The Law of Evidence: Analysis of the Role of Minor Witnesses through the Rulings *Regina vs Giuseppe Attard and Giuseppe Chetcuti* and *Regina vs Aloysia and Emmanuel Camilleri*

Omar Rababah

This article by **Omar Rababah** was previously submitted as an assignment for LHM1002 and is being published with the author's permission. The article examines the role of minor witnesses within the Maltese law of evidence through two landmark criminal cases: *Regina vs Giuseppe Attard and Giuseppe Chetcuti* (1862) and *Regina vs Aloysia and Emmanuel Camilleri* (1961). Both cases involved wilful homicide, multiple accused, and death sentences, though only the former was carried out. While the crimes occurred almost a century apart, each raised important questions about the admissibility and reliability of minors' statements in criminal proceedings. These cases highlight the judiciary's delicate task in balancing fairness with the evidentiary value of minors' accounts, demonstrating that even very young witnesses can significantly shape the outcome of a criminal trial.

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Omar Rababah is a third-year law student in the University of Malta. He read for a B.A. (Hons) in Social Work (2016) and a Masters In Access to Education (2021). He is interested in Criminal and Family Law. His plan is to practice law through litigation in Court.

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1. Introduction

The principles of the law of evidence are fundamental to every criminal proceeding. A judicial process cannot be deemed fair or legitimate unless these principles are upheld and observed by all parties involved. Proper application of these principles, especially in relation to the accused, is crucial to guaranteeing a fair trial in court.[1]

In this paper, the notions of the law of evidence, with specific attention to minor witnesses, will be explored in relation to these two major and sensational cases that impacted Maltese society at large. The first case is *Regina vs Giuseppe Attard and Giuseppe Chetcuti*, decided by Chief Justice Sir Antonio Micallef and Judges Salvatore Naudi and Ignazio Schembri on the 15th of December 1862.[2] In this case, a minor witness to the crime played an important role in identifying the accused and thus strengthened the prosecution's argument in court, even though the minor did not take the witness stand.[3] The second case was *Regina vs Aloysia Camilleri and Emmanuel Camilleri*, decided by Chief Justice Sir Anthony Mamo and Judges A.J. Montanaro Gauci and William Harding on the 9th of March 1961. In this case, a number of minors were present at different times on the day the crime took place. These minors took the witness stand; some of them were not merely simple witnesses but key witnesses who presented crucial facts to the jurors.[4] The legal implications of these cases will be discussed to provide an analysis of how, through court procedure, the consideration of minor witnesses as valid evidence for the jurors affected both trials and their ultimate outcomes.

2. Definitions

To delve into the cases and their legal implications, it is important to define the key terms *minor* and *witness*, which form the foundation of the discussion on the role of minors as witnesses in the two cases.

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[1] Madame Justice Consuelo Scerri Herrera, 'Foreword' in Stefano Filletti, Law of Evidence (University of Malta Press, 2024) xxiv.
[2] Joseph Galea, F'*Ġieħ Il-Ħaqq* (Interprint Limited 1982) 64.
[3] Verbal Process of Regina v Giuseppe Attard e Giuseppe Chetcuti (Her Majesty's Court, 1862).
[4] Edward Attard, *Delitti f'Malta* (4th edn, Book Distributors Ltd 2004) 43-87.

2.1 Minor

The legislator does not define the term *minor* in the Criminal Code of Malta (Chapter 9 of the Laws of Malta) in the sense of explaining the characteristics required for an individual to be classified as a minor. Among other things, it establishes the link between mischievous discretion and the age of criminal responsibility.[5]

The legislator defines the characteristics of a minor in the Civil Code of Malta (Chapter 16 of the Laws of Malta).[6] This definition is found in Article 157, stating that:

> a minor is a person of either sex who has not yet attained the age of eighteen years.[7]

The same definition appears in Article 2 of the Victims of Crime Act (Chapter 539 of the Laws of Malta). For the purposes of these two cases, in relation to this definition, the ages of the minor witnesses ranged from just under three years old to fifteen years old.

