KNOX AND SOLLECITO APPEAL TO THE SUPREME COURT 2015
TJMK/WIKI TRANSLATION OF THE FIFTH CHAMBERS MOTIVATION REPORT
(PRE-FINAL DATED 1 NOVEMBER 2015 STILL SUBJECT TO CORRECTION)

= // =

REPUBLIC OF ITALY

In the name of Italian people

SUPREME COURT OF CASSATION

Fifth Criminal Division

Consisting of:

Doc. Gennaro	MARASCA – President
Doc. Paolo Antonio	BRUNO - Lecturer
Doc. Alfredo	GUARDIANO
Doc. Luca	PISTORELLI
Doc. Gabriele	POSITANO

Has delivered the following

VERDICT

On appeals from

SOLLECITO RAFFAELE, born in Bari the 26thof March of 1984

KNOX Amanda Marie, born in Seattle (United States of America) the 9th of July of 1987

against the judgment delivered by the appellate Florence Court of Assize of 30th of January 2014;

having noted the evidence, the trial judgment and the appeals;

having heard the report submitted by the reporter Doc. Paolo Antonio Bruno;

having heard the prosecutor, in the person of Deputy AG Doc. Stefano Maria Pinelli, who has concluded by demanding the cancellation without possibility of remand for a expired prescription period regarding the point B) of the report, with redetermination of the sentence in the measure of twenty-eight years and six months of detention for Knox Amanda and twenty-four years and

six months for Sollecito Raffaele;

having then heard:

the lawyer Carlo Pacelli, defender of the civil party Patrick Lumumba, who has requested the dismissal of the appeal and the confirmation of the sentence and its civil penalty as in the written arguments and expense report;

The lawyer Enrico Fabiani Veri [sic], defendant of the civil party Kercher family, which requested the inadmissibility or, alternatively [in subordine = as a second choice], the dismissal of the appeals and the confirmation of the sentence appealed as in written arguments, which have been submitted along with the expense report;

the lawyer Francesco Maresca, for the same civil parties, who has argued for the inadmissibility or the dismissal of the appeal, with an order to the applicants to pay the expenses as submitted in the expense report.

also heard:

the lawyer Luciano Ghirga, for Amanda Marie Knox, who has referred to the document of the appeal and further reasons, arguing for their acceptance.

also the lawyer Carlo dalla Vedova, defendant for Amanda Knox, who has referred to the document of the appeal and the further reasons, arguing for the cancellation of the prescribed sentence; preliminarily, he asked for the suspension of the proceeding until the decision regarding the atgued constitutional legitimacy matter under articles 627-628 cod. proc. pen. ; or, alternatively, waiting for the decision of the European Court of Human Rights.

Given the late hour and the necessity to take care of the other scheduled proceedings as well as this hearing, the President extended the hearing to the 27th March 2015, for the continuation of the debate and deliberation.

At the first day's hearing, the lawyers Giulia Bongiorno and Luca Maori were also heard, on behalf on Raffaele Sollecito, referring to the reasons of the appeal, demanding the approval of the latter; the trial had then been put on hold with the decision pending.

SUMMARY OF THE FACTS

1. Raffaele Sollecito and the United States citizen Amanda Marie Knox were called to account, before the Perugia Court of assize, for the following crimes:

A) within the meaning of Articles 110, 575, 576, first clause , number 5, in relation to the crime sub C) and 577, first clause number 4, in relation to article 61 n. 1 and 5 of the penal code, to

have, in conjunction between them and with Guede Rudi Hermann, killed Kercher Meredith, by means of choking and subsequent breaking of the hyoid bone and profound lesion on the left anterolateral and right lateral neck region, caused by a piercing and cutting weapon mentioned in section B), and meta-hemorrhagic shock with observable asphyxical subsequent to the bleeding (caused by the puncture and cutting wounds present on the left anterolateral and right lateral region of the neck and the contextual aspiration of hematic material), and taking advantage of the nocturnal hour and the isolated location of the apartment inhabited by Kercher and the same Knox, as well by two other Italian girls (Romanelli Filomena and Mezzetti Laura), an apartment located in Perugia, in via della Pergola number 7, committing the act for futile reasons, while Guede, with the conjunction of the others, committed the crime of sexual violence;

B) within the meaning of Article 110 of the penal code and 4 law number 110/1975 to have, in conjunction between themselves, brought out of the house of Sollecito, without a justified reason, a big puncture and cutting knife with a total length of 31 cm (seized from Sollecito the 6th of November 2007, exhibit 36);

C) within the meaning of Article 110, 609 bis and ter no. 2 of the penal code to have, in conjunction between themselves and with Guede Rudi Hermann (Guede as material executioner, in conjunction with the co-accused) forced Kercher Meredith to endure sexual acts, with manual and/or genital penetration, by means of violence and threast, resulting in constraining maneuvers which produced lesions, particularly on the upper and lower limbs and on the vulvar region (ecchymotic suffusions on the fore side of the left thigh, lesions on the vestibular-vulvar area and ecchymotic areas on the fore side of the medial third of the right leg) as well as the use of the knife described in point B;

D) within the meaning of Article 110, 624 of the penal code, acting together, acquiring an unjust profit, in the circumstances of time and place described in point A) and C), took possession of the sum of approximately € 300.00, two credit cards, of Abbey Bank and Nationwide, both from United Kingdom, and two cellphones owned by Kercher Meredith, stolen from the aforementioned; fact to be qualified within the meaning of article 624 bis of the penal code, the place of execution of the crime cited in point A) referred to here.;

E) within the meaning of article 110, 367 and 61 n. 2 of the penal code to have, acting together, simulated the attempted burglary and entering of the room of the apartment in via della Pergola, inhabited by Romanelli Filomena, breaking the window glass with a stone found in the vicinity of the house and subsequently dropped in the room, near the window, all of this to obtain impunity from the crimes of homicide and sexual violence, trying to ascribe them to unknown persons who broke in, for this purpose, into the apartment;

All this took place in Perugia, during the night between the 1st and 2nd of November 2007.

Knox only, furthermore, regarding the crime mentioned in point F), within the meaning of article 81 cpv, 368, clause 2, and 61 n. 2 of the penal code, because, with multiple actions within the same criminal plan, knowing that he was innocent, with statements filed during declaration to the Flying Squad and the Police of Perugia on the 6th of November 2007, she falsely blamed Diya

Lumumba called “Patrick” for the murder of the young Meredith Kercher, all of this to obtain impunity for everyone and particularly for Guede Rudi Hermann, colored as is Lumumba; in Perugia, during the night between the 5th and the 6th of November 2007.

By judgment of 4-5 December 2009, the Court of assize declared Amanda Marie Knox and Raffaele Sollecito guilty for the crimes mentioned in point A) – this including the crime mentioned in point C) – also in B) and D), regarding the cellphones, and E) and, for what concerns Knox, also the crime mentioned in F); crimes which fulfill the prerequisite of continuity and, excluding the aggravating factor mentioned in article 577 and 61 n.5 of the penal code, conceded to both extenuating circumstances equivalent to the remaining aggravation circumstances, condemned them to the sentence of twenty-six years of prison for Knox and twenty-five years of prison for Sollecito, plus other consequential terms;

condemned, also, the same accused, jointly, to pay compensation for 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 compensated at a separate session, with the immediate payment of the amount of 1,000,000.00 € each in favor of John Leslie Kercher and Arline Carol Lara Kercher and 800,000.00 € each in favor of Lyle Kercher John, Ashley Kercher and Stephanie Arline Lara Kercher;

condemned, also, Amanda Marie Knox to pay compensation for damages to the civil party Patrik Lumumba, to be compensated at a separate session, with the immediate payment of the amount of 10,000.00 €, plus other consequential terms.

condemned, finally, the aforementioned Knox and Raffaele Sollecito to pay compensation for damages to the civil party Aldalia Tattanelli (owner of the apartment in via della Pergola), to be compensated at a separate session, and for Lyle Kercher, John Ashley Kercher and Stepanie Arline Lara Kercher, with immediate payment.

Regarding the appeals proposed by the accused, the Court of Assizes of Appeal of Perugia, by judgment of 3 October 2011, declared Knox Amanda Marie guilty for the crimes referenced in point F), excluding the aggravating factor mentioned in article 61 n.2 of the penal code and excluded the general extenuating circumstances equivalent to the aggravating factors within the means of article 368 of the penal code – condemned her to the sentence of three years of prison; confirming strictly for this sentence the civil damages.

absolved the accused from the crimes previously accredited to them on point A), B) and D), to have not committed the act, and from the crime described in point E) because there is no case to answer, rejecting the damages proposed against them by the civil party Aldalia Tattanelli.

regarding the appeals proposed by the Perugia prosecutor-general, by the accused Amanda Marie Knox and the civil parties, this Court of Cassation, First Criminal Division, with sentence of 25 March 2013, cancelled the disputed sentence referring to the crimes mentioned in point A) – incorporated in point C) – B), D) and E) and the aggravating factor within article 61 n.2 of the penal code concerning point F) and referred the appeals to the Court of Assizes of Appeal of

Florence for new examination.; denying Knox's appeal, with subsequent circumstances.

During the review the Court of Assizes of Florence, with the trial sentence indicated above, confirming the exisistence of the aggravating factor within the meaning of article 61 n.2 of the penal code, with reference to the crime within the meaning of article 368, second paragraph of the penal code, point F), revises the sentence against Amanda Marie Knox to be twenty-eight years and six months of prison; confirming the trial sentence, with the consequential damages in favor of the constituted civil parties.

Against the aforementioned ruling, the accused's defendants had proposed different Court of Cassation appeals, each one subject to the following critical reasons.

[Amanda Marie Knox]

The appeal in favor of Amanda Marie Knox, before the presentation of the multiple reasons of which it was constituted, was preceded by a long premise which, on the one hand, anticipated the direction of the entire appeal and, on the other hand, proposed once again the same set of problems already discussed in the original grounds for appeal, such as the constitutional legitimacy issue of the conjunction of articles 627 chapter 3 and 628 chapter 2, regarding the application of a possible "indefinite repetitiveness" of an order of remand by the Cassation and corresponding options of indefinitely appealing a rescission order.

In first arguments the basis for contesting of the entire appeal was presented, represented by the pretentious avoidance of the dictum of the rescission order of this legitimacy Court and the divergent interpretation of the same probative material by two different courts of assizes, Perugia and Firenze, the last, however , based on mere paperwork exam.

Then, it continued into the analytical analysis of the procedural factual circumstances or evidences, which wouldn't have been validly examined or, illegitimately, perceived in a partitioned way and not from a global and unitary perspective.

Taking into account this, various reasons for the appeal were deduced and reasons summarily presented, according to the terms of article 173, chapter 1, disp. att. code of penal procedure, that is in the terms strictly necessary to the decision.

The first reason challenged the violation and inobservance of the criminal law, according to article 606 lett. b) and c) of the code of criminal procedure and also the incorrect reasoning, according to the same article let. e), about the decisive matter of the asserted reason, of Knox for the commitment of the crime, in violation of article 110 of the penal code.

Contested, in this regard, was what previously assumed in the judgments as to the merits, regarding some claimed disagreements between the aforementioned Knox and Kercher, despite the occurred absolution, with definitive decision, of the finding for theft of the sum of three hundred euros and the collected depositions, including the one provided by Marco Zaroli, regarding the "idyllic" relationship between the two girls. From the records of proceedings there

had not emerged any reason that could have induced Knox to mindfully concur in the murder act and, contrarily to the assumption of the judge, the verification of motive during the evidentiary process was absolutely necessary. In this regard, no indications have been offered by the [First Chambers] review judge, despite the specific indication of the rescission order, which had notified a triple possibility: 1) genetic acknowledgement on the death option; 2) changing of an initial program which only included the involvement of the English girl in a not shared sexual game; 3) mere forcing of an erotic group game.

