed: "*On the matter of oral argument instruction, the court which – in the exercise of exceptional power pursuant to Article 507 Criminal Procedure Code – admits new evidence, but also admits contrary evidence.*"[48]

It must be held that the principle can and must be applied even in cases like the instant, in consideration of, – even though involving expert examinations –, it would have had as its object not only evaluation, but also acquisition, of data (the profile extracted from the DNA recovered by the experts from the blade of the knife) which would have constituted further evidence.

Documents referrable:

Appendix 6: CAA hearing transcript of September 6, 2011 – examination of Prof Giuseppe Novelli, technical expert for the prosecution.

[33] **Appendix 8**: CAA hearing transcript of September 7, 2011

---

[48] Cf. for all: Cass. n.29389 of 4 May 2007

2.2 Order of September 7, 2011 – rejection of the hearing of Luciano Aviello

Violation of Articles 190, 238 paragraph 5 and 495 paragraph 2 Criminal Procedure Code, as well as manifest illogicality of the judgment on the point by manifest illogicality of the reasoning – Article 606 (c) and (d) Criminal Procedure Code.

In its order dated September 7, 2011, the Court held the new examination of Aviello to be not indispensable. It was requested by the Procurator General following to the declarations made to the Public Prosecutor in the proceedings for *calunnia* against the brother, being limited to the acquisition of the interview transcript of the witness (originally called by the Knox defence and admitted by the same Court), in consideration of the "admissibility and relevance" with the order dated May 21, 2011: the new hearing, according to the Court, would not have been, in fact, "indispensable", "even in consideration of the acquisition of the transcript of his interview on the part of the Public Prosecutor" (see p52 of the hearing transcript for September 7, 2011). This decision is then justified, as will be seen, by the Court of Appeal in this current case, in the judgment (see p42 of the appealed judgment).

This decision, as well as being totally unsupported by reasoning, is also procedurally incorrect.

The witness Aviello had been admitted and examined on the request of the same Knox defence. Aviello, in fact, – as had been represented by the CAA, in separate proceedings, n. 10985/2010/21 RGNR, whose interview **[34]** transcript had been acquired by the Court right on September 7, 2011 (cf. Annexure n. 8) –, had not only retracted his declarations made in the present case, but had added totally new circumstances, and decisively relevant for the purposes of the decision, such as the fact that around three days after he got to know Sollecito, who revealed to him that it was Ms Knox who had been materially involved in killing Meredith in the course of an erotic game, after there had been an argument arising from monetary reasons and that the killing had occurred using the knife Exhibit 36.

Aviello, in the course of his interview, is reported thus as to what Raffaele Sollecito disclosed to him: "*…he was talking and talking and talking … saying: 'I effectively know, it's true, it's Amanda but I didn't do it, I didn't do the murder, it wasn't me' and I had said and he spoke often other (words inc.) about himself the fact of that, of that photo on the computer, I will never forget it, he says: 'That is toilet paper, he says that was Halloween, mardigras … but I know that Amanda is a knife collector – she did so herself – and effectively*

the knife was from the kitchen[49] *– he was telling me – although an argument came about in that fleeting event – he was talking of erotic games and was talking also saying – it was a money situation… He was there, who said that he wasn't? He was there, it wasn't him, physically"* (see pp49 and 50 of the statement of Luciano Aviello interview in the proceedings n. 10985/2010/21 RGNR Procura Perugia).

These confidences made to the witness by the accused Sollecito were pointing, therefore, to Ms Knox as the material author of the homicide, the same Sollecito as accessory or, in any case, present at the fact, and the knife known as Exhibit 36 as the murder weapon (see the statement previously indicated acquired by the Court via the impugned order).

The extreme relevance of the evidence in the present **[35]** proceedings against Ms Knox and Sollecito, in particular for the murder of Meredith Kercher, is, therefore, quite apparent.

The Court acquired Aviello's interview transcript, placing, amongst other things, the stress on his retraction and not on the totally new and relevant circumstances constituting Sollecito's confidences, but did not want to allow a new hearing of the witness.

It is necessary, at this point, to dwell on various passages of the decision because a rigorous examination of the logico-juridical path followed by the Court will reveal grave illogicality and contradictions; a contrast with procedural norms based on pain of non-utilisability and nullity; and a totally partial reading and, in this, misleading of the same acquired transcript.

As has been said, the witness, called by the Knox defence, had been admitted on 21 May 2011 and placed under examination on June 18, 2011 (see hearing transcript p12, and from p 103 to p123).

When the retraction and new allegations occur – relevant circumstances on the part of Aviello – it is the Procurator General who asks for re-examination of the witness.

The Court could do nothing other than grant the request: the principle of the right to proof obliged it to grant a request not forbidden by law and it was not manifestly superfluous or irrelevant (Article 190, 2nd paragraph Criminal Procedure Code). The

---

[49] *NdT* – rendering the locution: *il coltello era quello di casa* ("it was the house knife")

Procurator General, in his request for admission of Aviello's testimony, made known the fresh character of the evidence requested (see the hearing transcript of September 7, 2011 at pages 34 and 36).

The Court, in the impugned order (see p52 of the hearing of September 7, 2011), had instead affirmed that the "*new hearing of the witness Aviello* **[36]** *does not appear indispensable, even in consideration of the acquisition of the transcript of the interview on the part of the Public Prosecutor*".

The district Court [the CAA] had made reference to a concept, "indispensability", extraneous to the power of the court relating to the admission of "in contrary" evidence, which must be admitted except under conditions of prohibition of the evidence itself or of "manifest" superfluousness or irrelevance, not of indispensability, this requisite being extraneous to the conditions mentioned above, the only ones that could limit the power of the court.

The CAA does not explain why the requested evidence is not indispensable: the expression "even" which refers to the acquisition of the interview transcript alludes, in fact, to a further element that would render the requested evidence exactly not indispensable, but, apart from the extraneity of this requirement to the conditions pursuant to the second paragraph of Article 190 Criminal Procedure Code, no mention is made of what this further element (implied by the expression "even") could be, that would render the evidence not indispensable. Lastly, the same acquisition of the document cannot be considered as equivalent to a witness examination and, therefore, it is not understandable why this acquisition would ever render the examination not indispensable.

If this is the "reason" for the order, then, in its decision, the CAA has held, in particular Aviello, together with others, to be unreliable witnesses, due to the lack of any objective corroboration of the declarations made (see the judgment at p 42), an element, this, in total disaccord with respect to the reasons of the order.

[37] This affirmation of unreliability, besides being contradictory with the September 7, 2011 order, is also apodictic [=undisputable] because it is completely lacking in any reasoning. If, in fact, the Court is of the opinion to infer the unreliability of the witness from the intervening retraction, admitted onto the record, it would have had the obligation to recall the witness – who had by this time become a witness in the proceedings – and examine him. The omitted examination of the witness has removed from the proceedings [the opportunity of] the admission of declarations

with which he himself recounted the confidences made to him by Raffaele Sollecito, [and, as such,] extremely useful for the purposes of evaluating the falsity of the alibis of the two accused.

The Court rejected the request and had disposed, – in open violation of the principle of orality of *dibattimento*,[50] Aviello in his turn having been already admitted to testify, – the acquisition of new declarations from the witness, in spite of the defenders of the accused being opposed to it (see the transcript of the hearing of September 7, 2011 at pp 51 and 52) and therefore lacking the consensus of the parties that could have rendered the acquisition not allowable but, at the least, shared in common.

Once the transcript of declarations made by the witness in other proceedings was acquired, the CAA would have at least had to examine him and evaluate him in person. Just as has occurred almost systematically in the appeal process, the appeal court has instead isolated and considered, – with, amongst other things, illogical, incongruous and erroneous, reasoning –, only the "retractory" part of the transcript, that is, the one in which Aviello denies what he had previously declared in the proceedings, as a witness called by the Knox defence. It has instead incomprehensibly ignored the circumstances of the alleged induction to the false declarations by Sollecito, relevant for the purposes of the falsity of the alibi and of the confidences of the accused according to which it was Ms Knox who killed Meredith with the knife Exhibit 36, amongst other things the object of study **[38]** of the genetic testing, during the course of an erotic game and also for monetary motives, while he, Sollecito, was present at the scene of the crime. It was a case of totally new circumstances which ought to have found their way into the proceedings but instead they remained outside, and not only because the witness was not examined and was not able, therefore, to clarify them, but also because already having acquired the transcript, the Court has omitted any evaluation in judgment of these circumstances.

Rejecting the submission of a new examination of Aviello on new circumstances, it emerges after the examination of the witness, without there being the conditions pursuant to Article 190, 2nd paragraph Criminal Procedure Code, the Court has violated Articles 190, 238, 5th paragraph, and 495 para 2 Criminal Procedure Code, procedural norms guaranteed by the protection pursuant to Article 606(c) Criminal Procedure Code, in violation of the right to proof.

---

[50] *NdT* – the oral argument phase of a trial

In addition, justifying the denial with the appearance of non-indispensability even in consideration of the acquisition of the transcript, the Court has fallen into three censurable errors at Cassation-level, that is to say:

- it has not in any way justified "the *appearance of non-indispensability*", an element, this, which arises at root from the conditions requested for rejecting a, – for the more so, new –, request for proof, because relative to the new and opposing declarations made by the witness with respect to the precedents: therefore absolute deficiency of the reasoning pursuant to Article 606 (e), first part of Article 606 Criminal Procedure Code;
- it has not indicated which "other" element would have justified the rejection of the Procurator-General's submission regarding the acquisition of the statement; therefore absolute deficiency of the reasoning, in relation to the omitted element and manifest **[39]** illogicality of the reasoning, in relation to the indication of the element of acquisition of the document as subsequent with respect to another document not mentioned in any way (Article 606(e), first part Criminal Procedure Code).
- still continuing with the paralogism of "*petitio principii*", the CAA justified the denial of the evidence by reference to the acquisition of the statement, itself decided in "alternative" to the normal examination of the witness, with that "inferential" circularity already pointed out multiple times in the present appeal.

The Court, in other words, has rejected a request, making it derive, as a procedural presupposition, from an "alternative" decision made prior, as if to say: we will not allow you the examination because we will "concede" you the acquisition of the statement: therefore manifest illogicality of the reasoning, in relation to the rejection of an application by the parties, tied to the "concession" of the documentary acquisition decided by the same Court (Article 606(e), first part Criminal Procedure Code).

The Court has violated Articles 511 *bis*, 511 paragraph 2 and 505, Criminal Procedure Code, disposing the allegations of the statements without the prior examination of the person who had made the declarations in a different proceeding. Paragraph 2 of Article 511 Criminal Procedure Code, referred to by Article 511 *bis* Criminal Procedure Code, disposes, in fact, that the reading and therefore the acquisition of transcript of declarations made by the witness is disposed only after examination of the person who made them, unless examination had not taken place. But this exception is, on the face of it, inapplicable to the facts here because it was the same Court that had rejected the request for a new hearing of the witness Aviello, putting into gear, once again, that abnormal "circular"-type logic inference already mentioned.

[40] In the ambit of evidence law, the Court has likewise violated the rule that required it to admit decisive new evidence against the defendants on the facts constituting the object of the proof to be discharged, that is to say, Article 495 Criminal Procedure Code and, therefore, on appeal, pursuant to Article 603 paragraph 2 Criminal Procedure Code, being a case of new additional evidence after the first instance verdict (Article 606(d) Criminal Procedure Code).

In any case, once the transcript of the interview was acquired, in violation of the above-mentioned rules, the CAA would have had to have evaluated it in its entirety, but not even this occurred.

The judgement was based only on the part of the statement constituting the retraction of the declarations made during the current appeal process and has ignored the parts of the statement which contained the allegations against Sollecito of having pushed the witness [Aviello] to make calumnious declarations and the non-admitted confession of Sollecito to the witness.

If, according to the Court, Aviello is reliable when he is retracting, it is not understandable why he would not be so when referring to the co-involvement of Sollecito in the retracted declarations and of the confidence made by the same Sollecito indicating Ms Knox as the material author of the murder and wielder of the seized knife (subject of the examination disposed in the appeal) and the accused himself as, in any case, present at the scene.

This confidence totally escaped the Court.

The evaluation, carried out by the Court, on this sole "retractory" aspect, and the complete obliteration of the totally new element, constituted by the above-mentioned, further aspects that are completely new, render, therefore, the order affected also by the error pursuant to Article 606(e), last part, Criminal Procedure Code, through defect and, in any case, manifest motivational illogicality respecting the acquired statement.

[41] Even in another aspect, it must be emphasised that the judgement reasons are manifestly contradictory (see p42 again), according to which it is not shown that Aviello, Castelluccio, De Cesare and Trinca induced themselves to make declarations favourable to the accused and held by the Court not to correspond to the truth because they were solicited by others and in particular by the current accused. This would have no relevance, according to the Court, for the purposes of falsifying the

alibis, but it is a case of a quite obviously and fundamental erroneous and illogical conclusion: it is, in fact, the accused, together with his defence counsel, when he chooses, as in this case, a defensive line based on false testimony, to contribute in a definitive way to falsifying the alibi put forward. In his latest declarations, in fact, Aviello has, in fact affirmed, amongst other things:

"*the declarations which I made to the Court of Assizes and earlier were completely false, or better, were all agreed… In the Court of Appeal, on the 18th if I'm not mistaken, they were false, agreed with Sollecito's Counsel*" (see p24 of the acquired statement)

"*Giulia Bongiorno arrives…she tells be about the money and all these things*" (see p35, same document)

"*and which I would have had also by means of Sollecito's sister*" (p 36)

"*but I had all the guarantees because Ms Bongiorno was telling me that she was covered here in Perugia*" (p37)

"*I'm not going to confirm the declarations made to the Court of Appeal… Absolutely not, they're declarations… agreed with Counsel Dalla Vedova but even earlier with Raffaele .. the conduit for my money was Raffaele's sister, Giulia Bongiorno, although who to send it on to I had no one*" (see p40)

To the question of who would have invented the story of the little wall where he would have **[42]** hidden the knife, Aviello replied, "*Raffaele, his sister, the Counsel, when they were staying earlier in Perugia*" (see p 53).

And again: "*There was a staging, but not ordered by me … But indeed by Raffaele's Counsels… who had not even wanted to go to the interview in prison to avoid you ending up alone, so they had themselves called out making Amanda's Counsel to step in…Maori had always agreed that I should do this, already from prison before…*" and Aviello had added that this had been referred to him by Raffaele Sollecito (see p56)

"*Counsellor Bongiorno claimed that … she had strong ties …with the Perugia Prosecutor's Office*" (see the statement at p59).

These affirmations, the gravity of which is relevant not only to the proceedings which see the ex-collaborator charged with *calunnia*, but also the proceedings currently under way, are totally obliterated by the CAA.

The CAA's order of September 7, 2011 is, therefore, affected by error pursuant to (c) and (d) of Article 606 Criminal Procedure Code in relation to the procedural rules mentioned, the inobservance of which is penalised by the rule under Article 606(c) Criminal Procedure Code. Even in this case, the error indicated by letter (e), first part of Article 606 Criminal Procedure Code appears evident, because the manifest illogicality of the reasoning emerges from the text itself of the judgment (see p42).