2.2 Witness

A witness is someone who is called to court to give evidence based on any matter perceived through one or more of their senses. Maltese courts recognise two main types of witnesses: ordinary witnesses and expert witnesses. The key difference is that an ordinary witness cannot give opinions but must only state objective facts as they experienced them.[8] The testimony of any witness then becomes evidence in the trial.[9]

The law does not specifically define the term *witness* but sets out the eligibility criteria for who may serve as one. In the Criminal Code, Article 629, it states that:

> 1) Every person of sound mind is admissible as witness, unless there are objections to his competency.
>
> 2) The court shall explain to the witness the obligation of the oath if, on account of his age or for other reason, it appears doubtful whether he understands such obligation; and if, notwithstanding such explanation, the court shall deem it

[5] Criminal Code (Cap 9, Laws of Malta) Art 37.
[6] Gaynor Saliba, 'Definition of 'the child' under Maltese law' (LLB Thesis, University Of Malta 2015) 79.
[7] Civil Code (Cap 16, Laws of Malta) Art 157.
[8] Stefano Filletti, *Criminal Law – Law of Evidence* (Malta University Press) 51.
[9] ibid 53.

> necessary that the witness, before giving evidence, be further instructed as to the consequences of false testimony, the court may, if it considers the deposition of such witness to be important for the ends of justice, adjourn the trial to another day, and, should the case be before the Criminal Court, discharge the jury.[10]

Article 563 of the Code of Organization and Civil Procedure is almost identical to the Criminal Code. In fact, Article 563 states that:

> all persons of sound mind, unless there are objections against their competency, shall be admissible as witnesses.[11]

In both cases, these sections of the law were mentioned and, at times, challenged particularly in attempts to discredit the minor witnesses presented by the prosecution or to undermine statements made by minors that were relevant to the case. This will be explored at a later stage in this paper.

3. Narration of Cases

Both cases were sensational and shocked the nation at the time they occurred. For the purpose of this article, they will be briefly introduced and narrated before being analysed from the perspective of the law of evidence, specifically concerning minor witnesses. Interestingly, the two crimes were committed 98 years, 1 month, and 23 days apart, yet they share both similarities and differences.

They are similar for two main reasons. First, in both cases, two individuals were co-accused of the same crime, and both were ultimately found guilty of, among other crimes, wilful homicide, which today falls under Article 211 of the Criminal Code.[12] Secondly, both cases resulted in at least one person being sentenced to death by hanging. However, only in *Regina vs Giuseppe Attard and Giuseppe Chetcuti* was the punishment carried out. In *Regina vs Aloysia Camilleri and Emmanuel Camilleri*, the death sentence was commuted to imprisonment following a decision by the Governor of Malta, Sir Guy Grantham, after consulting with the Executive Council, which included the three presiding judges. This followed two successful petitions: one filed by defence lawyer Dr. John Pullicino, and another by a group of eighty lawyers and legal procurators arguing that the evidence at trial excluded

[10] Criminal Code (n 5) Art 629.
[11] Code of Organization and Civil Procedure (Cap 12, Laws of Malta) Art 563.
[12] Criminal Code (n 5) Art 629.

reasonable doubt regarding the guilt of the accused.[13]

The two cases also differ in several ways. The most obvious difference is that they were committed in different centuries. Furthermore, the homicide in the *Attard/Chetcuti* case was committed during a burglary, while in the *Camilleri* case it was not. Most importantly, in the *Attard/Chetcuti* case, the minor served as a witness to the crime who helped police identify the culprits but did not testify in court. In contrast, in the *Camilleri* case, the minors were not only witnesses to the crime but were also called as official witnesses in court to convince the jurors of the accused's guilt.

3.1 Regina vs Giuseppe Attard and Giuseppe Chetcuti

Attard, aged 22 and known as *ta' Gesgies*, and Chetcuti, aged 30 and known as *Krakar*, were accused of committing a burglary accompanied by the wilful homicide of Katarina Borg, aged 35, on the 5th of July 1862, at 35 Market Street, Floriana.