Also, in a scenario of absolute uncertainty the review judges had elaborated an abnormal type of collusion in a crime, the fruit of a singular mixture of different impulses and reasons of the participants: Mr. Guede driven by a sexual motive; Ms. Knox by resentment towards the English woman; Mr. Sollecito by unknown intent.

The second reason highlights a problem of great relevance in the circumstance of the present judgment, that is the right interpretation of the scientific examination results from a perspective of respect of the evaluation standards according to article 192 of the criminal procedural code and the relevance of the genetic evaluation in the absence of repeatable amplification, as a consequence of the minimal amount of the sample and, more generally, the reliability coefficient of investigations carried out without following the regulations dictated by the international protocols, both during the collecting phase and the analysis.

Particularly, anomalies were challenged in the retrieval of the knife (item 36) and the victim's brassiere hook, which do not exclude the possibility of contamination, as correctly outlined in the Conti-Vecchiotti report, ordered by the Perugian Court of assizes, which also notified the unreliability of the scientific data, precisely because it was not subject to a further examination.

It was also denied that the retrieved knife would have been the crime weapon.

The third reason challenged the law violation and incorrect reasoning, according to article 606 lett. b) and e), regarding the teleological nexus between the crime of calunnia and the homicide. In this regard, the psychological conditions of the accused during the issue of the calumnious declarations dated 11.06.2007 are outlined, her declarations were considered unusable by this Court (with ruling number 990/80); also challenged was a violation of article 188 of the code of criminal procedure, for infringement of the declarer's moral freedom during the assumption of evidence.

The fourth reason challenged incorrect reasoning regarding the relevant circumstances of the happening, with reference to, firstly, the asserted simulation of theft in Romanelli's room, without considering that Guede, at the moment of his arrest, presented wounds on his right hand compatible with the hypothesis of a previous breaking of the window's glass and subsequent climb in order to enter the room, with shards of glass on the windowsill, also in the same way not considered was the criminal record of Guede, who wasn't new to stealing in apartments, with identical modalities. Moreover, not considered was that not a single genetic imprint of the accused had being retrieved in the room of the murder, while fourteen imprints referable to Guede were retrieved in the same room.

The argument was totally illogical of a purported selective cleaning of the environment carried out by the accused, being almost impossible to remove specific genetic traces, leaving others intact.

The fifth reason denounces the incorrect reasoning in the evaluation of the Curatolo's and Quintavalle's declarations, non-adequately interpreted during the examination of the evidence. Also the illogical relevance given to the SMS received by Patrik Lumumba, due to uncertain of the site of the reception, and considering the well-known unreliability of localizations based on the triangulation of telephone cells.

The sixth reason challenged the law violation, in relation to the use of statements considered unusable by this Court, with particular reference to the declarations of the accused contra se at 5:45 AM of 11.6.2007.

Also, it was not considered that the defense report submitted by Knox suffered from the unstable psychological conditions in which she found herself, also from the stress consequent to the violation of her defense rights.

The seventh reason denounces the violation of articles 111 Cost., chapter 2 and 238 of the criminal procedure code, with reference to the irrevocable sentence issued against Guede and the inappropriate interpretation of the declarations produced by the aforementioned, via Skype, to his friend Giacomo Benedetti.

The eighth reason denounces the lack of assumption of decisive evidence, according to article 606 lett. d) of the criminal procedure code and in relation to articles 111 chapter 2 and 238 bis of the criminal procedure code, for failure to re-open court hearing evidentiary phase, denied with order of 09.30.2013, in order to examine Guede, after his accusations against the indicted woman.

The ninth reason signals inconsistency and contradictory nature of motivation and also great inaccuracy, such as the declaration at page 321 about the presence of genetic traces of Sollecito and Kercher on the retrieved knife.

It is argued, also, that the place where the cellphones of the victim had been retrieved was compatible with Guede's itinerary towards his house, situated in via del Canerino n. 26.

Inadequate, moreover, was the evaluation of the results of the report provided by Massimo Bernaschi about the computer damage, by suspected electric shock.

The tenth reason denounces the inobservance or erroneous application of articles 627 and 603 of the criminal procedure code referring to the preliminary order of 09.30.13 and 04.17.14.

Requested, also, is the correction of the material error presented in the order dated 04.17.13, referring to the erroneous indication of the place of birth of the accused, who was born in Seattle and not in Washington.

The eleventh reason denounces the violation and inobservance of article 606 lett b), in relation to the quantification of the punishment in point of aggravating circumstance according to article 61 n.2 of the penal code for the crime of calunnia placed on the accused assuming a teleological nexus.

The remand judge [Nencini] had considered the generic mitigating circumstances of minor value, previously considered equivalent, despite the final status of judgment [giudicato] on the point.

[Raffaele Sollecito]

3. The appeal on behalf of Raffaele Sollecito is explained in terms of twenty-two reasons, which will be also systematically summarised according to the requirements of article 173, chapter 1, of the code of penal procedure.

To this summary explanation has to be added the reference to the introductory part, containing specific requests.

The first concerns the ruling for referral to the United Sections panel [Sezioni Unite] on matters asserted of being of maximum relevance and, potentially, capable of generating interpretative contrast:

a) Probative or evidential value of the results of the scientific evidence in case of violation of scientific community international protocols regarding the collection and reading of the data;

b) Usability of declarations produced by Guede during the appeal process. In relation to this, it is inappropriate to relate the review of this appealed sentence to what he has stated during interrogation, reported in the appealed sentence according to article 238 bis; if those declarations were usable, it would be a consent to include in the trial, in violation of the same procedural disposition, declarations produced in absence of cross-examination.

c) Range of explanation of the principle of beyond reasonable doubt, which, from what is stated by the current defense, would be violated in this specific case by the erroneous statement by the remand judge, according to which the lack of procedural collaboration of the accused has exempted the judge from analyzing the alternative hypothesis emerged from the trial papers or the defense perspectives.

d) Reliability limits in witnesses' declarations (such as the ones from Dramis, Monacchia, Quintavalle and Curatolo), produced some time after the facts, after being solicited by journalists. The question is about the verification of the reliability of witnesses during the procedures who created strong media impact, with particular reference to Gioffredi and Kokomani claims and to the declaration of the former offender Luciano Aviello, who did not hesitate to produce slanderous declarations towards the prosecutor, the defence attorney, and Raffaele Sollecito's father.

The intervention of the supreme jurisdictional assembly was necessary in order to fix the

evaluation standards of oral evidence during trials with strong media exposure, aiming to preserve the credibility of the trial, protecting it from mythomaniac or judicial attention-seeking behavior.

In the introductive part also thoroughly examined is the position of Amanda Knox regarding the erroneous evaluation of the evidence against her, which had reflected negative effects also on the position of Sollecito, with the distorted conviction that the two substantial positions would be linked by an indissoluble bond, almost like a unique communication vessels system or an abnormal "mutual" extension of responsibility. All of this in order to denounce the erroneous methodological position consisting in the lack of an "identifying" evaluation of the appellant's role in the tragic happening subject to judgment. And the aforementioned assumption gave headway to a further denouncement of legitimacy, consisting in the remand judge avoiding the dictum of the cancellation judgment, which gave to the remand judge the task of "highlight the subjective position of Guede's contestants in the light of all the supposable circumstances", all specifically enunciated.

It is also pointed out that Ms. Knox had never placed, even in her noon report (erroneously considered of confessional nature), Sollecito at the crime scene. On the contrary, from the aforementioned report, it was possible to deduce that the foretold was not present in the house of via della Pergola.

In fact, no trace of Sollecito was found in the room of the murder. The only element of proof against him was represented by the DNA trace retrieved on the brassiere hook of the victim; trace of which relation with the indicted was actually denied by the Vecchiotti-Conti report, which, in this regard, had accepted the observations of the defense advisor Professor Tagliabracci, world-renowned geneticist.

Once this is considered, it is possible to proceed with a brief listing of the reasons for the appeal.

1) The first articulated reason challenged the violation of articles 627, chapter 3 and 628 of the code of criminal procedure for the nonobservance of the principles enounced in those articles, particularly referring to the necessity: a) to ascertain the presence of the suspects on the crime scene; 2) to outline the subjective positions of the Rudy Guede's assumed co-attackers; 3) to establish the motive of Raffaele Sollecito in relation to the one asserted for Guede.

In strict connection with the aforementioned appeal, also, further reasons of complaint are advanced, specifically contexted within the logic of incorrect reasoning, with regard to the meaning of article 606 lett e) of the code of criminal procedure, connected with the challenged avoidance.

- The first concerns the appealed denial of the evidentiary phase re-opening, also expressed in the order dated on 30th September 2013, also appealed. The request procedurally proposed by the defense (based on the new reasons of the 29th June 2013 and the minutes of the hearing dated 30th September 2013) was aimed to acknowledge the actual presence of the accused on the crime scene and the role carried out by each one of them on the occasion. It is advanced also:

- the omitted evaluation of decisive elements regarding Sollecito's alibi, with particular reference to the results of the integrative report submitted by the technical expert for one of the parties, D'Ambrosio, which demonstrates the interaction of the indicted with his computer;

- manifest illogicality of the reason in relation to what is expressed by article 522 of the code of criminal procedure; in the absence of motivations capable to exceed the limit of beyond reasonable doubt with regards to supposed participation of Sollecito to the criminal act of murder and to the role he carried out in the crime;

- lack of reasoning in the motivations report, in relation with articles 192 and 238 bis, with regards to the content of the irrevocable sentence against Guede in order to identify a reason for the murder.

The requested re-opening of the evidentiary phase, aimed to demonstrate the absence of the indicted on the crime scene and the inexistence of any reason, was illogically denied, especially since the appealed sentence had already asserted an autonomous reason, of sexual nature, against Guede.

Furthermore, the denial of the re-opening of evidentiary phase also includes a law violation in regard to article 627, second paragraph, in accordance to which "if the appeal sentence is annulled and the parties issue a request, the judge orders the re-activation of the evidentiary phase in relation to the assumption of evidence found relevant for the decision"

Even if is not intended to follow the case law orientation in line with the renewing of the appealed preliminary hearing, as for the right to evidence, the appeal judge was, however, obliged to give reason for the denial of the request of re-opening of evidentiary discussion in a rational manner and consistent with the evidentiary framework.

It was, among other things, requested a genetic perizia [examination/investigation by judge-appointed experts] in relation to the stain (apparently of spermatic nature) present on the victim's pillowcase, in order to verify its nature and possible attribution to an unknown third party; a perizia aimed to acknowledge the effective possibility to carry out a selective cleaning in order to remove only the traces connectable with the current appellants, inside the victim's room, without removing the ones retrieved and correctly attributed to Mr. Guede; the carrying out of exams on the item 165 B, with previous acquisition from the criminal laboratory department, of the residual DNA sample extracted from the brassiere hook and further genetic exams on the same item, ordering for such purpose a supplementary investigation in order to cancel every reason of doubt on the matter; [11] exams on the stone retrieved inside Ms. Romanelli's room, in order to identify the presence of DNA on the stone surface; audiometric test [perizia] aimed to acknowledge the possibility of hearing the supposed heart-rending scream coming from the house in via della Pergola and the footsteps with the windows closed, of the witness Capezzali; IT investigation [perizia] on Sollecito's computer, in order to verify the existence of human interactions during the night between the 1st and 2nd November 2007; anthropometric perizia in relation to the build, height, gait and somatic features of the subject filmed by the parking facility camera, to be compared with the physical features of Guede and his clothes at the moment of the

arrest; examination according to the ex-article 197 bis of Guede in regards to the facts happened the night of the murder.

The rejection of the aforementioned evidentiary discussion requests has been motivated by the appeal judge by illogical and off-topic reasoning.

2) Violation of article 606 lett. e), with reference to the wrong reading and interpretation of the content of Knox's report.

3) Another incorrect reasoning has been deduced with reference to the considered irrelevance of the exact determination of the hour of death of Meredith Kercher (which according to the defense should have been placed between 9 and 10 PM, 10:15 PM at most), with special reference to the exam carried out on Ms. Kercher's phone records.

