

~~CT# 62~~

28, 1963

IN THE PRIVY COUNCIL

No.18 of 1963

ON APPEAL  
FROM HER MAJESTY'S CRIMINAL COURT FOR THE ISLAND  
OF MALTA AND ITS DEPENDENCIES

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

19 JUN 1964

25 RUSSELL SQUARE  
LONDON, W.C.1.

BETWEEN

MALCOLM STEWART BROADHURST ... Appellant

and

THE QUEEN ... Respondent

74163

C A S E FOR THE RESPONDENT

10 1. This is an appeal from a judgment dated p.9.  
the 28th October, 1961 of Her Majesty's Criminal  
Court for the Island of Malta and its  
Dependencies (Mamo C.J., Gauci and Harding J.J.  
with a jury of nine members) whereby the  
Appellant was convicted of causing wilful grievous  
bodily harm from which death ensued as a natural  
consequence of this harm and within a period of  
forty days from the day on which this harm was  
caused. The Appellant was sentenced to  
20 imprisonment with hard labour for fifteen years.

30 2. The indictment recited an allegation that, p.11.1.12-  
on the night of the 22nd/23rd July 1961 the p.12.1.33.  
Appellant, following an argument with his wife,  
Jean Peggy Broadhurst, had thrown her down the  
stairs at the matrimonial home; that she had  
sustained bruises to her chest and right leg,  
abrasions to her back, and severe injuries to  
her head; that as a direct result of these  
injuries and notwithstanding surgical  
intervention she had died during the morning  
of the 23rd July 1961. The indictment  
alleged that by so doing the Appellant had  
rendered himself guilty of wilful homicide and  
demanded that he be sentenced to death or to  
any other punishment applicable according to the  
declaration of guilt of the Appellant.

3. The jury unanimously found the Appellant p.9.11.2-7.  
not guilty of the crime of wilful homicide

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preferred in the indictment but by six votes to three found him guilty of causing wilful grievous bodily harm from which death ensued as a natural consequence of this harm and within a period of forty days to be reckoned from midnight of the 22nd July, 1961.

4. The criminal law and procedure of Malta are contained in the Criminal Code. The provisions of the criminal law relevant to this appeal are as follows: 10

UNDER TITLE II - "Of the Will and Age of the Offender"

s.35 (1) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.

.....

(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence. 20

UNDER TITLE VIII - "Of Crimes against the Person"

Sub-title I "Of Wilful Homicide"

225(1) Whosoever shall be guilty of wilful homicide shall be punished by death.

(2) A person shall be guilty of wilful homicide if, maliciously with intent to kill another person or to put the life of such other person in manifest jeopardy, he causes the death of such other person. 30

.....

UNDER SUB TITLE II - "Of Wilful Offences against the Person"

228. Whosoever, without intent to kill

or to put the life of any person in manifest jeopardy shall cause harm to the body or health of another person, ..... shall be guilty of bodily harm.

229. A bodily harm may be either grievous or slight.
- 230(1) A bodily harm is deemed to be grievous .....
- 10 (a) if it can give rise to danger of
- (i) loss of life; or
- (ii) any permanent debility of the health or permanent functional debility of any organ of the body; or
- (iii) any permanent defect in any part of the physical structure of the body; .....
- 20 234.(1) Whosoever shall be guilty of a grievous bodily harm from which death shall ensue solely as a result of the nature or the natural consequences of the harm and not of any supervening accidental cause, shall be liable -
- 30 (a) to hard labour or imprisonment for a term from six to twenty years, if death shall ensue within forty days to be reckoned from the midnight immediately preceding the crime.
- 235.(1) A bodily harm which does not produce any of the effects referred to in the preceding sections of this subtitle, shall be deemed to be slight .....

UNDER SUB TITLE IV - "Of Involuntary Homicide or Bodily Harm"

- 40 239. Whosoever, through imprudence, carelessness, unskilfulness in his

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art or profession, or non-observance of regulations, causes the death of any person, shall, on conviction be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred pounds.

