**ITALIAN REPUBLIC**

In the name of the Italian People

**THE SUPREME COURT OF CASSATION**

FIFTH PENAL SECTION

Composed of the Right Honorable Judges:

| | | |
|---|---|---|
| dr. Gennaro | MARASCA - President | Sent. N. Section 1105 |
| dr. Paolo Antonio | BRUNO - Reporting Judge | UP – 25/03/2015 - 27/03/2015 |
| dr. Alfredo | GUARDIANO | R.G.N. 32598 / 2014 |
| dr. Luca | PISTORELLI | |
| dr. Gabriele | POSITANO | |

issued the following

**RULING**

on the appeals filed by

SOLLECITO Raffaele, born in Bari on 26/03/1984
KNOX Amanda Marie, born in Seattle (USA) on 09/07/1987

against the ruling by the Court of Assizes of Appeal of Florence dated 30-Jan-2014;

taken notice of the documents, of the challenged ruling and of the appeals;

having heard the report by the Reporting Judge Paolo Antonio BRUNO;

having heard the Public Minister, in the person of Deputy Prosecutor General Dr. Stefano Maria Pinelli, who concluded asking for the annulment without refferal because of expiration of the statute of limitations concerning charge B) with recalculation of the sentence in twenty eight years and six months of imprisonment for Knox Amanda and of twenty four years and six months for Sollecito Raffaele;

having then heard:

counselor Carlo Pacelli, defence attorney for the civil party Patrick Lumumba, who asked for the rejection of the appeals and the upholding of the appealed ruling and of the monetary provisions, as per written conclusion and expenses;

counselor Enrico Fabiani Veri, defence attorney for the civil party of the Kercher family, who asked for the inadmissibility or, subordinately, the rejection of the appeals and the upholding of the appealed ruling as per written conclusions he filed together with expenses;

counselor Francesco Maresca, for the same civil party, who concluded by asking for a declaration of inadmissibility or, in any case, for the rejection of the appeal, with the conviction of the defendants to pay monetary compensations, as per written conclusions and expenses.

Having also heard:

counselor Luciano Ghirga, for Amanda Marie Knox, who made reference to the appeal and to the new reasons for appeal, insisting for its acceptance;

counselor Carlo Dalla Vedova, defence attorney for Knox, who made reference to the appeal and to the new reasons, asking for the annulment of the appealed ruling; preliminarily he asked for the suspension of the proceeding until the decision concerning the proposed issue of constitutional legitimacy of Articles 627-628 of the Italian Code of Criminal Procedure; or, in any case, until the decision of the European Court of Human Rights.

Because of the late time of the day and the necessity of dealing with other proceedings scheduled in the same session, the President postponed the hearing to 27-Mar-2015, for the continuation of the hearing and for the decision.

At today's hearing, having heard counselors Giulia Bongiorno and Luca Maori, who, on behalf of Raffaele Sollecito, have made reference to the reasons of appeal, asking for their acceptance, the case was discussed [by the panel] in order to reach a decision.

## CONSIDERED AS FACT

**1.** Raffaele Sollecito and US citizen Amanda Marie Knox were indicted, in front of the Court of Assizes of Perugia, of the following offences:

A) of the offence under Italian Penal Code Articles 110, 575, 576, first section no. 5, in relation to the crime *sub* [Latin: "under"] C) and 577 first section no. 4 , in relation to Italian Penal Code Article 61 nos. 1, 5 , for having, in collaboration among themselves and RUDY HERMANN GUEDE, killed MEREDITH KERCHER, by means of strangulation and consequent rupture of the hyoid bone, and profound

lesion to the left anterolateral region and the right lateral region of the neck, by a sharp cutting weapon as per charge B), and thus metahemorrhagic shock with appreciable asphyctic component secondary to the bleeding (derived from the sharp-object wounds present in the left anterolateral and right lateral regions of the neck and the concomitant abundant aspiration of hematic material [i.e. blood]), and taking advantage of the nocturnal hour and the isolated location of the apartment rented by the same KERCHER and the same KNOX, in addition to two young Italian women (FILOMENA ROMANELLI and LAURA MEZZETI), an apartment located on via della Pergola 7 in Perugia, committing the act for futile reasons, while GUEDE, in collaboration with the others, committed the offence of sexual violence.

B) of the offence under Italian Penal Code Article 110, 4, Law no. 110/1975, for having, in collaboration between themselves, carried outside of the residence of SOLLECITO, without a justifiable reason, a large sharp cutting knife of 31 cm in total length (seized from SOLLECITO on 06-Nov-2007, Exhibit 36).

C) of the offence under Italian Penal Code Articles 110, 609-*bis* and –*ter* no. 2, for having, in collaboration with RUDY HERMANN GUEDE (GUEDE being the perpetrator in collaboration with the co-accused), compelled MEREDITH KERCHER to undergo sexual acts, with manual and/or genital penetration, by means of violence and menace taking the form of lesion-producing constricting maneuvers, in particular upon the upper and lower limbs and vulvar area (ecchymotic suffusions [i.e. bruises] on the anterolateral face of the left thigh, lesions in the vestibular area of the vulvar region, and ecchymotic area on the anterior face of the middle third [of the] right leg) in addition to the use of the knife *sub* B).

D) of the offence under Italian Penal Code Articles 110, 624, for having, in collaboration between themselves, in order to procure an unjust profit, [and] in the circumstances of time and place described under charges A) and C), taken possession of the sum of approximately €300.00, 2 credit cards, of Abbey Bank and Nationwide, both of the United Kingdom, and 2 mobile phones belonging to MEREDITH KERCHER, removing them from the custody of the latter (an act to be described under Italian Penal Code Article 624-*bis*, the place of commission of the crime, contained in charge A), being recalled here).

E) of the offence under Italian Penal Code Articles 367, 110, and 61 no. 2, for having, in collaboration between themselves, simulated an attempted burglary in the bedroom occupied by FILOMENA ROMANELLI in the apartment on via della Pergola 7, breaking the glass of the window with a stone taken from the vicinity of the residence, which was left in the room near the window, all in order to secure themselves impunity from the offences of homicide and sexual violence, by attempting to attribute the responsibility therefore to unknown persons [who would have] penetrated the apartment to this end.

[these] events having all taken place in Perugia during the night between 01-Nov and 02-Nov-2007.

furthermore KNOX alone [is accused] of: F) of the offence under Italian Penal Code Articles 81 second section, 368 section 2, and 61 no. 2, for having, with several actions [all] executing a single criminal plan, via an accusation lodged in the course of statements given to the Mobile Squad at the *Questura* [police station] of Perugia, on the date of 06-Nov-2007, falsely accused DIYA LUMUMBA, known as "Patrick", of the crime of homicide against the young MEREDITH KERCHER, knowing him innocent, all with the aim of obtaining impunity for all [involved] and in particular for RUDY HERMANN GUEDE, himself [a person] of colour as LUMUMBA; in Perugia, on the night between 05-Nov and 06-Nov-2007.

With the verdict dated 04 – 05-Dec-2009, the Court of Assizes declared Amanda Marie Knox and Raffaele Sollecito guilty of the crimes attributed to them under charge A), into which offence the crime under charge C) was incorporated, B), D) limited to the mobile phones, and E), and, for what concerns Knox, of the crime attributed to her under charge F); the crimes having all been bound together by continuation, and with the exclusion of the aggravating circumstances under Italian Penal Code Articles 577 and 61 no. 5, the generic mitigating circumstances equivalent to the remaining aggravating circumstance being acknowledged to both, sentenced Knox to twenty six years of imprisonment and Sollecito to twenty five years of imprisonment, not including other consequential rulings;

[the Court] convicted, moreover, the same defendants, together, to pay damages to the civil parties John Leslie Kercher, Arline Carol Lara Kercher, Lyle Kercher, John Ashley Kercher and Stephanie Arline Lara Kercher, damages to be paid separately, with an immediately effective provisional assignment of € 1,000,000.00 to both John Leslie Kercher and Arline Carol Lara Kercher and of € 800,000.00 in favour of Lyle Kercher, John Ashley Kercher and Stephanie Arline Lara Kercher;

[the Court] also convicted Amanda Marie Knox to pay damages to the civil party Patrick Lumumba, to be paid separately, with an immediately effective provisional assignment of € 10,000.00, not including other consequential rulings;

[the Court], finally, convicted Knox and Raffaele Sollecito to pay damages to the civil party Aldalia Tattanelli (the owner of the flat [sic] on via della Pergola), to be paid separately, and to Lyle Kercher, John Ashley Kercher and Stephanie Lara Kercher, with an immediately effective provisional assignment.

Ruling on the appeals filed by the defendants, the Court of Assizes of Appeals of Perugia, with verdict dated 03-Oct-2011, declared Knox Amanda Marie guilty of the crime under charge F), with the exclusion of the aggravating circumstance under the Italian Penal Code Article 61 n. 2, and - having acknowledged the generic mitigating

circumstances being equivalent to the aggravating circumstances under the second section of the Italian Penal Code Article 368 - sentenced her to three years of imprisonment; [the Court] also confirmed, for this charge only, the payment of damages;

acquitted the defendants for the crimes attributed to them under charges A), B) and D), for not having committed the crime, and for the crime under charge E) because the fact does not exist, rejecting the compensation demanded from them by the civil party Aldalia Tattanelli.

Ruling on the appeals filed by the Prosecutor General of Perugia, by defendant Amanda Marie Knox and by the civil parties, this Court of Cassation, First Penal Section, with ruling dated 25-Mar-2013, annulled the challenged ruling, limited to the crimes under charges A) - into which offence the crime under charge C) was incorporated - B), D) and E) and to the aggravating circumstance under Italian Penal Code Article 61 n. 2 concerning to charge F) and referred [the case] to the Court of Assizes of Appeal of Florence for a new trial; rejected Knox's appeal, with consequent decisions.

Ruling in the referral court, the Court of Assizes [of Appeals] of Florence, with the verdict quoted on the first page [of the present ruling], having deemed existent the aggravating circumstance under Italian Penal Code Article 61 n. 2, concerning the crime under Italian Penal Code Article 368, second section, recalculated the sentence imposed on Amanda Marie Knox to a total of twenty eight years and six months of imprisonment; confirmed the other points of the first instance ruling, with the consequential decisions also in favour of the civil parties.

Against the aforementioned pronouncement the attorneys of the defendants filed separate appeals to the Court of Cassation, each of them based on the points of criticism that follow.

**2.** The appeal in favour of Amanda Marie Knox introduced the discussion of its various reasons with a long foreword, on the one hand disclosing the inspiring lines [or reasoning] of the whole appeal and, on the other hand, proposing again issues already raised during the [Florence] trial [*gravame*[1]], such as the issue of constitutionality of the *combinato disposto* [the combined effect of two or more Articles of law] of Articles 627 section 3 and 628 section 2, with reference to a possible "repetition to infinity" of judgments of referral by Cassation and the [related] possibility of an [endless] sequence of appeals [to Cassation] against the referral verdict and the never ending possibility to appeal the annulled verdicts.

[1] Usually "gravame" means appeal, but in this case it would suggest a meaningless repetition, as it is known that Knox's counsel raised such issues already during the Florence trial.

Under the first aspect the basic reason for contesting was presented for the whole appeal, constituted by the alleged evasion [by the court of Florence] of the [content of the] ruling of this Court of Legitimacy that caused the referral and by the diverging reading of the same body of evidence by two different courts of Assizes, that of Perugia and that of Florence, the latter, moreover, on the basis of a mere examination of papers.

[The appeal] then moved on to the analytical indication of factual circumstances or trial evidence which were allegedly not appropriately evaluated or, illegitimately, considered separately and not in a global and unitary perspective.

Having advanced all this, [the appeal] argued various reasons for appeal, which are now succinctly presented, within the limits provided for by Article 173, section 1, of the instructions of application [disposizioni attuative] of the Italian Code of Criminal Procedure, that is within the limits *of what is strictly necessary for the decision*.

With the first [reason of appeal] the violation or non-observance of the penal law, under Article 606 letters b) and c) of the Italian Code of Criminal Procedure is denounced, as well as the lack of justification, under the same Article, letter e) on the decisive point of the alleged motive of Knox to commit the serious crime, in violation of Article 110 of the Italian Penal Code.

On this subject, as hypothesised in the fact finding ruling, regarding the alleged disagreements between the appellant and Kercher, despite the acquittal in the meantime, with a definitive ruling on this point, for the theft of the sum of three hundred euros and the testimonies acquired, among them the one by Marco Zaroli, concerning the "idyllic" relationship between the two girls. From the trial documents no motive had come out that could have induced Knox to a willful participation in a murder and, contrary to the assertion of the fact finding judge, the motive is absolutely necessary in a trial based on circumstantial evidence. No indication on this point had been given by the judge of referral, even in the face of the specific indications given by the annulled ruling [the acquittal], which had pointed to three possibilities: 1) the genetic agreement on how the death occurred; 2) modification of an initial program foreseeing only the involvement of the young Englishwoman in an unwanted [by her] erotic game; 3) mere coercion in a group sex game.

Not only that, but in a situation of absolute uncertainty the referral judges contrived an anomalous type of participation to a crime with others [figura concorsuale], the product of a singular mixture of different impulses and motives attributed to each participant: Guede by a sexual motive, Knox by a resentment against the Englishwoman, Sollecito by an unknown reason.

The second reason poses a problem of great importance in the context of the present judgment, namely the correct evaluation of the results of the scientific

investigations, with regards to respecting the criteria of evaluation under Article 192 of the Italian Code of Criminal Procedure and of the value of the results of the genetic investigation, with their failure to perform a [second] "amplification", given the scarcity of the sample, and, more in general, of [the evaluation of] the reliability of investigations carried out without respecting the provisions prescribed by the international protocols, for what concerns both evidence collection and its analysis.

[The appeal] particularly denounces the anomalies in the collection of the knife (Exhibit 36) and of the clasp of the victim's bra, anomalies of such relevance that the risk of contamination cannot be excluded, as correctly assessed by the Conti-Vecchiotti expert report, ordered by the Perugian Court of Assizes, that also considered the scientific result to be unreliable, precisely because it could not be tested again.

The possibility of the collected knife being the murder weapon is also challenged.

With the third reason the violation of law and lack of justification is denounced, under Article 606, letters b) and e), relative to the connected purpose between the crime of calumny and the murder. It also depicts the psychological state of the defendant at the time of the slanderous statements (06-Nov-2007), statements in any case ruled not usable by this Court (with ruling n. 990/88 [sic, correctly 990/08]), reporting moreover the violation of Article 188 of the Italian Code of Criminal Procedure, because of the impairment of the moral freedom of the person making the statement at the time it was recorded as evidence.

With the fourth reason the lack of justification in the ruling concerning elements of fact of the case is asserted, with reference, first of all, to the alleged staging of a burglary in Romanelli's room, which does not consider that Guede, at the time of his arrest, had wounds on his right hand compatible with the hypothesis that he had previously broken the window's glass and had climbed the wall to enter, given that the shards of glass scattered on the window sill, in the same way that Guede's previous [crimes] had not been considered, who wasn't new to breaking and entering into apartments in a similar way. Furthermore, it had not been considered that no biological trace attributable to the defendant had been found in the murder room, while as much as fourteen traces attributable to Guede had been found there.