4) The same flaw has been challenged regarding the supposed incompatibility of Mr. Curatolo's declarations with the time of the scream, and the asserted irrelevance of [scientific] exams on the precise hour of death of the young English woman.

5) Also distorted was the interpretation of Capezzali's declarations, of which has been attached the relative transcription.

6) In regards to flawed reasoning, interpreted according to the new wording of article 606 lett. e) of the code of criminal proceeding, the erroneous interpretation of Mr. Curatolo's witness declarations is challenged.

7) The same for Mr. Quintavalle's testimony and the omitted examination of the evidential contribution of inspector Volturno, who submitted the service note according to which the aforementioned Quintavalle had told of having seen Mr. Sollecito and Amanda always together.

8) With reference to the combined provisions of articles 606 lett. e) and 192 of the procedure code it is, then, challenged the erroneous evaluation of the proof in relation to the supposed participation of persons in the crime, with particular reference to the contested examination of the footprints and traces highlighted by luminol.[12]

9) Also challenged is the misrepresentation of the evidence related to the time of the 112 call, also based on the supposed error of the timer of the camera situated near the parking lot.

10) Identical violation is challenged with reference to the supposed alteration of the crime scene carried out by the two suspects.

11) Other case of motivational deficit, a sub-type of evidence misrepresentation, and also contradiction or manifest motivational illogicality, is challenged, according to article 192 of the code of criminal procedure, regarding the supposed falsehood of the provided alibi and the related violation of the principle nemo tenetur se detegere.

Moreover, it should have been considered as a “failed” alibi, not “false”, and as such not suitable to sustain an “evidential conclusion”, otherwise it would be subject to inadmissible inversion of the burden of proof.

12) Also erroneous was the interpretation of the results of the genetic evidence on item 36) and on the supposed compatibility of the seized weapon with the most serious wound observed on the victim’s neck. With regards to this, it was clear the misrepresentation in which the judge was involved, given that on the knife’s blade was not observed any mixed Kercher-Sollecito DNA. On the same instrument had been retrieved traces of starch, proof that it was not true that it had been properly washed in order to remove incriminating traces. Furthermore, the starch, found in plants, has a well-known absorbing capability, so it should have absorbed the blood in case it was used for the commitment of the crime.

Hence, the motivated request to refer the trial papers to the “United Sections”.

Furthermore the assumption that the most serious wound on the left side of the victim’s neck would have been inflicted with a single strike was denied by unambiguous emerging proofs, such as the results of the examination submitted by pathologist Cingolani, and also the conclusions of the party’s expert Introna.

13) The motivation of the appealed sentenced was objectionable also in relation to the asserted availability of the kitchen knife to Amanda Knox at the time of the attack. In this regard, it was illogical to state that the kitchen knife, used for the homicide, wouldn’t have been hidden, considering that the furniture and instruments of the apartment rented by Sollecito were listed in inventory, so that the lack of the knife would have generated suspicion, and accordingly was put back in its place subsequent to cleaning.

Also clearly illogical was the motivation related to the carrying of the knife on the part of Ms. Knox, with the asserted use of the capacious purse in her possession, for the supposed reasons of personal defense, encouraged by Sollecito who was familiar with knives. It was not considered as true that this explanation would exclude the hypothesis of joint concurrence, since it would admit that the suspect woman was alone [13] and not able to take advantage of the supposed defense by her boyfriend in case of aggression by strangers,.

However, there was no evidence on the supposed concurrence of the appellant in [a charge of] unjustified carrying of thee knife.

14) Obvious also was the flawed reasoning on the results of the genetic investigations on the bra hook, for which a referral to the United Sections of the Court is requested.

With regard to the possible contamination of the item, the appeal judges overlooked the photographic material placed before the court, which clearly demonstrated the possible contamination, regarding the way the hook was treated, with a “hand to hand” passage carried out by persons who wore dirty latex gloves.

Furthermore, a second amplification was not carried out on the hook despite the fact that half of the sample was still available, and remained unused.

Also, the hook, though observed during the first inspection carried out by the scientific police, was left on the ground, on the floor, and there it remained for some time. It wasn't true, also, that between the first access and the one during which the hook was finally collected, only two inspections by the investigators took place, in reality there were more and in such occasions everything was put in disarray.

With regard to this, the objections by the defense and the contrary conclusions of the defense adviser professor Tagliabracci, were not considered.

15) A misrepresentation of the evidence also took place in relation to the actual delivery of the progress reports [SAL] on the examinations carried out by Dr. Patrizia Stefanoni, of the scientific police.

16) Another reason for complaint with regard to the judge's motivations context is related to the supposed theft simulation in Romanelli's room and the absence of motivation in the new reasoning presented in the report of 29th July 2013.

In this regard, it is argued that it was Sollecito who notified the postal police, their having arrived in via della Pergola for other reasons (the retrieval of Kercher's cellphones, one of them with the sim card in the name of Romanelli), about the strangeness of the fact that from the room of the housemate of Kercher and Knox, the computer and valuable items were not missing; that the testimony declaration of lawyer Paolo Brocchi and of Matteo Palazzoli, presented in the new submiessions, regarding acts of thievery carried out by Guede with modalities similar to the ones that were supposed to be used for the breaking-into the apartment in via della Pergola, were not considered; nor were properly considered the defense reports about the wounds on the palm of the hand palm of Guede at time of his arrest in Germany; nor that the evidence had been misrepresented with reference to the collocation of the glass shards, given that from the collected testimony declarations [14] it resulted that the shards of glass were placed both under and over the objects present in Romanelli's room; that, also, a glass fragment was retrieved in Meredith's room, indicating that whoever unlawfully entered the room had brought that fragment with him. Therefore, it was clear that the sentence under appeal was based on mere speculations, totally detached from the trial's reality.

17) Challenged also is the violation of article 238 bis of code of criminal procedure, on the fact that through the acquisition [in the trial against Knox and Sollecito] of the irrevocable sentences issued against Guede, it was intended to make use of declarations released contra alios in a different procedural context, although those declarations were issued in absence of the blamed persons. Beyond this point, for which a referral to United Sections of Cassation was solicited, Guede's declarations were erroneously evaluated, in violation of the standards dictated by article 192 of the code of criminal procedure and the indications of this Court (p. 57). It was true that those declarations were adopted as a mere confirmation element, but they were still unusable declarations. The sentences about him, after all, also the Supreme Court ones, demonstrated the

absolute unreliability of Mr. Guede.

18) Another violation of the article 238 bis of the code of criminal procedure was challenged with reference to the supposed binding effectiveness of external final verdicts [giudicato esterno].

19) Also related to the declarations of Guede, their use constituted a violation of articles 111 Const., 526 chapter 1 bis of the code of criminal procedure, and 6 of the European Convention. And also on this matter, referral to a United Sections of Cassation panel was requested.'

20) In the event that such legal approach is not shared [by the Supreme Court], a question of constitutional illegitimacy was advanced of those laws which allowed bypassing the regulatory prohibitions in regards to the usability of declarations incriminating third parties in the absence of the accused persons, by means of the mere acquisition of irrevocable judgments against the declarant and containing the relative propagations contra alios.

21) Incorrect reasoning was also challenged in relation to the supposed possibility of contamination of the evidence during the appeal, independently from the doubting of sufficient quantity expressed on the point.

22) There was also a lack of rationale also related to the aggravating circumstance of sexual violence.

23) The same also applies with regard to the supposed theft of the victim’s cellphones.

24) Clear also is the violation of the principle of the beyond reasonable doubt, because of the omission of the examination of alternative solutions.

Finally, a rationale was omitted on a possible downgrading of the charge from voluntary murder to the less serious charges of aiding a crime or manslaughter, and also the application of mitigating circumstances.

4. The defenses of both the accused then proposed new reasons.

4.1. In favor of Knox, two further reasons were submitted.

In the first one, objected to is the violation of article 606 lett. a), b) e) of the code of criminal procedure, criticizing the entire reasoning process of the appealed verdict, which exceeded the fixed standard of the - already exorbitant - annulment ruling , with violation of articles 627 par. 3, and 623 of the code of procedure. Criticized, particularly, is the anomalous examination of the merits within the annulment ruling.

In the second reason, objected to is the contradiction and manifest illogicality in the rationale according to article 533 of the code of criminal procedure.

And at the end, a delay of the judgment is proposed while waiting for the decision of the

European Court of Human Rights, following the presentation to the international judicial body on the appeal of 11.22.2013, for alleged violation of the right to an equal trial, according to the article 6 par. 3 lett. a/c ECHR; for alleged violation of defense rights, according to the article 48 par. 2 of the Chart of Fundamental Rights of the European Union; and for the violation of the prohibition on torturing, according to the articles 3 ECHR and 4 of the Chart of Fundamental Rights of the European Union.

4.2 Also Sollecito's defense proposed new reasons, listed as follows.

The first new reason challenges the incorrect reasoning on the time of Kercher's death. As defense has stated a careful examination of objective elements would have allowed the setting the time of death in a period of time between 9-9:29 and 10:13 PM.

The exact determination of the time of death [exitus] was fundamental to proving the actual presence of the accused at the crime scene, at the time of the aggression.

In particularl the examination carried out on the victim's cell phone revealed subsequent contacts between 9 and 9:13 PM, as reported in the Pellero report on the SMS and the aforementioned cellphone. This would have allowed acquiring – if not the certainty of the young English woman being alive until 10:13 PM, considering the possibility of accidental phone connections – at least useful information in this regard.

More precisely, inge following contacts took place during the considered period of time:

1) a first call, at 8:56, to her home number, in England, remained unanswered and not followed by a new call, strange considered the habits of the girl, who was used to calling her family every day;

2) another contact, maybe accidental, at 9:50 PM, on a voice mail, lasted a few seconds, without waiting for an answer;

3) a contact, at 10PM, with the English bank Abbey, which failed obviously because it was not preceded by the international prefix;

4) at 10:13, an SMS was received by the cellphone, in the place where it was abandoned, in via Sperandio.

On the other hand, the examination carried out on Sollecito's computer registered an interaction at 9:20 PM and a subsequent one at 9:26 PM, not found by the postal police, but discovered by the defense expert D'Ambrosio by means of a different operative system application (MAC), for the watching of an animated cartoon (Naruto) of the length of 20 minutes, demonstrating that Sollecito was at home until 9:46.

This helps to demonstrates the non-involvement of the accused, also evident from the Skype contact occurred between Guede and his friend Benedetti.

To be sure, a new IT analysis by judge-appointed experts would have been necessary, as requested in vain by the defense.

The previous [a quo] judge, then, also committed an obvious misrepresentation in the evaluation of Curatolo's testimony, not realizing that the declarations of the witness were, actually, in favor of the accused, especially in the part where he states to have seen the couple in piazza Grimana at 21:30 PM until 12:00 AM. Therefore, there was an internal contradiction of the judging: it wasn't true what was stated at p. 50 concerning the supposed absence of extrinsic elements confirming that the two accused, from 9:30 PM to 12:30 PM of the next day, would have been in a different place than the one where the homicide took place.

Within the reconstruction of the crime, then, it was not taken in account that witnesses Capezzalie and Monachia located the harrowing scream that they heard at a time around 11 – 11.30 PM. However, Ms. Capezzali was contradicted by other witnesses, residents of the area, who declared they didn't hear anything.

Furthermore, not examined was the video clip captured by the camera placed near the parking lot which had filmed the passing by of a person similar, in features and clothes, to Guede. The time of filming was 7:41 PM, though 7:39 PM effectively because of a clock error of 12 or 13 minutes.

Also the autopsy, in observing the gastric situation, allowed the fixation of the hour of death between 9:30 and 10 PM. Furthermore, during the cross-examination hearing, the forensic pathologist Dr. Lalli rectified an error contained in his technical report, pointing out that the time of death would have had to be set not at "not less than 2-3 hours from the last meal (that took place around 6 PM, with the English friends)" but at "not more than 2-3 hours from the last meal".