UNDER CRIMINAL PROCEDURE Title IV - "Of Her Majesty's Criminal Court"

448.(4) It shall also appertain to the Court - 10

(a) to maintain good order during the sitting;

(b) to conduct the hearing;

(c) to do in matters which are not prohibited or prescribed by law under pain of nullity, whatever it may, in its discretion, deem necessary for the discovery of the truth. 20

.....

471. The order to be followed in the examination of witnesses shall be as hereunder :

The party calling the witness proceeds to examine him; any juror may then put any questions which he may deem necessary; and the Court, besides the questions which it may deem proper to put in the course of examination or cross-examination, may finally put any other question which it shall deem necessary. 30

472. After the cross examination of the witness, it shall not be lawful for the parties to put any question directly to the witness. They may, however, submit to the Court any further question they may desire to put to the witness, and any such question, if considered by the Court to be material to the case, shall be put to the witness by the Court itself. 40

.....

10 476. After the conclusion of the case for the prosecution and for the defence, the Judge, or, if the Court consists of three Judges, the senior Judge or, with the consent of the latter, any other of such Judges, shall in the name of the Court address the Jury, explaining to them the nature and the ingredients of the offence preferred in the indictment, as well as any other point of law which in the particular case may be connected with the functions of the Jury, summing up, in such manner as he may think necessary, the evidence of the witnesses and other concurrent evidence, acquainting them with the powers which the jury may exercise in the particular case, and making all such other remarks as may tend to direct and instruct the Jury for the proper discharge of their duties.

20 .....

479.. For every verdict of the Jury, whether in favour of or against the accused, there shall be necessary the concurrence of at least six votes.

5. The evidence for the Crown included the following:

30 (i) Surgeon Lieutenant Clements R.N. said that soon after 1.30 a.m. on the 23rd July 1961 he was taken to the Appellant's flat. The deceased, who was wearing pants and a brassiere was lying on the bed deeply unconscious. He saw the Appellant at about 2.15 a.m. and gave him a medical examination. The Appellant showed no sign of disease but the witness formed the impression that he had been under the influence of alcohol but was sobering up at the time. Recalled the witness said the Appellant was not under a blackout at the time of the medical examination. He also changed his statement of impression of the Appellant to: "had been drinking and was sobering."

p.14.1.7.  
p.14.1.28.  
p.15.1.15.  
p.22.1.28.  
p.18.1.12.  
p.21.1.6.  
p.222.  
p.223.1.21.  
p.223.1.1.

40 (ii) Surgeon Commander Watt R.N. had operated upon the deceased. There were four obvious injuries of the skull: behind the

p.31.1.1.

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- p.32.1.15. left ear, one in the left occipital region, a laceration above and behind the right ear, and a contusion overlying the right parietal bone. There was considerable contusion of the brain substances and also laceration of the brain underlying an extensive blood clot. The deceased died from these injuries notwithstanding the operation. Had she not received medical attention she would have died earlier. 10
- p.37.1.31. (iii) Dr. Camilleri read a report of a joint post-mortem. The cause of death was laceration and contusion of the brain, subdural haemorrhage and fracture of the vault of the skull. In addition to the injuries and other abrasions to the head there was a bruise above the 7th and 8th ribs, a series of abrasions disposed in pairs on either side of the lower part of the vertebral column, and an abrasion in the left lumbar region. Any one of the injuries to the head could have been caused by a fall from a standing position on a flat surface but not all the head injuries could have been so caused. The abrasions on the back could have been produced either by the body grazing sideways along a railing, intermittently, or by the body being thrown across the railings while resisting, or by the body rubbing over the edges of a step or steps, but if the body had been thrown across the railings one would have expected the head injuries to be higher up. The doctors conducting the post mortem formed the view that the deceased must have fallen backwards (they were not able to say whether she was pushed or thrown or fell accidentally), that she must have grazed her back against the bannisters or the iron railing in the first flight of stairs, that she then struck her head and this caused stunning and a further fall from the half landing to the floor below. The various lesions must have been produced at three or four different stages of the fall. 20
- p.34.1.25-  
p.35.1.22. 30
- p.44.  
p.38. 40
- p.44. 40
- p.53.1.16. (iv) Superintendent of Police Scicluna saw and cautioned the Appellant at 3.30 p.m. on the 23rd July. The Appellant said he could not say anything about the accident because he could not remember anything. The Appellant had been to a dance with the deceased the previous evening and had drunk