The hypothesis of an alleged selective cleaning of the crime scene by the defendant was completely illogical, with it being basically impossible to remove some genetic traces while leaving others untouched.

With the fifth reason the lack of justification in the ruling concerning the evaluation of the testimonies of Curatolo and Quintavalle is denounced, because their content is not appropriately considered. It is then stated that relevance was illogically given to the SMS received by Patrick Lumumba, the location of its

reception [by Knox] being uncertain, given the well known uncertainty in the localisation [of a position] based on the cell tower used.

With the sixth reason a violation of law, with reference to the use of documents even if they had been ruled not usable by this Court [of Cassation] is denounced, particularly [concerning] the statements against herself by the defendant dated 5.45 on 06-Nov-2007.

Moreover it had not been considered that the *memoriale* written by Knox herself was affected by the unstable psychological condition she was experiencing, also due to the violation of the defensive rights that she suffered.

With the seventh reason [the appeal] objects to the violation of Articles 111, section 2 of the Constitution and 238 of the Italian Code of Criminal Procedure, with reference to the evaluation of the definitive ruling against Guede and to inappropriate assessment of the statements he made, through Skype, to his friend Giacomo Benedetti.

With the eighth reason the omission of admission of decisive evidence, under Article 606 letter d) of the Italian Code of Criminal Procedure, in relation to Articles 111 section 2 [of the Constitution] and 238*bis* of the Italian Code of Criminal Procedure is denounced, for the denial of renewed evidentiary hearings, dated 30-Sep-2013, of the request to cross-examine Guede, after his accusations against the defendant.

The ninth reason points out inconsistencies or contradictions in the reasoning of the ruling, as well as serious inaccuracies, like the statement on page 321 concerning the presence of genetic traces of Sollecito and Kercher on the knife that was seized.

It is then surmised that the place where the victim's stolen mobile phones were found was compatible with Guede's route to return to his home, on via del Canarino [sic, correctly: Canerino] n. 26.

Furthermore, the evaluation of the results of the expert report by Professor Massimo Bernaschi concerning the damage suffered by the computers, most likely due to an electric shock, is deemed inadequate.

With the tenth reason the failure to comply or the erroneous application of Articles 627 and 603 of the Italian Code of Criminal Procedure is denounced, with reference to [the] Court rulings of 30-Sep-2013 and of 17-April-2014.

Furthermore, the correction of a material error in the Court Ruling of 17-Apr-2013 [sic, correctly: 2014] is requested, with reference to the incorrectly stated birthplace of the defendant, who was born in Seattle and not in Washington.

With the eleventh reason the violation and non-observance of Article 606, letter b) is claimed, with reference to the verdict concerning the aggravating circumstance to the crime of calumny under Article 61 n.2 of the Italian Code of Criminal Procedure, charged because of the hypothesised teleological link.

The referral judge had deemed the generic [mitigating circumstances] as having less value [than the aggravating circumstances], even if they had been ruled as equivalent in a decision that became definitive on that subject [i.e. the Hellmann ruling].

**3.** Raffaele Sollecito's appeal rests upon twenty-two motives, which are also set out succinctly, in terms prescribed by the aforementioned Article 173, Section 1, implementing provisions, Italian Code of Criminal Procedure.

This succinct rewording necessitates prefacing by a reference to the introductory part, which contains specific requests.

The first concerns a motion to defer to the United Sections the questions purportedly of greatest relevance, potentially capable of generating conflicting interpretations:

a) The probative or indicative value of the outcome of scientific inquiry in the case of violation of international protocols accepted by the scientific community in relation to the presentation and interpretation of the data;

b) The usability of statements made by Guede during the appellate proceedings. In this regard, it is alleged that the reference in the judgment under appeal to Guede's account during questioning, reported in the judgment acquired according to Article 238 bis, is inappropriate; if those statements had been usable, it would have meant permission to introduce statements made without cross-examination into the proceedings, in violation of the same procedural regulation.

c) The context of the principle, *beyond reasonable doubt*, which, according to the appellant's defence, was violated in the present case in view of an erroneous assertion by the referral judge, according to which the lack of procedural collaboration by the defendant exempted the judge from pursuing and analysing alternative hypotheses emerging from the court records and from arguments advanced by the defence.

d) Limits of reliability of testimonial statements (such as those of Dramis, Monacchia, Quintavalle and Curatolo) made at a distance of time from the events following the urging of journalists. The legal issue is that of verifying the reliability of testimony in proceedings with a strong interest in the media, with a particular reference to the witnesses Gioffredi and Kokomani and to the deposition of Luciano Aviello, previously convicted of several offences, who did not hesitate to make

libellous statements regarding public prosecutors and Raffaele Sollecito's counsel and father.

The intervention of the highest jurisdictional assembly was necessary so that evaluative criteria for oral evidence would be established in trials of the strongest interest to the media, to preserve the credibility of the legal process, sheltering it from varieties of mythomania and from judicial protagonism.

Also examined in the introductory part, at length, is Amanda Knox's position, considering that the erroneous evaluation of evidence against her resulted in its negative impact having repercussions on Sollecito's position, in the distorted belief that the two substantive positions would be indissolubly shackled together, as if in a single system of *vasi comunicanti* [communicating vessels] or in an anomalous "solidaristic" extension of responsibility. All of this aims to denounce the erroneous methodological formulation, which consists in the absence of an "individualising" evaluation of the appellants' parts in the tragic case being adjudicated. The aforementioned finding gave momentum to a further legitimacy complaint, namely the circumvention of the *dictum* of the annulled judgment, which tasked the referral judge with "delineating the subjective position of Guede's associates in view of the range of hypothetical situations", as specifically stated.

Further, it is pointed out that the aforementioned Knox never placed, not even in the memorial under her signature (erroneously considered to contain a confession), Sollecito at the scene of the crime. In fact, the memorial makes clear that the latter was not present in the house on via della Pergola.

Moreover, no trace of Sollecito was discovered in the room of the homicide. The only indicative element against him was represented by a trace of DNA discovered on the clasp of the victim's bra, the trace for which identification with this defendant was, however, excluded by the Vecchiotti-Conti report, which on this point, incorporated observations by the party's consultant, Professor Tagliabracci, a world-famous geneticist.

This said, it is possible to proceed to a summary of the numerous grounds for complaint.

1) As the first, the most multifaceted reason, violations are denounced against Articles 627, Section 3, and 628 of the Italian Code of Criminal Procedure, for the non-observance of the legal principles set out in Articles 627, Section 3, and 627 of the Italian Code of Criminal Procedure, in particular related to the necessity of a) ascertaining the presence of the defendants at the scene of the crime; 2) delineating the subjective position of Rudy Guede's presumed associates; 3) determining Raffaele Sollecito's criminal motive in relation to that definitively established for Guede.

Regarding the close connection with the aforementioned objection, further issues for complaint are put forward, specifically calibrated in the logic of motivational defect, pursuant to Article 606, letter (e), of the Italian Code of Criminal Procedure, directly related to the denounced circumvention.

- The first concerns the contested denial of new evidentiary hearings, also expressed in the ruling dated 30-Sep-2013, also challenged. The petition formally submitted by the defence (in the new motives as of 29-Jun-2013 and in the note submitted on 30-Sep-2013) was intended to establish the actual presence of the defendants at the place of the crime and the role played by each one in the instance. It is further suggested:

- lack of evaluation of decisive elements concerning Sollecito's alibi, in particular with regards to the results of integrating the report by the party's technical consultant D'Ambrosio, demonstrating the defendant's interaction with the computer in his possession;

- the obvious illogicality of the motivations report with regards to the prescription of Article 522 of the Italian Code of Criminal Procedure; lacking correct reasoning capable of transcending the limits of reasonable doubt in order to establish Sollecito's participation in the homicidal action and the role he played in the affair;

- motivational defect, pursuant to Articles 192 and 238 bis, regarding the content of the final judgment against Guede with the purpose of identifying the homicidal motive.

Illogically denied was the request to renew evidentiary hearings, aimed at demonstrating the defendant's absence at the scene of the crime and the non-existence of any motive besides that ascertained by the acquired sentence, of a sexual nature, concerning Guede.

Besides, the denial of the renewal of hearings included another violation of the law, according to Article 627, second section, according to which "if the appellate judgment is annulled and the parties so request, the judge shall reopen[2] evidentiary proceedings to acquire evidence relevant to the decision."

Not willing to follow the jurisprudential direction concerning the mandatory nature of the reopening of evidentiary hearings on appeal, in line with the evidence, the referral judge was, however, obliged to motivate the denial of the request for probative integration in a rational way coherent with the procedural record.

Among others, a request was made for a genetic testing of the stain (apparently left by sperm) on the victim's pillowcase, in order to verify its nature and possible

[2] Translators note: the original word was "rimozione", i.e. "removal", but this does not make sense in the context and the author probably intended to write "rinnovazione", i.e. "renewal"]

attribution to an unknown person; for direct expert testimony to determine whether it is practically possible to perform the cleaning aimed at only removing traces attributable to the appellants inside the victim's room, without removing any of those collected and precisely attributed to Guede; for the genetic assessment of Exhibit 165 B, upon the acquisition at the laboratories of the Scientific Police of the remainder of the DNA extracted from the bra clasp and further genetic assessments of this sample, ordering a supplementary inquiry if necessary to eliminate all reasons for doubt in this regard; for the assessment of the stone found in Romanelli's room in order to detect the presence of DNA on the surface of the rock; for an audiometric measurement to verify whether it was possible to hear the presumed harrowing scream from the house on via della Pergola and the sound of footsteps behind closed windows, by witness Capezzali; for a computer-science investigation of Sollecito's computer to verify the existence of human interactions on the night of 01-Nov and 02-Nov-2007; for an anthropometric test to examine the physique, the height, the gait, and distinguishing features of the subject captured by the video camera at the crossroads in the parking lot, for a necessary comparison with Guede's physical characteristics and his clothing at the moment of his arrest; for a cross examination of Guede under Article 197 bis regarding the facts of the night of the murder.

The rejection of the aforementioned procedural requests was motivated by the judge *a quo* [of the trial from which this appeal is being heard] in a manner which was neither logical nor pertinent.

2) Violation of Article 606 (e) concerning the erroneous reading and interpretation of Knox's memorial.

3) Another motivational flaw is suggested by reference to the finding that determining the exact time of Meredith Kercher's death (which, according to the defence, should have been placed between 21.00 and 22.00 hours, 22.15 at the latest) would be irrelevant, particularly with reference to the examination of Kercher's telephone records.

4) The same flaw is noted regarding the alleged irreconcilability of Curatolo's testimony to the time of the scream and the asserted irrelevance of the precise time of death of the young British woman.

5) Also distorted was the reading of Capezzali's testimony, a relevant record of which is attached.

6) From the angle of motivational deficiency, assessed according to the new formulation of Article 606 (e) of the Italian Code of Criminal Procedure, the complaint claims an erroneous reading of Curatolo's testimony.

7) The same concerns Quintavalle's testimony and the omitted evaluation of Inspector Volturno's testimony, who drew up an internal memorandum, according to which the same Quintavalle had reported seeing Sollecito and Amanda always together.

8) Regarding the combined provisions of Articles 606 (e) and 192 of the legal code, the complaint claims an erroneous evaluation of evidence in hypothesising joint action of the persons in the commission of the crime, with a particular reference to the contested assessment of the footprint and to the traces revealed with *luminol*.

There was no evidence, therefore, on the asserted joint participation of the appellants in the unjustified carrying of the knife.

9) It then denounces the distortion of evidence regarding the timing of the 112 call, based on a presumed error of the timer in the video camera located in the proximity of the parking lot.

10) An identical violation is inferred regarding the alleged alteration of the crime scene by the two defendants.

11) Another aspect of motivational deficiency that is criticised, *sub specie* [under the pretext] of misinterpretation and of contradictoriness or obvious illogicality of the motivation, on the basis of Article 192 of the Italian Code of Criminal Procedure, concerns the finding of the falsity of the alibi proposed and the corresponding violation of the principle *nemo tenetur se detegere* [no one is obliged to give testimony unfavourable to oneself].

Moreover, one would be dealing, if anything, with a "failed", not a "false" alibi, unfit as such to support the "circumstantial inference", otherwise inadmissibly inverting the burden of proof.

12) Also erroneous was the reading of the results of the genetic tests performed on Exhibit 36 and on the presumed compatibility of the seized weapon with the most serious injuries detected on the victim's neck. In this regard, it was obviously a distortion by the judge *a quo* [of the trial from which this appeal is being heard], given that no DNA mixture of Kercher and Sollecito was found on the handle of the knife. On the same utensil, traces of starch were found, evidence that it could not have been thoroughly washed to remove incriminating traces. In addition, starch, present in plants, is well known for its absorbent capacity, therefore it would have absorbed blood if used to commit the homicide.

Hence the motivated request to refer the proceedings to the United Sections.

In addition, the assumption that the most serious wound on the right side of the victim's neck could have been inflicted by a single blow was refuted by the

unequivocal evidentiary findings, namely the conclusions of the forensic pathologist expert Cingolani and of the party's consultant, Introna.

13) The motivation of the ruling under appeal was also inviting criticism by asserting the availability of the kitchen knife at the hands of Amanda Knox at the moment of aggression. In this regard, it was illogical to argue that the kitchen knife used in the homicide had not been concealed because the furniture and kitchen tools in the residence rented by Sollecito were subject to a search, so that the absence of the knife, once discovered, could have given rise to suspicion; hence, the need to return it to its place, after cleaning.

The motivation was also clearly illogical regarding Knox's transport of the knife, through the asserted use of a spacious bag in her possession, for hypothetical reasons of personal defence, prompted to that end by Sollecito, who had a definite familiarity with knives. It was not taken into account that, even if conceded as true, to validate this justification one would exclude the hypothesis of joint participation at the same time, because one would have to admit that the female defendant was alone and could not avail herself, if attacked by strangers, of any protection by her fiancé.

There was no evidence, therefore, of the asserted joint participation of the appellants in the unjustified carrying of the knife.

14) Further, the motivational deficiency was blatant with regards to the conclusions of the genetic examination of the bra clasp, with regard to which referral of the proceedings to the United Sections is requested.

Regarding the possible contamination of the sample, the appellate judges ignored the photographic materials included in the court records, which clearly demonstrated possible contamination in the way the clasp was treated, being passed from hand to hand by persons wearing dirty latex gloves.

Moreover, no second amplification was performed on the clasp despite there being a usable portion of the extract, which nonetheless remains actually unused.

Moreover, the clasp, although noted during the first site inspection by the Scientific Police, was left on the floor and remained there for quite some time. It is not true, moreover, that between the initial access and that during which the clasp was at last acquired, that there were only two site searches by the investigators, which were more numerous in reality and on those occasions everything was turned upside-down.

In this regard, no account was taken of the defence's observations and of the conclusions to the contrary reached by the party's consultant, Professor Tagliabracci.

15) There was also a distortion of evidence regarding the actual delivery of S.A.L. [*stato avanzamento lavori*, state of work progress] related to the investigations performed by Dr. Patrizia Stefanoni of the Scientific Police.

16) Another line of grievance concerns the motivational context regarding the alleged simulation of the burglary in Romanelli's room and the inadequacy of motivation regarding the new motives referred to in the brief as of 29-Jul-2013.