Considered this uncertain conclusion, a new analysis by judge-appointed experts [perizia] was requested in vain, in the new reasons for appeal, dated 29 July 2013.[17]

So, in the light of the trial data, as stated by the defense, the time of death of the young English woman would have had to be approximately set between 9 and 10:13 PM.

The second new reason challenges the failure to order a judge appointed experts review [perizia] in order to verify or otherwise the possibility of a selective cleaning of the crime scene which would have removed only the traces referable to the two accused, leaving only Guede's ones. In fact, in Kercher's room multiple traces of Guede were found but none of Sollecito.

Incorrect reasoning is also suggested on the supposed alteration of the crime scene by the accused. It was not, however, considered that Sollecito had no interest in polluting [the scene].

The third reason challenges a flaw in rationale regarding the plantar imprints presumed as female footprints (size 37 EU) demonstrating a participation of more than one person in the crime.

With reference to the imprints, there was an obvious error in the judgment, also present in the judgment of annullment of Cassation (p. 21), considering that the only imprint retrieved in Kercher's room belonged to Guede.

The fourth reason again claims violation of the law, with reference to the article 606 lett. c) and e) regarding the evidence on the participation to the crime and the violation of the articles 111 Const, 238, 513 and 526 of the code of penal procedure on the usability of the interrogation of Guede and the observance of the evaluation standards on a charge of complicity.

The fifth reason claims misrepresentation of the evidence and manifest illogicality, related to the results of the genetic investigation on the knife (item 36) and also on the supposed "non-incompatibility" of the instrument with the most serious wound observed on the victim's neck. Claimed further is the violation of the evaluation standards of evidence according to article 192 of the code of criminal procedure.

The sixth reason claims lack of rationale, because there was no consideration of the violation of the international recommendations on the sampling and examination of traces of small entity and the interpretation of the results. Also claimed is misrepresentation of the evidence and manifest illogicality of reasoning on the results of the genetic examinations carried out on the kitchen knife and also violation of the proof evaluation standards, according to the article 192 of the code of procedure.

The seventh reason claims incorrect reasoning with reference to the violation of the international recommendations on the sampling and analysis related to the genetic examinations carried out on the brassiere hook (item 165 B) and the objected-to contamination of the item, after the inspections carried out by the Criminal Investigation Department.

The eighth reason challenges the violation of articles 192 and 533 of the code of criminal procedure on the interpretation of the genetic examination on the item 165 B and lack of rationale on the objected violation of the international recommendations in matter of interpretation of mixed DNA.[18]

The ninth reason challenges a violation of article 192 of the code of criminal procedure and manifest illogicality of evidence for misrepresentation of the scientific investigation, considering the failure of the DNA proof in this case.

The tenth reason challenges a manifest illogicality in the motivation in the luminol evidence related to the supposed presence of blood imprints in areas of the house of via della Pergola and also on the bathmat, and manifest illogicality of rationale related to the mixed traces of Knox and Kercher and the evaluation of the circumstantial evidence in relation to the participation of more than one person to the crime.

The eleventh reason challenges a manifest illogicality or contradictory nature in the motivations related to the evaluation of the motive of the murder.

The twelfth reason argues the same incorrect reasoning and misrepresentation of the evidence related to the time of the 112 call.

The thirteenth reason argues the same incorrect reasoning in relation with the alibi and the supposed tentative of Sollecito to cover for the supposed co-perpetrator Amanda Knox.

The fourteenth reason challenges the violation of the law principles stated by Cassation and the violation of the judicial standards of "beyond reasonable doubt" according to article 533 of the code of criminal procedure.

CONSIDERED THAT

1. Logical and exposition reasons call for an immediate examination of the preliminary matters advanced by the defenses.

In fact, these are issues of prejudicial relevance, since they are potentially capable of influencing the subsequent developments of decisions which, even if devoid of substantial definitiveness, could nevertheless have a decisive effect, at least in relation to the remand back to the lower court and postponement of the present consideration.

First of all, we will address the issue of constitutional legitimacy of the combined provisions of articles 627 par. 3, and 628 par. 2 of the code of criminal procedure, for supposed violation of the principle of reasonable length of the judicial process in light of article 111 of the Constitution; also the request to delay judgment until the decision of the European Court for Human Rights, subjected to an appeal submitted by the defense of Amanda Knox complaining about coercive treatment to which the aforementioned was supposed to have been exposed by the investigators during the preliminary investigations; also to the multiple requests of Raffaele Sollecito's defense to refer examinations to the United Sections of this Supreme Court [a panel of all Chambers] about matters of particular relevance to their capability to generate interpretative alternatives in the case law of this Court.

2. All the requests are clearly unfounded.

2.1. Unfounded, first of all, is the restated issue of constitutional legitimacy of the laws that rule judgment by the courts after Supreme Court remand. And in fact, the motivating report of the previous [a quo] judge [Nencini, ed.], who, with the preliminary court order dated 30 September 2013, has considered the matter as clearly unfounded, is irreproachable. To the arguments brought forward [by the judge] in relation to the first matter – an illustration of how the dynamics of the relationship between a judgment of annulment on legitimacy grounds, and a replacement judgment by the lower judge after remand, are guided by a progressive narrowing of the thema decidendum [matter], which, serves to preclude an extension ad infinitum of the trial process – this can be added: the effect of the progressive delimitation of the res iudicanda is followed by the judiciary as a possible result not only of the rescinding [annulling] judgment, but

also of the requirements of article 628, par. 2, of the procedural code, according to which in all cases the sentence of the appellate judge can be challenged only in relation to reasons not concerning points already decided the Court of Cassation, or for failure to abide with the requirements of article 627, chapter 4 , of the code of criminal procedure, according to which "the appellate judgment by the court following Supreme Court remand cannot reopen the issue of nullity, even absolute, or inadmissibility, decided during previous trials or during preliminary investigations."

Thus legitimacy jurisprudence is prohibited to extend as far as non-usability, since it is considered as an expression of a general principle of the decree which tends to confer definitive status to the decisions of the Court of Cassation (Section 5, n. 10624 dated on 12 February 2009, Barbara, Rv. 242980; Section 5, n. 36769 dated on 03 September 2006, Caruso, Rv 235015; Section 1, n. 22023 of the 18 April 2006, Marine, Rv. 235274; and, about preliminary judicial review, Section 6, n. 47564 of the 14 November 2013, Tuccillo, Rv. 257470; contra, Section 3, n. 15828 of the 26 November 2014, Rv. 263343).

It is thus perfectly acceptable to affirm that the legislative [parliament] has designed a procedural module with a progressive foundation (principle of so-called "progressive ruling"), which can be viewed – in a slice of time – as "concentric circles".

Furthermore, the previous court – in the instances described in the appeal document signed by the lawyers Ghirga and Della Vedova – had already had the opportunity to take care of this matter, declaring it inadmissible on the basis of argumentations that the current defensive explanations doesn't seem capable of rebutting, since they do not proffer arguments that could possibly promote a different deciding conclusion.

It cannot be ignored that the criminal trial is, constitutionally, aimed at the acknowledgement of the material truth by means of a cognitive progression, excluding possible errors in procedendo or in iudicando, medio tempore occurring, to reach its final purpose, in terms of approximation as close as possible to that objective, [20] rendering back to the community a result commonly intended as "judicial truth", that means truth found procedurally (rectius, the one which has been possible to verify by means of the ordinary gnostic and inferential instruments at disposal of the judge). All of this, within the ineluctible contexts of the procedural formalities, which represent, obviously, the maximum expression of juridical civility and the prestigious spirit of a centuries old process of advancement of procedural knowledge typical of the Italian juridical culture.

And when one deals with, as in this case, matters of particular evidence in absence of direct proof, or of reliable technical-scientific contribution, or of pertinent and usable declarative contributions – the judicial truth, detached from factual reality, ends up being a mere fictio iuris, considering the limits and the ordinary subjectivity of the instruments of human knowledge, commonly depending on a reconstructive and re-elaborative process a posteriori.

So, it is precisely in this circumstances that the respect of standards is most necessary, representing an unswerving parameter – objective and privileged – for the verification of correctness and adequacy of the cognitive process of the judge during the pragmatic approach to

the material truth.

And the Judge of the legitimacy is, in fact, called to attend to the aforementioned verification with cognitive powers only ab extrinseco, meaning that they are limited to a mere external check of the formal correctness, congruency and logical coherence of the set of explanations justifying that cognitive progression, without any possibility to observe the real demonstrative importance of the evidential elements used in it.

And furthermore, such pursue of finalization will have to comply with the constitutional principle under article 111 of the Constitution about reasonable length of a trial process intended to develop through phases and predetermined sequenced articulations.

The pursue of that ultimate purpose (seeking of the material truth) – particularly in trials of particular delicacy like the one examined here, of such difficulty in carrying out of procedural activities, and technical investigations of particular complexity – has therefore to be related to the necessity of a judicial reply of a length as short as possible, for the obvious necessity of respect for the value of the subjects involved and of the ineluctible claim for justice both of the victims and the community.

2.2. The request of Amanda Knox's defense aimed at the postponing of the present trial to wait for the decision of the European Court of Justice [sic] has no merit, due to the definitive status of the guilty verdict for the crime of calunnia, now protected as a partial final status, against a denouncement of arbitrary and coercive treatments allegedly carried out by the investigators against the accused to the point of coercing her will and damaging her moral freedom in violation of article 188 of penal procedure code. [21]

And also, a possible decision of the European Court in favor of Ms. Knox, in the sense of a desired recognition of non-orthodox treatment of her by investigators, could not in any way affect the final verdict, not even in the event of a possible review of the verdict, considering the slanderous accusations that the accused produced against Lumumba consequent to the asserted coercions, and confirmed by her before the Public Prosecutor during the subsequent session, in a context which, institutionally, is immune from anomalous psychological pressures; and also confirmed in her memoriale, at a moment when the same accuser was alone with herself and her conscience in conditions of objective peacefulness, sheltered from environmental influence; and were even restated, after some time, during the validation of the arrest of Lumumba, before the investigating judge in charge.

2.3. Finally, denied also is the request from Sollecito's defense seeking to obtain referral to the United Sections of this Court of matters related to the evidential value of scientific results acquired in violation of international protocols which contain specific prescriptions meant to assure the genuineness of the sampling and the analysis; also related to the standards of evaluation of expert testimony during the trial process under strong media exposure; also related to the usability of accusative declarations reported in the verdict that had been acquired according to article 238–bis of the procedure code.

These are, clearly, matters of particular weight, of some agreed relevance for purposes of defining the present judgment, but of dubious capacity to generate potential jurisprudential contrasts. Anyway, interpretative tangles are checked out here which this Court could not ignore, with the pertinent conclusion having binding effectiveness within the purpose of defining the present proceeding.

3. Having thus stated, the main topic of the present proceeding can now be approached, the leitmotiv of the claims of the appellants, revolving around a prejudicial claim of inobservance, on the part of the [Florence] appeal judge, of the dictum of the [2013] annulment ruling by this Court and the principle of law established within it.

The investigation requested to this Court is only apparently simple, considered that the ratio decidendi of the annulment ruling is founded on the finding of a manifest illogicality of the rationale supporting the appealed judgement; a finding which consists – and specifies itself – in the observation of a violation of the principles of completeness and of non-contradiction.

It is an established jurisprudential rule that, in presence of such reasoning for an annulment, derived from a deficit in the reasoning, the new appeal judge [giudice di rinvio] is tasked with the comprehension of the whole body of evidence, which he is expected to revisit [22] in full freedom of conviction, without any bound, being only supposed to produce, as a result, a reasoning deprived of those flaws of manifest illogicality or manifest contradiction which caused the annulment of the first appeal verdict. In the case law of this Court of Cassation there is, in fact, the recurrent statement "following an annulment for incorrect reasoning, the new appeal judge is prohibited from basing the new decision on the same arguments considered illogic or inconsistent by the Court of Cassation, but he is however free to reach, on the basis of different argumentations from the ones claimed in the Supreme Court therefore integrating and completing the ones already issued, the same judicial result of the annulled ruling. This because it is an exclusive task of the courts of merit to reconstruct the resulting facts from the trial findings, and to assess the signification and value of the relative sources of evidence". (among others, Sect 4, n. 30422 of 21 June 2005, Poggi, Rv. 232019; Section 4, n. 48352 of 29 April 2009, Savoretti, Rv 245775).