Documents referred to:

Appendix 8: PV [transcript] of the interview with Luciano Aviello dated July 22, 2011, in proceeding No. 10985/2010/21 RGNR, acquired by the Court on September 7, 2011.

Appendix 7: Transcript of CAA hearing, September 7, 2011.

3 - **UNRELIABILITY OF THE WITNESS QUINTAVALLE.**

FAILURE TO OBSERVE THE PRINCIPLES OF LAW DICTATED BY THE SUPREME COURT IN THE MATTER OF CIRCUMSTANTIAL CASE AND ILLOGICALITY OF THE MOTIVATIONS IN THE EVALUATION OF THE RELIABILITY OF THE WITNESS – ARTICLE 606(B) AND (E) OF THE CRIMINAL PROCEDURE CODE.

It has already been mentioned in the introduction about the extravagance of some of the statements contained in the sentence of appeal and among these also the one used by the Court to argue that the testimony of Quintavalle would be a weak circumstantial element "by itself fails to prove not even presumptively the

culpability" (p. 51).

One finds is up against a true and proper falsification of the first instance decision, which does not base the defendants' declarative guilty judgment on the statements of the witness Quintavalle, but speaks of bringing in an element (not the only one) that demonstrates the falsity of the alibi. From the falsity of the alibi (not even derived solely from Quintavalle's statements) there is uniquely derived a piece of circumstantial evidence of guilt.

Thus the CAA considers that the deposition of the witness Quintavalle is "not very reliable" (p. 51) and the expression once again surprises because a witness is either credible and his statements will be usable or they will not. The introduction of the additional category of the *"not very reliable"* is the fruit of a subjective impression of the judger, such that it is hard to know what is to be meant by it.

The decision appealed from bases its judgment of low credibility on two circumstances: Quintavalle did not tell the officers who questioned him about that circumstance, and "he took a year to convince himself of the accuracy of his perception and of the identification of Amanda Knox." It then explains **[44]** the witness's bewilderment, claiming that the shopkeeper could have "evaluated the importance of his testimony in the days immediately following the event" (p. 52)

From thence forward the usual suppositions, the adjudicator, uncritically accepting an objection of the defence, had in addition affirmed that the identification of the accused by Quintavalle could not have been certain because he would have seen the young woman only in passing, out of the corner of the eye, not from in front.

In relation to the suppositions of the Court, it seems appropriate to recall that Quintavalle had explained the reason for which he did not mention having seen the young woman on the morning of November 2, and his explanation is confirmed by the statements of Inspector Volturno, who stated that the investigation activity, carried out in the early days after the fact, tended to establish whether there could

have been purchases of bleach made by Amanda and Raffaele with the clear purpose of checking if any cleaning activity had taken place to remove traces of the crime.

Quintavalle did not take a year to convince himself of the accuracy of his perception: his doubt was in regard to the usefulness of the date – his having seen the girl on the morning of November 2,- and in this regard reading the statements of Quintavalle (cf. transcript of the first instance hearing March 21, 2009) contradicts what, in contrast to the truth, was written by the CAA on this point. It should be thus noted that precisely such hesitation (is it useful or not? Am I going to say this or not?) makes it entirely plausible that Quintavalle had not on his own volition communicated to the inspector Volturno his having seen the girl, but limited himself at answering specific questions that, as mentioned, were put to him and which were focusing on the purchase of items and not on the people.

[45] A further observation on which the CAA bases its assessment of unreliability (thus: of low reliability) appears completely arbitrary, because contradicted by the statements of the witness. Quintavalle would had seen the young woman out of the corner of the eye and never from the front. From the examination of the statements made by Quintavalle in the first instance trial completely different facts emerge because Quintavalle affirms what was referred to by the Court of Assizes on p. 71, when the young woman was still outside the store (cf. transcripts of the hearing March 21, 2009, p. 72) adding: "*this young woman when she came inside, I looked at her to greet her; I mean I saw her at a distance of one metre, 70-80 cm*". Since in the ruling this clarification is omitted, one must presume that Quintavalle's statements had been accepted exactly as they had been reported in the defendants' grounds of appeal, intentionally deprived of all that could contradict it, thwarting its defensive utility.

The CAA then affirms that Quintavalle spoke of a grey coat, which does not appear that Amanda had ever owned; the Court however does not base its own assertion on negative findings, because such circumstance had never been the object of apposite investigations.

Not only is it incomprehensible how the Court could have been able to affirm that

Amanda as never owned such a garment but, and this is invalidating, even if it were true, it would be absolutely neutral because Quintavalle did not base his identification on the clothes which did not catch his attention all that much. Quintavalle, in fact, has based his identification above all on Knox's face, the features, and the colour of her eyes and it is to be noted that the witness had seen that young woman before, as appears evident from his statements and those of Inspector Volturno: all of this would have **[46]** allowed, – as was duly done in the first instance trial, based on procedural information and not on suppositions, – a different evaluation of the identification made by Quintavalle and in any case account what came out of the preliminary hearings effected.

Again it should be noted that the opinion of low reliability conflicts with the fact that the statements of Quintavalle have found full corroboration in those of the witness Chiriboga (hearing of June 26, 2009 p. 74) about which the CAA says nothing and does not explain its omission.

The Court devalues the reliability of Quintavalle, considering only the part of the statements suggested by the defence and hypothesizing one possibility, – for the witness to consider the importance of his identification, – which finds no justification at all.

The illogicality of the reasoning on the point can in addition also be deduced by the affirmations contained in p. 51 wherein the Court affirms that *"it would be a case of, even if hypothetically a true fact, an element of weak circumstantial evidence, inasmuch as on its own alone not conducive to proving guilt even presumptively"*. The fact that Quintavalle saw Knox on the morning of November 2,, in his shop at opening time, would be for the Court an unsuitable element, on its own, to proving culpability even presumptively. The erroneous evaluation of the items of circumstantial evidence, caused by the methodology followed, that has isolated them from the context and from the logical linking binding them with the other adduced evidence, does not allow one to comprehend that the testimony of Quintavalle, considered together with the other circumstantial evidence, contradicts the alibi of the accused who have claimed to have slept at Sollecito's house until 10:00 on November 2, 2007; the logical procedure adopted, in violation of the interpretative rules of

circumstantial evidence dictated by the Supreme Court **[47]** and mentioned in the premise, is illegitimate, misleading and illogical**.** Thus far, the contradictory nature of the reasoning was extrinsic, that is, obviously in contrast to the depositions of Quintavalle and of Chiriboga, as well as that of Inspector Volturno, but, under the last-mentioned aspect, the inconsistency is intrinsic and emerges from the same judgment, on pages 51 and 52.

The Court, which also bases the unreliability of the witness on the fact that this latter had recalled having seen Amanda in his shop on the morning of November 2, after a long time, does not explain, the reason why Quintavalle would be in a position to appreciate, in the days immediately following the event, the relevance of his identification. What would have been the elements capable of allowing Quintavalle to realize the importance of the circumstance? On this point, as it has already been noted, the judgment is completely lacking and it is a key step in the logical coherence in the assessment of the reliability of the witness (Article 606, para. 1(e) of the Criminal Procedure Code.

……..

Documents referrable**:**

Annexure 09: Transcript of the hearing, the Court of Assizes Perugia, March 13, 2009

Annexure 10: Transcript of the hearing, the Court of Assizes Perugia, June 26, 2009

Annexure 11: Transcript of the hearing, the Court of Assizes Perugia, March 21, 2009

4 - **UNRELIABILITY OF THE WITNESS CURATOLO**

ILLOGICALITY AND INCONSISTENCIES OF THE JUDGMENT [48] ON THE EVALUATION OF UNRELIABILITY OF THE WITNESS- (ARTICLE 606, PARA. 1(E) CRIMINAL PROCEDURE CODE)

In the section relating to the witness Curatolo, the judgment continues in its methodological line highlighted in point n° 2 of the premise of the current appeal; individually examines the considered items of circumstantial evidence instead of in their totality and their drawing together in the judgment of the Court of Assizes of Perugia.

In order to define correctly the scope of relevance of the testimony, ending in the negatived verification of the alibis put forward by the defendants, the judgment focuses on the theme of alibi verification for expressing its own assessment on the soundness of the falsity of the alibi itself. It affirms on this point that *"the falseness of the alibis, although definitely usable as a piece of circumstantial evidence, is definitely not sufficient by itself to prove guilt, being able to find explanation in other ends and reasons"* (see judgment p. 43). To thwart even the circumstantial relevance of the falsity of the alibi, the CAA stretches to claim that a possible explanation, "in the case in question", could be *"for example, if they had been present in the house at Via della Pergola and yet extraneous to the commission of the crime"*. The first instance judgment, – which as has been shown, has never been used as a point of reference, either positive or negative, by the appeal court, – adhering to a clear direction by the jurisprudence of legitimacy[51] [=the Supreme Court], had held that the false alibi, as such indicative (in contrast to an unproved one) of the defendants' attempt to evade the ascertainment of the truth, should have been considered as an *indicium* against them, which, although by itself incapable (in application of the **[49]** rule in the second paragraph of Article 192 of the Criminal Procedure Code) of basing a judgment of culpability on, having been revealed to be pre-arranged and mendacious and, in as much intended for the offender to escape justice, can be correlated with other circumstantial evidence and in the context of the overall probative complex, may provide that higher confirmatory value unifying all the other circumstantial evidence collected in the case.

---

[51] Ex pluris: Supreme Court Criminal Section 2, sentence 11840 of 11/03/2004 – 04/02/2004 rv. 228386.

On these pre-conditions, the judgment of the primary court arrived at the conviction of the accused after having evaluated numerous items of circumstantial evidence, amongst which the testimony of Antonio Curatolo would have had to have been numbered.

The district Court [=the CAA], slavishly following the submission of the appellants, attributed a special emphasis to the testimony of Antonio Curatolo, so much so as to have ordered the re-opening of oral argument and the hearing of various witnesses to rule out that the witness [=Curatolo] could have observed both defendants together between the hours of 22:00 and 23:00 - 23:30, on November 2,, in Piazza Grimana, where Curatolo used to permanently station himself during the day and, at times, also during the night.

As the judgment says (cf. page 48), "The testimony given by Curatolo presents two mutually contradictory circumstances: having seen the two young people [Ms Knox and Sollecito] in Piazza Grimana on the evening before the crime scene inspection by the Scientific Police and to having however at the same time, located the episode in the context of the Halloween holiday, and that is on the evening of October 31, [2007]"

The Court's evaluation regarding the circumstances ascertained through the examination of the witnesses, who cannot be the subject of this appeal, depend on reasons of merit undisputable at Supreme Court level, appear to conclude, as the same judgment argues in p. 50, that the sighting perhaps occurred on October 31,, the Court refusing **[50]** a priori to acknowledge that the witness could have been confused about the context about the evening of the sighting and not on what happened the following morning, when the crime was discovered.

This conclusion stands in irremediable contrast with what was stated during the oral argument at the first instance trial by Patrick Diya Lumumba, Gatsios Spiridon and by the same Amanda Knox.

On the night preceding that of the murder, the night of "Halloween", Amanda could have not been seen by Curatolo because she was in the not so very nearby pub "Le Chic", full of customers, where a Bulgarian girl who was there said to Patrick that Amanda was looking for him and she wanted a glass of red wine. Patrick Lumumba sees the young woman from Seattle, recalls that she was made-up like a cat, and this happened after 22:00, so much so that Lumumba reports: "I can say for sure that already by midnight and a bit and I think that she was no longer there" (cf. hearing transcript of April 3, 2009 pages 158 and 159)

Even the defendant [=Knox] disproves the CAA's hypothesis; she excludes that on the night between October 31, and November 1, she would have been in Via della Pergola, near the basketball court (cf the transcript of the hearing of June 12, 2009, p.125). So, Knox was at the "Le Chic" pub, after about 22:00, she met up with her friend Gatsios Spiridon in the town centre where, after a long time, Raffaele Sollecito joined them and she went with him to the latter's home around 02.00 AM.

Spiridon, for his part, in essence confirmed the story told by Amanda with greater precision and has said, referring specifically to the night of "Halloween": *"We met I think about midnight, she came to see me, we went around the local clubs in the town centre, 2-3 places, more than anything we walked about rather than remaining in the pubs because there was so many* **[51]** *people, and then around 02:00, 01:45 if I remember correctly, she told me that she had to meet up with this Italian guy that she met at the fountain. Me and my friends, we accompanied her to the fountain and said goodbye to her"* (cf. transcript of the hearing of June 27, 2009 at page 31).

Raffaele Sollecito, for his part, that evening was having dinner in a trattoria in San Martino in the fields, to celebrate Angelo Cirillo's (a friend of Raffaele Sollecito's) sister's boyfriend's graduation (cf. transcript of the hearing of July 4, 2007 [*sic*] pages 64 and 65).

On October 31,, therefore, the two defendants, from 21:30 to 23:00/23:30, were not and could not have been in Via della Pergola, but, as we have seen, Ms Knox in the pub Le Chic, dressed up as a cat, and then in the city centre with Gatsios Spiridon,

while Sollecito was at the graduation dinner with his friends, out of town. They were not where Curatolo would have seen them the following night and, moreover, they were also far apart from each other and they would have met up by the Fontana Maggiore, in Piazza IV November only around 02:00 on November 1, and, from there, they would have gone to Raffaele's house.

With regard to Curatolo's testimony, it should be specified that the examination had revealed out that the witness mistakenly believes, and has always believed, that Halloween falls on November 1, of each year and not on October 31,. When asked what night Halloween is, the witness replied: "It ought to be November 1, or 2,, the day that we celebrate the dead" (cf. transcript of the hearing March 26, 2011 p. 16). In the approximate understanding of the feast of Halloween, that a fifty-five-year old homeless man (who comes from the province of Avellino) can have, not to mention many inhabitants of Perugia, students or not, this holiday is already associated with the "dead", therefore with the night between the first and November 2,.

[52]

It is therefore evident that the homeless man superimposed the two events: the night of Halloween and the sighting of the accused, for which he was nevertheless an onlooker, the bench in front of the news-stand being almost his fixed spot. The superimposition has not in any case altered the effective temporal reference, which, as we already mentioned above, and as the witness has repeatedly said even at the appeal stage, the arrival of the Police and the Carabinieri was the day after.

To highlight the witness' extraordinary accuracy there is, amongst other things, the fact that two members of the Perugia Scientific Police who on November 2, 2007 went on reconnaissance with equipment, Assistant Palmieri and Assistant Montagna, leaving the Questura [=police headquarters] to go to Via della Pergola where there had been a crime reported "around 13:40 – 13:45" (cf. statements of Chief Insp. Claudio Cantagalli and Asst Chief Gioa Brocci, at the hearing of April 23, 2009, p. 86 to p. 126).