In this respect, it is suggested that it was Sollecito who pointed out to the postal police, who had arrived at the house on via della Pergola for another reason (the discovery of Kercher's mobile phones, one of which was in Romanelli's name), the strangeness of the situation, for the fact that computers and objects of value were not stolen from the room of the flatmate of Kercher and Knox; that no account was taken of the testimony of the lawyer Paolo Brocchi and of Matteo Palazzoli, as noted in the new motives, regarding the burglaries committed by Guede in a way analogous to that apparently used to enter the residence on via della Pergola; that the defence briefs, including the parts dealing with the injuries to the palm of Guede's hand present at the moment of his arrest in Germany, were not examined; that evidence was misinterpreted as to the position of the glass fragments, given that it follows from the evidence that glass fragments were both above and below the objects present in Romanelli's room; that, furthermore, a glass fragment was also discovered in Meredith's room, a sign that the person who had stealthily broken in had also brought in that fragment. Therefore, it was obvious that the ruling under appeal was founded on mere conjecture, entirely separate from procedural reality.

17) Further, the appeal points out a violation of Article 238 bis, Italian Code of Criminal Procedure, based on the argument that, through the admittance of the irrevocable judgment against Guede, it was intended that statements made *contra alios* [against others] in a different procedural context be rendered usable, even though these statements were made in the absence of the persons accused. Apart from such questions, also with respect to those for which referral to the United Sections is being sought, Guede's statements were erroneously evaluated, in violation of criteria imposed by Article 192 of the Italian Code of Criminal Procedure and of guidelines by this Court (p. 57). It was true that these statements were invoked merely as confirmation but they were unusable nonetheless. In any case, the judgments concerning him, including the final one, demonstrated Guede's complete unreliability.

18) Another violation of Article 248 of the Italian Code of Criminal Procedure was reported, referring to the finding of the binding effect of an external judgment.

19) Invariably, with regards to Guede's statements, their relevant use amounted to a violation of Article 11 of the Constitution, Article 526, of section 1, of the Italian

Code of Criminal Procedure, and of Article 6 of the European Convention. On this point, too, it is requested that these questions be referred to the United Sections.

20) In case such approach was not shared, the question was raised of constitutional legitimacy of the norms that allowed to bypass the prescriptive prohibitions, regarding the usability of statements incriminating third parties in the absence of those parties, via the admittance of final judgments against the declarer containing the relevant claims *contra alios* [against others].

21) A motivational *deficit* is also asserted regarding the hypothesised attempt at probative contamination during the appeal, even apart from the formulation of insufficient evidence expressed in this regard.

22) Also missing was the motivation regarding the aggravating circumstance of sexual violence.

23) The same could also be held regarding the theft of the victim's mobile phones.

24) Moreover, there was a clear violation of the principle of proof beyond reasonable doubt, among other things, in view of the lack of investigation into alternative solutions.

Lastly, the omitted reasoning on the possibility of reclassifying the circumstances of the homicide to the less serious charge of aiding and abetting or of manslaughter is contested, as well as the application of mitigating circumstances.

**4.** The counsel of both defendants have therefore proposed new reasons [for appeal].

**4.1.** In favour of Knox two additional reasons were provided.

First it contends a breach of Article 606 letters a), b) and e) of the Italian Code of Criminal Procedure, criticising the whole motivational process of the judgment under appeal, which exceeded the scope set by even exorbitant pronunciation of annulment, with violation of Articles 627, section 3, and 623 of the Italian Code of Criminal Procedure. In particular, the anomalous entry into the merit of the annulled judgment is criticised.

The second reason complains of contradictoriness and patent lack of logic according to Article 533 Italian Code of Criminal Procedure.

They proposed, finally, to apply for a postponement of the trial awaiting the decision of the European Court of Human Rights, following the application to that supranational judicial body, on 22-Nov-2013, for alleged infringement of the right to a fair trial, pursuant to Article 6 section 3 letters a/c ECHR [European Court on Human Rights] for violation of the right to defence, under Article 48 section 2 of the European Charter of Fundamental Rights; and for violation of the prohibition of

torture, including Articles of the ECHR 3 and 4 of the Charter of Fundamental Rights of the EU.

**4.2.** The defence of Sollecito also proposed new reasons [for appeal], as summarised below.

With the first they complained about the lack of reasoning over the time of death of Kercher. According to the defence, careful examination of objective evidence would enable them to secure the time of death between 21.00-21.20 hours and 22.13.

The exact determination of death was essential to ascertain the actual presence of the accused at the scene of the crime at the moment of the attack.

In particular, the analysis of the victim's mobile phone revealed further activity between the hours 21.00 and 22.13, as explained by the consultant Pellero regarding SMS on the aforementioned telephone. That would have allowed acquisition - if not with certainty whether the young English girl was still alive at 22.13, given the possibility of accidental connections - at least some useful indication in this regard.

More precisely, there were the following connections over the relevant time period:

1) a first call, at 20.56, to her home number in England, remained unanswered and, unusually, this was not followed by a further call given the girl's routine behaviour, to call her family members every day;

2) another call, perhaps accidental, at 21.50, to an answering machine, which lasted a few seconds, without waiting for an answer;

3) a call, at 22.00, to the British bank Abbey, obviously an error because it was not preceded by the country code;

4) at 22.13, a text message was received on the phone, but in the place where it had been abandoned, in via Sperandio.

On the other hand, the examination of Sollecito's computer registered an interaction at 21.20 [sic; correctly, 21.10] and then a subsequent one at 21.26 not discovered by the postal police - but by the defendant's consultant D'Ambrosio using different software, MAC, to watch a cartoon (*Naruto*) lasting 20 minutes, demonstrating that until 21.46 Sollecito was at his house.

This serves to demonstrate the non-involvement of the accused, also evident in light of the Skype call between Guede and his friend Benedetti.

This would, however, require further analysis of the computer, which was unsuccessfully requested by the defence.

The judge *a quo* [of the trial from which this appeal is being heard] then committed a clear error in the evaluation of the witness Curatolo, not realising that the statements of the witness were rather favourable to the accused, especially in so far as he reported seeing the two lovers in Piazza Grimana from 21.30 to 24.00. There was, therefore, a contradiction within the judgment: it was not true what is claimed on page 50 regarding the lack of favourable evidence that might help confirm that the two defendants were, from 21.30 until about 12.30 of the next day, in a different place than the scene of the murder.

In the reconstruction of the crime he had not, then, taken into account the witnesses Capezzali and Monacchia who reported the harrowing scream at around 23 to 23.30. Except that, Capezzali was contradicted by other witnesses, residents in the area, who had stated that they had heard nothing.

Moreover, they did not examine the footage recorded by the camera located near the parking lot that had recorded the passage of a subject resembling Guede in appearance and clothing. The time of recording was 19.41, but effectively 19.53, as there is a time difference of 12 or 13 minutes.

Even the autopsy, according to the stomach findings, allowed the time of death to be set at between 21.30 and 22.00. Moreover, under cross-examination the consultant, Dr. Lalli, had corrected an error contained in the technical analysis signed in his name, stating that the time of death would be fixed "at not less than 2 or 3 hours after the last meal (which occurred around 18.00, in the company of her English friends)" but "not more than 2 or 3 hours after the last meal".

Given this uncertain conclusion a new expert assessment was requested which was denied, in the new grounds in the appeal, dated 29/07/2013.

In short, in the light of the given facts, according to the defence, the correct time of the death of the young Englishwoman would have to be set between 21.00 and around 22.13.

The second reason points out the complete impossibility of a *selective* cleaning of the scene of the murder, in relation to the removal of only the traces related to the accused, leaving those of Guede. In fact, in Kercher's room there had been found numerous traces of Guede and none of Sollecito.

They also deduce that there is a deficiency in the reasoning regarding the presumed tampering with the scene of the crime by the accused. It had also not been taken into account, that Sollecito had no interest in such tampering.

With the third reason they denounce the defective reasoning regarding the plantar footprints being attributable to a woman (size 37) as thus demonstration of involvement of several people in the crime.

With reference to footprints, there was an obvious error in the judgment, which was also present in the judgment of annulment by the Supreme Court (p. 21), given that the only footprint found in Kercher's room was Guede's.

The fourth reason claims violation of the law, with reference to Article 606 letters c) and e) as proof there were collaborators in the crime and of violation of Articles 111 Constitution, 238, 513 and 526 Italian Code of Criminal Procedure on the use of statements of Guede and the [in]observance of the necessary criteria for the evaluation of the claim regarding complicit collaborators.

The fifth reason contends there is misrepresentation of evidence and patent illogic relating to the results of genetic evaluation of the knife (Rep. 36) and on the claimed "non-incompatibility" of it with the largest wound found in the neck of the victim. They also suggest violation of assessment of evidence as per Article 192 Italian Code of Criminal Procedure.

The sixth reason contends lack of reasoning for failing to take into account the violation of the international recommendations on evidence collection and analysis of traces of samples of minuscule amounts and interpretation of the results. Also claimed is misrepresentation of evidence and patent illogic reasoning on the results of genetic testing on the kitchen knife as well as violation of the criteria of evaluation of the evidence, in Article 192 of the Italian Code of Procedure.

The seventh reason deduces lack of reasoning with regard to the breach of the international recommendations on collection and analysis with regard to genetic examinations on the bra clasp (Rep. 165b) and on the blatant contamination of the item, during the searches and inspections carried out by the judicial police.

The eighth reason claims violation of Articles 192 and 533 Italian Code of Criminal Procedure, on the interpretation of the genetic findings on item 165b and lack of reasoning for the blatant violation of international recommendations regarding interpretation of mixed DNA.

The ninth reason claims violation of Article 192 Italian Code of Criminal Procedure and patent lack of logic concerning evidence for misrepresentation of the scientific investigation, given the failure of the DNA evidence in this case.

With the tenth reason it is contested that there is patent illogical reasoning with reference to the *luminol* test to prove the alleged presence of bloody footprints inside the house on via della Pergola and on the bathmat as well as patent lack of logic in reference to mixed traces of Knox-Kercher and the evaluation of the circumstantial evidence concerning the involvement of multiple persons in the crime.

With the eleventh reason it is claimed there is patent lack of logic or contradiction in reasoning with regards to the evaluation of a motive for the murder.

The twelfth reason claims identical false reasoning and misrepresentation of evidence concerning the time of the call to 112.

With the thirteenth reason it is proposed the identical defect in reasoning concerning the alibi and the alleged attempt by Sollecito to cover up for the alleged co-conspirator Amanda Knox.

The fourteenth reason denounces the violation of the principle of law enunciated by the Supreme Court and violation of the norms for judgment of the [application] of beyond reasonable doubt, specified in Article 533 Italian Code of Criminal Procedure.

## AS A MATTER OF LAW

**1.** Considerations of logic and exposition require an examination *in limine* [at the beginning] of the preliminary issues raised by the parties.

This concerns problematic points of law important prior to the proceedings – by virtue of their potential capacity to influence decisive further developments – which, while lacking substantive finality, nevertheless can take on decisive potency, at least for the purpose of delaying or suspending the present proceedings.

This refers, *in primis* [first and foremost], to the questions of constitutional legality of the combined provisions of Article 627, Section 3, and 628, Section 2, of the Italian Code of Criminal Procedure, for alleged violation of the principle of reasonable length of trial, as provided in Article 111 of the Constitution; to the request for delay pending the ruling of the European Court of Human Rights, before which a complaint has been brought by Amanda Knox's defence of coercive treatment to which she was allegedly subjected by investigators in the course of preliminary inquiry; to multiple requests by Raffaele Sollecito's defence that questions of specific importance be transferred from the responsibility of this Supreme Court to that of the United Sections, both for reasons of their objective importance and for their potential to generate interpretive conflicts within this Court's jurisdiction.

**2.** All the requests are clearly unfounded.

**2.1.** First, there is the question, posed again, of the constitutional legitimacy of the legal norms governing the referral trial [the appeal trial after annulment]. Indeed, the response with motives of the judge *a quo* [of the trial from which this appeal is being heard] appears irreproachable, whose response, by court order of 09-Sep-2013, holds it patently unfounded or, anyway, irrelevant to the present case. To the arguments advanced in relation to the first legal issue – which points out that the dynamics of the relations between the proceedings on points of law resulting in an annulment and the post-annulment proceedings before a referral judge are

steered towards a progressive narrowing of *thema decidendum* [matter to be decided], which, at least as a trend, precludes the legal process from being protracted *ad libitum* [at one's pleasure] – to this observation it can be added that the effect of progressive delimitation of *res iudicanda* [matter being judged] is pursued by the legislator as a possible outcome not only of the judgment of annulment, taken in isolation, but also of the provisions of Article 628, Section 2, of the Italian Code of Criminal Procedure, according to which: *in all cases, a ruling by a referral judge may only be challenged for motives not related to issues already decided by the Court of Cassation, that is for failure to comply with the provisions of Article 627, Section 3*; and of Article 627, Section 4, of the Italian Code of Criminal Procedure, according to which: "*in referral proceedings, nullity, even absolute, or inadmissibility established in earlier proceedings or in the course of preliminary investigation may not be reargued*".

It is forbidden that point-of-law jurisprudence, by and large, also extends to unusability, which is an expression of a general legislative principle, which confers (trend-like) finality on the rulings of the Court of Cassation (Section 5, No. 10624 as of Feb. 12, 2009, *Barbara*, vol. 242980; Section 5, No. 36769 as of 03-Oct-2006, Caruso, vol. 235015; Section 1, No. 22023 as of 18-Apr-2004, Marine, vol. 235274; and, concerning post-annulment proceedings on precautionary measures, Section 6, No. 47564 as of 14-Nov-2013, Tuccillo, vol. 257470; *contra*, Section 3, No. 15828 as of 11-Nov-2014, vol. 263343).

It is possible to affirm, therefore, that the legislator has designed a procedural mode of progressive development (the so-called "progressive judgment" principle) that could be visualised – at least in a "static" dimension – as the geometric figure of "concentric circles".

On the other hand, the Constitutional Court – on the occasions indicated in the appeal signed by counsels Ghirga and Dalla Vedova – has had the opportunity to occupy itself with this question, declaring it inadmissible on the basis of arguments which the present rationale by the defence does not seem able to undermine, not advancing argumentative elements to suggest a possible, different, decisive epilogue.

It cannot be left unsaid that the criminal process is, constitutionally, extended towards ascertaining the material truth, as well as towards a cognitive progression, which, corrected for *errores in procedendo* [errors in the procedure]] and *in iudicando*, *medio tempore* [errors in judgment, in the meantime] intervening, reaches its ultimate end, in terms of approximating, as closely as possible, that objective, rendering to society a result commonly understood as "procedural truth", that is to say, truth procedurally ascertained (*rectius* [to be precise], that which is possible to ascertain with the ordinary tools of cognition and inference at the judges'

disposal). All of this, under ineluctable compliance with procedural forms, which represents, indisputably, the greatest expression of legal civility and a noble distillate of the secular process by which scientific knowledge matures, typical of Italian legal culture.