The house was owned by Mr. Lawrence De Martino, a money exchanger known for the wealth he kept at home, including large amounts of cash and precious stones. Mr. De Martino and his wife were invited by Amabile De Marco and Giannina De Marco (Mrs. De Martino's sister) to their house in Casal Balzan (modern-day Ħal Balzan) to celebrate the feast of St. Valentine. The couple left their housekeeper, Katarina Borg, and their two-year-and-nine-month-old son at home, instructing her not to open the door to anyone.

Upon their return, Mr. De Martino found Katarina Borg dead and all his valuables stolen. There were no signs of forced entry, suggesting the intruders were allowed inside. The young De Martino child emerged from the cellar in shock and, days later, began saying, "Peppi tat-tuttu, Peppi taz-zija Giannina." This referred to Giuseppe Attard, since "tuttu" meant horse in baby language and Attard was employed by Giannina De Marco as a coachman.

This clue led police to question Attard, who denied involvement and provided an alibi, claiming his carriage had not moved from Balzan during the time of the crime. Investigators later found that Attard was close friends with Giuseppe Chetcuti and another man, Gamri Borg known as il-Gigin, who had recently begun gambling despite his low income. Suspicion arose, leading to their arrest. Borg (il-Gigin) was offered a pardon in exchange for testimony, and he revealed that the three men had used

[13] 'Il-Kundanna Ta' Giga Mibdula' *Il-Berqa* (23 March 1961) 1.

another carriage, gained entry through Attard's familiarity with the victim, and killed her during the burglary.[14]

Attard and Chetcuti were tried by jury. The prosecutor was Sir Adrian Dingli while the defence lawyer was Dr. Francesco Grungo. They were found guilty unanimously and sentenced to death by hanging.[15] The sentence was executed on the 22nd of December 1862 as per court orders.[16]

3.2 Regina vs Aloysia Camilleri and Emmanuel Camilleri

This case, known as the "crime of the century," horrified the Maltese public. Sir Anthony Mamo remarked that upon news of the murder of young Twanny Aquilina, "horror spread throughout all of Malta."[17]

Married couple Aloysia (Giga) and Emmanuel Camilleri (Leli) were accused of the wilful homicide of eight-year-old Twanny Aquilina, Aloysia's son but not Emmanuel's, on the 23rd of August 1960 at their apartment at 102 St. Dominic Street, Valletta. Twanny was found decapitated in a pool of blood, with visible violent wounds all over his body.[18] Medical evidence confirmed that his head was severed while he was still alive.[19] Both accused denied the charges. Emmanuel claimed he had an alibi, saying that after an afternoon nap until 5:30 p.m., he went out for errands including a haircut, stationery purchases, and tea at Mutumallu.[20] The prosecution challenged inconsistencies in his timeline. Aloysia testified for three hours, denying all accusations and claiming she was at the Valletta ditch with her other children while Twanny remained at home.[21] Her daughter's testimony, however, contradicted her account, claiming she saw her mother holding the breadknife later confirmed as the murder weapon.

The 17-day trial was the longest in Maltese criminal history at the time.[22] The prosecutor was Dr.

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[14] Galea (n 2) 65.
[15] 'Trial For Murder' *Malta Times And United Service Gazette* (18 December 1862) 2.
[16] Verbal Process of Regina v Giuseppe Attard e Giuseppe Chetcuti (n 3) 93.
[17] Attard (n 4) 44.
[18] Raymond Żammit 'Capital punishment in Malta: in-depth analysis of a death sentence: the trial of Aloysia [Giga] and [Leli] Camilleri (1961) (BA Criminology Thesis, University Of Malta 2006) 7.
[19] 'Ras Twannie Nqatgħet Meta T-Tifel Kien Għadu Ħaj' *Il-Berqa* (25 February 1961) 1.
[20] 'L-Akkużat Jitlob Li Jixhed' *Il-Berqa* (6 March 1961) 1.
[21] 'Tixhed Giga' *Il-Berqa* (7 March 1961) 1.
[22] Żammit (n 18) 10.