A problem – suggested with appreciable discretion within the new reasons [of appeal] in favor of Knox – appears when, as in this case, the Court of Cassation has entered in the merits, going beyond the institutional limits assigned to it, such as when for example it offers a range of causal alternatives for the murder and assigns to the judge the task of picking, within that predetermined numerous clausus, the one most appropriate to the case at bar. There's no doubt, in the opinion of this panel, that in such peculiar event the new appellate court cannot consider itself either bound or influenced, because of the aforementioned clear problem of this institutional kind, that, for what was stated before, exists between cognizance of legitimacy and cognizance of the fact, the latter being the exclusive prerogative of the judge of merit. In this regard the Supreme Court has already given its contribution, stating that the new appellate judge cannot be influenced "by evaluations possibly over-stated by the Court of Cassation in its argumentations, since the spheres within which the respective evaluation are carried out are different, and it is not the task of the Court of Cassation to put its conviction before the judge of merits in regards to those

matters. After all, in those cases where the Supreme Court possibly focus its attention over some specific aspects from which the lack or the contradiction of reasoning emerges, this doesn't mean that the new appellate judge would be tasked with a new judgment only on the specified points, because the judge retains the same powers which originally belonged to him as a judge of merits in relation to the identification and evaluation of the trial data, regarding the point of the verdict affected by annulment" (Section 4 n.30422/2005 cit.). In the same sense it was stated that "… possible factual elements and assessments contained in the annulment ruling are not binding for the new appellate judge, but are considered exclusively as a reference point in order to position the complained-about error or errors, [23] and therefore not as data imposed for the decision requested of him; moreover, there's no doubt that, after the ruling of annulment for incorrect reasoning through the indication of specific points of deficiency or contradiction, the powers of the new appellate judge cannot be restrained to the examination of the single specified points, as if they were isolated from the rest of the evidential material, but he must also carry out other acts of evidence-finding on which results his decision has to be based, providing the reason for this within the judgment report" (Section 4, n. 44644 of 18 October 2011, defendant F., Rv. 251660; Section 5, n. 41085 of 3 July 2009, defendant L., Rv. 245389; Section 1, n. 1397 of 10 December 1997 dep. 1998, Pace, Rv. 209692).

All of this is the background to a reiterated doctrine of this Court of Cassation, consolidated to the point of constituting a ius receptum, according to which "the powers of the new appeals judge are different depending on if the annulment has been ruled for violation or erroneous application of the criminal code, or for absence of manifested illogicality of reasoning, since, while, in the first hypothesis, the judge is bound to the law principle expressed by the Court, without changing the evaluation of the facts as they were found by the appealed verdict, in the second hypothesis, a new examination of the evidential compendium can be carried out, without repeating the same incorrect reasoning of the annulled order. (among the others, Section 3, n. 7882 of 10 January 2012, Montali, Rv. 252333).

3.1. As we will see, the appeals judge [Nencini] was influenced on many points by the suppositions of factual aspects emerging within the annulment judgment, as if the convincing and analytic evaluations of the Supreme Court were unavoidably converging in the direction of affirmation of guilt of the two defendants. Being misled by this error, the same judge encounters clear logic inconsistencies and obvious errors in iudicando, which need to be challenged here.

4. Meanwhile, it can't be ignored, on a first summary overview, that the history of these proceedings is characterized by a troubled and intrinsically contradictory path, with the only fact of irrefutable certainty being the guilt of Amanda Knox regarding the slanderous accusations against Patrick Lumumba. On the concern of the murder of Kercher, the declaration of guilt of Knox and Sollecito, in first instance, was followed by a ruling of acquittal from the appeal Court of Assizes of Perugia, consequent to an articulated evidential integration [the Conti-Vecchiotti report, ed.]; the annulment by this Supreme Court, First Criminal Section; and finally the judgment, on appeal, of the Court of assizes of Florence, today considered under a new Cassation appeal.

An objectively wavering process, the oscillations of which are the result of glaring failures or

investigative “amnesias” and of culpable omissions in [24] investigating activities, which, had they been carried out, would have, probably, allowed from the start the outline a framework, if not of certainty, at least of reassuring reliability, in direction of either the guilt or the non-involvement of the current appellants. Such scenario, intrinsically contradictory, constitutes a first, eloquent, representation of an evidential set of anything but “beyond reasonable doubt”.

4.1. Surely, an unusual media fuss about the crime, caused not just by the dramatic modalities of the death of a 22-year old woman, so absurd and incomprehensible in its genesis, but also by the nationality of the persons involved (a USA citizen, Knox, accused of participating in the murder of her housemate who was sharing a foreign study experience with her; an English citizen, Meredith Kercher, killed in mysterious circumstances in the place where she likely used to feel most safe, her home, and additionally the international implications of the case itself, prompted the investigation to suffer from a sudden acceleration, which, in the spasmodic search for one or more culprits to be delivered to international public opinion, surely didn’t help the search for substantial truth, which, in complex murder cases like the one examined here, has an ineluctible requirement both for accurate timing, and also the completeness and accuracy of the investigation activity. Not only that, but also, when – as in this case – the result of the search is greatly based on the results of scientific examinations, the antiseptic sampling of all the elements useful to the investigation – in an environment provided of the appropriate sterilization, so to shield it from possible contaminations – constitutes, normally, the first cautionary strategy, itself the vital prelude to a correct analysis and “reading” of the retrieved samples. And if the key part of the activity of technical-scientific research consists in specific genetic investigations, whose contribution in the investigative activity emerges as more and more relevant, the reliable parameter of correctness can only be the respect of standards imposed by the international protocols which outline the fundamental rules of procedure of the scientific community, on the basis of statistic and epistemological observation.

The rigorous respect for such methodological standards provides a reliability, conventionally acceptable, in the assembled results, firstly related to their repeatability – that is the possibility that those findings, and those alone, would be reproduced by an identical investigative procedure 0in identical conditions, according to the fundamental laws of the empiric method and, more generally, of experimental science, that since Galileo has been based on the application of a “scientific method” (typical procedure meant to obtain knowledge of “objective” reality, reliable, verifiable and sharable; by common knowledge this consists, on one hand, in the collection of empiric data in relation to the hypothesis and theories to be confirmed; on the other hand, in the mathematical and rigorous analysis of such data, that is associating – as stated for the first time by aforementioned Galileo – “sensible experiences” with “necessary demonstrations” that is the experimentation with mathematics.

4.2. As we will see, all of this is basically missing in the current judgment.

Not only that but, the media attention, besides not helping the search for the truth, has produced further prejudicial feedback in terms of “procedural diseconomy”, generating undue “noise” (in the IT meaning) , not so much from the delay of the availability of witness testimony from certain persons (considering that from this point of view it is anyway just a matter of verifying the

reliability of the corresponding declarative contributions), but because of the introduction into the trial of extemporary declarations by certain detained subjects, of solid criminal caliber [defense witnesses Alessi and Aviello], surely intent on self-serving mythomania and judicial attention-seeking behavior capable of assuring them a media stage, including on TV, so breaking at least for one day the grayness of their prison regime. And by the way this was a common instance of claims from "fetchers" of truths collecting within the prison environment unworthy confidences between co-inmates during the routine yard time. Clearly not commendable situations, which, also, had had the outcome of assuring – for the first time during the appeal – the active participation in this case of Rudy Guede (when he was summoned during the first instance judgment, he invoked his right to not respond; p. 3): [he's] a key element in this case, even if unshakably reticent (and has never confessed), a bringer of half-truths differing from time to time.

Rudy Guede is the Ivorian citizen who was also himself involved in the Kercher case. Tried separately with a separate judgment, as a co-participant to the murder, he was sentenced, at the end of an abbreviated trial, to the penalty of thirty years imprisonment, reduced on appeal to sixteen years.

Our mention of him is to make it worth introducing the second, irrefutable, certainty of this trial (after the one concerning the responsibility of Knox for the crime of calunnia), that is the guilt now under irrevocable ruling, of the Ivorian as the author – participating with others – of the murder of the young English woman.

The finding of guilt of the aforementioned was reached on the basis of genetic traces, definitely attributable to him, collected in the house in via della Pergola, on the victim's body and inside the room where the murder was committed.

4.3. The same reference [to Guede] also raises two relevant points of law, highlighted by the defense: one concerning the usability and the value of the aforementioned irrevocable verdict in this proceeding; the other related to the usability of the declarations - in terms less than coherent and constant – produced by Guede within his own trial, which may involve the current appellants in some way.

4.3.1 As for the first question, the use of the [Guede's] definitive verdict in the current judgement, for any possible implication, is unexceptionable , since it abides with the provision of art. 238 bis of Penal Code [sic]. Based on such provision "(…) the verdicts [p. 26] that have become irrevocable can be accepted [acquired] by courts as pieces of evidence of facts that were ascertained within them and evaluated based on articles 187 and 192 par 3".

Well, so the "fact" that was ascertained within that verdict, indisputably, is Guede's participation in the murder "concurring with other people, who remain unknown". The invoking of the procedural norms indicated means that the usability of such fact-finding is subordinate to [depends on] the double conditions [possibility] to reconcile such fact within the scope of the "object of proof" which is relevant to the current judgement, and on the existence of further pieces of evidence to confirm its reliability.

Such double verification, in the current case, has an abundantly positive outcome. In fact it is manifestly evident that such fact, which was ascertained elsewhere [aliunde], relates to the object of cognition of the current judgement. The [court's] assessment of it, in accord with other trial findings which are valuable to confirm its reliability, is equally correct. We refer to the multiple elements, linked to the overall reconstruction of events, which rule out that Guede could have acted alone. Firstly, testifying in this direction are the two main wounds (actually three) observed on the victim's neck, on each side, with a diversified path and features, attributable most likely (even if the data is contested by the defense) to two different cutting weapons. And also, the lack of signs of resistance by the young woman, since no traces of the assailant were found under her nails, and there is no evidence elsewhere [aliunde] of any desperate attempt to oppose the aggressor; the bruises on her upper limbs and those on mandibular area and lips (likely the result of forcible hand action of constraint meant to keep the victim's mouth shut) found during the cadaver examination, and above all, the appalling modalities of the murder, which were not adequately pointed out in the appealed ruling.

And in fact, the same ruling (p. 323 and 325) reports of abundant blood spatters found on the right door of the wardrobe located inside Kercher's room, about 50 cm above the floor. Such occurrence, given the location and direction of the drops, could probably lead to the conclusion that the young woman had her throat literally "slashed" likely as she was kneeling, while her head was being forcibly held [hold] tilted towards the floor, at a close distance from the wardrobe, when she was hit by multiple stab wounds at her neck, one of which – the one inflicted on the left side of her neck – caused her death, due to asphyxia following [to] the massive bleeding, which also filled the breathing ways preventing breathing activity, a situation aggravated by the rupture of the hyoid bone – this also linkable to the blade action – with consequent dyspnoea" (p. 48).

Such a mechanical action is hardly attributable to the conduct of one person alone.

On the other hand such factual finding, when adequately valued, could have been not devoid of meaning as for researching the motive, given that [27] the extreme violence of the criminal action could have been seen – because of its abnormal disproportion – not compatible with any of the explanations given in the verdict, such as mere simple grudges with Ms. Knox (also denied by testimonies presented, [even] by the victim's mother); with sexual urges of any of the participants, or maybe even with the theory of a sex game gone wrong, of which, by the way, no mark was found on the victim's body, besides the violation of her sexuality by a hand action of Mr. Guede, because of the DNA that could be linked to him found inside the vagina of Ms. Kercher, the consent of whom, however, during a preliminary phase of physical approach possibly consensual at the beginning, could not be ruled out.