And when, as in this case, one is dealing with a legal process based exclusively on circumstantial evidence – in the absence of direct evidence, of reliable technical-scientific inputs, or of relevant and usable declarative contributions – all the more the procedural truth, unanchored from material and phenomenal reality, ends by being a mere *fictio iuris* [legal fiction], owing to the tools of human cognition commonly employed in the process of reconstruction and revision *a posteriori* being limited and usually subject to opinion. Therefore, it is exactly in situations of this kind that respect for the forms is all the more necessary, representing the unfailing criterion – objective and preferential – that is the testing for correctness and for congruity of cognitive route of a judge in a problematic approach to material truth.

And to perform such verification is this Court on points of law specifically called, with the powers of cognition *ab extrinseco* [from the outside], limited, that is, to externally checking for formal correctness, congruity and logical coherence of the justifiable totality of this cognitive progression, without any means of evaluating the true demonstrative depth of the probative elements utilised in it.

Undoubtedly, such specific finalisation must be aligned with the constitutional principle, from Article 111 of the Constitution, of reasonable duration of the trial, intended to resolve itself throughout the predetermined temporal phases and subdivisions.

The pursuit of this ultimate end (the search for material truth) – much more so in trials of particular sensitivity like the one in question, of such difficulty as to require indefatigable inquiry and particularly complicated technical investigations – should therefore be combined with the imperative of a judicial result within the shortest possible time, on account of the obvious imperatives of respect for the value/person of the actors involved and of unavoidable service of justice for the victims and society.

**2.2.** Further, without merit is the request by the defence of Amanda Knox to postpone the present proceedings pending a decision by the European Court of Justice [sic; correctly, Court of Human Rights], where – due to the definitive status of the conviction for the offence of false accusation ["calunnia"], at that time addressed via partial judgment – a complaint has been filed of wrongful and coercive treatment to which investigators allegedly subjected the person under investigation, the appellant, to the point of damaging her will and of harming her moral freedom, in violation of Article 188 of the Italian Code of criminal procedure.

In fact, an eventual pronouncement by the European Court in favour of the

same Knox, in the sense of a hoped-for recognition of her unorthodox treatment by the investigators, would not be able, in any way, to undermine the internal [Italian Court] judgment, nor open the prospect for a revision of the verdict and sentence, considering that the libelous accusations which the aforementioned defendant made against Lumumba owing to the impact of the alleged coercive acts were also confirmed by her before a public prosecutor, during questioning, therefore, in a context free of institutionally anomalous psychological pressures; and were also confirmed in a memorandum ["memoriale"] bearing her signature, at a moment when the said accuser was alone with herself and her conscience, in conditions of objective tranquillity, free from external conditioning; and were even repeated, some time later, during the validation of Lumumba's arrest, before the GIP [judge of preliminary investigation] who initiated the proceedings.

**2.3.** Finally, the motion by Sollecito's defence to refer from this Court to United Sections questions related to the probative value of scientific results acquired in violation of international protocols, containing precise prescriptions to assure the authenticity of presentation and analysis; to the criteria for the evaluation of witness statements at trials with strong media exposure; to the usability of accusatory statements incorporated into a judgment acquired within the meaning of Article 238-bis of the same legal code, is rejected.

We are dealing, by all signs, with questions of a particular moment, of doubtless relevance to the resolution of this case but of questionable capacity to generate jurisprudential controversies. At any rate, these are potential interpretive nodes this Collegium [Court] definitely cannot avoid resolving, with relevant acknowledgements provided, of binding force in shaping this judgment.

**3.** With these preliminary considerations, the central theme of the current judgment can be tackled, forming the *leitmotiv* [recurring theme] of the objections of the appellants, concerning the rulings rejecting the non-compliance by the referral Judge, of the *dictum* [authoritative opinion] of the verdict annulled by this court, underlining the criteria of the principle of law that affirms it.

The assessment requested of this Court is – only in appearance – easy, given that the *ratio decidendi* [rationale for the decision] of the verdict of annulment lies in the realisation of the obvious lack of logic of the reasoning of the challenged judgment; a realisation that, then, is substantiated – and specified – in the revealed violation of the principles of completeness and freedom from contradictions.

In any case, it is an indisputable application of jurisprudence that, in the presence of such grounds for annulment, pertaining to the deficiency in reasoning, the referral judge is responsible for the examination of the entire body of evidence, that he is expected to review in complete freedom to form judgments, without any type of constraints, being only required to produce motivations devoid of

deficiencies of obvious lack of logic or patent contradictoriness that had caused the annulment of the first appeal verdict. In the jurisprudence of this Court of Legitimacy, in fact, the assertion is repeated according to: *"following an annulment for deficiency of reasoning, the referral judge is not bound by founding the new verdict on the same arguments considered illogical or deficient by the Supreme Court of Cassation, but is free to arrive at, based on different arguments from those rejected in the Court of Legitimacy or rather integrating and completing those already carried out, to the same decision of the annulled pronouncement. That because it is the judge of the lower court who is expected to have the task of reconstructing the facts emerging from the results of the trial and to appreciate the significance and value of the various sources of evidence* (amongst others, Section 4, n. 30422 of 21/06/2005, *Poggi,* Rv. 232019; Section 4, n. 48352 of 29/04/2009, *Savoretti*, Rv. 245775).

A problem – outlined, with appreciable discretion, in the new reasoning in favour of Knox – is when, as in the case in question, the judge of legitimacy made *incursions* into the "merit", going beyond the institutional limits assigned to it, such as, for example, when a variety of alternative motives are proposed for the murderous act and the referral judge is expected to identify, in that predetermined *numerus clausus* [finite number], the most appropriate to the case in question. There is no doubt, according to this Court, that in such an unusual situation the referral judge cannot be considered in any way bound or conditioned, precisely because of the clearcut *discrimen* [crisis] that exists in the profession, for what has been said, between cognisance of law and cognisance of fact, the latter the exclusive prerogative of the referral judge. On this matter, moreover, this Supreme Court of Jurisprudence has already expressed itself, in stating that the referral judge cannot be conditioned in his reasoning *by evaluations of fact that may have escaped the judge of legitimacy, with the levels on which the respective evaluations operate being different, and with it not being the role of the Court of Cassation to superimpose its own judgment on the referral judge regarding such aspects. Moreover, where the Supreme Court focuses any attention on some particular aspects from which emerges the deficiency or the contradictoriness of the reasoning, that does not mean that the referral judge for the new verdict is limited only by the points specified, because he conserves the same powers held originally, which is as the judge of merit relative to the identification and evaluation of the court records, within the charges of the verdict affected by annulment.* (Section 4 n. 30422/2005 cit.). In the same way, it was stated that […] *any elements of fact or evaluation contained in the pronouncement of annulment are not binding on the referral judge, but are to be taken purely as points of reference in order to identify the defect or defects reported, and not as facts that impose upon the decision entrusted to him; in addition there is no doubt that, following a pronouncement of*

*annulment because of lack of reasoning through the identification of specific points of deficiency or of contradictoriness, the power of the referral judge cannot be limited to the evaluation of the single points specified, as if they were isolated from the rest of the body of evidence, but is expected to consider other court records on which the decision must be based, providing the justification in the sentence.* (Section 4, n. 44644 of 18/10/2011, defendant F., Rv. 251660; Section 5, n. 41085 of 03/07/2009, defendant L., Rv. 245389; Section 1, n. 1397 of 10/12/1997 dep. 1998, Pace, Rv. 209692).

All of this is at the basis of the recurring lesson of this Judge of Legitimacy, on the consolidated point constituting *ius receptum* [established law], according to which *the powers of the referral judge differ depending on whether the annulment was pronounced because of violation or erroneous application of penal law, or due to a patent lack of logic in the reasoning, since in the first case the judge is bound by the principle of law expressed by the Court, subject however that the evaluation of the ascertained facts remain unaltered in the appealed sentence; in the second case they can proceed with a new assessment of the body of evidence, with the limit of not repeating the motivational faults of the sentence that has been annulled.* (Inter alia Section 3 n 7882, of 10/1/2012, *Montali* Rv. 252333).

**3.1**. As we will see, the judge *a quo* [of the trial from which this appeal is being heard], in further points, remains conditioned by the prospect of the factual profile unexpectedly included in the annulled sentence; such that the stringent and analytical evaluation of the Supreme Court might unavoidably become forced towards affirming the guilt of the two accused. Misguided by this basic misunderstanding, the same judge is drawn into logical inconsistencies and obvious *errores in iudicando* [errors in judgment] that are here reported.

**4.** One cannot avoid concluding, in the meantime, in this first attempted analysis, that the history of this trial has been characterised by a troubled and intrinsically contradictory path, around one sole certainty; the guilt of Amanda Knox for the slanderous accusation of Patrick Lumumba. Regarding, on the other hand, the murder of Kercher, the ruling of guilt of the same Knox and of Sollecito in the first trial was followed by acquittal in the Court of Appeal of Perugia, as a result of an articulated analysis of the evidence; then its annulment by the First Section of the Supreme Court; and finally by conviction, in the Court of referral in Florence, followed by today's appeal to the Court of Cassation.

An objectively wavering process, whose oscillations, however, are also the result of clamorous *failures*, or investigative "amnesia" and of culpable omissions of investigative activity. Had they been carried out these would, in all probability, have led to a picture if not of certainty, at least of tranquil reliability pointing either towards guilt or innocence of today's accused. Such a scenario, intrinsically

contradictory, constitutes in itself already a first and eloquent signal of an investigation that was never capable of reaching a conclusion *beyond any reasonable doubt.*

**4.1.** Certainly an unusual media clamour about the case, was due not only to the means of death of the 22 year-old [sic; correctly, 21 year-old], so absurd and unusual in its origin, but also to the nationalities of the people involved. (A citizen of the United States, Knox, accused of involvement in the murder of a flatmate, who was also sharing the experience of studying overseas; a British citizen, Meredith Kercher, found murdered under mysterious circumstances in a place in which, probably, she felt most protected, it being "her house"), and therefore, reflecting the "international" nature of the story, it led to a sudden acceleration of the investigations, in the frantic search for one or more guilty people to placate international opinion, and certainly did not help lead to the real truth. In homicides such as this (such pressure) affects not only the timing but also the competence and the correctness of the investigative activities. Not only this, but when – as in this case – the outcome of such research depends greatly on scientific investigations, the aseptic collection of all the samples useful for the investigation – in conditions that guarantee prior *sterility* that avoids possible contamination – constitutes, notably, the first prudent, shrewd and essential prelude – in its turn – of a correct analysis and "reading" of the recovered samples. So when the central point of technical activity contains specialist genetic investigations, the contribution of investigative activity is ever more relevant; credible parameters of correctness must respect international *standards* of protocols, following fundamental rules of approach prescribed by the scientific community, on the basis of statistical and validated observations.

The rigorous respect of such methodical norms offers a conventional coefficient of acceptable credibility of such results, primarily linked to their *reproducibility* - namely the possibility of obtaining these results, and only these, reproduced with a constantly identical method and under identical conditions, according to fundamental empirical rules. On a more general level following the scientific method starting with Galileo Galilei on the application of the "scientific method". This is typically leading to "objective" reality, *reliable, verifiable and agreeable* – well-known to be consistent, on one hand, in the collection of empirical data agreeable with the hypothesis and the theory to be validated; on the other hand in the mathematical and rigorous analysis, associating in this way – as first affirmed by the above-mentioned Galilei - "sensible experiences" to "necessary demonstrations", that constitute experimental mathematics.

**4.2.** As will be seen, all of this is essentially missing from the present trial.

Not only this, but media attention, as well as not benefiting from a search for the truth, led to further prejudicial reactions, at least in terms of *"procedural deviations", generating illicit "noise"* (in the provision of information). This is not so much from the late discovery of witnesses by certain people (considering that in this case this throws into question the reliability of such statements), as of *irruption* of the trial by the impromptu propulsion of detainees with proven criminal records, who are certainly not people averse to moments of pathological lying and of being protagonists in trials, and are able in this way to secure, at least for a day, their return to the limelight of television, thereby breaking the monotony of prison. We see amongst other things, not unusual claims by such *"bearers"* of truths collected in the prison environment, from supposed confidences of co-prisoners in the classical *hours of exercise* or of *socialising.* Such situations are certainly not commendable, but nevertheless in the first appeal had the merit for the first time of securing the active participation in this trial of Rudy Guede (who, having been cited in the course of the first instance trial, availed himself of the right not to respond, f.3). He is a key element in this story, even though unwaveringly reticent (and never having confessed), a bearer of half truths, which moreover from time to time changed.

Rudy Guede is the Ivorian citizen, and is himself involved in the Kercher story. Judged separately, this co-participant in the murder, was condemned after a fast track trial, to 30 years in prison, reduced to 16 on appeal.

The reference to him is to introduce a second, irrefutable certainty in this trial (after that relating to the responsibility of Knox for the crime of calumny), namely the guilt, irrevocably confirmed, of the same Ivorian, as author – in collaboration with others – of the murder of the young English woman.

Affirming the guilt of the aforementioned was the finding of genetic traces, certainly attributable to him, collected in the house on via della Pergola, on the body of the victim and in the room in which the murder was committed.

**4.3.** The same reference weighs, therefore, on two relevant rights of law raised by the defence; one relating to the use and validity of the above-mentioned irrevocable sentence in the present trial; and the other to the validity of statements – in terms that were characterised by anything but consistency and constancy – of Guede within his *own* trial, that in some way those being considered today were involved.

**4.3.1.** Concerning the first question, the use of that irrevocable sentence in this trial, considered from all points of view, is irreproachable, as set out in Article 238 *bis* Italian Code of Criminal Procedure. According to that provision "[...] *sentences defined as irrevocable can be used once the fact has been ascertained and are evaluated according to Articles 187 and 192, section 3.*"

Well, the "fact" asserted in the sentence in question is, without question, the participation of Guede in the murder "along with other persons, unknown". The reference to procedural rules signifies that the use of such assessment is subordinate to the double condition of amenability of this *fact* to the "objective of the evidence", with reference to the present trial, and the existence of *other elements of proof which confirm its reliability.*

Double elements which, in the case under consideration, have largely positive results. And in fact the pertinence of this fact is evident, indeed accepted by this court. Equally correct is its evaluation concerning other trial verdicts, which confirm its validity. We are referring to multiple elements, linked to the complex reconstruction of the crime, which rule out Guede having acted alone. In the first place lies the existence of the two principal wounds (in reality three), found on the neck of the young English woman, one on one side and one on the other, with different directions and characteristics compatible (even if the conclusion is disputed by the defence) with two different knives. And further, the lack of signs of resistance on the part of the girl, under whose nails no trace of any aggressor was found, excluding any desperate attempt at opposition; the bruises on the upper arms and the echymoses on the mandibular area and the lips (probably manual acts of constriction to shut the mouth of the victim) found at autopsy, and the chilling mode of killing, not adequately evaluated in the contested judgment.

And in fact, in the same judgment (pages 323 and 325) it is evident that copious sprays of blood were recovered on the right side of the wardrobe in Kercher's room, 50 cm from the floor; circumstances which, having regard to their direction, would lead one to believe that the girl literally had her "*throat slashed*" while probably on her knees, with the head tilted, a short distance from this item of furniture, and was inflicted with more cuts to the throat, of which one – inflicted on the left side – caused her death by asphyxia following the flow of blood, which flowed back into and blocked the airway "impeding breathing, a situation aggravated by fracture of the hyoid bone – also referable to the action of the knife – with consequent dyspnoea" (p 48).