The CAA, possibly aware of the indefensibility of the sighting of both defendants on October 31, 2007, in order not to incline to the hypothesis submitted by the Procurator-General, according to whom the homeless man's imprecision of recollection, in relation to the feast of Halloween, could not be considered as determinant in claiming that the sighting could not have happened on the evening of the crime, in the end, declared, the witness's total unreliability. The Court states (judgment p. 51) that the deposition is not credible *"being unable to place any confidence on the verification of the episode, and above all on the identification of the two young people with the current defendants"*…

The conclusion of the district court [=the CAA] on this point appears illogical because it is outside of the deliberations that took place in the course of examination of the witness carried out in pages 43-51; in truth, the examination was confined to the presence of coaches in the square, to the presence of **[53]** young people who were going to the discotheques and the weather conditions on the evenings of October 31, and November 1,. No part of the examination has, instead, ever been about the identification of the defendants, that is, the possibility for Curatolo of identifying Ms Knox and Sollecito.

This certainty, which has not been questioned even by the appellants, emerges clearly from Curatolo's statement in the course of the hearing before the Court of Assizes; on this occasion the witness, having seen them in the courtroom, recognizes without a shadow of doubt both defendants, as the two young people whom he saw on the night of the crime in the basketball court of Piazza Grimana (cf. hearing transcript of March 28, 2009 p. 6).

The conclusion of the judgment on this point appears absolutely devoid of reasoning; but, on closer inspection, that is tied to what the appeal court judges are claiming about the witness to whom they credit *"a decline of the intellectual faculties... shown by his answers given before this Court in the course of his hearing and deriving from his lifestyle and from his habits"* (cf. judgment p. 44).

The claim of the decline in intellectual faculties, which finds no confirmation in a medical assessment carried out to that effect by the Court, derives only from an unjustified prejudice for the kind of life led by the witness, as well as the fact that Curatolo at that time was a user of stupefactants.

The disagreement on the part of the Court with Curatolo's life choices appears fully evident in reading pages 44 and 45 of the judgment. The formulation of a negative opinion due only to drug consumption appears evident only when one re-reads the transcript of the hearing of March 26, 2011. At the end of the examination of Curatolo, the Recorder [= Zanetti} posed questions to Curatolo about his choice to live as a homeless person and **[54]** in the end, asked the witness whether he used drugs, in particular in 2007.

It would be worthwhile quoting Curatolo's response: *"I used heroin"* (cf. the transcript p. 21).

For the Recorder, that could have been enough, but not for Curatolo, who concluded with decisive emphasis like this: *"I should point out that heroin is not a hallucinogen"*.

What the witness stated is true: opioids normally do not have hallucinogenic effects. Among the hallucinogens, there are natural ones such as mescaline, psilocybin, THC (Tetrahydrocannabinol), the active ingredient of the cannabinoids, and those artificial ones, such as LSD and ecstasy.

In conclusion, Curatolo is perfectly correct and extremely lucid: it is hashish, rather, that has effects of this type.

Opioids such as heroin cause, in fact, a rapid excitation, followed by a phase of sedation - relatively brief relaxation, after which the subject returns to near normal until the onset of a new phase of need of the substance.

On the relevance of the use of stupefactants on the "contradictions displayed", on the memory and about the possibility of formation of false memories, there is in the case file (available as well to the CAA), a scientific answer, altogether "beyond reproach", [where] Prof Carlo Caltagirone, consultant for the Knox defence, who, during the hearing of September 25, 2009, stated: *"Look, basically they are entirely almost insignificant... it is amply documented that it has no effect above all in people who have a certain habit..."* When asked by the President of the Court of Assizes of first instance: *"So it does not impede the memory and recollection"*. The Technical Consultant of the accused Knox replied: *"No, no,* **[55]** *no"* (see transcript of the hearing September 25, 2009 at p. 39). And the Technical Consultant was alluding to the hashish! All the more reason this answer counts for drugs devoid of hallucinatory-type effects, amongst which are the opioids such as heroin.

On the other side of the coin, the CAA did not alter its negative opinion on this fact not even after having verified that Curatolo was the key-witness in the murder [case] of an elderly lady, which ended with the definitive conviction[52] of the murderer. In particular, Curatolo indicated the time, by which the accused was held responsible for the murder (cf. hearing of May 21, 2011 statements by Deputy Insp Monica Napoleoni, p. 7).

From the considerations set out, therefore, there emerges the Court's absolute illogicality and contradictory reasons of the Court on the affirmation of unreliability of the witness Curatolo. The conclusions of the judgment on the point are inconsistent with the reasoning's premises and are founded on an unproven prejudice, without any scientific support because it is not based on any specific medical examination, which would have attributed to the witness "a decline of intellectual faculties" as regards being a heroin user. We also ask for, along this line of argument, the annulment of the judgment under Article 606 para 1(e) of the Criminal Procedure Code.

---

[52] NdT – definitive, *i.e.*, after all appeals were exhausted

Documents referrable:

Annexure 12: transcript of hearing Court of Assizes of Perugia April 3, 2009

Annexure 13: transcript of hearing Court of Assizes of Perugia June 12, 2009

Annexure 14: transcript of hearing Court of Assizes of Perugia June 27, 2009

Annexure 15: transcript of hearing Court of Assizes of Perugia July 4, 2007 [*sic*]

Annexure 16: transcript of hearing CAA of Perugia March 26, 2011

[56]

Annexure 17: transcript of hearing Court of Assizes of Perugia April 23, 2009

Annexure 18: transcript of hearing Court of Assizes of Perugia September 25, 2009

5 – TIME OF DEATH

Defect or manifest lack of logic in the sentencing report
- (Article 606, paragraph 1(e) of the Criminal Procedure Code)

The Court of Assizes had deduced the time of Meredith's death, whose time-frame was determined by the expert autopsy as being between 21:30 on November 1, and the early hours of November 2, 2007, from the declarations of the accused [=Knox], who referred to Meredith's screams of pain in the *memoriale* contained in the case file, but without giving [precise] times, and from the testimony of Nara Capezzali and Antonella Monacchia, confirmed by those of the witness Maria Ilaria Dramis (see transcript of the hearings of March 27, 2009, pp 100, 101, 102, 108, 114, 117 for Monacchia and from p 89 to p 95 for Dramis).

According to the appealed-from judgment, the time of death ought to be brought forward from the time indicated by the two witnesses who heard the harrowing scream. This assertion is based solely on the *hypothesis*[53] as reported in the following.

The intercepted chat (see Annexure n. 20)

The Court holds that in order to determine the time of death, the Skype call [="chat"] between Rudy and his friend Benedetti is usable: this conversation had been intercepted by the Police.

Rudy Guede, in the course of this tele-conversation with his friend, while **[57]** claiming that he had nothing to do with the crime, placed himself in the flat at Via della Pergola between 21:00 and 21:30.

It is unexplainable at a logical level why Guede would have lied about his participation in the crime (claiming his innocence), but would not have lied about the precise time, placing himself at the scene of the murder precisely at the moment when the crime was committed. There is no logical explanation for such behaviour. Neither does the reasoning of the CAA have any logical basis. Why believe what Guede says during a call in which he is – most certainly – lying, claiming himself innocent? A reasoning that seeks to be logical, confronted with Guede's certain guilt, and this precisely because he is lying when talking with his friend, should lead one to the consideration that the young Ivorian is also lying about the time. Indeed, following a rigorous logic, one should hold that the guilty party who wishes to deflect suspicion from himself, in addition to claiming innocence while admitting his presence at the crime scene, would not provide the precise time of the crime, but a different time, presumably, on the other hand, prior to the actual crime. From which, one could, instead, deduce, more correctly on the logical level, that the crime had occurred later than the time indicated by Guede during the intercepted call. Why

---

[53] NdT – emphasis in original

would he himself give a piece of information that would have incriminated him? Why then furnish the actual time of the crime, whilst at the same time denying that he was the one who committed it? Why – and this question contains its own diriment[54] – say the precise time of the crime, affirming his own presence on the scene, knowing himself guilty? If Rudy, knowing himself guilty, admits that he was at the scene where the crime had in any case been consummated, yet proclaims himself innocent, in the conversation with his friend, it is reasonable to think that he is referring neither to the exact time of the crime, nor even to a **[58]** time near to that actual one. To support his innocence and bolster his defence, the best position for Rudy would have been that of saying that he was in the house *before*[55] the crime. This is the logically correct reasoning that the CAA ought to have made. The hypothesis of the CAA is not in fact reasoning, because it lacks any kind of argumentation. Guede is hypothesized as saying the truth concerning the time, and, for the *n*-th time, the conclusion is reached in the same way. As has already been observed, it is a case of one on the not rare *petitiones principii* contained in the reasons of the CAA's judgment, combining the error of defect and illogicality in the judgment (Article 606, paragraph 1(e) of the Criminal Procedure Code).

But even this hypothesis (see p. 42 of the appealed judgment), which seems to satisfy the Court on the subject of the time of death, is then superseded by the one which the CAA will elaborate regarding the mobile phones of the victim.

The CAA has, once again, made another completely anomalous use of the Skype call, accepting it for the time of Kercher's death, but not for other circumstances which are also extremely relevant for decisive purposes, but which have been totally ignored.

In fact, in the call, Guede recounts having heard Meredith complaining about her missing money and of her intention of asking Ms Knox, with whom she had quarrelled, for an explanation (p. 10 of the call [transcript]), of having seen Meredith look in vain for the missing money in her drawer (p. 18), then of having seen

---

[54] NdT – solution, resolution
[55] NdT – emmphasis in original

Meredith look, still in vain, for her missing money in Amanda's room (pp. 18-19 of the call [transcript]), and of having heard a girl enter the house, who could have been one of the roommates, thus Amanda (p. 11 of the call [transcript]), while the Ivorian found himself in the bathroom, just before hearing Meredith's terrible scream which would have caused him **[59]** to exit the bathroom, about five minutes after the girl's ingress (p 12 of the call [transcript]).

The Court has, in practice, without reason thrown the responsibility onto Guede for throwing the rock and clambering in (see pp 121-122 of the appealed judgment): in the same Skype call, Guede, however, repeatedly denies having seen the broken window in Romanelli's room during the whole time in which he was in the house at Via della Pergola on that evening (pp 8, 20, 34 of the call [transcript]). Not only that: Rudy Guede also said that he was at Knox's "many times" (pp 88 of the call [transcript]).

If the Court held the Ivorian citizen to be sincere in the tele-conversation with his friend Benedetti, then why not also believe him when he denies having broken in, or when he recounts Meredith taking it out with Amanda, or when he says that he had been at the latter's place "many times"?

The judgment, apart from being manifestly illogical, is manifestly contradictory with respect to the contents of the case file referred to (Article 606(e) Criminal Procedure Code).

———————————-

Meredith's mobile phones

The Court hypothesizes, again in this case uncritically accepting one of the suppositions of the appellants, that the last calls made from one of the victim's

mobile phones had not been made by her, while hers would have been the attempt to communicate with her parents at 20:56.

The phone calls of 21:58 and 22:13 came to be interpreted by the appeal bench as evidence of the aggression that would have occurred at around that time. With **[60]** disconcerting superficiality, it is hypothesised that the aggressor, inexpertly, wanting to turn off the phone, at 21:58 erroneously keyed the number of Meredith's bank because it was the first number in the list.

With equal superficiality, the judgment, without supporting the conjecture with a scientific explanation, hypothesizes the ineffectiveness of the connection of the phone call of 22:13 (of 9 seconds' duration) inasmuch: it could have been explained as the reception of a "multimedia message" [MMS] (see p 60 of the appealed judgment). The hypothesis formulated, for the phone call of 21:58, appears totally unlikely, not only because familiarity with mobile phones is widespread, but also because the judgment does not explain how come the attempt to turn off the phone had not been carried to completion in a much more simple manner, such as taking the battery out or damaging it [the phone] in such a way as to render it unusable.

Equally unlikely is the hypothesis with respect to the 22:13 connection, made without human interaction, formulated solely to make the attack coincide with a time – 22:15 – different from that determined by the trial judgment.

From what was subsequently ascertained, the victim's mobile phones had been thrown away, coming out from Via della Pergola into the underlying countryside which in the darkness of the evening (or of the night?) would have been mistaken for a woody escarpment in an uninhabited area. One of the two phones (the one with the English SIM card) had been subsequently contacted and on the morning of November 2, it had rung.

The circumstance that Meredith had not tried to call her family makes several hypotheses possible, including some that were not taken into consideration by the

appeal judges, but still plausible: the victim may have decided to **[61]** postpone her call until around 23:00, as canvassed by the CAA, or else, having already spoken with both her parents on that day, she could have decided to wait for the next day to call them (see the declarations made respectively by Meredith's father and mother, with specific reference to this aspect, from the hearing of June 6, 2009: p 9 of the transcript for Ms Kercher's mother, Arline Carol Mary Kercher, who places her daughter's last phone call on the afternoon of November 1, 2007, and, for the father John Leslie Kercher, at p 22, where the latter places the last call made to him by his daughter in the early afternoon of the same first November).

Furthermore, the considerations made on this subject by the trial judgment at pp 352-353 have been totally ignored to uphold the hypothesis suggested by the Sollecito defence.

Suddenly changing its own conviction about the time of death, initially obtained from Guede's Skype call with his friend Benedetti, the Court, after having formulated these other hypotheses on the subject of the handling of one of the victim's mobile phones, fixes the time of the murder at around 22:15. This displacement of the time by 45 minutes with respect to the time indicated by Rudy Guede, according to the appeal judges, finds support in the idea (a further hypothesis) that, Meredith, not having succeeded in contacting her parents, would have however tried to do so again later, had she not been killed. This supposition by the Court could be sound, but certainly it is not anchored in certain facts; therefore it proves nothing, nor gives certainty to the formulated hypothesis. That which cannot be excluded is only possible. Not even probable. Because of this, it proves nothing; the rigour of logic, in particular, of judicial logic.

In this case, also, one is confronted with a circularity of reasoning, **[62]** called out in the premise, which sustains itself through the error of defect and illogicality in the judgment (Article 606, paragraph 1(e) of the Criminal Procedure Code).

The testimony of the three women

Not being able to demonstrate that the exact time of the murder could be established based on Guede's intercept, there instead remain, "credible" (according to the same CAA) depositions from two witnesses: Capezzali and Monacchia. The time of the "harrowing scream" and the sound of steps of several people running is indicated as between 23:00 and 23:30. Here, strange to say, the CAA finds traces of ambiguity in that half-hour of doubt between 23:00 and 23:30. It is obvious that, especially with seniors who do not often look at the clock, they are giving approximate times; a half-hour of difference, in a nocturnal recall, cannot be seen as undermining the testimonies of the witnesses Capezzali and Monacchia. The more so as there is a third witness, Ms Dramis, who provides a statement consistent with that of Capezzali and Monacchia.

The circumstance underlined by the CAA, regarding the tardiness of the witness Dramis, carries no import, at least if one does not wish to maintain that the witness Dramis would have some reason to lie. Contrariwise, nothing prevents telling the truth. Especially by the fact that her recall is not "technically" tardy, but – as the CAA itself asserts in judgment – only "expressed" tardily, because she was pushed to reveal it by a young apprentice journalist. In the reasons of the appealed judgment, it says that the Court "*does not hold that the element constituted by the scream, heard by signora Capezzali and signora* **[63]** *Monacchia, because of the ambiguity of its meaning and because of the impossibility of placing it precisely in time, can be privileged to other elements which would lead to moving the time of death forward by more than an hour*." (p 58). But what are these elements? They are the two hypotheses, contrasting with each other because they oscillate between 21:30 and 22:13, that the CAA has formulated from Guede and Benedetti's intercepted Skype call and on the usage of Meredith's mobile phone with the English service.

