

## Two judicial post-mortems that went awry 1870 & 1908

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**ABSTRACT:** The first instance of an exhumation of a cadaver for a judicial post-mortem took place in 1870 in connection with a murder case. Knowledge, on the part of the pathologist, of the scene of the crime and of the events leading to the murder are important as they may suggest to the pathologist what to look for in the corpse, but only a thorough autopsy may reveal the cause of death. This is possible even after exhumation of a decomposed cadaver.

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### The case of Michele Schembri

Michele Schembri, a youth of about eighteen years was murdered on the 1st June 1870. His body was found in a field at Marsa concealed under bundles of corn seven days after the killing. It was in an advanced state of decomposition, the fleshy parts being "almost entirely destroyed by rats and other vermin". Carmelo Camilleri, nicknamed Midneb, from Birkirkara and about twenty-eight years of age, was arrested and convicted of the wilful murder of Schembri. Her Majesty's Criminal Court sentenced him to death on the 19th August 1870, the execution taking place at Kordin on the 24th of the same month.

### The inquest and its aftermath

The inquest was held immediately after the discovery of the body but two medical practitioners, Dr Guiseppe Montanaro and Dr Felice Mifsud Bonnici, appointed to carry out the post-mortem examination "pronounced it impossible to detect by a post-mortem the cause of the man's death". On the strength of this statement, the Magistrate, Dr. Antonio Zammit, allowed the interment of the body; but the matter was not allowed to end there.

### Exhumation

One of the Police Physicians (District Medical Officers) of Valletta, Dr. P. Grillet, felt uneasy about the handling of the case when the circumstances surrounding it came to his knowledge. He held the view that a regular post-mortem examination should have been carried out under any circumstances. Dr. Antonio Ghio, the Chief Police Physician (Chief Government Medical Officer) supported Dr. P. Grillet and an application was made to the Magistrate who directed that the body should be exhumed and an autopsy be performed. The new panel of doctors consisted of Dr. Antonio Ghio, Dr. Salvatore Pisani, Dr. Giuseppe Galea and Dr. P. Grillet together with the other two medical men appointed at the original inquest<sup>1</sup>.

### Findings at the second autopsy

The findings at this second examination were as follows:- (a) a skull wound made with a pointed and cutting instrument penetrating through the temporal bone into the cavity of the skull to an extent that might have caused an incision in the involucra of the cortical part of the brain; (b) a fracture of the occipital bone; (c) a wound in the frontal bone with the loss of a portion of it; (d) two ribs broken; (e) a portion of a knife stuck in the temporal bone that "could but with difficulty be extracted with a forceps"; (f) "other minor lesions".

The second panel of doctors came to the conclusion that the wound penetrating the skull was insufficient to account for the death and that the latter must have been caused "by commotion and confusion of the brain in consequence of blows given with tremendous force".

Circumstantial evidence pointed to Carmelo Camilleri as the killer though the motive of the murder was not conclusively proved. The unanimous verdict of the jury declared Carmelo Camilleri guilty and he was sentenced to death and hanged.

After hearing the sentence the accused admitted his guilt. He said that he had struck the victim with a knife which broke in the process and then he tried to cut the victim's throat with the broken knife. The knife was never found. The throat lesions could not be discovered at the second post-mortem as the soft tissues had perished through decomposition<sup>2</sup>.

### The case of Antonio Azzopardi

Antonio Azzopardi, nicknamed Ninu Xkora, a man of strong physique from Hamrun, was sentenced to death on the 19th October 1908 for the murder of his brother-in-law. The death sentence was carried out on the 27th October. The body was buried in the prison cemetery allegedly after "a cursory medical examination soon after the hanging"; but the story of his execution was not yet over for there was persistent rumour among the public that Azzopardi had been cut down and buried when he was still alive<sup>3</sup>.

### Suspicion that Azzopardi's was an instance of apparent death

Dr. Peter Paul Agius expressed this suspicion in his newspaper *Risorgimento* and denounced "the casual manner" in which the body of Azzopardi was disposed of by immediate burial. He remarked that the accused was "an exceptionally strong and vigorous man". This observation stemmed from the fact that in judicial hanging death is not due to asphyxia, as in suicidal and homicidal hanging, but to dislocation of the upper cervical vertebrae from the long and sudden drop of the prisoner, the distance of the drop being calculated according to the weight of the body to cause almost instant death. Dr. Agius maintained that in the case of Azzopardi it was not possible "so soon to certify death" and that probably Azzopardi's was a case of apparent death and that he was buried alive. Dr. Agius accused the government of failing to ascertain that life was extinct before Azzopardi's burial<sup>4</sup>.

Dr. PP Agius subsequently apologised on learning that the death certificate had been signed by the Chief Government Medical Officer, Dr. Giuseppe Caruana Scicluna, the Prison Medical Officer Dr. Giacomo Baldacchino and Dr. Emmanuel Said and by other doctors present at the execution as members of the *Arciconfraternita del Santissimo Rosario e della Misericordia*<sup>5</sup> who declared that the atlas had been fractured" as shown externally by the abnormal motility of the head over the neck" and that death was instantaneous<sup>6</sup>. In view of this declaration, Dr. Agius felt assured that death did not occur by a slow asphyxia adding that what he had published had been written in good faith and inspired "by love for science and suffering humanity" and that he now felt relieved from the grave doubt that had been tormenting him for many months<sup>7</sup>.