This is a physical action that is very difficult to ascribe to one person acting alone.

Except that the real importance, had it been adequately evaluated, would have resulted in relation to the quest for a motive. Thus the disproportional cruelty of the criminal action - could be considered as not being very compatible with any of the situations envisaged in the judgment, i.e. mere disagreements with Knox (which is even supported by evidence gathered from the victim's mother), with sexual impulses of some of the participants and, perhaps, with the idea of a group sex game gone wrong. This however, was not reflected on the victim's body, beyond the

digital violation by Guede, whose DNA was found in Kercher's vagina. However it cannot be excluded that there was conscious acceptance of a preliminary physical approach that was initially consensual.

This criticism renders even less compatible a break-in by an unknown burglar, when you consider whether in the natural order of **ordinary** events, it is really possible that a thief, at the sight of a young woman becomes seized by uncontrollable sexual urges and attacks her, with great difficulty. Then after the physical and sexual aggression, he precipitates into gratuitous homicide with the brutal ferocity seen in this case, rather than making a hasty escape. Unless, of course, one thinks about the disturbed personality of a serial killer, of whose acts there is no trace, there having been no murders of girls in Perugia at the time and using the same methods.

**4.3.2.** Regarding the second question, and as regards its usability – according to the method of acquisition under Article 238 *bis* Italian Code of Criminal Procedure - statements made by Guede *contra alios* [against others] as part of its proceedings in the absence of people blamed and their lawyers. (This is by reference to Guede's not always consistent and stable allegations, made during the preliminary investigation and reported in judgment. In these he had somehow involved Knox in the murder, but never explicitly Sollecito, while at the same time continuing to profess his own innocence, despite the presence at the scene of the murder and on the victim's body of numerous biological traces attributable to him). Here the result can only be negative. Indeed, such a mode of acquisition would result in an elusive sidestepping of the guarantees laid down by Article 526 section 1-*bis* Italian Code of Criminal Procedure, whose tenor is that *"the guilt of the defendant cannot be established on the basis of statements by persons who by choice have always voluntarily avoided examination by the accused or his counsel".* This would obviously, at the same time, be in violation of Article 111, section 4 Constitution, which gives the same conclusion to harmonise the trial system, according to Article 6[.3] letter d), of the European Commission [sic; correctly; Convention] of Human Rights (Section F. n. 35729 of 01/08/2013, *Agrama,* Rv 256576).

In this regard, it is useful to recall the principle of "non substitutability", taken by the United Sections of the Supreme Court from the widest category of *"legality of the evidence*", reflecting that, when the code establishes a prohibition or expresses non-usability, the use of other procedural instruments, typical or atypical, intended to surreptitiously circumvent such a barrier, is forbidden. (Section U, n. 36747 of 28/05/2003, *Torcasio,* Rv. 225467; cf, and Section U, n. 28997 of 19/04/2012, *Pasqua,* Rv. 252893).

And even in this trial process, Guede - called to testify as a witness as a result of the accusatory statements of Mario Alessi (a man convicted of a horrendous murder

of a child) - after having denied the accusation, confirmed the contents of a letter he sent to his lawyer, and then unexpectedly turned to a news broadcast, in which he accused today's applicants, and then refused cross-examination by their lawyers. Thus after recognising the authenticity of his letter refuting Alessi's claim that Raffaele Sollecito and Amanda Knox had nothing to do with the murder, Guede refused to be cross-examined by the defendants' lawyers, assuming that his presence in the trial was limited to the content of the statements of Alessi concerning himself. Hence, the unusability stated – in the part related to the letter that however concerned today's appellants – cannot be used in a different procedural context, given that it was made without the prescribed guarantees.

On the other hand, confronting the definitive attitude of closure the (appeal) court did not force the Ivorian to testify, as a result of the irrevocability of the judgment obtained against him, pursuant on Article 197 Italian Code of Criminal Procedure.

And in fact, bearing in mind the successive Article 197 bis, section 4, of the same legal code, he could not be compelled to give evidence about facts for which he had already been condemned, but always denied his responsibility, and could not give evidence involving his responsibility in relation to the offence in the present trial, since it was made outside such prescribed guarantees.

**4.4.** Finally, still as a preliminary matter, the question of law must be addressed, raised by the defence, regarding the rejection of the request for a new evidentiary hearing in the referral trial, also with regards to the execution of the requested expert assessments.

The exception is based on the importance of the expected obligation of the requested evidentiary hearing, against the particular yardstick of Article. 627 section 2, the second part, that "[.....] *If an appellate decision is cancelled and the parties request so, the judge has the means to renew an evidentiary hearing for the collection of evidence relevant to the decision*".

Obviously, the letter of the rule differs from the general discipline of the ordinary powers of the court of appeal in that field, in accordance with Article 603 Italian Code of Criminal Procedure: *"un-decidability of the state of the court records",* in the case referred to in section 1, for the possibility that the request relates to evidence already collected or new; we recall the criteria laid down in Article 495, section 1, for the hypothesis of new evidence discovered after the first instance judgment; the "*absolute necessity*" of supplementary evidence, in case of renewal *ex officio* [by right of office], as well as in the special case (originally envisaged and now repealed, pursuant to Article 11 law 28.4. 2014, n. 67) of the renewed request in favour of a defendant who was absent in the [Court of] first instance.

This court opines that the particular wording of the rules mentioned does not authorise the belief that the new court, in the event of annulment of the appellate decision, is obliged to renew evidentiary hearings by virtue of the mere fact that parties request it. To conclude otherwise would not have rational basis and, indeed, would introduce a dystonic element into the overall discipline of the institution.

Moreover, the first part of the second section of the same Article 627 Italian Code of Criminal Procedure states that the referral judge decides with the same powers as the court whose judgment has been annulled, subject to limitations arising in law.

For a harmonious reconstruction of the architecture of codes and obligations, therefore, we believe that the special discipline of the renewal of the evidentiary hearing in the court of referral does not detract from the general requirement laid down in Article 603 Italian Code of Criminal Procedure.

Moreover, in hindsight, the call, in section 2 of Article. 627 Italian Code of Criminal Procedure, to take evidence "relevant" for the decision is merely superfluous language, given that the relevant judgment is, necessarily, essential for the evaluation by the appeal court invested with the request for supplementary evidence and to the same appreciation of *absolute necessity* which led to the referral. And in fact, in no case of renewal of the evidentiary phase can one find evidence entering the trial that are not "relevant" to the decisions; and the same is true, more generally, for the entire package of evidence in a criminal trial, in consistent application of the fundamental principle laid down by Article 190 of the Italian Code of Criminal Procedure, according to which the judge must admit evidence requested by the parties, with the exception, other than those prohibited by law, of evidence "clearly superfluous or irrelevant".

In this sense and, with this understanding, we therefore need to reiterate the orientation expressed in the matter by this Supreme Court on previous occasions (Sec. 5, n. 52208 of 30/09/2014, *Marino*, Rv. 262,116 according to whom *the referral judge, invested with the task following the annulment pronounced by the Supreme Court, is not required to reopen the evidentiary hearing each time the parties so request, since its powers are identical to those of the court whose judgment was annulled, such that they must consider only evidence if it is essential to the final decision, as provided for by art 603 Italian Code of Criminal Procedure, as well as being relevant, as stipulated in Article 627, section two, Italian Code of Criminal Procedure*; Sec. 1, n. 28225 of 09/05/2014, Dell'Utri, Rv. 260,939; Sec. 4, n. 30422 of 21/06/2005, Poggi, Rv. 232,020; Sec. 1, n. 16786 of 24/03/2004, De Fa / Co, Rv. 227924).

There is no doubt, then, that the application of the powers conferred to the referral court regarding evidentiary hearings, as here, should be appropriately reasoned and the reasons, certainly, audited in the Court of Legitimacy.

Well, in this case, the judge *a quo* [of the trial from which this appeal is being heard] gave full reasons for the denial of the hearing of new evidence, considering it irrelevant to the decision. However, in other respects, the reasons for the denial emerged implicitly - but for this no less clearly – in the overall reasoning, maintaining that the body of evidence in the court records was complete.

On the other hand, there is no reason to believe that, despite the peculiarities in the referral judgment, there should not apply in this matter the principle generated whereby the expertise is neutral, removed from bias of parties and placed at the discretion of the judge, such that *it doesn't fall into the category of "decisive evidence" and its refusal is not sanctionable pursuant to Article 606, first section, letter d) Italian Code of Criminal Procedure, as it is the result of a judgment of facts that, if supported by adequate reasons, is irreversible* (Sec. 6, n. 43526 of 03/10/2012, reply, Rv. 253707).

**5.** Having resolved, in the aforementioned words, the matter of the rulings and those primarily to do with law, we may now face the "merit" of the trial process in relation to the content of the articulated appeals.

First, it should be noted that, regarding the contravention of charge B), relating to the illegal carrying of the knife indicated in the charge, we have now passed the statute of limitations, from the date of its commission.

There is no choice other than to accept it, without there being *evidence* of more favourable reasons for acquittal based on merit, keeping in mind Article 129, second section, Italian Code of Criminal Procedure, all the more in light of the pronouncements of guilt in the first instance trial and the second Assizes Appeal Court.

Moreover, according to undisputed guidance of this Court of Legitimacy *the formula of acquittal on merit prevails on the declaration of impossibility to proceed due to the statute of limitations only if there is detectable, with a simple analysis of the evidence, total absence of proof of guilt borne by the accused rather than positive proof of innocence, and not also in the case of mere contradiction or lack of evidence that requires a pondered consideration between opposing findings (Sec. 6, n. 10284 of 22/01/2014, Culicchia, Rv . 259,445).*

**6.** We may now proceed to examine the motivational structure of the ruling under appeal, the object of numerous critiques by the parties.

Even on first reading, discrepancies, inconsistencies, and *errores in iudicando* [errors in judgment] that invalidate the overall structure of the argument *ab imis* [from the deepest] do not escape notice.

**6.1** Erroneous, in the first place, is the assertion regarding the substantive irrelevance of ascertaining the motive of the murderous act.

This cannot be accepted in light of the unquestioned doctrine of this regulating Court (starting from Sec. 1, no. 10841 of 24/09/1992, *Scupola*, Rv. 192865) relating to the relevance of the motive as a *glue* that links the various elements of which proof is made, especially in circumstantial cases such as the one at hand.

Not only that, but - obviously - its value as a reinforcing key to the circumstantial evidence requires the prior verification of the degree of trustworthiness of the evidence [in question] in terms of clarity, precision, and consistency resulting from analysis of the same [evidence], considered in isolation and then incorporated into a global and unitary framework (Sec. 1, no. 17548 of 20/04/2012, *Sorrentino*, Rv. 252889 in the wake of United Sections, no. 45276, *Andreotti*, Rv. 226094, according to which *the "motive"* ["causale"], *while capable of constituting an element confirming involvement in the crime of the individual with the aim of physical elimination of the victim when, by its specificity and exclusivity, it converges unambiguously in a single direction, nevertheless retains a margin of ambiguity in itself, insofar as it may catalyse and reinforce the probative value of the positive evidence of guilt, from which one may logically infer, on the basis of established and trustworthy rules of experience, the existence of the uncertain fact (i.e. the possibility of attributing the crime to the party concerned), inasmuch as, upon analytic evaluation of each piece [individually] and in the context of a global assessment as a whole, the evidence, possibly in light of its interpretive reading [chiave di lettura] provided by the motive, presents itself as clear, precise, and convergent with unambiguous significance).*

Which, as we will see shortly, cannot be maintained in the case at hand, in the face of a body of evidence which is ambiguous and intrinsically contradictory.

In particular, none of the possible motives out of the range of those indicated by the annulled ruling itself can be ascertained in the present case.

The sexual motive, attributed to Guede in the proceedings against him, cannot be extended *tout court* to his presumed partners in crime; by what has been said, the hypothesis of a group erotic game has found no confirmation of any kind; it is not possible to hypothesise, for each presumed participant a motive that has been *transferred* or combined due to the sharing of some motivation or another. On the other hand, an extension of this sort would require the verification of secure interpersonal relationships among the co-participants that [would] render such a

*transfer* likely, if only in the fortuitous or spontaneous circumstances of a criminal accord.

Now, for all that the sentimental relationship between Sollecito and Knox is undisputed, and for all that it has been established that the young woman did have occasion to meet Guede in a few instances, there is no proof at all that Sollecito was acquainted with or had ever frequented the Ivorian. On this point it is certainly contradictory and manifestly illogical to [on the one hand] acknowledge (at f. 91) the unreasonableness of hypothesising the participation in such a "gory" murder in complicity with a stranger in ruling out any notion of involvement on the part of flatmates Filomena Romanelli and Laura Mezzetti (who, certainly, did not know Guede), and [on the other hand] not extend the same argument to Sollecito, who turns out never to have even met the Ivorian.

**6.2.** Another judicial error is to be found in the finding that the establishment of Kercher's exact time of death was irrelevant, in the belief that the approximate timing offered by the expert investigations was sufficient, for all that this may have been correct at the trial stage.

The Sollecito defence is right to object in pointing out the need for investigation of this point and all its implications, especially in a circumstantial case like this one. Not only that, but the exact determination of Kercher's time of death is an unavoidable factual prerequisite for the verification of the defendant's alibi, in the form of an inquiry aimed at ascertaining the possibility of his alleged presence in the house on via della Pergola at the time of the murder. It is for this reason that an appropriate expert review was requested.

Now, on this point too one must register a deplorable carelessness in the preliminary investigation phase. It suffices to consider that the findings of the judicial police had proposed a banal arithmetic mean between a possible earliest time and a possible latest time (from around 6.50pm on 01-Nov to 4.50am of the following day), thus fixing the time of death at about 11.00 – 11.30pm. Examination of the gastric apparatus of the victim (who, in late evening, had consumed breakfast [sic; correctly, dinner] with her English friends), has permitted – again, an approximation, amended at the trial stage – a greater restriction of the temporal range.

The Court of referral has further narrowed the timeline, placing it between about 9.00pm on 01-Nov (when Kercher took leave of an English friend) and 00.10.31am of the next day, on the basis of the recording (in the telephone records) of a signal on one of Kercher's own mobile phones intercepted by a cell tower serving the zone where via Sperandio is located, in the area where the phones in question had been abandoned by the murderers.

But this finding is also approximate in that, at the time just indicated, Meredith Kercher was already dead, if only since shortly before, by the very fact that the signal was recorded in the area in which the phones were abandoned, after having been removed [from her possession] immediately after the murder in the house on via della Pergola, a few hundred metres distant from the location of their discovery.

The appellant's defence has offered a much more reliable analysis in this respect, one anchored to incontrovertible factual data.

Indeed, examination of telephone traffic has revealed that, after saluting her English friend at 9pm, the young woman had vainly attempted to call her relatives in England, as had been her daily habit, while a final contact was recorded at 10.13pm, so that the timeline was restricted further to the range of 9.30 - 10.13pm or thereabouts.

**7.** The second criticism that must be raised against the ruling under appeal introduces to the central theme of the judgment, or rather the legal value attributable to the scientific evidence, with particular reference to the genetic investigations, acquired in violation of the rules established by international protocols[3].