Such finding is even less compatible with the theory of the intrusion of an unknown thief inside the house, if we consider that, within the course of ordinary events, while it is possible that a thief is taken by an uncontrollable sexual urge leading him to assail a young woman when he sees her, it's rather unlikely that after a physical and sexual aggression he would also commit a gratuitous murder, especially not with the fierce brutality of this case, rather than running away quickly instead. Unless, obviously, we think about the disturbed personality of a serial killer, but

there is no trace of that in the trial findings, since there are no records that any other killings of young women with the same modus operandi were committed in Perugia at that time.

4.3.2. With regard to the second matter, relative to the option of akkowing – as article 238 bis of the code of criminal procedure allows – declarations "against others" made by Guede in the context of his own procedures in absence of other defendants (with reference to declarations, not always coherent and consistent, during the preliminary investigations and noted in his sentencing reports, somehow involving Knox in the homicide, but never explicitly Sollecito, while continuing to plead innocence, despite the presence in the crime scene and on the victim's body of multiple biological traces attributed to him), the ruling can only be negative. Such a mode of allowance would result in an evasion of the guarantees dictated by article 526 chapter 1- bis, of the code of criminal procedure, according to which "the defendant's guilt cannot be proved on the basis of declarations produced by anyone who, in free will, had always voluntarily avoided the examination by the accused or his defense team". And furthermore, it seems a clear violation of article 111, chapter four. of the Constitution, which dictates identical an prescription in order to harmonize judicial processes according to article 6 letter d) of the European Convention for Human Rights (Section F. n. 35729 of the 1st August 2013, Agrama, Rv 256576).

In this regard, it appears useful to refer to the principle of "non-substitutability", accepted by the United Divisions of this Supreme Court under the category "legality of the proof", meaning that, when the code establishes an evidentary prohibition or an expressed non-usability, it is forbidden to resort to other procedural instruments, typical or atypical, with the purpose of surreptitiously avoid such obstacle (Section U, n. 36747 of the 28 May 2003, Torcasio, Rv. 225467; cfr,, also, Section U, n. 28997 of the 19 April 2012, Pasqua, Rv. 252893).

And also during this trial, Guede – asked to speak as contextual witness, following the accusative declarations of the convicted offender Mario Alessi (sentenced for the horrible homicide of a child) – after denying the accusations of the aforementioned, confirmed the content of a letter sent by him to his attorneys which was then, surprisingly, shared with a television news service, in which he accused the current appellants - has then, substantively, avoided cross-examination by the defendants. And in fact, after recognizing the authenticity of the missive, where he denied what was stated by Alessi, regarding some asserted confidences related to the innocence of Raffaele Sollecito and Amanda Knox, he didn't wanted to be cross-examined by the accused's defense, claiming his presence (as contextual witness) was limited to the content of Alessi's declarations, which was with regard to him. So, the non-usability of what he declared – in the part concerning the letter that related to the current appellants – that is not useable in a different procedural context because it was produced absent the prescribed guarantees.

Furthermore, facing such unmoving and non-cooperative behavior, the appeal judge [Hellmann] did automatically insist on cross-examination of the Ivorian, despite the final irrevocability of the sentence against him, and failed to resolve the incompatibility of speaking in the present proceeding, according to article 197 of the code of criminal procedure.

And in fact, according to article 197 bis chapter 4 of the same standard code of procedure, he could have not been obliged to depose on the facts for which he had received a sentence, having

always denied, during the proceeding against him, his responsibility and, not being able, in any way, to depose on facts involving his responsibility regarding the crime for which he was accused.

4.4 Finally, continuing on the preliminaries, the matter of standards must be faced, as claimed by the defense, regarding the denial of the claim for renewed court hearings during the appellate trial, on the request of carrying out requested external investigations as requested.

The appeal exception was founded upon the observance of the presumed obligatory nature of the request of evidential integration of article 627, chapter 2, second part, according to which "[….] if a sentence in appeal has been annulled and the parties request it, the judge can order a reviewing of the court hearings by obtaining proofs relevant to the decision"

Clearly, the letter of this norm is far from the discipline of the regular powers of the appellate judge regarding this matter under article 603 of the code of criminal procedure "non-decidability of the state of proceedings", in the hypothesis above in part 1, that the defense request referred to evidences already collected or new; referring to the criteria of article 495, chapter 1, on the hypothesis of new evidences found after the first instance ruling; there is "absolute necessity" of its integration with supplementary investigations, in case of review ex officio, beyond the special subject matter (originally in application and now canceled, according to article 11 law 28 April 2014, n. 67) of the requested review in favor of a defendant absent from the trial in the first instance.

The Supreme Court here states that the particular formulation of the aforementioned rule does not require the appellate judge, in the hypothesis of annulment of the first instance ruling, to be obliged to renew the court hearings just because the parties request it. A different interpretation would not have a rational basis and, instead, would introduce a dystonic element in the discipline of the institution.

In fact, the first part of the second chapter of article 627 of the code of criminal procedure highlights that the appellate judge decides with the same powers of the judge whose ruling has been annulled, except only for limitations originating in the law.

For a harmonic reconstruction that follows the code's architecture it is imperative, then, to consider that the specific observance of the trial ruling renewed during the appeal judgment should not create an exception to the general requirement dictated in article 603 of the code of criminal procedure.

Furthermore it is clear that the reference, in chapter 2 of article 627 of the code of criminal procedure, to the assumption of "relevant" evidence for the decision constitutes a mere repetition, given that the trial judgment is, necessarily, central to the evaluation by the appeal judge charged with the requirement of evidentiary integration and the same appreciation of absolute necessity inspiring the appeal. And in fact, in case of renewing of the trial hearings on appeal no evidence that is not "relevant" to the decision may enter the proceeding; and the same thing applies, more generally, to the whole evidential section of the criminal proceeding, according to the

fundamental principle stated in article 190 of the standard code of procedure, according to which the judge has to approve the evidence requested by the parties, excluding, beyond the instances prohibited by the law, any "manifestly irrelevant or unnecessary" evidence.

In this sense, with this clarification, it is worth, therefore, restating the orientation expressed, regarding this matter, by this Supreme Court on similar occasions (Section 5, n. 52208 of 30 September 2014, Marino, Rv. 262116, according to which "the appellate judge, charged with the proceeding following the annulment declared by the Court of Cassation, is not obliged to reopen the court hearings every time the parties demand this, because his powers are identical to the ones of the judge whose sentence was annulled, and he has to accept assumption of the suggested new evidence only if it is necessary for the new decision" according to article 603 of the code of criminal procedure, and article 627, second chapter, of the code of criminal procedure; Section 1, n. 28225 of 09 May 2014, Dell'Utri, Rv. 260939; Section 4, n. 20422 of 21 June 2005, Poggi, Rv, 232020; Section 1, n. 16786 of 24 March 2004, De Falco, Rv. 227924)

Also, without question, the use of the powers conferred upon the appellate judge regarding new investigation, has as always to be concretely motivated and the relative motivation is, of course, again contestable by the Supreme Court.

In this specific case, the appeal judge [Nencini] has given a concrete reason for denying further evidentiary incorporation, considering it irrelevant for his decision purpose.

Furthermore the motivations for the denial of appeal implicitly emerged from the judge's motivational construct, which declared complete the evidentiary compendium.

Furthermore, there is no reason to assumne, even within the specific appellate judgment, that the general principle of neutral expertise separated from the viewponts of the parties and remitted to the discretional power of the judge, was not observed because "it doe not come within the category of decisive proof and the consequent ruling of denial is not arguable according to article 606, chapter 1, let. d), of the code of criminal procedure, because it represents the result of a factual judgment which, if supported by adequate motivation, cannot be reversed by Cassation" (Section 6, n. 43526 of 3 October 2012, Ritorto, Rv. 253707).

5. Now having resolved, in the sections above, the defense's prejudicial claims, and the preliminary standard ones, the "merit" of the judgment can now be considered, in relation to the substance of the appealed matters

Firstly, it has to be assumed that, according to the loss of rights claimed under point b), relative to the charge of illegal carrying of the knife, this is now beyond the statute of limitations.

This has to be accepted, even in absence of more favorable reasons for acquittal on the merit, referring to article 129, second chapter, of the code of criminal procedure, and also the declarations of guilt in the trial sentence and the second appeal court.

Moreover, according to the undisputed decision of this Court of Cassation "the acquittal formula

on the merit prevails on the statute of limitations in appeal cases where, with a mere analysis, the absolute absence of the proof of guilty against the defendant that is in fact positive proof of innocence can be observed, though not in the case of mere contradiction or insufficiency of the evidence which requires a pondered judgment between opposing conclusions, n.10284 of 22 January 2014, Culicchia, Rv. 259445).

6. The examination of the motivational structure of the appealed sentenced, the object of multiple claims by the defenses, can now be proceeded with.

Even from a very first reading, we can identify contradictions, incongruencies and errors in rulings which deeply permeate the whole argumentative structure.

6.1 Firstly, the judges' statement is erroneous that the motive for homicide does not have to be determined with precision

The assumption is not acceptable in relation to the indisputable principle of this regulatory Court (from Section 1, n. 10841 of the 24 September 1992, Scupola, Rv. 192865) regarding the relevance of the motive as bond between multiple elements that the proof has constituted, during evidential procedures like the one examined here.

Furthermore, the value in this as one of the strengthening elements of the evidence is, obviously, contingent on verification of the reliability coefficient of the evidences, by way of clarity, precision and concordance, with analytic and resulting appreciation of these, individually considered and subsequently placed in a global and unitary perspective (Section 1, n. 17548 of 20 April 2012, Sorrentino, Rv. 252889 in the wake of Section U, n. 45276, Andreotti, Rv. 226094 according to which the "cause", representing a confirming element of the involvement in the crime of the subject intent on the physical elimination of the victim as it converges in its specificity and exclusivity in an unequivocal direction, nevertheless, but still preserving a margin of ambiguity, in the meantime can work as a catalytic and strengthening element of the evidential value of the positive elements of proof of responsibility, from which can be logically deduced, on the basis of known and reliable experience rules, the existence of an uncertain fact (that is the possibility of attributing the crime to the instigator), when, after analytic examination of each one of them and in the framework of a global evaluation, the evidences in relation to the interpretation supplied by the motive reveal themselves as clear, precise and convergent in their univocal significance).

This, as will be stated below, cannot be confirmed in this case, because of an evidential compendium which is equivocal and intrinsically contradictory.

Specifically, none of the possible motives in the scenarios of the appealed sentence have been firmed up in this case.

The sexual motivation attributed to Guede during the separate procedure against him is not wholesale extensible to the supposed other attackers; for as has been stated before the hypothesis of a group erotic game has not been demonstrated; it is not possible to presume for each appellant

a shared or combined motive assuming a sharing in the attack. Such an extension would have to postulate the existence of trusting interpersonal relationships between the appellants, which within the particular and sudden character of the criminal pact would lend verisimilitude to such a move.

Now, though the sentimental relationship between Sollecito and Knox was fact, and though the girl had occasion to know Guede to some extent, there is no proof that Sollecito would have known or hung out with the Ivorian. On this point it is contradictory and clearly illogical to assume (see f. 91) the unreasonable hypothesis of participation in such a brutal crime with an unfamiliar person by the housemates Filomena Romanelli and Laura Mezzetti (who certainly didn't know Guede), but not extend this argument to Sollecito, who also seems to have never known the Ivorian.

6.2. Another error of judgment resides in the supposed irrelevance of the verification of the exact hour of Kercher's death, considering sufficient the approximation offered by the examinations, even if assumed as correct during the trial pohase.

With regards to this, Sollecito's defense has reasons to appeal, since they signaled the necessity of a concrete verification specifically in the evidential proceedings, every consequential implication. Furthermore, the exact determination of the time of Kercher's death is an inescapable factual prerequisite for the verification of the alibi offered by the defendant in course of the investigation aiming to verify the possibility of his claimed presence in the house at via della Pergola at the time of the homicide. And for this reason an expert verification was requested.