On the logical level, the causes that lead the CAA to conclude that the testimony of Capezzali, Monacchia and Dramis is irrelevant are unacceptable. The "ambiguity" is assumed as a premise, and not demonstrated. It is one of the many examples of

petitio principii. As if to say: that the statements of Capezzali and Monacchia are ambiguous, because of which, being ambiguous, they cannot be taken into consideration. On closer inspection, however, there is no trace, neither in the proceedings, nor in the judgment of the CAA. The same Court, for that matter, could have said the same of Ms Dramis, for the reasons given above. As for the impossibility of fixing the scream in time, there is, equally, no trace, neither in the court documents, nor in the reasons for the CAA's judgment. An uncertainty of half an hour within a span of time of, according to the medico-legal findings, about 5 or 6 hours ("between 21:00 and 21:30 of November 1, and the early hours of November 2, 2007", p 55), cannot be considered as a evidence of ambiguity, particularly, taking into account that – it must be repeated – difficult as it is to look at the clock during the night, when one rises from one's bed for physiological needs, intending to go back to sleep immediately afterwards. The opposite would have seemed much stranger. Taking into account that also Ms Dramis points to a timing compatible with that of Capezzali and Monacchia, the CAA's second premise in its reasoning **[64]** also has no basis.

Hypotheses remain hypotheses, then, and, without proof, are evidence of nothing on the juridico-logical plane. Conversely, the testimony of the two women who heard the harrowing scream are facts asserted by credible and reliable witnesses, recognized in the same appealed judgment. And, precisely because of the reliability of the witnesses, are proof.

Thus, the conclusions of the CAA are logically unfounded, the premises in the reasoning not reaching certainty-truth – or even probability.

The hypothesis about the mobile phones, unspecific, unanchored to objective facts and also contrasting with the declarations of Rudy Guede in his Skype call with his friend (held truthful by the CAA), has been judged valid and acceptable by the Court, and, under this aspect, the time of death has been brought forward to 22:15!

Vice versa, in taking the declarations of Capezzali and above all Monacchia into consideration, the Court has observed that "the witness was not more precise about

the time, she was not able to anchor it to objective data" (p 57). Was the Court not aware that its own solution – the 22:15 timing – was also not anchored to any certain data? The reference to the lack of anchoring of the declarations of the witnesses to objective data is not true, since both Capezzali and Monacchia have done exactly this.

In the light of the choice made by the CAA, it is cannot go unnoticed that even Amanda has spoken of the scream much earlier than Ms Monacchia and Ms Capezzali, and she had done so in her own *memoriale* of November 6, 2007, when no one could have known about the scream or even about the possibility that Meredith would have been able to scream.

[65] And, again, no consideration of the thanatological data examined in the trial judgment, the object of exposition by experts and consultants, has been effected by the CAA, which did not bother itself with expounding on any evaluation of these data, the most probable time of death being indicated as 23:30 (midway between 18:50 and 04:50, and thus within the range of times permitted by the thanatological data[)].

The reasoning on the time of the murder, in the entirety of its articulation, follows the pattern that was defined in the premise of this appeal submission as: "*petitio principii*", and bases itself on the error of the judgment, [namely] in its form or defect in reasoning, as well as in its manifest illogicality (Article 606, paragraph 1(e) of the Criminal Procedure Code).

Documents referrable:

Annexure 19: transcript of the hearing of the Court of Assizes of Perugia, March 27, 2009

Annexure 20: Skype conversation between Rudy Hermann Guede and his friend Benedetti

Annexure 21: transcript of the hearing of the Court of Assizes of Perugia, June 6, 2009

6 - GENETIC INVESTIGATIONS

DEFECT IN THE REASONING. CONTRADICTIONS AND ILLOGICALITY IN THE JUDGMENT (Article 606(e) of the Criminal Procedure Code)

As has been hinted, the expert report, in the absence of tests on the new traces sampled by the same experts, produced a documentary analysis of the operations, carried out by the Scientific Police **[66]** in the form of unrepeatable technical tests, and of the results obtained, to which the Appeal Court, as it had explicitly fore-warned, has passively adhered, importing completely the conclusions of the expert report, without adding any reflection which would have given account of the checks that the Court ought to have carried out on the consistency and fitness of these in the argumentative whole of the first instance Court of Assizes.

And, in effect, the [reasoning] structure of the Court of Appeal is that of assuming as axiomatic (that is, propositions assumed as true because held to be evident), mere expert opinions, even when these do not have, *ictu oculi*,[56] any scientific value inasmuch as not having as their object the interpretation of a scientific phenomenon, but a factual situation capable of affecting the interpretation itself only if demonstrated.

---

[56] NdT – a *coup d'oeil*, as the French would say

This is the case for the contamination of the exhibits that the experts assume as possible, but which in fairness is to be demonstrated, and which, in any case, is proposed as the basis for the substantive unusability of the genetic profiles obtained by the biologist of the Scientific Police. Indeed, the judgment/expert report holds that, even if wanting to adopt the conclusions of the Scientific Police on the attribution of the DNA extracted from the two exhibits (knife and [bra] clasp), it cannot be excluded that the examined DNA arrived on the exhibits, not prior by contact, but by contamination taking place in any of the phases in which the work of the Scientific Police was undertaken, from collection during the crime scene inspection to the analyses in the laboratory. It is evident that the "non-exclusion" of the occurrence of a certain phenomenon is not equivalent to affirming its occurrence, nor even that the probability that it did occur. Infinite are the events which, in nature, cannot be excluded, but which remain within the realm of possibility, if one is not able to **[67]** affirm where, how and when they would have happened, they cannot enter into a logical-juridical reasoning aimed at nullifying elements already acquired, above all if of a scientific in nature.

On the contrary, the Appeal Court, while being unable to affirm a contamination event, assumes such an unproven hypothesis as a determining element in holding that the results of the genetic tests performed during the course of the investigations are unreliable.

And it does this with the inconsistent and unshareable affirmation according to which the burden of proof relative to the defect of contamination would fall upon the prosecution, who ought to have provided the impossible positive proof of its missing occurrence. Thus from the CAA text: "*Now, Prof Novelli and then also the Public Prosecutor have claimed that it is insufficient to sustain that the result derives from contamination, it being the onus of he who claims contamination to show its origin. This argumentation, however, cannot be adopted, inasmuch as it ends up with treating – on the judicial level – the possibility of contamination as an exception of a civil-type nature. Thus, one cannot state: I have proved that the genetic profile is yours, now you prove that the DNA had not been left on the recovered item by direct contact, but by contamination. No. One cannot work this way. In the ambit of a trial -- as is noted,– it is incumbent on the Public*

Prosecutor who maintains the charge at law (the terminology is used in Article 125 of the implementation rules in the Criminal Procedure Code), that of proving the existence of all the elements on which it is based, and therefore, when one of these elements is completed by a scientific element, which represents the result of an analysis procedure, the onus is also that of proving that the result had been obtained by means of a procedure which guarantees the integrity of the **[68]** *exhibit from the moment of its collection*[57] *to that of its analysis*" (p 82-83 of the appealed decision).

The logical error into which the Appeal Court has fallen is quite evident: further, in fact, is the so-named *falsificationist* approach, which involves the evaluation of an element on the basis of a dialectical opposition of arguments in favour and arguments against, completely different from the rationality of an allegation reaching for contamination, which does not constitute a theory to be confirmed or to be denied, but a factual circumstance to be demonstrated. And it is transparent that, even in criminal procedure, the general principle "*onus probandi incumbit ei qui dicit, non ei qui negat*"[58] knows no exceptions.

In other words, if a piece of circumstantial evidence must be certain in itself, and if therefore even scientific proof must be immune to any alternative-explanation hypothesis, this does not alter the fact that this hypothesis ought to be based on reasonable elements and not merely abstract hypothetical ones. And if the refutation of a scientific piece of evidence passes via the affirmation of a circumstance of fact (being the contamination of an exhibit), that circumstance must be specifically proved, not being deducible from generic (and otherwise unshareable) considerations about the operative methodology followed by the Scientific Police, absent demonstration that the methods used would have produced, in the concrete, the assumed contamination.

In the present case, nothing is said in the judgment/expert report on how the victim's DNA could have been accidentally found on the knife-blade and Sollecito's DNA on the clasp of the bra worn by Meredith Kercher when she was killed. These same

---

[57] NdT – the text has "*refertazione*"

[58] NdT – the burden of proof falls upon he who states, not he who denies.

experts have, in fact, had to exclude (during their cross-examination by the Public Prosecutor) that it could have happened in the laboratory, both because of the time intervening between the examination of the exhibits in question and the examination of the previous exhibit that contained the **[69]** same DNA (cf. transcript of the hearing of July 30, 2011, pp 77 and following for the knife, pp 128 and following for the bra clasp), and because of the so-called negative controls that the experts had held to be indispensable to exclude contamination. These controls had been presented by the experts, though, as if not effected by the Scientific Police biologist, only in so far as not being annexed to the report. These same [controls] had been, instead, shown in court by the Public Prosecutor as documents already annexed to the case file at first instance (cf ibid pp 130 and following). Moreover, the experts had not been able to point to any reasonable source of contamination outside of the two exhibits during preceding stages: Professor Conti, questioned by the Public Prosecutor on the point, limited himself to claiming that "*Everything is possible*" (see pp 70 and following of the transcript of the hearing of July 30, 2011).

But these matters emerging from the proceedings were totally ignored by the appealed judgment, from which a glaring defect cannot but arise: "*The decision of the court of appeal judge, which involves the total reshaping of the trial judgment, imposes the necessity of demonstrating the incompleteness or the incorrectness that is the incoherency of the relevant argumentation with rigorous and penetrating critical analyses followed by complete and convincing reasoning which, when superimposed over the entire field covered by the primary court, without leaving any gap, will give reasons for the choices made therein and for the preference given to different, or differently weighed, elements of proof. The different explanation of a fact cannot be based simply on mere possible alternatives, untethered from procedural reality, but must be based on specific factual data which render probable the conclusion of a logical "path" that can be followed without apodictic affirmations but with a correct form of* **[70]** *reasoning. (In the circumstance of the case, regarding the effects of exposure to asbestos, the* [Supreme] *Court criticized the sentence of the territorial court* [=the appeal court] *which, without sufficiently examining the arguments of the first instance court, had disregarded the conclusions of this latter, although reached on the basis of information supplied from scientific studies by experts).*"[59]

[59] Cass. Sez. 4 n 7680 of 29.11.2004

Likewise no logical explanation has been supplied in order for adopting the conclusions of the experts even at the level of the reliability of attributing to Amanda Knox the DNA that was collected from the handle of the same knife that was held to be the murder weapon: it is illogical, in fact, to hold, on the one hand, that the tests performed by the Scientific Police are unreliable because of the methodology with which the exhibits had been collected and examined and, on the other, affirming their exactitude limited to one single trace. If the error committed is of a methodological type and if the Court, together with the experts, maintains that this error is liable to invalidate the results of the tests performed by the Scientific Police, they cannot but be totally swept away, without distinction. To save one of them means saving the criticized method and to irremediably contradict, therefore, what is being claimed for the other traces.

Equally contradictory and completely illogical is to maintain – as the judgment does, in unison with the experts – the inaccuracy of the interpretation of the genetic profiles performed by the Scientific Police (to put in doubt, in other words, that the extracted profiles effectively belong to the victim, for the knife blade, and to Sollecito, for the bra clasp), and **simultaneously** the possible contamination of the same exhibits, an argument which presupposes, instead, both the existence of the DNA and the accuracy of the attribution of the profile extracted from that DNA, landing, **[71]** however, on the exhibit by external contamination. Two clearly incompatible arguments but both married together uncritically by the Court.

7 - Analysis of the prints and other traces

Lacunae in the motivations, contradictions and lack of logic in the motivations (Article 606(e) of the Criminal Procedure Code)

After having argued, with the outcome described earlier, for the necessity of an expert report in order to clarify the decision of the court in matters outside of its cultural baggage, and to resolve the contradictions in the opposing theses of the parties, the Court of Appeal of Assizes improvised itself as an expert concerning the attribution of the bare footprints: that made in blood on the bathmat in the small bathroom (held by the Scientific Police to be compatible with Sollecito's foot and

incompatible with Rudy's), and those revealed by Luminol on the corridor floor (held by the Scientific Police to be compatible with Sollecito's and Knox's feet and incompatible with Rudy's). Likewise for the other traces of blood found in the little bathroom positioned round the corner with respect to the room where Meredith had been killed.

And, in truth, for these elements, – no less founded than the genetic analyses in proceedings and technical-scientific evaluations, – the Court accepted the defence theory totally uncritically without feeling any need for expertise of any sort, and without asking itself questions about the validity of the methods used by the defence consultant Prof Vinci. To this intrinsic contradiction, not corrected by any discussion of the point, is added the further glaring defect in the judgment whereby the CAA **[72]** completely distorts the significance of the conclusions by Engineer Rinaldi, director of the footprint section of the Scientific Police, as these were analytically reported in the reasonings section of the first instance judgment, from which work an evident distortion, with respect to the effective and objective (emerging, that is, from the mere reading) logistical steps of the amending decision [of the CAA], founds the reasons of the contrary opinion.

The meaning of the concept of probable identification, in fact, had been reported in the first instance judgment in agreement with what was deduced in the technical report: "*The lack of fine detail present on the papillary ridges, which are highly individualising elements, has led the specialists to conclude that the print on the small mat was useful for negative comparisons but not for positive ones, in this case, corresponding with what occurred for print 5/A and for numerous others Dr Rinaldi and Chief Insp Boemia have reached an opinion of probable identity, as will be explained*" (p 362 of the judgment at first instance). Now, there is no one who will not see that the CAA, in criticising the first instance judgment which gave credit to the Scientific Police specialists "*despite their assertion that the print on the small mat …was to be considered as useful for negative comparisons but not for positive ones*", carries out an illogical reasoning which leads it to incongruous conclusions, showing that it has not understood that the limit of footprint analysis does not relate only to those analysed in this trial, but <u>all</u> the footprints, given the absence on the sole of the foot and on the toes of the "fine details" that, instead, characterise the fingertips. A limit which, therefore, even the party's technical consultant has had to take into account, whose thesis, though,

appears in the eyes of the Appeal Court **[73]** to be immune to censure. Not only that, but the same Court uses the criteria and techniques of exclusion, whose evidential value it has just criticised, to attribute the same prints to Rudy Guede (pp 99-100 of the appealed judgment), while, as well, developing a series of completely illogical and contradictory circumstantial arguments: it is completely unexplained why Rudy would ever have lost a shoe with respect to the well-established presence of blood, indicative of the then-past overcoming of the victim; why ever Rudy would have washed his feet in the small bathroom but would have taken it upon himself to leave his faeces in the one further along; the circumstance that Rudy would have gone towards the front door wearing only one shoe is, to say the least, a bold claim, also because it does not locate the episode in which Rudy went into the other bathroom, with every implication regarding the staining of the corridor.