This question, specific as it is, forms part of the lively theoretical debate on the relationship between scientific evidence and criminal trials, in search of a problematic balance between a theory – not insensitive to certain suggestions of interpretive stances from beyond our borders – that tends to put an increasing amount of weight on the contributions of science, even if not validated by the scientific community; and a theory that insists on the primacy of law and postulates that, in deference to the rules of criminal procedure itself, only those scientific experiments validated according to commonly accepted methodological canons may be allowed to enter.

This cultural debate, while respecting the principle of freely-held opinion of the judge, also proposes to critically reexamine the now-obsolete and dubiously credible notion of the judge as "*peritus peritorum*" [expert of experts]. Indeed, this old maxim expresses a cultural model that is no longer current, and is in fact decidedly anachronistic, at least to the extent that it expects to assign to the judge a real ability to master the flow of scientific knowledge that the parties pour into the proceeding; a more realistic formulation, by contrast, sees the judge as wholly oblivious to those contributions, which are the fruit of a scientific training that he or she does not, need not, and cannot possess. This is all the more true with regard to genetic science, whose complex methods require a specific training in forensic

[3] Translator's note: this is a fragmented paragraph in the original text, lacking a direct object of the verb *introduce* ("introduces"); it has been translated with the same erroneous grammar in English.

genetics, chemistry, and molecular biology, drawing upon a knowledge base that is light-years away from the purely humanistic and juridical education of a magistrate.

The consequence of acknowledging, as is inevitable, this state of *legitimate* ignorance on the part of the judge, and therefore their inability to "autonomously" master scientific evidence, cannot, however, be an uncritical placing of trust, which would be tantamount – perhaps on account of a misunderstood notion of freely-held opinion and of an equally misunderstood concept of "expert of experts" – to the substantial abdication of their own role by means of a fideistic acceptance of contributions by experts to whom the resolution of the case – and thus the responsibility of deciding it – would be delegated.

On the other hand, if in the presence of a technical/scientific contribution *ex uno latere* [from one side], that is originating from only one of the parties to the proceeding, or, on the other hand, independently ordered by the judge themselves, it may constitute a *commodus discessus* [easy way out] to paraphrase, in a more or less knowing manner, the technical arguments adopted in support of the finding, the problem presents itself in drastic form when, faced with opposing scientific contributions, that same judge is called upon to make a choice of sides; in that case, the paraphrase is far more challenging, and requires an appropriate and pertinent motivation explaining the reasons for which the alternative scientific proposition cannot be accepted (cf. Sec. 6, n. 5749 of 09/01/2014, *Homm*, Rv. 258630, according to which the judge who decides to adhere to the conclusions of the court expert, against those of a party consultant, while not being burdened with the obligation to provide an independent demonstration of the scientific correctness of the former and the erroneousness of the others, "*is however bound*" to demonstrating the fact that the expert conclusions were assessed "*in terms of reliability and completeness*", and that the consultant's arguments were not ignored).

This Court considers that this delicate problem, inasmuch as the present case is concerned, must find its solution in the general rules that inform our legal system and not, indeed, *aliunde* [from elsewhere], in an abstract insistence on the primacy of science over law or vice-versa. Scientific proof cannot, in fact, aspire to an unconditional credit of self-referential trustworthiness in the trial setting, by the very fact that a criminal trial renounces all notion of legal proof. Furthermore, it is known to all that there does not exist [only] one single science, bearer of absolute truths immutable over time, but rather many sciences or pseudosciences, including those that are "official" and those that have not been validated by the scientific community, insofar as they are expressions of research methods that are not universally recognised.

So, the solution to the question cannot but pass through a recalling of principles and rules that regulate the acquisition and formation of evidence in criminal trials, and then, to criteria which govern the manner in which it is to be evaluated.

The reference coordinates will have to be those attaching to the principle of cross-examination and to the judge's control over the process of formation of evidence, which must respect preordained guarantees, whose observance must strictly govern the judgement of the relevant reliability of the results.

Hence a piece of scientific evidence may be held to be reliable only when it has been examined by the judge, at least with regard to the subjective reliability of the person affirming it, the scientific nature of the method employed, within a more or less acceptable margin of error, and the objective significance and reliability of the result obtained. In short, according to a critical method not dissimilar, conceptually, to that required for the assessment of ordinary evidence, with the aim of raising the level of reliability of "legal truth" as far as possible, or – if one prefers – reducing the unavoidable gap between legal truth and substantive truth to reasonable margins.

After all, in the procedure of inductive/inferential logic, which allows one to proceed from the known fact to the unknown fact to be proved, the judge, in full freedom of opinion, may use any element whatsoever that serves as a *bridge* or glue between the two facts in question and allows one to proceed from the known one to the unknown one, according to parameters of reasonableness and good sense.

The *trait d'union* [French: "hyphen", presumably metaphorical as "link"] may, therefore, be most varied: the so-called "rule of experience", legitimated by the heritage of common knowledge or by direct observation of the phenomenal reality, which records the repeatability of certain events in the constancy of identical, determined, conditions; a scientific law, of universal or simply statistical application; a law belonging to logic, which governs and guides the mental pathways of human rationality, and whatever else may be useful according to need.

The probative reasoning which permits the passage from the evidentiary *element* to the evidentiary *result* belongs within the exclusive competence of the judge of merit, who, obviously, must provide an adequate motivation and of whom is required, in the case of circumstantial evidence, a twofold justificatory examination: a first examination pertaining to so-called "external justification", by means of which the judge themselves must determine the validity of the rule of experience or of the scientific or logical law or of any other rule used; and a second examination pertaining to the so-called "internal justification", by means of which the validity of the result obtained via the application of the "bridging rule" must be concretely demonstrated (Section 1, no. 31456 of 21/05/2006. *Franzioni,* Rv. 240764).

**7.1.** With such considerations, in general and in the abstract, it is now time to consider, in the specifics, a very particular profile that is a lot more problematic.

In the case in question, indeed, it is not about ascertaining characteristics and admissibility of an entirely new scientific method (even if practiced elsewhere for some time), as in the case examined and aforementioned sentence *Franzoni*, regarding the admissibility of "*Blood Pattern Analysis*" or B.P.A. (a practice already known in the United States and in Germany, a result of the combination of scientific laws and different disciplines, recognised universally), in that under examination are the findings of the genetic science, of acclaimed reliability and of increasing utilisation and usefulness in judicial investigations.

Moreover, this Court, on more than one occasion, has already recognised the value in trials of genetic investigations conducted on DNA, given the high number of statistically confirmatory occurrences, to render the possibility of an error as infinitesimal (Section 2, n. 8434 of 05/02/2013, *Mariller*, Rv. 255257; Section 1, n. 48349 of 30/06/2004, Rv. 231182).

It is, rather, about ascertaining what value in the trial the genetic investigations can have when performed in a context when the analysis and findings are not at all respectful of the regulations approved by international protocols and those which, ordinarily, must take inspiration from the scientific method.

In making implicit reference to judicial interpretation of legitimacy, the judge *a quo* [of the trial from which this appeal is being heard] didn't hesitate to attribute evidentiary value to the aforementioned results (f. 217).

The assumption cannot be shared.

And indeed, the jurisprudence of this Supreme Court, nominated above, recognised in the genetic investigations – about its degree of reliability – full *value of proof*, *and not merely as an element of circumstantial evidence according to Article 192, 2nd section, Italian Code of Criminal Procedure;* adding that, *in cases where the genetic investigation doesn't provide absolutely certain findings, circumstantial value can be attributed to its results* (Section 2, n. 8434 of 05/02/2013, *Mariller*, Rv, 255257; Section 1, n. 48349 of 30/06/2004, Rv. 231182). Which means that, in cases where the *identity* is established, the findings of the genetic investigation assume significant evidence, while in the case of mere *compatibility* with a specific genetic profile, they only have circumstantial importance.

Such a declaration of principle necessitates, however, a clarification. As a general rule, it is possible to adhere to these conclusions, on the condition though that the activity of collecting samples, storage and analysis of the exhibits has respected the regulations of the experience approved by the protocols of the

profession. Which must also be true, *a fortiori* [even more so], even in the *lesser* case, where the findings of the analysis don't provide a successful identification, but rather only of compatibility.

The principle of the necessary correctness of the method in the phase of collection, storage and analysis of the data examined, so as to preserve its integrity and authenticity, was stated by this Court in Section F, n. 44851 of 06/09/2012, *Franchini*, *non massimata*, even if only on the subject of information technology evidence, on the grounds that those principles have been incorporated into the Italian Code of Criminal Procedure with the amendment of section 2 of Article 244 and the new case of Article 254 *bis* of the same code, introduced into law 18/09/2008, n. 48.

The justifiable reasoning lies, in the opinion of this Court, in the same notion of circumstantial evidence offered by the legal code, that, in Article 192 section 2, orders that "*The existence of a fact cannot be deduced from pieces of circumstantial evidence unless they are serious, precise and consistent*", with the outcome that an element of evidence of the case, to qualify as being circumstantial evidence, must have the characteristics of seriousness, preciseness and consistency, according to a configuration borrowed from civil law (Article 2729, first section, Italian Civil Code). These characteristics are summarised in the so-called "certainty" of the circumstantial evidence, even if such a requirement is not explicitly stated in Article 192 of the Italian Code of Criminal Procedure, 2nd section. In reality, it is an additional characteristic considered as unfailing in established jurisprudence and intrinsically linked to the same burden of proof of circumstantial evidence, through which, through a process of formal logic, the demonstration of the concept of proof is arrived at – an unknown fact – starting from a known fact and, therefore, established as true. It is well understood, in fact, that a similar process would be, *in nuce* [in short], fallacious and unreliable, when reasoning from facts that are not *precise and serious* and then *certain*. It being understood, obviously, that the *certainty*, under discussion, must not be taken in terms of absoluteness or of truth in the ontological sense; the certainty of circumstantial evidence is, in fact, in any case always a category of procedural nature, being of the that *species* [type] of certainty that is formed during the trial through evidentiary proceedings (cf., also on this point, the aforementioned sentence *Franzoni*).

Taking into account such considerations one really cannot see how the results of the genetic analysis – that were performed in violation of the recommendations for the protocols regarding the collection and storage – can be considered endowed of the characteristics of *seriousness* and *preciseness*.

And in fact, crystallising the results of tried and tested experience, formed as a result of repeated experimentation and significant statistical findings from

experimental data, these rules epitomise the standards for [determining] the reliability of the results of the analysis, whether it is to determine identity, or merely compatibility with a specific genetic profile. Otherwise, no importance can be given to the acquired data, not even as circumstantial evidence (cf. Section 2, n. 2476 of 27/11/2014, dep. 2015, *Santangelo*, Rv. 261866, on the necessity of correct storage of the material containing genetic profiles, for the purposes of "repeatability" of technical findings capable of extrapolating the genetic profile; repeatability that is, moreover, dependent on the quantity of the trace and the quality of the DNA present on the biological exhibits collected; id. N. 2476/14 cit. Rv. 261867).

In the case in question, it is absolutely certain that those methods were not complied with (cf., among others, ff. 206-207 and the cited requested findings of the expert report Conte-Vecchiotti, ordered by the Perugian Court of Appeal).

In this regard it suffices to consider the methods of collection and storage of the two objects of major investigative interest in the current judgment: the kitchen knife (exhibit n. 36) and the bra clasp fastener of the victim (exhibit n. 165/b), for which the sentence did not hesitate to qualify the work of the investigators in terms of *lack of professionalism* (f. 207).

The big knife or kitchen knife, found in Sollecito's house and considered the murder weapon, was collected and then, preserved in a common cardboard box, of the sort used to package Christmas *gadgets*, namely agendas which credit institutions usually gift to local businesses.

More unusual – and disturbing – is the fate of the bra clasp.

Noticed during the first site inspection by the Scientific Police, the object was ignored and left there on the floor for quite some time (a good 46 days), until it was finally collected during an additional visit. It is certain that in the time period between the site inspection when it was noticed and the one when it was collected, there were other visits by the investigators, who rummaged everywhere, moving furniture and fixtures, in search of evidence that would be useful to the investigation. The clasp was perhaps trodden on or, in any case, moved (such that it was found on the floor in a different position from where it had initially been noticed). Not only this, but the photographic documentation produced by Sollecito's defence demonstrates that, at the time of the collection, the clasp was passed from hand to hand by the agents, who in addition were wearing dirty latex gloves.

Questioned on the reasons for the late collection, the officer of the Scientific Police, Dr. Patrizia Stefanoni, said during a hearing that initially it was not considered appropriate to collect the clasp because the whole item of underwear of the victim had already been collected. In other words, no importance was given to that small item, despite the fact that it is the common perception that precisely this

fastener is the part of most investigative interest, with it being manually operated and so a potential carrier of biological traces of use to the investigation.

In addition, the traces found on the two exhibits, for which the analysis gave the results which will be discussed hereinafter, were of minuscule amount (*Low Copy Number*; referring to the clasp cf. ff. 222 and 248), such that it was not possible to repeat the *amplification*, namely the procedure to "reveal the genetic traces of interest of the sample" (f. 238), and therefore to attribute a biological trace to a specific genetic profile. On the basis of the protocols in the field, the repetition of the analysis ("at least twice": evidentiary hearing Major CC Dr. Andrea Berti, expert nominated by the Referral Court, f. 228; "three times" according to Professor Adriano Tagliabracci, technical consultant for Sollecito's defence, f. 216) is absolutely necessary in order for the result of the analysis to be considered reliable, so as to exclude the risk of "false positives" within statistical boundaries of insignificant probability.

Essentially, it is nothing more than the procedure of *validation* and *falsification* of the scientific method, discussed previously. And on this matter, it is significant that the experts Berti-Berni, officers of RIS [*Reparto investigazioni scientifiche* / *Department of scientific investigation*] of Rome, carried out two amplifications of trace I found on the blade of the knife (f. 299).

Without the verification *through repetition* of the evidence arising from the investigation, one must ask what the relative value can be to the proceedings if they do not permit repetition, regardless of the theoretical debate on the identification more or less scientific of the findings of investigations carried out on samples so minuscule or complex.

It is the belief of this Court that the *Scientific* truth, however elaborated, cannot automatically be transferred into the trial to be transformed, *eo ipso* [of itself], in *judicial* truth. As has already been said, scientific proof has as an inevitable postulate the verification such that the relative findings can assume relevance and aspire to the level of "certainty"; since otherwise, they remain without reliability. But, independent of the scientific importance, a fact not verified, precisely because it does not have the necessary characteristics of preciseness and seriousness, cannot achieve, within proceedings, even the value of circumstantial evidence.

Certainly in this context, it is not a *nothing*, to be considered *tamquam non esset* [as if it didn't exist]. And in fact, it is still a fact emerging from the proceedings that, albeit devoid of demonstrable autonomous value, is nevertheless susceptible to appreciation, at least as a means of mere confirmation, within an ensemble of elements already endowed with overwhelming indicative value.

Herein lies, therefore, the error in judgment committed by the Judge *a quo* [of the trial from which this appeal is being heard] in assigning, instead, circumstantial

value to the findings of the genetic investigations incapable of amplification or the result of unorthodox methods of collection.