So, specifically on this point, it is fair to note a despicable carelessness during the preliminary investigation phase. It is sufficient to consider, in this regard, that the investigations carried out by the CID had proposed a threadbare arithmetic mean between a possible initial time and a possible final time of death (from approximately 6:50 PM on 1st November to 4:50 AM on the next day) setting the hour of death approximately at 11-11:30 PM.

The examinations of the gastrointestinal tract of the victim, who, in the late evening, had consumed a a meal with her English friends, has allowed – once again only with approximation, adjusted during the trial hearings – to much further circumscribe the temporal range.

The Appeal Court further reduced the temporal range, placing it in the hours between 9 PM of the 1st of November (time of Kercher's farewell to her friend) and 12:10:31 AM of the next day, on the basis of the recording (resulting from the acquired phone records) of a signal of one of the cellphones of Kercher intercepted in a telephonic cell covering the area of via Sperandio, where the cellphones had been abandoned by the perpetrators of the homicide.

But this observation also suffers from approximation, because at the last indicated time, Meredith Kercher was already dead, even if only for a little time, precisely because the signal was registered in the area where the telephones had been abandoned, after being stolen, shortly after the homicide, within the house in via della Pergola, some hundreds of meters from the place of

their retrieval.

The appellant's defense has offered, in this regard, a more reliable analysis, backed up by incontrovertible facts.

From the examination of the telephonic traffic has emerged that, after the departure from her English friend's house at 9 PM, the young woman had, in vain, tried to call her parents in England, like she used to do every day, while a last contact was registered at 10:13 PM, so that the temporal range has been further reduced to approximately 9:30/10:13 PM.

7. The second critical observation, relative to the appealed judgment, introduces the central matter of the judgment value attributable to the results of the scientific examinations, with particular reference to the genetic investigations, acquired in violation of the rules dictated by international protocols.

The specific question falls within the doctrinal debate on the relation between scientific proof and criminal procedure, in search for an equilibrium between the orientation – which is amenable to certain foreign schools of interpretation – which tends to recognize ever more weight to the science contribution, even if not validated by the scientific community; and the orientation which claims the supremacy of the laws and postulates that, according to the rules of criminal proceeding, only scientific results tested according to methodological standards which are routinely accepted could be considered as relevant here.

The present cultural debate, even if respecting the principle of free conviction of the judge, also tries to critically revisit the notion, by now obsolete and of dubious credibility, of the judge as a super-expert. In fact, the archaic rule of thumb reflects a cultural model that is not current anymore and instead is anachronistic, at least in the measure of what is supposed to be handled by the judge's real capacity to manage the scientific knowledge flow that the parties would enter into the proceedings, where, instead, a more realistic configuration wants him completely unaware of that contribution of the knowhow, the result of scientific knowledge that doesn't belong to him and cannot – and has not to – belong to him. And this is truer in relation to genetic science, in which complex methods postulate a specific knowledge in the fields of forensic genetics, chemistry, and molecular biology, which are part of a knowledge patrimony very distant from the prevalently humanistic and juridical education of the magistrate.

But the consequence of the inescapable acknowledgment of such a state of legitimate ignorance of the judge, and therefore of his incapacity of managing "autonomously" the scientific evidence, cannot be his uncritical acceptance, which would be equivalent – maybe for a misunderstood sense of free convincement and maybe also of a misunderstood concept of "expert of experts" – to a substantial renouncement of his role, through totally uncritical acceptance of the expert contribution to which is delegated the resolution of the judgment and therefore the responsibility for the decision.

But also, in a situation of a one-sided scientific contribution coming from just one of the procedural parties, and thus standardly disposed of by the same judge, this can be welcomed as a

paraphrasing in a more or less rational way of the technical argumentations presented to support the procedure, a problem dramatically arises when in a situation of conflicting scientific contributions, the same judge is called upon to settle upon a choice, and, in this case, the paraphrase is more complex, requiring a pertinent and valid motivation to explain the reasons for which an alternative scientific prospection would not be shareable. (cfr. Section 6, n. 5749 of 09 January 2014, Homm, Rv. 258630, according to which the judge who considers to adhere to the conclusions of the expert, in discordance with the ones presented by the defense adviser, even if not obliged to provide, as a reason, an autonomous demonstration of the scientific exactitude of the firstly cited, and the erroneousness, on the contrary, of the others, "he is however called to" demonstrate the fact that the expert conclusions have been valued "in terms of reliability and completeness", and that the advisers' argumentations have not been ignored).

The court considers that this delicate problem, with regard to the present judgment, requires a solution within the general rules which compose our procedural system, and not from elsewhere in an abstract claim of a supremacy of the science over the law or vice versa. The scientific evidence cannot, in fact, aspire to an unconditional endorsement of reliability during the trial proceeding because the criminal procedure rejects every idea of legal proof. Also, known to everyone is that there doesn't exist a single science, a bringer of absolute truth and immutability throughout time, rather various sciences and pseudo-sciences, both the official ones and the ones not validated by the scientific community because they reflect research methods not universally recognized.

And therefore the solution to this problem must result from the consideration of principles and rules which regulate the acquisition and the formation of the evidence in the criminal procedure and, then, of criteria which support the relative evaluation.

The citation points must be ones relating to the adversarial principle and the judge's control over the path of formation of the proof, which has to respect predetermined guarantees, the observance of which must be a rigorous parameter of the judging and reliability of the relevant outcomes.

So, a result of a scientific proof can be considered reliable only when examined by the judge, at least with reference to the subjective reliability of those who advance it, and the scientific method employed, and a more or less acceptable error margin, and the objective value and reliability of the obtained result.

Therefore, observing a method of critical approach not different, conceptually, from the one required for the appreciation of ordinary evidence, aiming to elevate as much as possible the degree of reliability of the legal truth, or alternatively, reduce to reasonable margins the inescapable gap between procedural truth and substantial truth.

Moreover, in procedures of inductive-inferential logic, which allow one to trace back from the known fact to the unknown one to be proved, the judge, in his full freedom of convincement, can use any element which would work as a bridge or bond between the two considered facts and allow one to trace back from the known one to the unknown one, according to parameters of reasonability and common sense.

The connection can, therefore, be of the most varied nature: the so called “experience rule”, legitimated by common knowledge or by direct observation of the reality of a phenomenon, which registers the repetitiveness of specific events in constant, identical, determined, conditions; a scientific law, of universal value or more narrowly statistical; a law based on logic, which presides and orients the mental paths of human rationality and anything else useful to the purpose.

The evidential reasoning which allows passing from the element of proof to the result of proof it is an element of the exclusive competence of the judge of merit, who has obviously to supply a concrete motivation and who, with regards to evidential proof, is required to apply a duplicable confirming scrutiny: a first verification concerning the so called “external justification” by way of which the same judge has to test the validity of the experience rule, or scientific-logic law, or any other rule observed; and a further verification related to the so called “internal justification” through which must be demonstrated, concretely, the validity of the result obtained through the application of the “bridge-rule” (Section 1, n. 31456 of 21 May 2008. Franzoni, Rv. 240764).

7.1. With these general and abstract considerations, we now examine from a new particular perspective specific details of a broadly problematic case.

In this specific case, in fact, it is not a question of verifying the nature and admissibility of a scientific method that is not really new, as in the Franzoni sentence formerly mentioned, , on the admissibility of the “Blood Pattern Analysis” or B.P.A. (a procedure already accepted in the United States and Germany, combining scientific laws of different universally recognized disciplines) because the objects of examination are the outcomes of the one science, genetics, of well-known reliability and increasing use and utility in judicial investigations.

Furthermore, this Court on multiple occasions has already recognized the procedural value of genetic investigation into DNA, given the statistically great number of confirmative recurrences, making the possibility of an error infinitesimally small (Section 2, n. 8434 of 05 February 2013, Mariller, Rv. 255257; Section 1, n. 48349 of 30 June 2004, Rv.231182).

Here it is more a matter of verifying what kind of procedural value can be assigned in a trial to the results of a genetic investigation carried out in a context of verifying very small samples with very little respect for the rules included in international protocols by which, normally, such scientific research is inspired.

Implicitly referring to the jurisprudential interpretation of legitimacy, the judge has not hesitated to attribute to the aforementioned outcomes evidential relevance (f. 217).

The attribution cannot be shared.

Important to note that the case law of this Supreme Court, cited above, has acknowledged of genetic investigations – specifically their degree of reliability – full evidential value, and not a mere evidential element, according to article 192, chapter 2, of the code of criminal procedure; adding that, in cases where the genetic investigation doesn’t have absolutely certain outcomes, it

can be attributed lesser evidential value (Section 2, n. 8434 of the 05 February 2013, Mariller, Rv. 255257; Section 1, n. 48349 of the 30 June 2004, Rv.231182). This means that, in the situation of placing suspects in terms of firm identity, the outcomes of the genetic investigation can have conclusive relevance, while in case of mere compatibility with a determined genetic profile, the outcomes have a mere circumstantial relevance.

This enunciation of principle needs a further clarification.

Generally, it is possible to accept the respective conclusions, provided the sampling activity, conservation and analysis of the sample were respectful of the requirements stated in the relevant protocols. This is true also in the less firm hypothesis, in which the outcomes of the analysis don't arrive at a firm identity result, but merely a compatibility one.

The principle of necessary methodological correctness in the phases of collection, conservation and analysis of examined data to preserve their maximum integrity and validity has been stated by this Court in Section F, n. 44851 of 6 September 2012, Franchini, although that was in the area of IT evidence, on the basis that those principles have been included in the code of criminal procedure with the modification of the second chapter of article 244 of the code of criminal procedure and the new particular requirement of article 254 bis of the same code, introduced into law on 19 September 2008, n. 48.

Justifying reasoning resides, for this Court, in the same notion of evidence offered by the standard code of procedure, which in article 192 chapter 2 states that "the existence of a fact cannot be deduced from evidence, unless they are serious, precise and concordant", so that a procedural element, to be elevated to firm evidence, has to present the characteristics of seriousness, precision and concordance, according to a configuration borrowed from the civil law (article 2729, first chapter, civil code).

This is all summarized in the so called "certainty" requirement of circumstantial, even if such a requisite is not expressly enunciated in article 192 of the code of criminal procedure, chapter 2. It's about, in fact, a further connotation considered non-failable in consolidated case law and intrinsically connected to the requirements for systematic evidential proof, through which, using a procedure of formal logic, a demonstration of the proof matter – a previously unknown fact - is achieved flowing from a confirmed fact and, therefore, considered true. It is well understood, in fact, that such a procedure would be, in short, fallacious and unreliable, in cases where it moves from non-precise to serious factual premises and therefore to certain. Given, obviously, the fact that the certainty, discussed here, is not to be understood in absolute terms, in an ontological sense; the certainty of the evidential data is, in fact, always a category of a procedural nature, falling within that species of certainty which takes form during the evidential procedure. (cfr. the Franzoni sentence).

In the light of such considerations it's not clear how the data of the genetic analysis – carried out in violation of the prescriptions of the international protocols related to sampling and collection – could be considered endowed with the features of seriousness and precision.

And in fact, rules for crystallizing of the results from valid samples, strengthened through repeated experimentations and methodical statistical verifications of experimental data, promote the standards of reliability in the results of the analysis both in hypothesis and identity and simple compatibility with a particular genetic profile. Otherwise, no relevance could be attributed to the acquired data, not even of minor evidence (cfr. Section 2, n. 2476 of 27 November 2014, dep.2015, Santangelo, Rv. 261866, on the necessity of a correct conservation of the vessels containing the genetic imprints, for the purpose of "repeatability" of the technical verifications capable of duplicating the genetic profile; repeatability also is dependent on the quantity of the trace and the quality of the DNA present on the biological samples collected; id. n. 2476/14 cit. Rv. 261867).