But there are further obvious and intrinsic contradictions in the judgment on this point: it is sufficient to read the following passage, relating to an argument of the first instance Court reported at length: "*But this is nevertheless a mere subjective impression, without any logical, and even less, technical-scientific support…*" (p 98 of the contested sentence), *although just earlier they asserted: "A simple visual examination of the photographs of the small mat makes it obvious that…"* (p 96 of the appeal judgment), and *"The which is in striking and irremediable contrast with what leaps out to the eye..."* (p 98 of the appealed judgment). It superimposes, therefore, on the presumed subjective impression of the first instance Court (for which it had just denied any argumentative value) its own definitely subjective impression, without giving, moreover, account of the reasons for which this should have been preferred to the former.

[74] Thus, nothing is explained and nothing is argued against the stringent thinking of the first instance Court which had led it to evaluate consultant Prof Vinci's arguments as unreliable: having, for example, employed the so-named "Robbins' grid" for aligning the prints for comparison, parting from a reference point different to the one used by the Scientific Police technicians, in conformity with the specific indications in the relevant literature.

As for the other bare footprints, revealed by Luminol along the hallway of the murder house, the forcing and, therefore, the illogicality, of the Appeal Court's reasoning is evident in holding that the prints (considered by the Scientific Police as compatible with those of Amanda Knox and Raffaele Sollecito), could have been the same as those left there on earlier occasions, when it is given of common experience that Luminol principally reveals traces of blood and, without giving the least evidence that other material, equally copious and equally sensitive to Luminol, had been poured out onto the floor, it is beyond logic to hypothesise that Ms Knox and Raffaele could have had bloodstained feet on a prior occasion and different from the murder. But here also the Court has limited itself to adhering to the undemonstrated theses of the defence.

Finally, the analysis of the results of the genetic tests on the bloody traces from the small bathroom, finally, provides, so to speak, a corollary to the reasoning inconsistency already presented; no point is put forward, at this level, on the reliability of the genetic profiles developed by the Scientific Police, which contrasts, once again, with the methodological criticism of the analysis which is discussed at length in the section dedicated to the expert report disposed in appeal.

And yet, not even these traces are rescued from the all-encompassing **[75]** botching of the work by the Scientific Police and the first instance count: this time, for the nonsensical reason that the blood traces containing DNA of Amanda Knox and Meredith Kercher would have been the result of a mixture unleashed by a collection error by the Scientific Police, who had improperly co-mingled the victim's blood, – carried into the bathroom by who knows who – and other biological material of Amanda Knox lying there prior to the murder, given that that was the bathroom (of the two present in the house) used by the two girls (see p 114 of the appealed judgment). The argument, borrowed wholesale once again from the daring and undemonstrated conjectures of the defence, is entirely irrational and illogical, because it does not even attempt to justify the "singular" coincidence of the presence of Amanda's DNA in all the traces mixed with Meredith's blood, lacking, beyond everything, the presence of other's DNA which might explain who and how – if not Ms Knox – the victim's blood had been carried from the murder room to various points in the little bathroom where the traces had been collected.

The CAA finishes its demolition of the first instance judgment on the scientific evidence with an argument meriting quotation in full: "*It cannot, therefore, be CONVENIRSI with the conclusions which the judgment makes on this matter on pages 405 and following. According to the Court of first instance, the two accused, stained with Meredith's blood, would have gone into the adjoining small bathroom, and there they would have washed themselves (it must be recalled that, according to the primary court, the imprint on the small bath would have left by Sollecito's right foot). But, if it had happened like that, it is not explained how come not the slightest genetic trace of Sollecito has been found in the small bathroom, despite the fact that the action of rubbing, owing to the washing up, would have entailed the loss of cells by exfoliation (as can be read,* **[76]** *in the judgement)*" (p 114 of the contested sentence).

The Appeal Court, however, does not explain why, on the basis of these same negative elements (absence of DNA in the small bathroom), it excludes the presence of Raffaele Sollecito and includes that of Rudy Guede who would have amply washed there (and afterwards swapped bathrooms to defecate…) but without himself having left any biological trace.

8 - xxx

[93]

9 - The staging of the crime

Defect in the reasoning and manifest illogicality of the same (Article 606(e) of the Criminal Procedure Code)

In relation to this accusation [staging the crime scene], the sentence absolved the accused because "the fact does not subsist".

Before proceeding to the detailed examination of the reasons of the Court, it becomes necessary to point out an anomaly which has ended up in distorting the principles which the legislature has laid down in Article 238 *bis* of the Criminal Procedure Code.

The usability, though limited, of the definitive sentence handed down for Rudy Guede on the same facts, as we know, could have been evaluated by the Court with to the legal rule dictated by Article 192, paragraph 3 Criminal Procedure Code, that is together with all the other pieces of evidence acquired in the trial against Knox and Sollecito.

In the case under examination, the Court has revisited the fact of the staging, without evaluating any new element with respect to those already used evaluated in the definitive decision, which convicted Rudy Guede of the murder of Meredith Kercher. All the witnesses having confirmed their declarations made during the course of the preliminary investigations, the elements at the disposal of the various judges have been the same, but the conclusions have been the opposite. The district Court [=the CAA] has re-tried the case, for this part, affirming his guilt in contrast to the definitive verdict. The acquittal of the accused for the offence charged against them of staging a crime is not consequent on the defective finding of their criminal responsibility, but has been instead the consequence of the paradoxical recognition of the responsibility of Rudy Guede, who was not an accused in the current trial, for having **[94]** committed the deed. Beyond this anomaly, which renders the decision of the territorial Court [=the CAA] on this point illegitimate, it appears however opportune to point out how also in this case the reasoning of the appeal judges has resulted in a "petitio principi[i]".

In the challenged judgment, it is asserted that "*the Court of Assizes at first instance ruled out that Rudy Guede could have had a motive in simulating the theft by means of breaking in through the window, keeping in mind that he, just days before, had been surprised inside a nursery in Milan where he had entered into illegally at night […] so that it would have been truly singular that […] to divert suspicion away from himself he would have simulated the carrying out of an illegal activity that was habitual for him.*" (p 115)

And again: "*In truth, […] it is exactly these elements, which lead the Court to hold that this is clearly about a simulation, to make people think that Rudy Guede, putting in place an evident staging, had thought to distance suspicion from himself, from the point that a professional thief does not simulate a theft, but commits it for real*" (p 115)

According to the CAA, in contrast to the Court of Assizes, Rudy Guede had an interest in simulating a theft.

Above all, the assumption that Rudy would have had any interest in staging is, to say the least, astonishing: and why so? If someone had seen him, and he knew about it, he would not have been able to act; if he did not know it, the artifice would however have not served its purpose; if no one had seen him, it would have been an artifice destined to make the clues point to a thief, reinforcing the possibility of working out it was him. The staging could not have been anything but the work someone who had reason to deflect suspicion from those staying in the house, in practice only Amanda, given the cast-iron alibis of the other two flatmates (Romanelli and Mezzetti) and the boys from the floor below.

[95]

Independently of the paradoxical premise, the argumentation of the CAA must be considered a fallacy, noted in ancient times, which has the name of *corax* (from Corace, to whom is attributed its identification). The *corax* is also, like ***petitio principii***, a "circular argument", thus "useless" and "inconclusive". An argument that proves nothing. To give an example, this argument is of the type: "Because Tom has threatened Dick publicly a few days before his murder, it is improbable that it was him who killed him, otherwise he would not have threatened him in front of witnesses". But the argument is circular, – as we were saying, – for the simple reason that to every *corax* one can respond with another *corax*. In fact, one may object to start with that "thinking that publicly threatening him would have allowed a refutation of that allegation, instead it was him" … Through this logic, in sum, without showing how many *coraces* can be invoked, since they are infinite, no

conclusion is reached proving anything. Any circular argument, in fact, is useless to prove anything.

On the logico-juridical level, the Court of Assizes' hypothesis is not tarnished by the response from the appeal court, since it is logically unsustainable, falling into the logical fallacy of circular reasoning referred to as *corax*.

As for the truth about the staging, the arguments proposed in the challenged judgment are not sufficient to prove the opposite thesis. And this because the conclusions reached by the CAA are founded on hypotheticals: ***if*** the shutters were open (not taking into account at all the declarations of Romanelli at the first instance trial – see transcripts of the hearings of February 7, 2009, pages 25, 26, 67, 68, 96, 103, 104, 115, 116); ***if*** a window pane is broken perhaps also no fragments remain on the windowsill; ***if*** the intruder has entered through the window he might also not have **[96]** left any traces on the wall or on a nail, which still remains straight and unbent, etc. It appears evident that one is going beyond probability (so deplored by the CAA in the conclusions to its own judgment reasons), reasoning instead on the basis of mere "*possibility*".

Independently of the erroneous structure of the reasoning, the decision leaves a whole series of points obscure, which it ought to have clarified in any case – in fact, it does not explain:

• how the author of the climbing exercise could have been able to think of climbing without a ladder at night and above all not knowing beforehand of the existence of the nail;

• how it could have come about that, in those conditions of time and place, the climber could have left no trace on the wall;

• why it must be considered plausible that that the author of the climbing exercise could have really performed the two phases, having first to push aside the shutters and then proceeding to climb after having thrown the rock, beyond the uncertain result of the throw;

• why the pieces of glass which, owing to the rock-throw, should have fallen also on the outside, have been found all on the inside, and also why, as well, they did not impede the ingress of the climber, who left no traces of blood on the windowsill, demonstrating that no cuts on the hand had occurred.

Finally, it is altogether incongruous that if the climbing thief would have really broken the pane before entering through the window, the pieces of glass could be found on top of and beneath the clothing, and it is even more incongruous to think that this could have taken place after the rummaging through of the clothes, one cannot see how the pieces of glass would have been able to end up, that is, climb back up, on top of the, by now, strewn clothes. The lack of logic of the thesis centred on the frenzy of the manoeuvre is **[97]** manifest, being an argument lacking any concreteness or coherence, also because the presumed thief had quite quickly mutated into something quite different, so as to render superfluous any remark on the reasonableness of the explanation.

And above all, the stubbornness of the climber, firmly decided on perpetrating the theft, how can this be explained, without there having been a precautionary investigation that there was no one at home? This is all the more pertinent in the timespan of 21:30-22:15 hypothesized by the Court, when it was reasonable to suppose that there might still have been some sign of Meredith's presence, having just arrived home. However, in desiring to think the opposite, whichever hour be hypothesized, it is quite incongruous that the unknown person could have made all the fracas hypothesized with the rock throwing and the smashing of the panes, without Meredith's having noticed it and having attempted to flee, or hide herself, or call someone for help; and furthermore, it is not clear why the climber, who was intending to carry out a theft, when all was said and done, had stolen nothing, had taken only the phones which he had then abandoned, and, *per contra*, if he had been taken by an unusual homicidal frenzy submitting the victim to the treatment well-known to us, importing an entirely different approach and a completely different type of criminal act.

But to all these questions, which the first instance judgement posed giving a coherent response and in line with the outcomes of oral argument, the challenged

judgment does not give any response, it formulates, instead, hypotheses which ought to be proved through an inductive reasoning, and instead, far from being subjected to testing by certain elements deduced from the oral argument outcomes, the hypotheses become certitudes for the adjudicator, from which, **[98]** with respect to the initial hypothesis, there spring fallacious conclusions.

The entire judgment on the point follows this scheme, which in the premise of this appeal is referred to as "*petitio principii*", and embodies the error of the judgment, in form or of non-existent reasons, or in that of manifest illogicality (art. 606 paragraph 1(e) of the Criminal Procedure Code).

_____

Documents referrable:

Annexure 22: transcript of the Court of Assizes Perugia hearing of February 7, 2009

_____

10. – DEFECTIVE RECOGNITION OF AGGRAVATION IN THE TELEOLOGICAL NEXUS OF THE OFFENCE OF *CALUNNIA*.

INCONSISTENCY OR MANIFEST ILLOGICALITY OF THE REASONS FOR JUDGMENT; DEFECT ARISING FROM THE TRIAL DOCUMENTS: FROM THE DECLARATIONS OF PATRICK DIYA LUMUMBA, FROM THOSE OF THE SAME ACCUSED AMANDA KNOX AND FROM THE CONTENTS OF THE CONVERSATION BETWEEN THIS LATTER AND HER MOTHER ON November 10, 2007 – Article 606(e), last part, Criminal Procedure Code.

The CAA held Knox responsible for the offence of *calunnia* under heading (F), to the detriment of Patrick Diya Lumumba, but did not recognise aggravation under Article 61(2) of the Criminal Code, charged against Ms Knox, due to having committed the *calunnia* with the aim of obtaining, for herself and for the other co-accused, impunity from the murder and in particular for Guede, he being of colour just like Lumumba.

The Court of Appeal of Assize, therefore, upheld the *calunnia* charge against Knox, but excluded from it any link with the murder.

[99] To produce a logical and rational motivation report, the CAA first of all explained why Knox named Lumumba, then, -- in the attempt to overcome the evident contradictions recognisable between holding Ms Knox responsible for the *calunnia* damaging Lumumba, and instead holding her extraneous to the offence in which she knew Lumumba to be extraneous to, -- has explained why Knox could not have been aware of Lumumba's innocence and, simultaneously, why she would have to be extraneous to the murder.

It is a question of the points of the [Court's] reasoning being, as will be seen, profoundly and manifestly illogical and conflicting with the procedural findings, which will be successively indicated [below].

Why the name of Lumumba?

According to the CAA, Ms Knox had calumniated [=*slandered, knowingly provided false information about*] Lumumba solely to put an end to the "stress" of the "interrogations".

The judgment appealed from displays not having, in fact, upheld the prosecutorial assumption according to which Ms Knox, anxious because Sollecito had negated the alibi of their being together that night, decided to say what had happened, substituting Lumumba for Rudy.

According to the appeal judges, in fact, "The obsessive length of the interrogations which took place day and night and were conducted by several people questioning a young and foreign girl,… deprived of the advice of a lawyer, to which she would have been entitled since she was by then in fact accused of serious crimes, and assisted … by an interpreter who …instead of limiting herself to translating also tried to induce her to force herself to remember, explaining to her that maybe, because of the trauma she had undergone, her memories were confused, makes it altogether understandable that she found herself in a situation of significant psychological pressure – calling it stress **[100]** would appear reductive – such as to raise doubt about the actual spontaneous nature of the declarations. A spontaneity that surges forth strangely in the middle of the night, after hours and hours of interrogation: the so-called spontaneous declarations were given at 01:45 (in the

middle of the night) of November 6, 2007 (the day following the beginning of the interrogation) and again at 05:45, and the memorandum was written a few hours later." (page 30 of the appeal judgment).

Now then, beyond grave and totally unfounded insinuations on the non-spontaneity of Ms Knox's declarations, it is not given to understand from what the Court infers such a particular psychological stress in the young American woman, so as to induce her to commit a grave *calunnia* purely to "free herself" from the investigators' questions.