beer and whisky. At about 11.30 p.m. or  
midnight the deceased had wanted to go home and  
did go home but he had wanted to stay and did in  
fact stay until the end, by which time he was  
more or less drunk. When he left the dance he  
felt worse and could not remember how he got  
home. He only remembered crossing Birzebugga  
Square and he then had another black-out. The  
next thing he remembered was finding himself  
10 near his wife who was lying on the steps at his  
flat with her head downwards in a pool of blood.  
He lifted her up and put her in bed and then  
called his next door neighbours but he did not  
remember saying anything to them. He had  
another black out and came to in the guard room  
at the barracks. The witness took the Appellant  
to his home: there were three flights of stairs  
up to the Appellant's flat and the Appellant had  
shown him the landing at the top of the first  
20 flight as being the spot where he had found his  
wife.

(v) Superintendent of Police Lanzon had  
interviewed the Appellant, together with  
Superintendent Scicluna at 5 p.m. on the 23rd  
July. The Appellant told him substantially  
what he had earlier told Superintendent Scicluna.  
The Appellant had left the dance at about 1 a.m.  
He recollected saying something to his next door  
neighbours when they opened the door in answer  
30 to his call but could not remember what he told  
them. On being asked if he remembered having  
told the neighbours : "I threw Jean down the  
stairs" he replied that he did not remember  
but added that 'probably' or 'quite likely' he  
had done so. He said that he went into the  
neighbours flat and began to cry. He also said  
his wife was rather a possessive woman and did not  
like him to go out on his own. He and his wife  
had their differences but he could not remember  
40 having had any arguments: he added it was  
probable or likely they had had one that night  
because he had been bitten on the right forearm  
and shoulder. On being told the neighbour's  
wife (Mrs. McKinnell) was saying that she heard  
the words: "Malcolm stop or you will kill me"  
and that she heard him say: "That is the end of  
that" and that he had said to her: "I have thrown  
her down the stairs, come and see Brenda", he said  
that he might have said so, The McKinnells were  
50 his friends and he had no reason to doubt their

pp.63-64.

p.65.1.19.  
p.65.11.22-41

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word. He had experienced black outs before, on two occasions, one of which had been the previous Christmas when he was drunk.

(iv) Mrs. Brenda McKinnell said she and her husband lived in the flat next to that of the Appellant and the deceased. They were awakened between 1 a.m. and 2 a.m. by banging about on the stairs. She also heard running noises on the roof. She heard the deceased call out: "Stop it Malcolm or you will kill me". The voice seemed to be coming from the stairs. Then there was more banging about and she heard the Appellant's voice, from the vicinity of her flat door, saying: "That is the end of that". About ten minutes later the door bell rang. The Appellant was standing outside wearing blue jeans and red slippers. He had blood on his feet, hands and chest. He said: "Please go and see Jean because I have thrown her down the stairs". She brought him into her flat and sat him down. He said: "I am not drunk, I am not drunk, I am not drunk" and "I do not know why I have done it because Jean did not do anything to me". She then went next door to see the deceased. Later she asked the accused if he would like her to look after the baby. He said he would and gave the baby to her together with tins of milk and babyfood. He was behaving correctly but was crying. In the morning she saw the Appellant's keys in the front door and she collected them. She had known the Broadhursts for about a year and had heard arguments between them: the deceased did not like the Appellant sleeping in the afternoons or going on the roof in the evenings.

In cross-examination the witness said there was a packing case on the first landing and two more belonging to the Broadhursts near the Broadhursts' door. When she went into the Broadhursts' flat these were in the same position they had occupied during the day. She had seen the Appellant drunk on other occasions, for example, the previous Christmas, but he was not drunk on this occasion. He did not mumble when he spoke to her. She said further that the Appellant and the deceased

p.80.1.1-  
p.81.1.26.