Mr. Agostino Levanzin, a pharmacist and journalist, joined the controversy by translating in Maltese and publishing in his newspaper *In-Nahla*, excerpts from the article by Dr. PP Agius in the *Risorgimento*;<sup>8</sup> but later, on reading the statements of the medical men present at the execution he declared that there was no doubt that the condemned man was dead when he was buried<sup>9</sup>. However, while Levanzin's declaration was in the press, he was summoned to appear in court for libelling Dr. Giuseppe Caruana Scicluna in one of the issues of *In-Nahla*<sup>10</sup>. Dr. PP Agius was also summoned for the same reason. Their case dragged on until October<sup>11</sup>.

### The trial by jury

The trial by jury of Dr. PP Agius, BA, MD, PhC, editor of the *Risorgimento* and of Mr. Agostino Levanzin, BA, PhC, LP, editor of *In-Nahla* took place on the 28th October 1909 before the Criminal Court. They were charged with having written and published in their papers "libellous articles" imputing to Dr. Giuseppe Caruana Scicluna that he had superficially performed the post-mortem examination on the 27th October 1908 of Antonio Azzopardi. Dr. Etienne Micallef, LL.D, Assistant Crown Advocate was the Prosecutor; Dr. Arturo Mercieca MA, LL.D appeared for Dr. PP Agius and the Noble Contino Alfredo Caruana Gatto, BA, LL.D for Mr. Agostino Levanzin. The Judge was Dr. Giovanni Pullicino, LL.D.

### Depositions of witnesses

Dr. Giuseppe Caruana Scicluna stated that he was present at the execution and that he did not notice "any irregularity in the proceedings. The death of the executed man was practically instantaneous". He added that he examined the body "minutely", touched the head and the hands two or three times "and ascertained that the head was abnormally moveable". Dr. Giacomo Baldacchino and Dr. Emmanuel Said, the other two experts appointed to conduct the post-mortem, confirmed the deposition of Dr. G. Caruana Scicluna. Other witnesses for the prosecution were Drs. Federico Bernard, G.F. Inglott, Andrea Pullicino and Joseph Portelli Carbone. They were all present at the execution in their capacity as members of the *Arciconfraternita*. They deposed, with the exception of Dr. F. Bernard, that they were convinced of the "practically instantaneous death of Azzopardi" and that "death could not be due to asphyxia".

### The defence of Dr PP Agius

The defence counsel of Dr PP Agius was Dr Arturo Mercieca LL.D then at the beginning of his legal career and later Chief Justice. He submitted to the court that (a) Ninu Xkora was an exceptionally strong man with a well developed muscular system; (b) the execution was not carried out by an expert hangman - in fact it was the hangman's first execution and he could hardly be expected to calculate exactly the depth of the drop necessary to cause the death of Xkora with his unusual physique; (c) in cases of death from natural causes the law did not permit the burial of a corpse before the lapse of twenty-four hours after the time when death is certified by the doctor in attendance as having occurred; while in the case of judicial hanging, burial was allowed an hour after the time of execution on the assumption that death was immediate from fracture of the first cervical vertebra with consequent injury to the spinal cord; (d) the report of the experts showed "the very superficial way" in which the post-mortem was carried out; (e) the death of the hanged man might not have been due to "dislocation of the neck"; (f) the witnesses of the prosecution could not make any "authoritative statement" on the subject as they had not examined the body of the hanged man; (g) it is very difficult to ascertain the existence of the fracture of the neck notwithstanding that the head is movable unless an autopsy is performed;<sup>12</sup> (h) the body was enclosed in a sack up to the neck and the three doctors appointed to perform the autopsy<sup>13</sup> did not remove the body from the sack but presumed that death had taken place from the fact that the head of the cadaver could be turned round which they took as an indication that the atlas had been fractured with consequent death.

To rebut this last point, defence counsel produced as medical witness Dr. Giuseppe Galizia, "a learned doctor with experience in a large practice" who described a case that had occurred to him together with two colleagues some time previously. The three of them had carried out the post-mortem examination of a young girl who had died after falling from a height. The external examination of the body showed that there was "complete circular mobility of the head" but on performing the autopsy they found that the atlas had

remained intact and that they had to look for other lesions to account for the death<sup>14</sup>.

It appears that in Xkora's case no second post-mortem examination took place to corroborate either Dr. Caruana Scicluna's evidence or that of Giuseppe Galizia. The judge summed up the case and the jury withdrew. They returned after an absence of half an hour with a verdict of not guilty by seven votes against two. Dr. PP Agius was released immediately by order of the court.

A precis of the trial appeared in the British press. As a result of this publicity Dr. PP Agius was presented, as a gift, with a book dealing with premature burial by the authors Dr. W Tebb and Col. E Perry with their dedication:- "To Dr PP Agius with the authors' kind regards and expressions of admiration for his zeal and independence of thought and action"<sup>15</sup>.