**7.2.** In order to dispel any possible ambiguity on the matter, it will be of value then, to consider that with the impossibility of attributing appreciable and demonstrable importance during the proceedings, to the results of the genetic investigations that were not repeated and became incapable of repetition, due to the insignificant quantity or the complexity of the sample, it is not a remedy to evoke the effectiveness and usability of the technical findings if they are "unrepeatable", when, as in the case in question, the defence guarantees were observed according to Article 360 Italian Code of Criminal Procedure. And in fact, the technical investigations for which the procedural rules are mentioned are those that – for perspicuous positive formulation – relate to "people, things or places where the state is subject to change", in other words states of any type or genre that by their nature can change, such that it renders it necessary to seal the state without delay in the phase of the preliminary investigations, for fear of irreducible modifications, with the result that, in accordance with the requirements of law, is destined to be utilised in the evidentiary hearings. That is permitted because the assessment to be made, even if repetition is impossible due to modification of the object under analysis, is capable of revealing "established" reality or entities endowed with demonstrable value. In the case in question, despite the compliance of the procedures according to Article 360 of the legal code, the evidence admitted – not repeated and not capable of repetition in any way – cannot take on either probative or circumstantial relevance, precisely because, according to the aforementioned laws of science, they necessitated validation or falsification. In other words, in one case the empirical data, "photographed" in a timely manner, assumes demonstrable significance; while on the other it is devoid of such capability, precisely because its indicative value is inextricably linked to its repetition or *repeatability*.

**8.** Then in close succession the points of patent logical inconsistency in the fabric of the reasoning of the challenged ruling are identified.

**8.1.** An element of evidence of unchallengeable relevance - for the reasons explained hereinafter - is represented by the total absence of biological traces attributable with certainty to the two defendants in the murder room or on the body of the victim, whereas, instead, abundant traces surely attributable to Guede have been found.

This was an insurmountable monolithic barrier on the path taken by the fact-finding judge to arrive at the conviction of the present defendants, already acquitted previously for the murder by the Court of Appeals of Perugia.

To overcome the relevance of such a negative element - undeniably favourable to the defendants - it has been claimed in vain that, after staging the break-in, the authors of the crime performed a "selective" cleaning of the crime scene, in order to remove only those damning traces attributable to them, while leaving behind, instead, those attributable to others.

This hypothesis is patently illogical. To fully understand its degree of inconsistency it is not really necessary to appoint court experts, even if this has been requested by the defences. That such a *selective* cleaning, moreover capable of escaping detection by *luminol*, whose use by the investigators (also to find traces of non-haematic origin) is nowadays part of everyday knowledge, is, for sure, impossible, according to the basic laws of ordinary experience.

After all, the assertion itself of a presumed carefulness in the cleaning is factually proven wrong, since in the "small bathroom" traces of blood have been found on the mat, on the bidet, on the tap, on a Q-tips box and on the light switch. And yet, had the defendants been guilty, they surely would not have lacked the time for an accurate cleaning, in the sense that there was no reason for the perpetrators to hurry up for fear of the possible arrival at home of other people. In fact, Knox was perfectly aware that Romanelli and Mezzetti were outside Perugia and would not have come back home that night, hence there would have been all the time necessary for a careful cleaning of the house.

With reference to the alleged bloody traces in the other rooms, mainly in the corridor, there is even an obvious misrepresentation of evidence. Indeed the S.A.L. of the Scientific Police (acronym of "Stato Avanzamento Lavori" [State of Work Progress], stating the progression of the scientific investigations and their results) had excluded, thanks to the use of a specific chemical reagent [TMB], that the traces highlighted by *luminol* in the concerned rooms were of haematic nature. These papers, even if duly filed into the trial documents, have been completely neglected.

Not only that, but it is also patently illogical, in this context, the reasoning of the fact finding judge, who (on page 186) reckons being able to overcome the defensive objection that the luminescent bluish reaction generated by *luminol* can be produced also by substances different from blood (for instance, leftovers of cleaning detergents, fruit juices and many others), by arguing that the reasoning, while theoretically correct, has however to be *"contextualised"*, meaning that if the fluorescence occurs at a place where a murder occurred, the reaction cannot be but connected with haematic traces.

The weakness of the argument is such, already at first sight, that it does not require any confutation, since to reason in that way one should also surmise that

the house on via della Pergola was never the object of cleanings nor was a "lived" location [i.e. with people living and doing things in it].

This observation hence allows to categorically exclude that those traces were made of blood and willfully removed in that circumstance.

Another striking logical inconsistency concerns the explanations given by the fact finding judge with respect to the theft of Kercher's mobile phones, which were disposed of by the unknown perpetrator or perpetrators, while fleeing from via della Pergola after the murder, by throwing them on a ground below road level, that in the dark could look like open country (it was, instead, a private garden).

All but plausible is, indeed, the reasoning according to which the mobile phones were carried away to prevent that a possible ring could lead to the discovery of the corpse of the young Englishwoman before the expected time, [a reasoning made] without considering that such a goal could have been reached more easily by switching off the phones or by removing the battery.

Furthermore, it is glaringly illogical - and also scarcely respectful of trial facts - to reconstruct the motive of the murder on the basis of alleged disagreements between Kercher and Knox, intensified also by the grievance the English girl had towards the flatmate for having the latter let Guede into the house, who had improperly used the bathroom (page 312). The "truth" offered by the Ivorian in one of the statements made at his trial (and usable, as previously said, exclusively for what does not concern the responsibilities of others) is, instead, another. The young man was in the bathroom when, according to him, he heard Kercher arguing with another person, whose voice he perceived as being female, and so the reason of the quarrel could not certainly be the use he had made of the bathroom.

Also illogical and contradictory is the argument that, in an attempt to give substance to those disagreements (moreover belied by other testimonies), he does not hesitate to *retrieve* the hypothesis of the theft of money and credit cards that Kercher would allegedly have blamed on Knox, in spite of the fact that Knox, as well as Sollecito, had been acquitted for the charge of theft, limited to the aforementioned goods, because "the fact does not exist" (page 316).

It is, in addition, arbitrary, in the absence of any kind of confirmation in the trial documents, *to translate* into the house on via della Pergola the situation Knox, in one of her statements, had described and contextualised in a different temporal and logistical setting, namely on via Garibaldi 130 [sic], at Sollecito's: viewing a movie, taking light drugs, having sex and then sleeping until the late morning of 02-Nov, hence at a time before, concomitant and after that of the murder. All that to introduce, as an aspect of the dynamics of the murder, the possible destabilising and clouding effect of the drug. This, again, is without of any type of confirmation, also because - among the many omissions or debatable investigative strategies - the

law enforcement, while collecting a cigarette stub in the ashtray of the living room, with biological traces showing a mixed DNA profile (of Knox and Sollecito), did not perform any kind of analysis concerning the nature of the formulation [of the content of the cigarette], for the reason that such an analysis would have made it impossible to ascertain the genetic profile, making the sample "unusable". And all this [was done] with the brilliant result of delivering to the trial a totally irrelevant piece of information, given that, obviously, Sollecito used to hang out at the house on via della Pergola, being in a relationship with the American girl; whereas, instead, the identification of the nature of the sample could have, perhaps, suggested investigative ideas of particular interest.

The remark above is emblematic of the overall structure of the part of the challenged ruling concerning the reconstruction of the events, summarised in Section 10 and having the title: *conclusive evaluations*.

It is, surely, undeniable the interpretative effort displayed by the fact finding judge in order to remedy the unbridgeable investigative gaps and the significant shortfalls of evidence with shrewd *speculations* and suggestive logical arguments, even if merely assertive and apodictic [dogmatic].

Now, if it goes without doubt that factual reconstruction is a task pertaining exclusively to the fact finding judge and it is not up to the Court of Legitimacy to establish if the related decision does indeed offer the best possible reconstruction of the events, nor to approve the reasoning behind it, having this [Supreme] Court to limit itself to verify if said reasoning is compatible - according to an expression often used in jurisprudence - "with common sense and with the limits of an acceptable latitude of evaluation" (among others, Section 5, n.1004 of 30/11/1999, filed in 2000, Moro G, Rv 215745), as well as compliant with the elements of evidence, according to the modified text of Article 606, section e) of the Italian Code of Criminal Procedure; it is true that the reconstructive version chosen, even if compliant with the rules of ordinary logic, must, nevertheless, agree with the facts discovered at trial and be the result of a process of critical evaluation of the evidence acquired according to the procedure. In other words, the use of logic and intuition cannot, in any way, compensate for the lack of evidence or the inefficiency of the investigations. Faced with missing, insufficient or contradictory evidence, the judge should simply accept it and issue a verdict of acquittal, according to Article 530, section 2 of the Italian Code of Criminal Procedure, even if he is really convinced of the guilt of the defendant.

There are, furthermore, patent [factual] errors in the reasoning of the ruling under examination. Along these lines, the assertion made on page 321, according to which, Sollecito's DNA was found, along with Kercher's, in the imperceptible striations on the knife deemed to be the murder weapon (Exhibit 36), is absolutely

groundless. The claim is in conflict with the extensive presentation made in the challenged ruling about the exhibit (pages from 208 onwards), reporting the results of the genetic investigations attributing trace A to Knox, trace B to Kercher and finally trace I - the one unduly neglected by the Conti-Vecchiotti report - which has been attributed by a new expert report to Knox. As it will be said later, while the attribution of trace A and I to the defendant [Knox] goes unchallenged, the attribution of trace B to Kercher cannot have - for the already expressed reasons - the characteristics of certainty, it being a *low copy number*, that is a quantitatively minuscule sample, allowing only a single amplification. But nowhere is it written that biological traces related to Sollecito's genetic profile were on the knife.

**9.** The ascertained *errores in iudicando* [errors in judgment] and the logical inconsistencies pointed out invalidate the appealed verdict from the *funditus* [foundations], hence it deserves to be annulled.

The aforementioned reasons for annulling can be summarised in the inability to present an evidentiary framework that can really be considered suitable to support a pronouncement of guilt beyond a reasonable doubt, as required by Article 533 of the Italian Code of Criminal Procedure in the text renewed by Article 5 of the law n. 46/2006.

As for the debate about the rule having, or not, peremptory value and about its effect on the evaluation of evidence, this Court of Legitimacy has had the opportunity more than once to reiterate that *the norm of law requiring a judgment "beyond any reasonable doubt", founded on the constitutional principle of presumption of innocence, did not introduce a different and more restrictive standard for the evaluation of evidence, but codified the principle of jurisprudence according to which the issuing of a verdict of conviction must be based on the certainty arising from the proceedings of the responsibility of the defendant* (Section 2, n. 7035 of 09/11/2012, filed in 2013, *De Bartolomei*, Rv. 254025; Section 2, n. 16357 of 02/04/2008, *Crisiglione,* Rv. 239795).

It is not, substantially, a new or "revolutionary" principle, but only the formalisation, with an aspect of recognition, of a rule of judgment already present in our country's judicial experience and, moreover, already *positivizzata* [applied in practice], having been formally introduced as a precondition for conviction, given the pre-existing rule of Article 530, section 2 of the Italian Code of Criminal Procedure, which provides that the defendant must be acquitted when the evidence is insufficient or contradictory (Section 1, n.30402 of 28/06/2006, *Volpon*, Rv. 234374).

Building on these premises, the principle was then strengthened such that *the rule of judgment summarised by the formula "beyond any reasonable doubt" requires that a pronouncement of guilt is conditional upon the body of admitted*

*evidence neglecting only unlikely occurrences, which may even be abstractly possible "in rerum naturae" [among the things of nature"], but whose real occurrence in the case under scrutiny cannot be confirmed by the trial evidence, resulting in this way as being outside the natural order of things and of natural human reasoning* (Section 2, n. 2548 of 19/12/2014, filed in 2015, *Segura*, Rv. 262280); with the related declaration that alternative reconstructions of the events must be based on reliable elements of evidence, since the doubt inspiring them cannot be founded on pure conjectures, even if plausible, but must be characterised by rationality (cf. Section 4, n. 22257 of 25/03/2014, *Guerinelli*, Rv. 259204; Section 1, n. 17921 of 03/03/2010, *Giampà*, Rv. 247449; Section 1, n. 23813 of 08/05/2009, *Manikam*, Rv. 243801).

**9.1** The intrinsically contradictory ensemble of the body of evidence, whose objective uncertainty is already emphasised by the previously highlighted wavering progress of the proceedings, does not therefore allow [us] to be satisfied to the *standard* of [beyond a] reasonable doubt, whose establishment is an achievement of legal culture that must, always and in any case, be upheld since it is the expression of fundamental constitutional values, centered around the key role of the human being in the judicial system, whose protection in the context of a trial is also exercised by the principle of presumption of innocence until the definitive decision [verdict], as per Article 27, section 2 of the Constitution.

**9.2** The aspects of the objectively contradictory nature [of evidence] can be, as shown below, illustrated for each defendant, in a *synoptic* presentation of the elements favourable to the hypothesis of guilt and of the elements against it, as they are shown, of course, by the text of the challenged ruling and of the previous ones.

**9.3** During the analysis of the aforementioned elements of evidence, it is certainly useful to remember that, taking for granted that the murder occurred on via della Pergola, the alleged presence at the house of the defendants cannot, in itself, be considered as proof of guilt. In the assessment of the problematic body of evidence, as described by the judge of the second appeal, one cannot but bear in mind the judicial concepts of merely *not punishable connivance* and of *participation in a crime committed by others* and of the distinction between them, as established by the indisputable teachings of the jurisprudence of legitimacy.

On this point, it is *ius recepitum* [well established rule] that the distinction lies *in the fact that the former assumes that the agent maintains a purely passive behaviour, without contributing to the crime, while the latter requires a positive participation - of a moral or material nature - to the criminal activity of others, also in ways facilitating or reinforcing the criminal intent of the associate* (Section 4, n. 4055 of 12/12/2013, filed in 2014, *Benocci*, Rv. 257810; Section 5, n. 2805 of

22/03/2013, filed in 2014, *Grosu*, Rv. 258953). Equally obvious is the repercussion of such a distinction on the subjective dimension, since in the participation of multiple individuals in a crime the subjective element consists in the consciousness and in the will of the participating individual to cooperate with other subjects to the joint realisation of the criminal act (Section 1, n. 40248 of 26/09/2012, *Mazzotta,* Rv. 254735).

**9.4.** However, a matter of undoubted significance in favour of the appellants, in the sense that it excludes their material participation in the murder, even if it is hypothesised that they were present in the house on via della Pergola, consists of the absolute lack of biological traces attributable to them (except the clasp which will be dealt with further on) in the murder room or on the victim's body, where instead numerous traces attributable to Guede were found.

It is indisputably impossible that traces attributable to the appellants would not have been found at the crime scene had they taken part in Kercher's murder (the room was of small dimensions: 2.91 x 3.36m, as shown in the plan reproduced in f: 76).

No trace belonging to them was found in particular on the sweater that the victim was wearing at the time she was attacked nor on her shirt underneath, which would have been the case if they had participated in the murder (instead, traces of Guede were found on a sleeve of the aforementioned sweater: ff, 179-180).

This aforementioned negative circumstance accords with the fact, already highlighted, of the absolute impracticability of the posthumous clean-up hypothesis, removing some biological traces while leaving others.