Maurice Caruana Curran, renowned for his cross-examination skills.[23] On the other hand, Dr. Pullicino defended Aloysia and Dr. Scerri defending Emmanuel.[24]

On the 9th of March 1961, the jury found Aloysia guilty unanimously and Emmanuel guilty by a 6–3 vote.[25] Aloysia's death sentence was later commuted to life imprisonment, while Emmanuel received twenty years of hard labour.

4. Minor Witnesses – A Legal Analysis

In the Maltese legal system today, there is no age limit for a person to be accepted as a witness. The only condition is that the court must be satisfied that the witness understands it is wrong to give false testimony, as seen in Article 630 of the Criminal Code:

> No person shall be excluded from giving testimony for want of any particular age; it shall be sufficient that the court be satisfied that the witness, though not of age, understands that it is wrong to give false testimony.[26]

To ensure this understanding, particularly in the case of minors, the law emphasises that the court shall explain the obligation of the oath if there appears to be doubt, as stated in Article 629(2):

> (2) The court shall explain to the witness the obligation of the oath if, on account of his age or for other reasons, it appears doubtful whether he understands such obligation; and if, notwithstanding such explanation, the court shall deem it necessary that the witness, before giving evidence, be further instructed as to the consequences of false testimony, the court may, if it considers the deposition of such witness to be important for the ends of justice, adjourn the trial to another day, and, should the case be before the Criminal Court, discharge the jury.[27]

Our legal system generally requires witnesses to be examined in court *viva voce*.[28] However, following a 2024 amendment (V.2024.7) to Article 646(2), minors are no longer to be examined *viva voce* if an

[23] ibid 38.
[24] ibid 39
[25] 'Giga Għall-Mewt - Leli 20 Sena Ħabs' *Il-Berqa* (10 March 1961) 1.
[26] Criminal Code (n 5) Art. 630.
[27] ibid Art 629 (2).
[28] ibid Art 646 (1).

audio and video recording is produced in evidence.[29] This change was introduced to reduce psychological stress on minors.

In both cases discussed, minors played a central role in the proceedings, though their level of participation varied.

In the *Attard/Chetcuti* case, the minor who witnessed the crime did not testify but was frequently referred to throughout the trial. In his opening address, Crown Advocate Sir Adrian Dingli stated:

> *All'arrivo di suo padre quel fanciullo gli andò incontro, e le parole che pronunziò erano-Peppo, Peppo nostro, alludendo ad Attard. Un fanciullo in quella età non è, innanzi alla legge, un testimonio competente: è quasi una macchina. Lo però l'ho fatto venire, non perché io speri di ottenere il permesso della Corte onde esaminarlo come testimonio, ma soltanto per prevenire qualche sospetto che non fosse stato prodotto per non indebolire la causa. Voi vedrete che se quel fanciullo non può colle parole che profferisce avvalorare l'accusa, esso però non dice nulla che giovi agli accusati.*[30]

Because of his very young age, two years and nine months, the minor's credibility was questioned, and the defence argued that he was merely repeating what his father had told him.[31]

In the *Camilleri* case, several minors testified, including Mary Caruana (15), Alfred Fitzpatrick (14), Carmen and Mary Cauchi (8 and 7), and Carmen Aquilina (8). Fitzpatrick's testimony linked Giga directly to the crime scene.[32] Mary Caruana's described Giga's attire and reaction.[33] Mary Cauchi's evidence deemed inadmissible. The court had ordered the Principal Welfare Officer to explain the consequences of false testimony to the minor to make sure that she was understanding in line with Art. 629 (2) as previously explained. It seems that the Court was not satisfied with her understanding of her oath and thus Sir Antony Mamo in his final address to the jury ordered that her evidence (together with

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[29] ibid Art 646 (2).

[30] Verbal Process of Regina v Giuseppe Attard e Giuseppe Chetcuti (n 3) 13, translated as "When his father arrived, that child ran up to him, and the words he uttered were "Peppu, our Peppu," referring to Attard. A child of that age is not, before the law, a competent witness, he is almost like a machine. I have nevertheless brought him here, not because I hope to obtain the Court's permission to examine him as a witness, but only to prevent any suspicion that he was not produced so as not to weaken the case. You will see that, even if that child cannot, by the words he speaks, strengthen the accusation, neither does he say anything that benefits the accused."