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p.82.1.6.

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p.83.1.19.  
p.85.1.20.  
p.86.1.22.

p.89.1.18.  
p.90.1.1.

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p.95.1.4.

p.97.1.1.

p.98.1.29.



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kissed and cuddled each other affectionately and openly.

p.100.1.1.

(vii) Thomas John McKinnell, the husband of Brenda McKinnell said he was awakened by shouting and the running of foot steps across the roof. His wife woke first. Then there were banging noises as if packing cases were being thrown downstairs. Shortly afterwards there was a ring at the doorbell. His wife answered it but he was immediately behind her.

p.110.1.18.

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The Appellant stood in the doorway. He was just wearing jeans and red slippers and his feet and chest were covered with blood. He said "I have thrown Jean downstairs, please come and see her" then "I don't know why I have done it." The witness went to the police station and told the naval shore patrol there had been an accident. As he came out of the police station he met the doctor and went with him to the Broadhursts' flat.

p.111.1.2.

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As he went to the top of the stairs the Appellant tried to follow the doctor into the flat. The Appellant was in an hysterical state and the witness kept him in an armchair in his (the witness's) flat. The Appellant started shouting and wanting to go in and said a lot of things the witness could not understand at the time. The witness had to strike the Appellant to prevent him from going into his (the Appellant's) flat. The Appellant left with the naval shore patrol but later returned. He had no keys and rang the bell. The witness's wife let him into their flat and tea was made for him. The Appellant said he left the dance at about 1 a.m. or when it ended, and walked as far as the W.R.N.S. Quarters where he broke a toy pistol he was carrying. After that he could not remember anything. During the time he (the witness) had lived next to the Broadhursts he had heard arguments frequently but no striking. The deceased objected to the Appellant going on the roof at night: she seemed to want him always by her side. There were also words spoken about the Appellant having to do the housework.

p.111.1.40-  
p.112.1.20.

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He had no keys and rang the bell. The witness's wife let him into their flat and tea was made for him. The Appellant said he left the dance at about 1 a.m. or when it ended, and walked as far as the W.R.N.S. Quarters where he broke a toy pistol he was carrying. After that he could not remember anything. During the time he (the witness) had lived next to the Broadhursts he had heard arguments frequently but no striking. The deceased objected to the Appellant going on the roof at night: she seemed to want him always by her side. There were also words spoken about the Appellant having to do the housework.

p.113.11.8-26.

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In cross-examination the witness said the Broadhursts kissed and hugged each other

p.116.1.19.

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- p.117.1.3. frequently in public, but they quarrelled when they were alone. They skylarked and bit each other. The deceased frequently thumped the Appellant and when she did so he struck back. The witness could not say it was playfulness. When the Appellant first came to the flat he was crying and sobbing: when he sat down he was trying to say something but it was not making sense to the witness who, in any event, was more interested in what was going on next door. When the Appellant rose from the chair he staggered slightly then walked normally: he seemed weary rather than drunk. 10
- p.123.1.19.
- p.139.1.5. (viii) Charles Kenneth Wright said he and his wife had gone to the dance with the Broadhursts. The deceased left before the witness and his wife, but before the deceased left he saw her talking to the Appellant and he saw the Appellant give her the keys of the flat. 20
- p.144.11.5-9. (ix) Mary Gafa had baby sat for the Broadhursts. The deceased returned home at 12.30 a.m. and the witness remained with her until 1 a.m. The deceased was in a happy mood that evening. The deceased let her out when she left and closed the street door after her. The Broadhursts never left the street door key in the lock.
- p.145.1.27.  
p.221
- p.149 (x) Petty Officer Raymond Jackson was in charge of the naval shore patrol and was called to the flat by McKinnell. The Appellant was sitting in the McKinnells' flat, perspiring profusely, and shaking and sobbing. He told the Appellant to put his shirt on and accompany him. The Appellant walked unaided but staggered at one point. He was in great mental anguish, but he complied with everything the witness told him to do. 30
- p.152.1.18.
- p.153.1.1.
- p.173.1.10-  
p.174.1.7. (xi) Eric Edwards had been at the dance. He left, at the end, by private bus. The Appellant boarded the bus near the W.R.F.S. Quarters and jumped off while it was moving, at Kalafrana Corner. He then bent down to pick up something. This was between 1.20 a.m. and 1.30 a.m. 40

(xii) David James Rearden had been at the dance. He saw the Appellant walking home afterwards. The Appellant was not staggering; he appeared to be walking normally. The time was just after 1 a.m.