**9.4.1.** With this premise, with regards to Amanda Knox's position, it is now observed that her presence in the house, the scene of the murder, is an acclaimed fact of the trial, based on her own admissions, also contained in her signed memorial, in the part where she explains how, when she was in the kitchen, after the young Englishwoman and another person went into Kercher's room to have sex, she heard her friend's harrowing scream, to the lacerating and unbearable point that she slid down, squatting on the floor, holding her hands firmly on her ears, so as to hear no more of it. On this point, the reliability of the opinion of the judge *a quo* [of the trial from which this appeal is being heard] is certainly acceptable concerning this part of the accused's account, based on the plausible consideration that it was she who first mentioned a possible sexual motive for the murder and spoke about the victim's harrowing scream, when the investigators still did not have the results of an examination of the body or of the post-mortem, nor witness information taken later regarding the victim's scream and the time it was heard (statements from Capezzali Nara, Monacchia Antonella and others). In particular we refer to the appellant's declarations of 11/06/2007 (f, 96) in the police station. On the other hand the

calumnious statements regarding Lumumba, which led to her guilty verdict, with a ruling already reached, had as part of the story the presence of the young American in the house on via della Pergola, a fact that nobody at that time - except obviously the other people present in the house - could have known (quotation f. 96).

According to Knox's calumnious statement, having met Lumumba by accident in piazza Grimana, she came home with him to via della Pergola and there, after Kercher had joined them, Lumumba made sexual advances towards the young Englishwoman, and they went to her room, from where the harrowing scream came. In short, it was Lumumba who killed Meredith and she could state this because she was at the scene of the crime, although in a different room.

Another element regarding her is represented by traces of mixed DNA, hers and the victim's, in the "small bathroom", an eloquent confirmation that she had come into contact with the latter's blood, which she tried to wash off (it seems we are dealing with washed away blood, while the biological traces belonging to her are a result of epithelial rubbing).

The data leads to strong suspicion, although not decisive, considering the well-known considerations regarding the certain nature and attribution of the traces in question.

Nevertheless, even if attribution is certain, the trial element would not be unequivocal as a demonstration of posthumous contact with that blood, as a likely attempt to remove the most blatant traces of what had happened, perhaps to help someone or deflect suspicion from herself, without this entailing her certain direct involvement in the murder. Any further and more meaningful value would be, in fact, resisted by the fact - which is decisive - that no trace leading to her was found at the scene of the crime or on the victim's body, so that - if all the above is accepted - her contact with the victim's blood would have occurred after the crime and in another part of the house.

Another element against her is, certainly, the calumny against Lumumba, which has already been referred to.

It is not understood, however, what pushed the young American to make these serious accusations. The hypothesis that she did so to escape the psychological pressure of the investigators appears extremely fragile, taking into account that the woman must have realised that, sooner or later, these accusations against her employer would have been disproved, considering that she certainly knew that Lumumba had no contact either with Kercher or with the house on via della Pergola. Moreover, the possibility of having an "iron-clad" alibi would then have led to Lumumba being freed and acquitted of the serious accusation.

Nevertheless, the calumny in question also represents circumstantial evidence against the appellant in so much as it could be considered as an initiative to cover for Guede, against whom she would have had an interest to protect herself due to retaliatory accusations against her. All is underpinned by the fact that Lumumba, like Guede, is black, hence the reliable reference to the former, in case the other was seen by someone coming into or going out of the flat.

As part of the accusation the contested simulation of a break-in in Romanelli's room is relevant, as matters of strong suspicion (placing of the glass fragments - coming, apparently from the breakage of a pane of the window caused by a stone being thrown from outside - on top of, but also underneath clothes and furnishings), the staging of which would lead to a person - being guilty of the murder and having a "qualified" relationship with the home - who would have had an interest in removing suspicion from him or herself, whereas a third assassin would have been driven by a very different need, after the murder, which would be to leave the flat immediately. Yet this element is also substantially equivocal, especially in light of the fact that, when the postal police arrived at the house on via della Pergola for another reason (looking for Romanelli, owner of the SIM card in one of the mobile phones found in via Sperandio), it was actually the defendants, in particular Sollecito - whose trial position is inextricably bound to Knox's - who pointed out the anomaly to the police officers, that **nothing** had been stolen from Romanelli's room.

Elements of strong suspicion are connected to the inconsistencies and falsehoods made by the accused in the various statements she made, especially in the part where her story was contradicted by telephone records which proved a different SMS source; in the witness statements of Antonio Curatolo, regarding the presence of Knox in Piazza Grimana, in the company of Sollecito, and of Mario Quintavalle, regarding her presence in the supermarket on the morning following the murder, perhaps to buy cleaning products. Nevertheless, the presence of intrinsic contradiction and poor reliability of the witnesses, on several occasions objected to during the trial, do not allow unreserved credit to be attributed to their respective versions, to the extent of proving with reasonable certainty, the failure, and therefore the falsity, of the accused's alibi, who insisted that she stayed in her boyfriend's home from late afternoon on 01-Nov until the following morning. Curatolo (an enigmatic personality: a vagrant, drug addict and drug pusher) - apart from the lateness of his statements and the fact that he was not new to judicial protagonism in cases under the media spotlight - was however disproved by reference to groups of young people leaving that evening in coaches for discotheques in the area, it being proven that on the night of the murder, the bus service was not running; also the reference to masks and practical jokes which he claimed to have witnessed that evening; that would lead to a conclusion that it was Halloween, 31-Oct, and not 01-Nov, the date of the murder. This contradicts the balanced assessment - but always in a context of uncertainty and

ambiguity - of the witness referring (regarding the context where he saw the two accused together) to the day before he saw (in the afternoon) unusual movements of police and Carabinieri and, in particular, men wearing white overalls and headgear (they looked almost like aliens) enter the house on via della Pergola (evidently 02-Nov, after the body was found).

Quintavalle - apart from the lateness of his statements, initially reticent and generic - offered no contribution to certainty, not even regarding the product bought by the young woman he noted on the morning after the murder, when his shop opened, the fact he recognised Knox is worthless as her image had appeared in every newspaper and television news broadcast.

Regarding the biological traces, marked with the letters A and I (the latter examined by the RIS [*Reparto investigazioni scientifiche | Department of scientific investigation*]), found on the knife seized from Sollecito's home and bearing Knox's genetic profile, this is a neutral element, given the accused lived with Sollecito in his home on via Garibaldi, although continuing to also live in via della Pergola, and - as has been pointed out - this utensil showed no traces of Kercher's blood, a negative circumstance which contradicts the prosecution's hypothesis that it was the murder weapon.

On this point, it has to be stressed that – yet again due to the questionable choice of the scientific police's geneticists - it was decided to favour investigations aimed at identifying the genetic profile of the traces found on the knife, rather than discover their biological nature, given that the small quantities of the samples did not allow the analysis to be repeated: in fact the qualitative examination apparently "used up" the sample and made it useless for further investigations. An extremely questionable choice, given that the finding of blood traces, coming from Kercher, would have given the trial an element of strong evidentiary value, showing for certain that the weapon had been used to commit the murder. The established presence in Sollecito's home [of Kercher's blood trace], given Knox lived there, would have led, then, to a possible deduction on the matter. Instead, finding that the traces matched Knox's genetic profile is not considered unequivocal data and indeed irrelevant, given that the young American lived with Sollecito, some of the time in his home and some of the time on via della Pergola. Not only this, but even if it had been possible to attribute trace B with certainty to Kercher's genetic profile, as evidence in the trial it would not have been decisive (not being a blood trace), taking into account the promiscuity and commonality of interpersonal relationships, typical of students living away from home, which make it plausible that a kitchen knife or other utensil could be moved from one home to another and that, therefore, the confiscated knife could have been moved by Knox to via della Pergola for domestic use, on the occasion of parties or other events, and thus also used by Kercher.

What is certain is that no traces of blood were found on the knife, lack of which cannot be linked to meticulous cleaning. As noted by the defence, the knife showed traces of starch, a sign of ordinary domestic use and of cleaning that was anything but meticulous. Not only this, but starch is famous as a substance with a high absorbance rate, thus, it is highly likely that, in the event of a stabbing, it would have retained blood traces.

In this respect the inquisitorial assumption that the young woman was used to carrying this heavy kitchen knife with her for personal self-defence, for this purpose using - it is said - her large bag, is highly implausible. It is inconceivable that the woman, having been told by her boyfriend to be careful when going out at night, did not use one of the switchblades which Sollecito certainly owned, as it seems he was keen on this type of weapon and had a collection of a number of such items.

Finally, the footprints found at the murder scene can in no way be traced to the defendant.

**9.4.2.** In Sollecito's case too the evidentiary framework which emerges from the judgment under appeal is marked by inherent and irreducible contradiction.

His presence at the scene of the murder, and in particular in the room where the crime took place, is linked to the only biological trace found on the bra clasp fastener (exhibit 165/b), for which there cannot, however, be any type of certainty in its attribution, given that this trace cannot be amplified a second time, and due to its scarceness, such that it is – for what has been said - an element without evidential value.

There remains, however, a strong suspicion that he was really present in the house on via della Pergola the night of the murder, at a time, however, that has not been possible to determine.

On the other hand, given Knox's presence in that house, it appears hardly credible that he was not with her.

Also following one of the versions given by the woman, that is the second one according to which, upon returning home on the morning of 02-Nov, having spent the night with her boyfriend, she immediately realised that something strange had happened (door open, traces of blood everywhere); or the other, set out in her memorial, according to which, she was present in the house when the aggression was carried out, but in a different room from where the ferocious aggression against Kercher was happening, it is very strange that she did not immediately call her boyfriend, and the telephone records show that there was no telephone call between the two, even more so because, having been in Italy for a short time, she was presumably unaware of what to do in such emergencies, so the first and perhaps the only person she could ask for help would have been her boyfriend, who

lived a few hundred metres from her home. Not doing so means that Sollecito was with her, which does not prejudice, obviously, the juridical relevance of his mere presence in the house, without any certain proof of his contributing to the murder action.

The defence argument which consists of his interaction on his computer to watch a cartoon downloaded from the Internet, at a time completely incompatible with the time of Kercher's death, cannot remove these strong suspicions. In fact, even if the defence reconstruction is followed and it is held as certain that Sollecito carried out the computer interaction himself and was present for the whole movie, the time when he finished would not be incompatible with a later presence in the house of Kercher, taking into account the short distance between the two homes, which can be walked in around 10 minutes.

An element of strong suspicion arises regarding the confirmation, at the time of spontaneous statements, of Knox's alibi, that is the presence of both in the home of today's defendant, on the night of the murder, as it is contradicted by Curatolo's statement of having seen the two together, from 21.30 to 24.00 in piazza Grimana; and by Quintavalle regarding the presence of a young woman, later identified as Knox, when his shop opened on the morning of 02-Nov. However, as observed above, such testimony includes significant scope for ambiguity and approximation so as not to be able, reasonably, to provide foundation for certainty, notwithstanding the judicial problematic of subjective reliability expressed by the judge *a quo* [of the trial from which this appeal is being heard].

Yet another element of suspicion is found in the substantial failure of the alibi linked to other alleged human interactions on his computer, and even if we cannot talk about a false alibi, it is appropriate to talk about a *failed* alibi.

There is also no certainty to be reached regarding the attribution to Sollecito of the footprints found in the house on via della Pergola, as the technical analysis did not go beyond a conclusion of "probable identity" to one of certainty (ff. 260/1).

**9.4.3.** It can easily be observed that the conclusion that there was a lack of an evidentiary framework consistent and sufficient to support the prosecution's hypothesis regarding the more serious case of murder certainly reverberates on the residual, secondary accusations, listed here, d) theft of mobile phones and e) simulation of a crime.

**10.** The intrinsic contradictory nature of the evidence, emerging from the text of the appealed verdict, in essence undermines the connective tissue of the same, leading to its annulment.

In fact, in the presence of a scenario marked by many contradictions, the referral judge should not have come to a verdict of guilt, but - as previously

observed – should have reached a verdict of not guilty, given Article 530, section 2, Italian Code of Criminal Procedure.

At this point only one matter remains to be resolved, regarding the type of annulment - i.e., whether it should be decided with or without a new trial - which depends, obviously, on the objective possibility of further investigation which could unravel the perplexing aspects, and offer answers of certainty, perhaps through new technical investigations.

The answer is certainly negative. In fact the biological traces on items of investigative interest are of minuscule magnitude, and as such, incompatible with amplification and, thus, destined not to give reliable, certain answers, whether in terms of identity or in terms of compatibility.

The computers of Amanda Knox and Kercher, which might have been useful to the investigation, were, incredibly, burned by the careless actions of the investigators, causing a short circuit due probably to an erroneous power supply; and they cannot give any more information, given that the damage is irreversible.

The panorama of the declared evidence is complete, given the accuracy and completeness of the evidentiary trial hearing, which occurred in both appeal trials.

Guede, a certain co-participant in the murder, has always refused to collaborate and, for reasons already given, cannot be forced to take the stand.

The technical assessments requested by the defence cannot be guaranteed to clarify matters, not only due to the time that has passed, but also because they relate to aspects that are difficult to verify (such as the possibility of selective cleaning) or of obvious irrelevancy (IT examination of Sollecito's computer), given the possibility for him, no matter how long the interaction was (even if the interaction was definitely his), to reach Kercher's house, or they are obviously superfluous, given the thoroughness of the impeccable technical investigations performed (e.g. the inspection of the body and subsequent forensic pathology tests).

Given the above-mentioned considerations, it is evident that a new trial would be useless, thus the verdict of annulment without a new trial, in accordance with Article 620 letter I) of the Italian Code of Criminal Procedure, thus applying a sentence of not guilty which would also have been reached by any new referral judge, in accordance with the principles of law set out in this judgment.

The annulment of Knox's conviction with regards to crime A), excludes the aggravating circumstance of criminal intent as per Article, 61 n. 2 of the Italian Penal Code. The exclusion of this part means the sentence must be redetermined, which is quantified to the same degree as fixed by the Perugia Court of Appeal, the

adequacy of which has been amply justified, on the basis of determining parameters with which this judgment completely agrees.

It is hardly necessary to add that the result of the judgment precludes consideration of any other defence plea, deduction or request as absorbed or implicitly rejected, while any other line of argument, among those not examined, are considered inadmissible as, clearly, it would enter into the merits of the judgment.

**11.** Given the above, it can only be decided [to proceed] as per the operative part of this judgment.

**FOR THESE REASONS**

Pursuant to Article 620 letter A) Italian Code of Criminal Procedure; annuls the ruling under appeal with respect to the crime under charge B) of the rubric because the crime is extinct due to statute of limitations;

pursuant to Articles 620 letter L) and 530, section 2 Italian Code of Criminal Procedure; excluding the aggravating circumstance under Italian under Article 61 n. 2 Penal Code, in relation to the crime of calumny, annuls the ruling under appeal without referral with respect to the crimes under charges A), D) and E) of the rubric because the appellants did not commit the act.

Recalculates the sentence imposed upon appellant Amanda Maria Knox for the crime of calumny in three years of confinement.

Thus decided 27/03/2015

| Reporting Judge | President |
|---|---|
| Paolo Antonio Bruno | Gennaro Marasca |

Translated by volunteers of http://www.injusticeanywhere.org/
Translators: Alex K, David Anderson, David Smith, John Rowell, Komponisto, Luca Cheli
Editors: Avrom Brendzel, Clive Wismayer, Hans Markus, Karen Pruett, Michael Birks