In the course of investigations for such a brutal murder, it is a completely normal eventuality that investigators during the early days of the investigations will be making lengthy and pressing questionings of people who are able to furnish information about the facts. Long examinations had to be endured by the victim's Italian housemates, especially Ms Romanelli, their friends, the boys who were living on the floor below, in addition to Ms Kercher's co-nationals, who even returned from the United Kingdom to answer further questions after having been interviewed at length in the Questura, but to none of them did it ever enter their minds to accuse an innocent of the murder to free themselves from the "weight" of questioning by the investigators.

On this point it is to be observed, further, that it was Ms Knox who presented herself in the Questura on her own initiative to accompany Raffaele Sollecito, who was going to have to be interviewed: *"Ms Knox was waiting and doing cartwheels and the splits and was tranquil up until the mobile phone was shown to her"* (Knox cross-examination transcript June 13, 2009, pp 17 and 18 and examination of Inspector **[101]** Rita Ficarra, February 28, 2009). All the so-called "interrogations" up until the declarations at 05:45 of November 6, 2007, were incorporations [*assunzioni*] [into the evidence file] of summarised information in which Knox was heard as "[a person] informed of the facts" and in which no defence counsel was able to participate. It is truly disconcerting how the CAA ignored the procedural cloak that Ms Knox wore up until the officers of the investigation taskforce of the Perugia Flying Squad suspended the examination of Ms Knox as provided for by Article 63 of the Criminal Procedure Code, there having emerged against her indicia of responsibility for the murder; from that moment onwards, Ms Knox was not placed under any examination or "interrogation".

The Court has affirmed that the "interrogations" were conducted by numerous people, evidently even the one in consequence of which Ms Knox reached the peak

of "stress" and calumnified Lumumba, but this circumstance, put forward by the defence in the appeal document, is absolutely unfounded.

If the District Court [*i.e.*, *the Court of Appeal*] had deepened its reading of the trial documents, it would have had the means of noting that the same accused [=*Amanda*], in the conversation with her mother on November 10, 2007, pp 43 and 44, had admitted:

"A[60]: I said … that what happened was that everyone had left the room, at that moment one of the police officers had said: 'I'm the only one that can save you, I'm the only one that can save you. Just give me a name.' And I said: 'I don't know!' And then they said, I said: 'can you show me the message that I received from Patrick?![']Because I don't remember having replied to him, and so they showed me the message, and then I said: "Patrick …' And then I thought about Patrick, of seeing Patrick, and I, I mean, thought that I had completely lost my **[102]** mind, and I imagined him uhm …seeing him and …

M[61]: Seeing him where?"

A: Seeing him near the basketball court.

M: OK.

A: And then in my house, I uhmm, imagined that he went like that in the kitchen, I mean uhmm … because – I could hear her screaming, but it's not true. It isn't.

M: So, yes, they are now saying that you were .. OK

A: And so it's not true. I said this only because I thought that it might have been true, because I imagined it. I didn't say it because I wanted to protect myself; and I feel horrible about this. Because I've put Patrick in this horrible situation, he is imprisoned in gaol now, and it's my fault. It's my fault that he's here. I feel terrible. I didn't want to do this. I was only frightened and I was confused, but now I'm not.

M: OK, OK.

A: I'm here, and I'm safe and sound. But I don't want to stay here, because I know that I don't merit staying here."

---

[60] Amanda Knox
[61] Edda Mellas, mother of Ms Knox

M: OK."

From the words of the accused, it can be inferred that, at a certain point, everyone who had been participating in the "interrogation", as the CAA calls it, went out, leaving a "police officer" who invited Ms Knox to remember; then she asked him to show the reply message to Patrick, Ms Knox not remembering having replied and it was then that Ms Knox accused Lumumba.

The Court, instead, reconstructs the crucial moment of the *calunnia* recalling, according to it, the declarations by the interpreter Donnino, according **[103]** to whom Amanda had a true and proper emotional shock when "*the story of the message exchanged with Lumumba came out*". And so, if Lumumba were innocent, why this shock? Because, replies the Court, "*having at that point reached the maximum [point] of emotional tension"* (pp 31 and 32).

Once again the Court constructs an hypothesis that is a pure conjecture, privy of any which confirmation.

Ms Donnino affirms (see the declarations at the March 13, 2009 hearing, p 137) that Amanda had denied having responded to Patrick's message but, when the opposite was proved by showing her the reply, she had the emotional breakdown and began to accuse Lumumba.

The Court of Assize dwelled upon this same circumstance and had excluded the hypothesis of a "forcing" by the Police of Ms Knox because she had accused Lumumba, and this because the latter [*i.e.*, *Lumumba*] had absolutely not been under the attention of the investigators who did not, in any case, without any other reason, have any motive for pushing Ms Knox to accuse Lumumba (see the CA judgment, page 418).

The total reasoning illogicality of the Court and the distortions of the probative findings do not end here.

According to the judgment appealed from, (p 32) "constructing a brief story around that name [Lumumba] was certainly not very difficult, if for no other reason than that many details and many inferences had appeared already the day following [the crime] in many newspapers, and were circulating all over town, considering the small size of Perugia".

On the day after the murder, though, contrary to the affirmation by the Court, no-one knew anything and there was no possibility of making conjectures. From which

certain facts did the Court draw out this conviction? The judgment is lacking any indication that can transform the formulated hypothesis **[104]** into a certain datum on which to construct a credible supposition; the hypothesis is not demonstrated, and the deduction a fantasy, completely invented by the Court, without any objective confirmation.

The newspapers concerned themselves with Lumumba only the day after November 6, because he was arrested. They had never spoken of him before.

Here also we must note another tripping up in the judgment in the false inductive reasoning constituted in the "fallacy of circular reasoning" already pointed out in the preamble to the appeal, that resolves itself into the defect of the extrinsic inconsistency of the reasoning identifiable in terms of Article 606(e) of the Criminal Procedure Code. Why did Amanda know Lumumba to be innocent?

According to the CAA, there are no contradictions between holding Ms Knox responsible for the *calunnia* in the matter of Lumumba in relation to the Kercher murder, and, therefore, aware of his innocence, and the fact that this crime [the *calunnia*] had not been finalised with a view to obtaining, for her and the other co-accused, impunity from the offence of that murder.

The Court of Appeal* had been well aware of the intimate connection existing between the *calunnia* ascribed to Ms Knox and her involvement in the Kercher murder and had no doubts in holding the sustainability of aggravation. Recalling the prosecutorial thesis, the Appeal Court*[62] affirmed that "…*Amanda Knox could only know that Lumumba was innocent of the crime of murder because she herself had participated in that crime, and thus knew who the real murderers were; if she had not participated in the crime or had not been present at the moment of the crime in the house at via della Pergola, she could not have known that Lumumba was innocent.*" (cf the appeal judgment*, p34).

[105] It is difficult to contest the high degree of coherence and rationality of the prosecutorial thesis under discussion that the judgment appealed from is however constrained to refute (as can be seen on p35 of the judgment) to be able to justify its own decision.

---

*[62] The text has "Corte di Assise" (CA) instead of CAA, and "primo grado" (first stage, first instance) instead of "secondo grado" (second stage, appeal stage). A *lapsus calami*.

How can one subject be certain about ruling out another subject from a specific criminous fact if the first is not involved in the fact themselves?[63] For the Court of Appeal, instead, the conviction of Ms Knox for *calunnia* is based on the fact that she was certain of the complete extraneity of Lumumba in the murder of Ms Kercher, yet still being herself extraneous to the latter.

The Court of Appeal justified its conclusion, affirming that Ms Knox was definitely aware of Lumumba's innocence, but not because the accused had participated in the offence and knew who the authors were, but because "*the lack of any evidence [elementi] connecting Lumumba to Meredith Kercher, could allow Amanda Knox, even if actually innocent herself and far from the house in via della Pergola at the time of the crime, to be aware of the complete non-involvement of Lumumba*" (pp 34 and 35).

This does not tally, though, with the procedural findings: it is not in fact true that there were no elements of ties between Lumumba and Meredith. In his declarations of April 3, 2009, Patrick Diya Lumumba refers to having met Meredith exactly through Amanda (cf the transcript of the declarations by Lumumba of April 3, 2009, at pp 151 and 152).

There was, instead, an element of a tie, and it was constituted by Ms Knox herself who had introduced Lumumba to the victim.

The explanation invoked by the Court, in one of the most critical passages of the judgment, to reconcile the psychological element of the upheld **[106]** *calunnia* against Lumumba with the claimed extraneity of Ms Knox to the murder is thus contradicted by specific information acquired during the trial at first instance.

The defect consequent to the missing correspondence between the probative outcome at the base of the judicial argumentation, and the procedural or probative act (defined in terms of "procedural inconsistency", different to and distinct from that of "logic") is not limited only to textual identification of the reasoning of the provisions appealed from, being able to be itself signalled, through the currently assented-to "hetero-integration", also through other acts of a procedural or probative nature, provided that they are specifically indicated.

---

[63] Cf Cass. Pen. Sez. VI, September 14, 2007, No 34881 (hearing March 7, 2007) Profeta and further in addition Cass. Pen. Sez. II, January 21, 2008, No 2750 (hearing December 16, 2008) Aragona. [RV 237675]

The recent reformulation of Article 606(e) of the Criminal Procedure Code, under Article 8 of Statute No 46 of 2006, has widened the ambit of the defect of reasoning with reference to the conceptual category on "inconsistency", which the Court of Appeal of Perugia is also drawn into.

Documents referred to:

Appendix 23: hearing transcript, Court of Assize, Perugia, June 13, 2009, cross-examination A. Knox.

Appendix 24: hearing transcript, Court of Assize, Perugia, February 28, 2009, examination of Inspector Rita Ficarra.

Appendix 25: conversation of November 10, 2007 between Ms Knox and her mother.

Appendix 9: hearing transcript, Court of Assize, Perugia, March 13, 2009, examination of the interpreter Anna Donnino.

Appendix 12: hearing transcript, Court of Assize, Perugia, April 3, 2009, examination of Patrick Diya Lumumba.

Appendix 31: hearing transcript, Court of Assize, Perugia, June 19, 2009, examination of Edda Mellas, mother of A.K.

[107]

Appendix 1: Judgement of the Court of Assize at first instance at p 419

CONCLUSIONS

Examination of the various grounds of appeal has evidenced the grave logico-juridical errors committed by the Court of Appeal, already described in the preamble.

From the reading of the judgment in its totality, independent of the individually examined grounds, an overall anomaly of the decision of the appeal bench emerges: the District Court placed itself, in the case before us, not as an appeal court upon which was incumbent an analysis of fact and of law of the verdict appealed from, with specific reference to the reasons for appeal and to the observations made by the

Procurator-General, but as a sort of "alternative first instance" court, whose task was to make a decision on the facts, without the least examination of the decision at first instance. In carrying out this task, the judgment did not shrink from disconcerting polemical observations about the court of first instance, too "flattened out" – this is the recurring theme – on that position of the prosecution and the findings of the investigative taskforce. With this approach, the anomaly of an introductory summary was not avoided in which the Recorder [=the *relatore*, or associate judge, Massimo Zanetti] began with a most grave affirmation for a "third verdict" according to which ["]the only truly certain and indisputable objective fact" was the discovery in the house on via della Pergola in Perugia of the body of Meredith Kercher, because only on this point were the public and private parties in agreement.

From the analysis of the various grounds of appeal emerges a truly radical and above all disconcerting **[108]** gap between the effective reality of judgment at first instance and the reconstruction of the same as given by the CAA It will suffice to cite on this matter, purely as an example, the "falseness of the alibis" that, for the CAA, is absolutely the first datum from which the CA begins, even at the level of exposition (see the appealed from judgment, p 11), as if the court at first instance had begun from an undemonstrated affirmation regarding that of the presence of Ms Knox and Mr Sollecito in the house on via della Pergola on the night of the murder. The CAA actually cites a passage with quotes from the [original] sentence appealed from, which becomes reported like this: "*"No element" – a verbatim quote from the sentencing report - "however, confirmed that Amanda Knox and Raffaele Sollecito were not to be found, late in the evening of that November 1,, in the house on via della Pergola""* (see the appeal judgment p11).

Unfortunately, the Court of Appeal, not even in this passage, has indicated the exact context of the passage and has limited itself to underlining the fact that the "falseness of the alibis" relating to the presence of the two accused in a place very nearby, but different from, that of the murder on the night of 1, and November 2, 2007, was the first consideration taken into account by the CA both in the history of the proceedings and at the beginning of its evaluative conclusions. The CAA in judgment, verbatim, affirmed thus: "*The Court [of first instance], from a narrative point of view as well, starts precisely from this first fact, which was described for the first time both during the course of the trial as well as in the concluding evaluations*" (see the judgment at p11).

The phrase in question, though, is not to be found at the beginning of the judgment, as erroneously sustained by the CAA, but inside the concluding considerations,

precisely at p 382, after a meticulous analysis, deepened and completed by all the probative elements emerging from the investigations and the preliminary hearings. There is no trace, either, in the "history **[109]** of the case": see p1 and p9, contrary to the assumption of the Court of Appeal.

It is submitted, therefore, because the most Excellent Court of Cassation, in accepting the current appeal, will desire to quash the decision of the Court of Appeal of Perugia, No 4 of 2011, handed down on October 3, 2011 and deposited on December 15, 2011, in the proceeding with the ordering of a new determination under Article 623(c) of the Criminal Procedure Code.

FOR THESE REASONS

It be requested that the most Excellent Court of Cassation desire to quash the appealed decision adopting the consequent provisionings.

Perugia, February 14, 2012.