### The defence of Mr. A Levanzin

The case of Mr. A Levanzin was then dealt with by the court. The defence lawyer, Dr. Alfredo Caruana Gatto, argued that since the jury had just held that the article published in the *Risorgimento* was not libellous, Mr. Levanzin could not be guilty as he had simply reproduced that article in his paper *In-Nahla*. The jury, after an absence of twenty minutes, returned with a verdict of not guilty. Mr. A Levanzin was released by the court<sup>16</sup>.

### Discussion

The nagging question as to whether the atlas had been broken or not was not determined by exhumation and dissection of the cervical vertebrae. Had it been possible, in the absence of such a post-mortem diagnosis, to take an X-ray picture of the cervical region, it is likely that the question would have been settled without further ado; but those were the early days of radiography in Malta. In fact the first attempts to take X-ray pictures in Malta were made in 1896 by Dr (later Sir) Themistocles Zammit and Mr. John Ellis. The usefulness of X-rays in the diagnosis of bone injuries was recognised by Mr. John Ellis who offered his services to the British Military Hospital in Valletta and to the Central Civil Hospital at Floriana in 1896. Dr. T. Zammit, too, pointed out the usefulness of X-rays in the skeletal examination of the human body but it was not until 1899 that X-ray apparatus was ordered from England for the Central Hospital; and it was only in October 1907 that X-ray equipment was installed in this hospital. Hence awareness of the forensic value of X-rays as a tool in judicial investigations was as yet non-existent<sup>17</sup>.

To appreciate why so much concern was shown regarding the establishment of the certainty of Azzopardi's death before his burial, it must be realised that at the beginning of the present century the question of apparent death and of hasty burials had been engaging the attention of both medical and lay people in Malta and abroad especially in France and the United Kingdom, so much so that in England a Society for the Prevention of Premature Burial was actively drawing the attention of the medical profession and the public to this topic<sup>18</sup>.

In Malta the possibility of the interment of living people, only apparently dead, had given rise to concern on the part of the authorities of the Holy Infirmary of

Valletta in the 18th century, so much so that measures were taken to forestall such an eventuality; and towards the last quarter of the 19th century an "alarm bell apparatus" attached to the limbs of the corpse was fitted out in such a manner that the slightest movement of the limbs would set up the ringing of the bells should the apparently dead person give signs of life<sup>19</sup>.

As an additional safeguard, appropriate legislation in 1872 disallowed the burial of corpses before the passage of twenty-four hours after apparent death<sup>20</sup>; but by the first decade of the twentieth century the belief was still current, despite these measures, that no one could say with certainty that an individual was really dead until putrefaction had set in<sup>20</sup>.

As a result of the circumstances surrounding Azzopardi's death and burial, the Hon. Contino Alfredo Caruana Gatto raised the following questions in the Council of Government:-

(a) whether government was prepared not to allow the burial of the cadaver of a hanged man before twenty-four hours to ensure that death had actually occurred;

(b) whether the family of the dead man would in future be allowed to take the cadaver for burial themselves;

(c) whether the cadaver should be buried in a coffin instead of in a sack.

Government replied "no" to the first two questions. With regard to the third query, government said that it was up to the Archconfraternity to decide<sup>21</sup>. Subsequently, His Excellency the Governor told the Archconfraternity not to bury executed men in a sack but in a coffin for which he offered to pay the cost. The Archconfraternity informed him that in future the expenses would be met by its members<sup>22</sup>.

Thanks to this controversy the manner of dealing with the corpses of executed persons was radically changed:-

(a) the "best" surgeons were called to certify death;

(b) the wrapping of the corpse in a sack was abolished;

(c) no hasty burials were permitted<sup>23</sup>.

### Comments

(a) The concern of the forensic pathologist is to search accurately for the lesions produced by a weapon in the cadaver. The autopsy, therefore, is to be carried out in a thorough, methodical and orderly manner even when the corpse is in an advanced state of decomposition (case of M Schembri, 1870).

(b) Information about the scene of the crime and the history of the events of the case are important as they may indicate to the pathologist what to look for but such knowledge should not lead to overconfidence and diminish the importance of an actual searching examination of the cadaver. The "atlas" case (Antonio Azzopardi - 1908) illustrates this point.

(c) Theoretical knowledge and medical experience about the causes of death are essential but they do not replace the actual search at the autopsy for the bodily organs injured and for the weapon or bullet lodged in the tissues in each particular case (Michael Schembri - 1870).

(d) Not only primary but also secondary causes of death have to be established and made available for the prosecution and the defence counsel (case of Antonio

Azzopardi. Evidence of witness Dr Giuseppe Galizia - 1908).

(e) It was recently stated that the first instance of an exhumation to be ordered by a Maltese Court for forensic purposes took place within living memory. This is not correct for, as the present paper shows, the performance of an exhumation for a judicial post-mortem examination was carried out for the first time in Malta in 1870. (case of Michael Schembri). A second exhumation by court order took place in 1955 (Regina vs G Terreni); a third and fourth one in 1965 (Police vs Joseph Caruana) <sup>24</sup>.

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