6. The evidence for the defence included:

10 (i) The Appellant. He was due to return to England in October and had started to pack the two packing cases outside his door. He had only had one bad quarrel with his wife. This was some six or seven months earlier and she had thrown two glasses at him. His wife did not like him sleeping in the afternoons and would wake him up every few minutes. Sometimes she would not speak to him for as long as two days after a quarrel. It was normally he who apologised. On the whole they were very happy together: they would skylark about and his wife sometimes bit or thumped him. On the  
20 afternoon of the 22nd they went on a picnic from 1.30 p.m. to 5.30 p.m. and he had drunk five bottles of beer. At 7.45 they went to the dance. At midnight the deceased said she was going home and he gave her the keys, including the key to the street door. During the course of the evening he drank ten to twelve bottles of beer and five or six  
30 whiskies. When he left the dance the cold made him feel worse and then he found himself on the square. The handle of one of the pistols he carried fell off and he stooped to pick it up. The next thing he remembered was seeing the deceased in a pool of blood. She was lying head downwards at the bottom of the second flight of stairs, with her feet up the stairs. He carried her to the bedroom. Then he rang the bell of the next door flat. He said something but had no idea what it was. The next thing he remembered was  
40 McKinnell slapping his face, he did not know why. Then he found himself in the guard room at Lyster Barracks. He recalled nothing in between save that, after hearing Surgeon Lieutenant Clement's evidence he remembered being given a finger-nose test in the sick bay. Before this incident he had had blackouts on two occasions after he had been drinking. After one of these occasions he had been told he had been violent and abusive.

p.178.11.16-20  
p.183.1.21.  
p.187.1.28.  
p.189.1.13.  
p.201.  
p.194.

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p.233.1.17.

(ii) Michael Shepherd had been on the afternoon picnic. The Appellant had drunk about five beers.

pp.237-8.

(iii) Leonard Henry Collecott spoke of a party in August 1959. The Appellant, who was then shortly returning home to marry, was present and had too much to drink. He became violent and abusive. Later he told the witness he had no recollection of what happened.

p.242.

(iv) Geoffrey Foster spoke of an incident just before Christmas 1950 when he found the Appellant lying in the street deeply asleep, as if in a coma. With the help of another man he took the Appellant home by taxi and carried him up to his flat.

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p.260.

7. The Chief Justice summed up the evidence to the jury. He directed them on the burden of proof and continued:  
"If the Prosecution fails to discharge this burden which lies upon it throughout the whole trial until the very end then, of course, you also know what your duty is, and it is to acquit the accused." He then defined the crime of wilful homicide and continued:

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p.261.1.36-  
p.262.1.4.

"It will be clear to you from this definition that, before you can find the accused guilty of wilful homicide, you must be satisfied as to four essential ingredients or elements:  
you must be satisfied that the wife of the accused in fact died; then that she died by the act or omission of the accused; in the third place, you must be satisfied that the act or omission of the accused causing the death was done maliciously, and lastly, that the act or omission was perpetrated with the intent on the part of the accused to cause the death of his wife or, at any rate, to expose her life to manifest peril. Each of these four elements necessary to constitute the crime of wilful homicide must be proved by the Prosecution to your satisfaction as I told you."

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He next dealt with the evidence of the death of Jean Broadhurst, including the medical evidence and its relevance to the defence of accident. Having done so, the learned Chief Justice turned to the evidence of Mr. and Mrs. McKinnell and, having summarised it, added:

10 "Now if you believe these two witnesses you will probably have no difficulty at all in coming to the conclusion that it was the accused who materially caused the injuries to his wife. p.266.11.4-12.