(signed)

Procurator-General

Giovanni Galati

Deputy Procurator-General

Giancarlo Costagliola

[110]

Table of Contents

[111]

List of attachments to the appeal to Cassation

Annexure No 00:	Judgment of the Court of Assizes of Perugia 7/2009 of 4,-December 5, 2009, deposited March 4, 2010
Annexure No 01:	Judgment of the GUP of Perugia of October 28, 2008
Annexure No 02:	Judgment of the Court of Appeal of Perugia 7/2009 of December 22, 2009, conviction of Rudy Guede, homicide of Meredith Kercher
Annexure No 03:	Cass. pen. Sez. 1, judgment n. 1132-2010 of December 6, 2010 – Rudy Guede
Annexure No 04:	CAA order of December 18, 2010
Annexure No 05:	CAA order of September 7, 2011
Annexure No 06:	CAA hearing transcript of September 6, 2011 – examination of Prof Giuseppe Novelli, technical

	consultant for the Public Prosecutor
Annexure No 07:	CAA hearing transcript of September 7, 2011
Annexure No 08:	interview of Luciano Aviello dated July 22, 2011 proc. n. 10985/2010/21 RGNR, acquired by the CAA on September 7, 2011
Annexure No 09:	Perugia Court of Assizes hearing transcript of March 13, 2009
Annexure No 10:	Perugia Court of Assizes hearing transcript of June 26, 2009
Annexure No 11:	Perugia Court of Assizes hearing transcript of March 21, 2009
Annexure No 12:	Perugia Court of Assizes hearing transcript of April 3, 2009
Annexure No 13:	Perugia Court of Assizes hearing transcript of June 12, 2009
Annexure No 14:	Perugia Court of Assizes hearing transcript of June 27, 2009
Annexure No 15:	Perugia Court of Assizes hearing transcript of July 4, 2009
[112] Annexure No 16:	CAA hearing transcript of March 26, 2011
Annexure No 17:	Perugia Court of Assizes hearing transcript of April 3, 2009
Annexure No 18:	Perugia Court of Assizes hearing transcript of September 25, 2009
Annexure No 19:	Perugia Court of Assizes hearing transcript of March 27, 2009
Annexure No 20:	Telemetric conversation (chat) between Rudy Hermann Guede and his friend Benedetti
Annexure No 21:	Perugia Court of Assizes hearing transcript of June 6, 2009
Annexure No 22:	Perugia Court of Assizes hearing transcript of 7 February 2009
Annexure No 23:	Perugia Court of Assizes hearing transcript of June 13, 2009, cross-examination A Knox
Annexure No 24:	Perugia Court of Assizes hearing transcript of February 28, 2009, examination of Inspector Rita Ficarra
Annexure No 25:	phone conversation of November 10, 2007 between Amanda Knox and her mother
Annexure No 26:	Perugia Court of Assizes hearing transcript of February 13, 2009

Annexure No 27:	Perugia Court of Assizes hearing transcript of February 6, 2009
Annexure No 28:	Perugia Court of Assizes hearing transcript of March 23, 2009
Annexure No 29:	Perugia Court of Assizes hearing transcript of April 4, 2009
Annexure No 30:	CAA hearing transcript of June 27, 2011
Annexure No 31:	Perugia Court of Assizes hearing transcript of June 19, 2009, examination of Edda Melas [*sic*], mother of K.
Annexure No 32:	Annotations of the police taskforce, of the November 6, 2007 *memoriale* of AK.

< — oooOooo — >

That is the conclusion of the Galati-Costigliola appeal document.

What follows is additional material that may be of assistance to the reader.

Additional material not part of the appeal document

To aid in understanding the appeal document within the legislative and legal context in which it is operating, citations in the text from the various Articles of the Criminal Code and the Criminal Procedure Code are expanded in this section, together with an accompanying cross-translation giving the gist of the Article.

Note that common law terminology, assumptions and concepts will be inappropriate, and, in some cases, misleading when applied as interpretative means to the Code. Note, also, that individual provisions link to other provisions, and therefore a proper understanding of the Codes will not be possible without taking their totality (and associated jurisprudence) into account.

List of Code Articles cited

Criminal Code

CC 61(2)

CC 100

CC 110

CC 367

CC 368

CC 386

CC 575

CC 576

CC 577

CC 609

CC 624

Criminal Procedure Code

CPC 63

Art. 63. **Dichiarazioni indizianti.** 1. Se davanti all'autorità giudiziaria o alla polizia giudiziaria una persona non imputata ovvero una persona non sottoposta alle	Article 63 Incriminating declarations 1. If in front of a judicial authority or the *polizia giudiziaria* a non-accused person or a person not placed under investigation makes

indagini rende dichiarazioni dalle quali emergono indizi di reità a suo carico, l'autorità procedente ne interrompe l'esame, avvertendola che a seguito di tali dichiarazioni potranno essere svolte indagini nei suoi confronti e la invita a nominare un difensore. Le precedenti dichiarazioni non possono essere utilizzate contro la persona che le ha rese. 2. Se la persona doveva essere sentita sin dall'inizio in qualità di imputato o di persona sottoposta alle indagini, le sue dichiarazioni non possono essere utilizzate.	declarations from which there emerge indicia of criminality against them, the authority will proceed to suspend the examination, advising the person that as a consequence of such declarations there may be investigations carried out against them and will invite the person to nominate a defender. The prior declarations may not be used against the person who has made them. 2. If the person needed to be heard from the beginning in terms of being an accused or a person placed under investigation, their declarations may not be used.

CPC 190

Art. 190. **Diritto alla prova.** 1. Le prove sono ammesse a richiesta di parte. Il giudice provvede senza ritardo con ordinanza escludendo le prove vietate dalla legge e quelle che manifestamente sono superflue o irrilevanti. 2. La legge stabilisce i casi in cui le prove sono ammesse di ufficio. 3. I provvedimenti sull'ammissione della prova possono essere revocati sentite le parti in contraddittorio.	Article 190 Right to evidence 1. Evidence will be admitted at the request of the parties. The judge will provide so without delay with orders excluding evidence forbidden by law or which is manifestly superfluous or irrelevant. 2. The law permits cases in which evidence is admitted *ex officio*. 3. Provisions on the admission of evidence may be revoked after having heard from the parties in objection.

CPC 192

Art. 192. **Valutazione della prova.** 1. Il giudice valuta la prova dando conto nella motivazione dei risultati acquisiti e dei criteri adottati. 2. L'esistenza di un fatto non può essere	Article 192 Evaluating evidence 1. The court evaluates the evidence taking into account in its reasoning the outcomes acquired and the criteria adopted. 2. The existence of a fact cannot be inferred

desunta da indizi a meno che questi siano gravi, precisi e concordanti. 3. Le dichiarazioni rese dal coimputato del medesimo reato o da persona imputata in un procedimento connesso a norma dell'articolo 12 sono valutate unitamente agli altri elementi di prova che ne confermano l'attendibilità. 4. La disposizione del comma 3 si applica anche alle dichiarazioni rese da persona imputata di un reato collegato a quello per cui si procede, nel caso previsto dall'articolo 371 comma 2 lettera b).	from items of circumstantial evidence unless these are weighty, specific and coherent. 3. Declarations made by the co-accused in the same offence or by a person charged in a connected proceeding under Article 12 are evaluated together with the other elements of proof which go to confirming its reliability. 4. The disposition of paragraph 3 applies also to the declarations made by a person charged with an offence related to that in the matter at hand, in the case provided for by Article 371 paragrapgh 2(b).

CPC 224

Art. 224. **Provvedimenti del giudice.** 1. Il giudice dispone anche di ufficio la perizia con ordinanza motivata, contenente la nomina del perito, la sommaria enunciazione dell'oggetto delle indagini, l'indicazione del giorno, dell'ora e del luogo fissati per la comparizione del perito. 2. Il giudice dispone la citazione del perito e dà gli opportuni provvedimenti per la comparizione delle persone sottoposte all'esame del perito. Adotta tutti gli altri provvedimenti che si rendono necessari per l'esecuzione delle operazioni peritali.	Article 224 Provisions by the court 1. The court will dispose, including *ex officio*, an expert examination via an order with reasons, containing the name of the expert, a summary promulgation of the object of the investigations, an indication of the day, time and place fixed for the appearance of the expert. 2. The court disposes the summons of the expert and will give opportune provision for the appearance of the persons placed under the examination of the expert. All the other provisions that become necessary for the carrying out of the expert's operations will be adopted.

CPC 237

Art. 237. **Acquisizione di documenti provenienti dall'imputato.** 1. E' consentita l'acquisizione, anche di ufficio, di qualsiasi documento proveniente	Article 237 Acquisition of documents origination from the accused 1. The acquisition, including *ex officio*, is permitted of any document originating from

dall'imputato, anche se sequestrato presso altri o da altri prodotto.	the accused, including if seized in the possession of others or produced by others.

CPC 238

Art. 238. **Verbali di prove di altri procedimenti.**	Article 238 Statements of proof from other proceedings
1. E' ammessa l'acquisizione di verbali di prove di altro procedimento penale se si tratta di prove assunte nell'incidente probatorio o nel dibattimento .	1. The acquisition of evidentiary statements from another criminal matter is allowed if it a case of evidence acquired in the *incidente probatorio* or during oral argument.
2. E' ammessa l'acquisizione di verbali di prove assunte in un giudizio civile definito con sentenza che abbia acquistato autorità di cosa giudicata.	2. The acquisition is allowed of evidentiary statements acquired in a civil matter having reached a decision that has attained the authority of a matter adjudged.
2-bis. Nei casi previsti dai commi 1 e 2 i verbali di dichiarazioni possono essere utilizzati contro l'imputato soltanto se il suo difensore ha partecipato all'assunzione della prova o se nei suoi confronti fa stato la sentenza civile.	2-bis. In the cases provided for by paragraphs 1 and 2, declaratory statements may be used against the accused only if their defender has participated in the acquisition of evidence or if in their legal dealings a civil decision has been made.
3. E' comunque ammessa l'acquisizione della documentazione di atti che non sono ripetibili. Se la ripetizione dell'atto è divenuta impossibile per fatti o circostanze sopravvenuti, l'acquisizione è ammessa se si tratta di fatti o circostanze imprevedibili.	3. Nevertheless, the acquisition of documentation of court files which are not repeatable is allowed. If the repetition of the file has become impossible by supervening facts or circumstances, the acquisition is allowed if it is a case of unforseeable facts or circumstances.
4. Al di fuori dei casi previsti dai commi 1, 2, 2-bis e 3, i verbali di dichiarazioni possono essere utilizzati nel dibattimento soltanto nei confronti dell'imputato che vi consenta; in mancanza di consenso, detti verbali possono essere utilizzati per le contestazioni previste dagli articoli 500 e 503.	4. Beyond the cases provided for by paragraphs 1, 2, 2-bis and 3, declaratory statements may be used during oral argument only in dealings with the accused who consents to it; in the absence of consent, said statements may be used for the notifications provided for by Articles 500 and 503.
5. Salvo quanto previsto dall'articolo 190-bis, resta fermo il diritto delle parti di ottenere a norma dell'articolo 190 l'esame delle persone le cui dichiarazioni sono state acquisite a	5. Except as provided for by Article 190-bis, the right remains of the parties to obtain an Article 190 examination of the persons whose declarations have been acquired under

norma dei commi 1, 2, 2-bis e 4 del presente articolo.	paragraphs 1, 2, 2-bis and 4 of the current Article.

CPC 238 bis

Art. 238-bis. **Sentenze irrevocabili.** Fermo quanto previsto dall'articolo 236, le sentenze divenute irrevocabili possono essere acquisite ai fini della prova di fatto in esse accertato e sono valutate a norma degli articoli 187 e 192, comma 3.	Article 238-bis Irrevocable Judgments Subject to Article 236, judgments which have become irrevocable may be acquired to the ends of proof of the fact in them ascertained and are evaluated under Articles 187 and 192 paragraph 3.

CPC 360

Art. 360. **Accertamenti tecnici non ripetibili.** 1. Quando gli accertamenti previsti dall'articolo 359 riguardano persone, cose o luoghi il cui stato è soggetto a modificazione, il pubblico ministero avvisa, senza ritardo, la persona sottoposta alle indagini, la persona offesa dal reato e i difensori del giorno, dell'ora e del luogo fissati per il conferimento dell'incarico e della facoltà di nominare consulenti tecnici. 2. Si applicano le disposizioni dell'articolo 364 comma 2. 3. I difensori nonché i consulenti tecnici eventualmente nominati hanno diritto di assistere al conferimento dell'incarico, di partecipare agli accertamenti e di formulare osservazioni e riserve. 4. Qualora, prima del conferimento dell'incarico, la persona sottoposta alle indagini formuli riserva di promuovere incidente probatorio, il pubblico ministero dispone che non si proceda agli accertamenti	Article 360 Non-repeatable technical findings 1. When the findings provided for under Article 359 relate to persons, things or places the which have been subject to modifications, the public prosecutor will advise, without delay, the person placed under investigation, the person harmed by the crime and their defenders at the time, of the hour and place fixed for the carrying out of the task and of the ability to nominate technical consultants. 2.The dispositions of Article 364 paragraph 2 apply. 3. The defenders as well as if necessary the nominated technical consultants have the right to attend the carrying out of the task, of participating in the findings and of formulating observations and reservations. 4. In case, prior to the carrying out of the task, the person placed under investigation puts forward reservation to promote an *incidente probatorio*, the public prosecutor will order that the investigations not proceed

salvo che questi, se differiti, non possano più essere utilmente compiuti. 5. Se il pubblico ministero, malgrado l'espressa riserva formulata dalla persona sottoposta alle indagini e pur non sussistendo le condizioni indicate nell'ultima parte del comma 4, ha ugualmente disposto di procedere agli accertamenti, i relativi risultati non possono essere utilizzati nel dibattimento.	save that these, if deferred, cannot be usefully carried out later. 5. If the public prosecutor, despite the express reserve submitted by the person placed under investigation and even if there be no grounds for the conditions indicated in the last part of paragraph 4, has equally disposed to proceed with the findings, the resulting outcomes may not be used in oral argument.

CPC 492

Art. 492. **Dichiarazione di apertura del dibattimento.** 1. Compiute le attività indicate negli articoli 484 e seguenti, il presidente dichiara aperto il dibattimento. 2. L'ausiliario che assiste il giudice dà lettura dell'imputazione.	Article 492 Declaration of the opening of oral argument 1. On the activities indicated in Articles 484 and following being completed, the president will declare oral argument open. 2. The associate who assists the judge will give reading to the indictment.

CPC 495

Art. 495. **Provvedimenti del giudice in ordine alla prova.** 1. Il giudice, sentite le parti, provvede con ordinanza all'ammissione delle prove a norma degli articoli 190, comma 1, e 190-bis. Quando è stata ammessa l'acquisizione di verbali di prove di altri procedimenti, il giudice provvede in ordine alla richiesta di nuova assunzione della stessa prova solo dopo l'acquisizione della documentazione relativa alla prova dell'altro procedimento . 2. L'imputato ha diritto all'ammissione delle prove indicate a discarico sui fatti costituenti	Article 495 Provisions by the judge relating to evidence 1. The judge, having heard the parties, provides by order for the admission of evidence under Article 190 paragraph 1 and 190-bis. When the acquisition of transcripts of proof of other proceedings is allowed, the judge provides by order for the request for new adducement of the same evidence only after the acquisition of the documentation relating to the proof of the other proceeding. 2. The accused has the right to the admission of the evidence indicated on discharge of the facts constituting the object of the proof on

oggetto delle prove a carico; lo stesso diritto spetta al pubblico ministero in ordine alle prove a carico dell'imputato sui fatti costituenti oggetto delle prove a discarico. 3. Prima che il giudice provveda sulla domanda, le parti hanno facoltà di esaminare i documenti di cui è chiesta l'ammissione. 4. Nel corso dell'istruzione dibattimentale, il giudice decide con ordinanza sulle eccezioni proposte dalle parti in ordine alla ammissibilità delle prove. Il giudice, sentite le parti, può revocare con ordinanza l'ammissione di prove che risultano superflue o ammettere prove già escluse. 4-bis. Nel corso dell'istruzione dibattimentale ciascuna delle parti può rinunziare, con il consenso dell'altra parte, all'assunzione delle prove ammesse a sua richiesta.	onus; the same right accrues to the public prosecutor in relation to the evidence againast the accused on the facts constituting the object of proof to be discharged. 3. Before the judge provides for on the question, the parties have the faculty of examining the documents the subject of the admission request. 4. In the course of oral argument instructions, the judge decides, by order, on the exceptions proposed by the parties relating to the admissibability of evidence. It judge, having heard the parties, may revoke by order the admission of evidence that is superfluous or admit evidence previously excluded. 4-bis. In the course of oral argument instructions each of the parties may renounce, with the agreement of the other party, the assumption of evidence admitted at their request.