[31] ibid 61-62.

[32] Attard (n 4) 59.

[33] ibid 57.

her mother's) was to be ignored in their judgement.[34] Carmen Cauchi and Carmen Aquilina, however, provided key evidence confirming details of the abuse and linking the accused to the crime. Carmen Cauchi's evidence substantiated the facts as the issue of Twanny being physically abused by his parents was highlighted and later confirmed by the accused themselves. She also described Giga's dress which was also very important information as previously explained.

The most important minor to give evidence in this case was Carmen Aquilina, Giga's own daughter. Given the blood relationship with her mother, defence lawyer Dr. Pullicino objected to her being a witness in line with Article 633 (1) and (2):

> (1) No objection to the competency of any witness shall be admitted on the ground that he was the party who laid the information or made the complaint, or that he was the party who made the report or the application in consequence of which proceedings were instituted, or that he is, by consanguinity or affinity, or by reason of any contract, employment or otherwise, in any manner related to or connected with the party above referred to, or with the person charged or accused; but in every such case, the witness shall be heard, and those who have to judge of the facts, being fully persuaded and convinced of the veracity of the testimony, shall act upon such testimony in the same full and ample manner, as if such facts had been proved by an extraneous person not related or connected as aforesaid.
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> (2) Nevertheless, it shall lie in the discretion of the court, regard being had to the degree of consanguinity, the reluctance to give evidence against the husband or wife, his civil union partner or against his cohabitant, against an ascendant or a descendant, or against a brother, sister, uncle, or nephew, and to other particular circumstances of the case, not to compel a witness to give evidence if he be unwilling to depose against a person related to him in any of the said degrees.[35]

In this case, in line of the above, defence argued that the child was too young to be able to confirm if she wanted to give evidence.[36] After hearing arguments from both sides, the Court decided to hear her testimony with 'special treatment'. This treatment was that she did not take the witness

[34] ibid 83.

[35] Criminal Code (n 5) Art. 633.
[36] Attard (n 4) 62.

stand but sat beneath the judges' bench. Carmen Aquilina's testimony was crucial to finding the accused guilty. She claimed that she saw Giga and Emmanuel physically handling Twanny, saw Giga and Emmanuel changing clothes and putting the dirty clothes in the washing machine and finally saw her mother retrieving the bread knife from the drawer and kneeling next to Twanny on the floor where at this point, asked her to leave the room.[37] All these facts emerging from her testimony were highlighted by Sir Anthony Mamo in his final address to the jury, placing them as key evidence for the jury's deliberation marking her testimony as crucial to the verdict.

5. Conclusion

The two sensational cases discussed, *Regina vs Giuseppe Attard and Giuseppe Chetcuti* (1862) and *Regina vs Aloysia and Emmanuel Camilleri* (1961) demonstrate the central importance of evidence and its correct appreciation within the Maltese criminal process. In both instances, the courts faced the delicate task of assessing statements involving minors, whose words and presence became pivotal to the outcome of each trial.

In the *Attard and Chetcuti* case, the role of the minor was indirect yet decisive. Although he did not take the witness stand, the words he uttered immediately after the crime guided the entire investigation, setting in motion the events that eventually led to the conviction of the accused. This shows how, even when not formally heard in court, a minor's perception of events can become a key element in shaping the evidentiary picture before the judiciary.

In the *Camilleri* case, the presence of several minors within the courtroom made the evidentiary exercise far more complex. The Court had to determine the extent to which each child understood the meaning and seriousness of the oath while ensuring that their accounts were truthful and reliable. The testimony of young Carmen Aquilina proved critical, providing the jurors with vivid and credible details that linked the accused directly to the crime.

Both cases underline the delicate responsibility of the courts in evaluating evidence connected to minors, a task requiring prudence, sensitivity, and a strong adherence to the principles of justice. The truth they revealed through their words, directly or indirectly, was instrumental in uncovering the reality behind each crime, proving that even the smallest voice can hold immense evidential weight within a criminal trial.

[37] Attard (n 4) 63.



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