Assuming that you do believe them, I do not think that you will have any doubt that it was the accused who materially inflicted the injuries on his wife and so the second element with which we are now dealing, would also be discharged."

20 He followed this by dealing at length with the question of the McKinnells' credibility and then turned to the third and fourth ingredients of the crime saying :- pp.266-270.

30 "Now after we had said all this, suppose that you are not satisfied that the accused was in fact the person who physically caused the injuries to his wife, that he had nothing at all to do with it, not even merely physically materially - nothing: in that case, of course, your enquiry stops there - the case for the Prosecution would fall through: your enquiry will not need to be pursued any further; the case is just finished. But suppose you do take the other view, you do accept the evidence of the McKinnells because you find, as I have tried to explain to you, that the objections brought forward against their evidence are not such to induce you to disbelieve them; then we would have that Jean Broadhurst was killed and that she was killed by the act of her husband. That would dispose of the first two elements of the offence, but it would not by any means be the end of your troubles. In that case you have to push your inquiry very much further. p.271.1.26- p.272.1.36.

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We thus come to the third and fourth inquiries, which for convenience we can take together. This is the most important and I am sure, also the most difficult of your tasks. I told you already that in order to bring the charge home to the accused the Prosecution must prove beyond reasonable doubt not only that the accused caused the death of his wife, but must similarly prove that he did it maliciously and with intent to kill her or, at any rate, to put her life in manifest peril. The Prosecution infers this intent from the act itself and from the circumstances in which it was done. Of course, so that in a crime of wilful homicide there may be the required intent it is not necessary that there should be premeditation. I know that you are paying attention to what I am saying to you and I wish to be as clear as possible on this point. Intent is not the same thing as premeditation. While intent is necessary, premeditation is not. Sometimes premeditation takes place, say in a case of armed robbery or in cases of poisoning where the crime is planned and thought out in advance: but intent to kill or to injure a person so as to expose his life to manifest peril can be formed on the spur of the moment, as happens almost always in all crimes of passion. The malice, the intent which is required for wilful homicide need not be aforethought except only in the sense that naturally every desire or intent or foresight comes before the external act. The theory of the Prosecution, as you know, is that on the night in question there was an argument between the accused and his wife and the accused in a fit of temper ran after his wife, beat her and threw her down the stairs. In so doing, the Prosecution says, the accused must have intended to kill her or, at least, having regard to the gravity of the head injuries caused, to cause her such serious bodily harm that

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death must have appeared to him to be the natural and necessary consequence of his action."

He then returned to the possibility of death resulting from an accident:

10 "Counsel suggested to you, or asked you to imagine, that the wife could have fallen down the stairs as the accused was chasing her in fun and, therefore, this was a case of pure accident. I do not know, but I do not think you will find very great difficulty in disposing of that suggestion. The circumstances appear to be hardly consistent with that explanation. To accept it would be to reject the whole of the evidence of the McKinnells and to disregard also the nature of the injuries, while it is a mere conjecture on the part of the accused if, as he says, he does not remember."

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p.273.1.35-  
p.274.1.3.

He next turned to the defence which lay in the Appellant's assertion that he did not remember anything of the incident, and said:

"But easy though it may be to put forward such an assertion, I am afraid your duty is to examine it with scrupulous care and determination to do justice".

p.274.1.13.

He continued:

30 "What we are really concerned with in this enquiry is the intent of the accused; we are not really concerned with what the accused remembered consequently, after the event; what we are really concerned with is what his state of mind was at the time he did the act, assuming that he did it".

p.274.11.19-24.

40 He then dealt with the evidence relating to what he referred to as "the alleged amnesia".

p.274.1.26.

The learned Chief Justice then directed the Jury on the law of Malta regarding intoxication, prefacing this with the remark

p.276.1.19-  
p.277.1.27.  
p.275.1.34.