CPC 507

Art. 507. **Ammissione di nuove prove.** 1. Terminata l'acquisizione delle prove, il giudice, se risulta assolutamente necessario, può disporre anche di ufficio l'assunzione di nuovi mezzi di prove. 1-bis. Il giudice può disporre a norma del comma 1 anche l'assunzione di mezzi di prova relativi agli atti acquisiti al fascicolo per il dibattimento a norma degli articoli 431, comma 2, e 493, comma 3.	Article 507 Admission of fresh evidence 1. Once the acquisition of evidence has terminated, the judge, if it becomes absolutely necessary, may dispose, inclduing *ex officio*, the assumption of new means of proof. 1-bis. The judge may also dispose under parapgraph 1 the assumption of means of proof relative to the documents acquired into the case file for oral argument under Articles 431 paragraph2, and 493 paragraph 3.

CPC 511

Art. 511. **Letture consentite.**	Article 511 Permitted readings

1. Il giudice, anche di ufficio, dispone che sia data lettura, integrale o parziale, degli atti contenuti nel fascicolo per il dibattimento. 2. La lettura di verbali di dichiarazioni è disposta solo dopo l'esame della persona che le ha rese, a meno che l'esame non abbia luogo. 3. La lettura della relazione peritale è disposta solo dopo l'esame del perito. 4. La lettura dei verbali delle dichiarazioni orali di querela o di istanza è consentita ai soli fini dell'accertamento della esistenza della condizione di procedibilità. 5. In luogo della lettura, il giudice, anche di ufficio, può indicare specificamente gli atti utilizzabili ai fini della decisione. L'indicazione degli atti equivale alla loro lettura. Il giudice dispone tuttavia la lettura, integrale o parziale, quando si tratta di verbali di dichiarazioni e una parte ne fa richiesta. Se si tratta di altri atti, il giudice è vincolato alla richiesta di lettura solo nel caso di un serio disaccordo sul contenuto di essi. 6. La facoltà di chiedere la lettura o l'indicazione degli atti, prevista dai commi 1 e 5, è attribuita anche agli enti e alle associazioni intervenuti a norma dell'articolo 93.	1. The judge, including ex officio, disposes that there be a reading, total or partial, of the documents contained in the case file for the oral argument. 2. The reading of transcripts of statements is disposed only after the examination of the person who has rendered them, unless the examination not have taken place. 3. The reading of expert reports is dispoed only after examination of the expert. 4. The reading of transcripts of oral declarations of suit or of submission is permitted only to the end of ascertaining the exisitance of conditions of procedability. 5. In place of reading, the judge, including ex officio, may specifically indicate the documents usable for the purposes of the decision. The indication of the documents is equivalent to their reading. The judge disposes the reading in any case, total or partial, when it is a case of statement transcripts and one party makes request of them. If it is a case of other documents, the judge is constrained to the request to a reading only in the case of a serious disaccord on their contents. 6. The faculty to ask for a reading or indication of the documents, provided for by paragraphs 1 and 5, is atttributed also to corporations and associations intervening under Article 93.

CPC 511 bis

Art. 511-bis. **Lettura di verbali di prove di altri procedimenti.** 1. Il giudice, anche di ufficio, dispone che sia data lettura dei verbali degli atti indicati nell'articolo 238. Si applica il comma 2 dell'articolo 511.	Article 511-bis Reading of statements of proof from other proceedings 1. The judge, including *ex officio*, that there be a reading of the statements from the documents indicated in Article 238. Article 511 paragraph 2 applies.

CPC 533

Art. 533. **Condanna dell'imputato.**	Article 533 Sentencing the accused
1. Il giudice pronuncia sentenza di condanna se l'imputato risulta colpevole del reato contestatogli al di là di ogni ragionevole dubbio. Con la sentenza il giudice applica la pena e le eventuali misure di sicurezza.	1. The judge pronounces sentence of conviction if the accused is guilty of the offence charged against him beyond all reasonable doubt. With the sentence the judge applies the penalty and possible measures of security.
2. Se la condanna riguarda più reati, il giudice stabilisce la pena per ciascuno di essi e quindi determina la pena che deve essere applicata in osservanza delle norme sul concorso di reati e di pene o sulla continuazione . Nei casi previsti dalla legge il giudice dichiara il condannato delinquente o contravventore abituale o professionale o per tendenza.	2. If the conviction relates to multiple offences, the judge establishes the penalty for each of them and so determines the penalty that must be applied in observance of the law on acting in concert and on the subsumation of offences. In cases provided for by law the judge will declare the convict delinquent or habitual or professional controvenor, or controvenor by tendency.
3. Quando il giudice ritiene di dover concedere la sospensione condizionale della pena o la non menzione della condanna nel certificato del casellario giudiziale, provvede in tal senso con la sentenza di condanna.	3. When the judge holds it necessary to concede the conditional suspension of the penalty or the suppression of the conviction in the judicial records office, he will provide for this in this sense in the sentence of conviction.
3-bis. Quando la condanna riguarda procedimenti per i delitti di cui all'articolo 407, comma 2, lettera a), anche se connessi ad altri reati, il giudice può disporre, nel pronunciare la sentenza, la separazione dei procedimenti anche con riferimento allo stesso condannato quando taluno dei condannati si trovi in stato di custodia cautelare e, per la scadenza dei termini e la mancanza di altri titoli, sarebbe rimesso in libertà.	3-bis. When the conviction relates to proceedings for offfences to which Article 407 paragraph 2(a) apply, even if committed by other offenders, the judge may dispose, in pronouncing the sentence, the separation of the proceedings even with reference to the same convict when each of the convicts is in precautionary custody and, for the expiration of the terms and the lack of other titles, would be granted liberty.

CPC 544

Art. 544. **Redazione della sentenza.**	Article 544 Redcation of the decision

1. Conclusa la deliberazione, il presidente redige e sottoscrive il dispositivo. Subito dopo è redatta una concisa esposizione dei motivi di fatto e di diritto su cui la sentenza è fondata. 2. Qualora non sia possibile procedere alla redazione immediata dei motivi in camera di consiglio, vi si provvede non oltre il quindicesimo giorno da quello della pronuncia. 3. Quando la stesura della motivazione è particolarmente complessa per il numero delle parti o per il numero e la gravità delle imputazioni, il giudice, se ritiene di non poter depositare la sentenza nel termine previsto dal comma 2, può indicare nel dispositivo un termine più lungo, non eccedente comunque il novantesimo giorno da quello della pronuncia. 3-bis. Nelle ipotesi previste dall'articolo 533, comma 3-bis, il giudice provvede alla stesura della motivazione per ciascuno dei procedimenti separati, accordando precedenza alla motivazione della condanna degli imputati in stato di custodia cautelare. In tal caso il termine di cui al comma 3 è raddoppiato per la motivazione della sentenza cui non si è accordata precedenza.	1. Deliberations being concluded, the president compiles and countersigns the disposition. Immediately after a concise exposition of the reasons of fact and of law on which the decision is based is redacted. 2. Whenever it is not possible to proceed with the immediate redaction of the reasons in chambers, they will be provided not greater than the fifteenth day after that of the pronouncement. 3. When the writing up of the reasons is particularly complex due to the number of parties or the number and gravity of the charges, the judge, if of the opinion of not being able to deposit the judgment in terms provided for by paragrsph 2, may however indicate in the disposition the ninetieth day after that of the pronouncement. 3-bis. In the scenario provided for by Article 533 paragraph 3-bis, the judge provides for the writing up of the reasons for each of the proceedings separately, according precedence to the judgment reasons for the conviction of the accused in a state of precautionary custody. In such case the expiration to which paragraph 3 applies is doubled for the judgment reasons which are not accorded precedence.

CPC 603

Art. 603. **Rinnovazione dell'istruzione dibattimentale.** 1. Quando una parte, nell'atto di appello o nei motivi presentati a norma dell'articolo 585 comma 4, ha chiesto la riassunzione di prove già acquisite nel dibattimento di primo grado o l'assunzione di nuove prove, il giudice se ritiene di non essere in grado di decidere allo stato degli atti, dispone la rinnovazione dell'istruzione dibattimentale.	Article 603 Renewal of oral argument 1. When one party, in the appeal document or in reasons presented under Article 585 paragraph 4, has requested the re-adducing of evidence already adduced in oral argument at first instance or the adducing of new evidence, the judge if of the opinion to be unable to decide as to the state of the acts, disposes the renewal of oral argument. 2. If new evidence turns up or is discovered

2. Se le nuove prove sono sopravvenute o scoperte dopo il giudizio di primo grado, il giudice dispone la rinnovazione dell'istruzione dibattimentale nei limiti previsti dall'articolo 495 comma 1. 3. La rinnovazione dell'istruzione dibattimentale è disposta di ufficio se il giudice la ritiene assolutamente necessaria. 4. Il giudice dispone, altresì, la rinnovazione dell'istruzione dibattimentale quando l'imputato, contumace in primo grado, ne fa richiesta e prova di non essere potuto comparire per caso fortuito o forza maggiore o per non avere avuto conoscenza del decreto di citazione, sempre che in tal caso il fatto non sia dovuto a sua colpa, ovvero, quando l'atto di citazione per il giudizio di primo grado è stato notificato mediante consegna al difensore nei casi previsti dagli articoli 159, 161 comma 4 e 169, non si sia sottratto volontariamente alla conoscenza degli atti del procedimento. 5. Il giudice provvede con ordinanza, nel contraddittorio delle parti. 6. Alla rinnovazione dell'istruzione dibattimentale, disposta a norma dei commi precedenti, si procede immediatamente. In caso di impossibilità, il dibattimento è sospeso per un termine non superiore a dieci giorni.	after the first instance decision, the judge disposes the renewal of oral argument with the limitations provided for by Article 495 paragraph 1. 3. The renewal of oral argument is disposed ex officio if the judge considers it absolutely necessary. 4. The judge disposes, likewise, the renewal of oral argument when the accused, held contumacious at first instance, makes request of it and proves to not being able to appear through accident or *force majeure* or through not having knowledge of the decree of citation, always that in such case the event was not due to his fault, or, when the act of citation for judgment at first instance had been notified via notification to the defender in the cases provided for Articles 151, 161 paragraph 4 and 169, not having voluntarily removed himself from awareness of the documents of the proceedings. 5. The judge provides by order, in the cross-examination of the parties. 6. On renewal of oral debate, disposed under law by the preceding paragraphs, proceedings continue immediately. In cases of impossibility, the argument is suspended for a period not greater than 10 days.

CPC 606

Art. 606. **Casi di ricorso.** 1. Il ricorso per cassazione può essere proposto per i seguenti motivi: a) esercizio da parte del giudice di una potestà riservata dalla legge a organi legislativi o amministrativi ovvero non	Article 606 Cases of appeal 1. Appeal to Cassation may be made for the following reasons: (a) exercise on the part of the judge of a power reserved by law to legislative or administrative organs or not allowed to public powers;

consentita ai pubblici poteri; b) inosservanza o erronea applicazione della legge penale o di altre norme giuridiche, di cui si deve tener conto nell'applicazione della legge penale; c) inosservanza delle norme processuali stabilite a pena di nullità, di inutilizzabilità, di inammissibilità o di decadenza; d) mancata assunzione di una prova decisiva, quando la parte ne ha fatto richiesta anche nel corso dell'istruzione dibattimentale limitatamente ai casi previsti dall'articolo 495, comma 2; e) mancanza, contraddittorietà o manifesta illogicità della motivazione, quando il vizio risulta dal testo del provvedimento impugnato ovvero da altri atti del processo specificamente indicati nei motivi di gravame. 2. Il ricorso, oltre che nei casi e con gli effetti determinati da particolari disposizioni, può essere proposto contro le sentenze pronunciate in grado di appello o inappellabili. 3. Il ricorso è inammissibile se è proposto per motivi diversi da quelli consentiti dalla legge o manifestamente infondati ovvero, fuori dei casi previsti dagli articoli 569 e 609 comma 2, per violazioni di legge non dedotte con i motivi di appello.	(b) inobservance or erroneous application of the criminal law or other judicial rules which must be taken into account in the application of the criminal law; (c) inobservance of the procedural rules established on pain of nullity, of unusability, of inadmissability or of decadence; (d) defective assumption of a decisive piece of evidence when a party has made request of it even in the course of oral argument limited to the cases provided for Article 495 paragraph 2; (e) defect, contradictoriness or manifest illogicality of the judgment reasoning, when the error results from the text of the provisioning appealed or from other documents in the proceedings specifically noted in the reasons of encumberment. 2. An appeal, in addition to the cases and with the determinative effects of specific dispositions, may be made against judgments pronounced at appeal level or unappealable. 3. An appeal is inadmissable if made for reasons different from those allowed by law or manifestly unfounded or, outside of cases provided for by Articles 569 and 609 paragraph 2, for violation of law not supported by the reasons of appeal.

CPC 623

Art. 623. **Annullamento con rinvio.** 1. Fuori dei casi previsti dagli articoli 620 e 622: a) se è annullata un'ordinanza, la corte di	Article 623 Annullment with retrial 1. Outside of cases provided for by Articles 620 and 622: (a) if an order is annulled, the Court of Cassation disposes that the documents be

cassazione dispone che gli atti siano trasmessi al giudice che l'ha pronunciata, il quale provvede uniformandosi alla sentenza di annullamento; b) se è annullata una sentenza di condanna nei casi previsti dall'articolo 604 comma 1, la corte di cassazione dispone che gli atti siano trasmessi al giudice di primo grado; c) se è annullata la sentenza di una corte di assise di appello o di una corte di appello ovvero di una corte di assise o di un tribunale in composizione collegiale, il giudizio è rinviato rispettivamente a un'altra sezione della stessa corte o dello stesso tribunale o, in mancanza, alla corte o al tribunale più vicini; d) se è annullata la sentenza di un tribunale monocratico o di un giudice per le indagini preliminari, la corte di cassazione dispone che gli atti siano trasmessi al medesimo tribunale; tuttavia, il giudice deve essere diverso da quello che ha pronunciato la sentenza annullata.	given to the judge who has pronounced it, the which judge will provide in compliance with the sentence of annullment; (b) if a conviction is annulled in the cases provided for by Article 604 paragraph 1, the Court of Cassation will dispose that the documents be given to the first instance judge; (c) if a Court of Appeal of Assizes verdict is annulled or a court of appeal or else an Assize Court or a tribunal collegially constituted, the judgment is remanded respectively to another section of the same court or the same tribunal or, in deficit, to the court or tribunal nearest. (d) if a single-judge tribunal verdict is annulled or of a judge overseeing preliminary investigations [=GIP], the Court of Cassation disposes that the documents be transmitted to the same tribunal; in all cases, the judge must be different to the one who has pronounced the annulled verdict.

Roles, Ranks and Titles

Position	Equivalent

Index

CC = Criminal Code

CPC = Criminal Procedure Code