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- p.277.1.28. that the plea of the defence was that the Appellant was so drunk that he did not or could not form the intent alleged by the Prosecution or indeed any other intent at all. He then dealt with the evidence relating to intoxication and said:
- p.279.11.3-7. "If, in accordance with the evidence, if you accept it, you take the view that the accused was not by reason of intoxication incapable of forming the requisite intent you will proceed to enquire whether, capable though he was, he in fact formed it". 10
- p.279. After this he discussed the evidence as to the state of the relationship between the Appellant and the deceased and continued:
- p.280.11.7-12. "But suppose you take the view that the Prosecution has not proved to your satisfaction that is to say as I told you, beyond reasonable doubt, that the accused was in fact capable of forming the intent and in fact formed it, then of course you cannot find the accused guilty of the crime which is charged against him." 20
- p.280.1.25-  
p.281.1.27. The learned Chief Justice then told the jury that, if they thought the specific intent necessary to constitute wilful homicide was not proved, they would have to go on to consider whether there was the intent necessary to constitute the lesser crime of grievous bodily harm followed by death. The latter intent was the generic intent to cause any harm. If a man was too drunk to be able to form the intent of wilful homicide, his mind might yet be clear enough for him to realise that his act was going to cause harm of some kind. If the jury found that the specific intent of wilful homicide had not been proved to their satisfaction by the Prosecution, they would have to consider whether the Appellant, if he had done the act, had done it with an intent to hurt. If so, he might be found guilty of the crime of wilful bodily harm from which death ensued. 30  
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Finally, Mamo, C.J. referred to the crime of involuntary homicide, which, he said, did not require any intent but was committed by mere negligence. The jury would not have to consider that unless they excluded both wilful homicide and grievous bodily harm followed by death.

10 8. The Respondent respectfully submits that the trial was throughout conducted fairly and properly in accordance with the law of Malta. Neither the questions put by the Court to the witnesses, nor the comments made by the learned Chief Justice upon the evidence in his charge to the jury, were in any way improper. In the charge, the evidence was correctly summarised and the Appellant's defence was fairly put to the jury.

20 9. The Respondent respectfully submits that the learned Chief Justice directed the jury accurately both upon the relevance under Maltese Law of drunkenness and upon the onus of proof. He told the jury in a number of passages that the onus of proof rested throughout upon the Crown, both generally and also specifically in relation to the intent of the Appellant.

30 10. The elements of the three offences of wilful homicide, grievous bodily harm followed by death and involuntary homicide were, in the Respondent's respectful submission, correctly put to the jury. Mamo, C.J. did not in his charge withdraw the question of involuntary homicide from the jury, either expressly or in effect; though he would have been justified in doing so, because on no reasonable view of the evidence should the Appellant have been found guilty of this offence. The verdict shews,  
40 moreover, that the jury took a view of the evidence upon which the question of involuntary homicide was irrelevant.

11. The Respondent respectfully submits that the judgment of the Criminal Court of Malta was right and ought to be affirmed, and this appeal ought to be dismissed, for the following (amongst other)

R E A S O N S

- (1) BECAUSE the trial was throughout conducted fairly and properly in accordance with the law of Malta;
- (2) BECAUSE in his charge the learned Chief Justice summarised the evidence accurately and put the Appellant's defences fairly to the jury;
- (3) BECAUSE the learned Chief Justice directed the jury accurately according to the law of Malta upon 10
  - (a) the elements of the offences of wilful homicide, grievous bodily harm followed by death and involuntary homicide,
  - (b) the relevance of drunkenness, and
  - (c) the onus of proof;
- (4) BECAUSE upon the evidence the jury could not reasonably have convicted the Appellant merely of involuntary homicide; 20
- (5) BECAUSE there is no reason to suppose that miscarriage of justice has occurred.

J.G. LE QUESNE

GERALD DAVIES

No. 18 of 1963

IN THE PRIVY COUNCIL

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O N A P P E A L  
FROM HER MAJESTY'S CRIMINAL COURT  
FOR THE ISLAND OF MALTA AND ITS  
DEPENDENCIES.

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B E T W E E N

MALCOLM STEWART BROADHURST  
Appellant

- and -

THE QUEEN ... Respondent

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C A S E FOR THE RESPONDENT

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CHARLES RUSSELL & CO.,  
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Strand, W.C.2.