In this case, it is certain that these methodological rules have not being fully observed (cfr, among others, ff. 206-207 and the outcomes of the Conte-Vecchiotti survey, acquired by the Court of Appeal of Perugia).

Just consider, in this regard, the modalities of retrieval, sampling and conservation of the two items of major investigative interest in the present judgment: the kitchen knife (item n. 36) and the brassiere hook of the victim (item n. 165/B), regarding to which, during the process, the conduct of the investigators was qualified as lacking in professionalism (f. 207).

The big knife or kitchen knife, retrieved in Sollecito's house and considered as the weapon of the crime, had been kept in a common cardboard box, very similar to the ones used to pack Christmas gadgets, like the diaries normally given to local authorities by credit institutes.

More singular – and unsettling – is the fate of the brassiere hook.

Observed during the first inspection of the scientific police, the item had been ignored and left there, on the floor, for some time (46 days), until, during a new search, it was finally picked up and collected. It is sure that, during the period of time between the inspection in which it was observed and when it was collected, there had been other accesses by the investigators, who turned the room upside down in a search for elements of evidence useful to the investigation. The hook was maybe stepped on or moved (enough to be retrieved on the floor in a different place from where it was firstly noticed). And also, the photographic documentation produced by Sollecito's defense demonstrates that, during the sampling, the hook was passed hand in hand between the operators who, furthermore, wore dirty latex gloves.

Questioned on the reasons for the absence of a prompt sampling, the official of the scientific police, doc. Patrizia Stefanoni, declared that, initially, the collection of the hook was not focused on because the team had already collected all the clothes of the victim. Therefore, no importance was attributed to that little detail, even if, in common perception, that fastening is the part of major investigative interest, being manually operable and, therefore, a potential carrier of biological traces useful for the investigation.

Also, the traces observed on the two items, which the analysis of has produced outcomes that will be discussed further, were very small (Low Copy Number; with reference to the hook cfr. ff.

222 and 248), so little that it didn't allow a repetition of the amplification¸ that is the procedure aimed to "highlight the genetic traces of interest in the sample" (f. 238) and attribute the biological trace to a determined genetic profile. On the basis of the protocols of the matter, the repetition of the analysis ("at least for two times" testimony of Major CC Dr Andrea Berti, an expert nominated by the Appeal Court, f. 228; "three times" according to Professor Adriano Tagliabracci, technical adviser for Sollecito's defense, f.126) is absolutely necessary for a reliable analysis result, in order to marginalize the risk of "false positive" within the statistical limits of insignificant relevance.

In essence, it is nothing less than a procedure of validation or falsification typical of the scientific method, of which we have talked before. And it's significant, in this regard, that the experts Berti-Berni, officials of the R.I.S. of Roma, carried out two amplifications of the trace retrieved from the knife blade (f. 229).

In absence of verification for repetition of the investigation data, it is questionable what could be the relevant value to the proceedings, even if detached from the scientific theoretical debate on the relevance of the outcomes of investigations carried out on such scarce or complex samples in situations not allowing repetition.

The Court is sure that the scientific truth, regardless of elaboration, cannot automatically be introduced in to the process to transform itself into procedural truth. As stated before, scientific proof requires a mandatory postulate, verification, so that the relevant outcome can take on relevance and be elevated to the rank of "certainty"; since otherwise it remains unreliable. But, independent of the scientific evaluation, an unverified datum, precisely because it is lacking in the necessary requirements of precision and seriousness, cannot be granted in the process any evidentiary relevance.

Certainly, in such a context, is not a zero, to be considered non-existant. In fact, it is still process data, which, although lacking in autonomous demonstrative relevance, is nevertheless susceptible to appreciation, at least as a mere confirmation, within a set of elements already equipped with such inclusive indicative value.

Therefore hidden here is the judicial error in which the trial judge committed in assigning evidential value to the outcome of the genetic investigation unsusceptible to amplification and resulting from an unorthodox procedure of collection and sampling.

7.2 In order to clarify any possible misunderstanding in this regard, it is worth considering that if it is impossible to attribute significant demonstrative relevance, in the court process, to outcomes of genetic investigations not repeated and made unsusceptible to repetition, because of scarceness or complexity of the sample, it is not possible to compensate by way of claiming the efficacy and usability of the "unrepeatable" technical verifications, in case of, as in this circumstance, observance of the defensive guarantees accorded in article 360 of the code of criminal procedure. In fact, the technical investigations to which the procedural rule mentioned are those that – for crystal-clear positive formulation – are related to "persons, things or places the status of which is subject to modification", in other words situations of any type or category

which, according to their nature, are variable, therefore it is necessary to crystallize their status unequivocally even before the preliminary investigation phase, to avoid irreversible modifications with an outcome that under standard procedures is destined to be utilized during the court hearings. This is allowed because the verification to be carried out, especially in cases of impossibility of repetition because of modification of the item to be examined, is still capable of highlighting already-accepted realities or entities equipped with demonstrative value. In this case, despite the observance of the rules expressed in article 360 of the standard code of procedure, the acquired data – not repeated and not susceptible to repetition for any reason – cannot assume either probative or evidential relevance, precisely because, according to the aforementioned laws of science, it requires validation or falsification. So, in one instance the empiric data, when immediately "photographed", acquires demonstrative significance; while in another instance it's lacking such a feature, precisely because its indicative relevance is indissolubly bound to its repetition or repeatability.

8. Now, in fluid succession, the points of clear logical disparity in the appealed motivation should be positioned.

8.1 A process element of incontrovertible value – as will be explained further – is represented by the asserted absence, in the room of the homicide or on the victim's body, of biological traces attributable with certainty to the two defendant, when, in contrast, there copious traces have been detected firmly referable to Guede.

This was an insurmountable roadblock on the road taken by the trial judge to arrive at an affirmation of guilt of the current appellants, who were already absolved of the homicide by the Hellmann Appeal Court.

To overcome the inconvenience of such negative element - unequivocally favorable to the current appellants – it has been sustained, in vain, that, after the theft simulation the perpetrators of the crime carried out a "selective" cleaning of the environment, in order to remove only the traces referable to them, while still leaving those attributable to others.

The assumption is manifestly illogical. To appreciate, in full, the amount of disparity it is not necessary to carry out an expert investigation ad hoc, even if requested by the defense. Such a cleanup would be impossible according to common-sense rules of ordinary experience, an activity of targeted cleaning capable of avoiding luminol examinations which are in commonplace use by investigators (also used to highlight different traces, not just hematic ones).

After all, the same assumption of an asserted precision in the cleaning is shown to be wrong in point of fact, considering that "in the little bathroom" hematic traces on the bathmat, on the bidet, on the faucet, on the cotton buds box, and on the light switch were found. And also, in a case of guilt of the current appellants, certainly they would have had enough time for an accurate cleaning, in the sense that there wouldn't be any reasons for hurry that would have animated any other perpetrator of the crime who would probably be worried about the possible arrival of other persons. In fact, Knox, was well aware of the absence of Romanelli and Mezzetti from the house and she knew that they would have not returned home that night, therefore there would have been

all the necessary time for an accurate cleaning of the house.

With reference to the asserted hematic traces in the other environments, especially in the corridor, there's also an obvious misrepresentation of the proof. In fact, the progress-of-works reports of the Scientific Police had excluded, consequent to the use of a particular chemical reagent, that, in the examined environments, the traces highlighted by the luminol were of hematic nature. Those -of-works certificates, despite being regularly compiled and registered in evidence, were not considered.

Also manifestly illogical, in this regard, is the argument of the trial judge who (at f.186) assumes that he could overrule the defense objection in relation to circumstances in which the luminescent bluish reaction caused by the luminol is also produced in the presence of substances different from blood (for example, detergent residues, fruit juices and others), on the assumption that that, even if theoretically exact, would have to be "contextualized" in the sense that if the fluorescence manifests itself in an environment involving a homicide, the luminol reaction can only be attributed to hematic traces.

The weakness of this, even at first sight, doesn't require any notation, and it would furthermore require the assumptions that the house in via della Pergola was never subject to cleaning or that it was not ever lived in.

This analysis permits us therefore to exclude, categorically, that hematic traces were removed on that particular occasion.

There's another clear logical disparity regarding the explanations given by the trial about the theft of the cellphones of Kercher, which the unknown perpetrator or perpetrators, while moving away from via della Pergola, got rid of, after the homicide, tossing them into a plot next to the road which in the dark could appear like open country (while was a private garden instead).

Far from plausible further more is the judge's justification that the cellphones would have been taken to avoid their eventual ringing leading to discovery of the corpse of the young English woman before the hypothetic time, without considering that such an outcome could have more easily been achieved by shutting the telephones off or removing the batteries.

It is also clearly illogical – and also little respectful of the trial's body of facts – to reconstruct the motivation of the homicide on the basis of supposed disagreements between Kercher and Knox, enhanced by the irritation of the young English woman toward her housemate for having allowed Guede in the house, who had thereupon made an irregular use of the bathroom (f. 312). The explanation offered by the Ivorian in one of his declarations during the proceeding against him (and usable, according to what stated before, only in the parts which don't involve responsibilities of third parties) is, instead, a different one. The young man in fact was in the bathroom, when he heard Kercher arguing with another person, who he perceived had a female voice, so that the motivation for the arguing could have not be constituted by his use of the bathroom.

Also illogical and contradictory is the judge's statement that, attempting to provide a cause for that disagreement (which was moreover denied in other declarations) doesn't hesitate to retrieve the hypothesis of the money and credit card theft which Kercher was said to have attributed to Knox, despite the fact that, in a definitive finding, Knox, and Sollecito too, would be absolved because "there is no hard fact" on the crime of thievery in relation to the aforementioned goods (f.316)

It is also arbitrary in the absence of any accepted confirmation to transfer to the house at via della Pergola the situations that Knox, in one of her declarations, had described and contextualized in a different timeframe and circumstance, which was in via Garibaldi n. 130, in Sollecito's house: viewing of a movie, light consuming of drugs, sexual intercourse, and nocturnal rest lasting until the late morning of the 2nd of November, in a period before, during and after the homicide. This was introduced as a dynamic of the murder, the possible destabilizing effect of drugs.

This also was done in the absence of any verification, and also because – among the multiple omissions or disputable investigative strategies – the police teams, even after collecting a cigarette butt from the ashtray in the living room containing biological traces of a mixed genetic profile (Knox and Sollecito), didn't carry out any analysis on the nature of the cigarette's substance because that investigation would have resulted in an impossibility to verify the genetic profile, making the sample "unusable". And all of this with the brilliant [sic] result of submitting to the trial an absolutely irrelevant data, considered that it is certain that Sollecito frequented the house in via della Pergola, because he was sentimentally bound to the American girl; while in contrast the verification of the nature of the cigarette sample might have offered investigative leads of particular interest.

What is underlined above is emblematic of the whole body of the appealed findings related to the reconstruction of the relevant event, reported in par.10 with the title: conclusive evaluations.

It is undeniably a faulty interpretation attempt of the judge in order to compensate for some investigative lacks and obvious proof shortfalls with acute speculative activity and suggestive logical argumentations, being merely assertive and dogmatic.

Now it is unquestionable that the factual reconstruction is an exclusive task of the trial judge and it is not the responsibility of the Court of Cassation to establish if the proposed assessment is actually the best possible reconstruction of the facts, nor to approve his justifications, requiring this court only to address verification if such justification is compatible - according to the basic jurisprudence formula – "with common sense and with the limits of a plausible appreciation of opinion" (among others, Section 5, n. 1004 of 30 November 1999, dep. 2000, Moro G, Rv. 215745), and also according to the probative requirements in the light of the text of article 606 lett. e) of the code of criminal procedure; it is also true that the chosen reconstructive version, even if in compliance with the standards of ordinary logic, has to adhere to the reality of the body of facts and be presented as the result of a process of critical evaluation of the points of proof acquired. Therefore the use of logic and intuition cannot compensate for shortfalls in proofs or investigative inefficiency. In the face of a missing, insufficient or contradictory proof, the judge must limit himself to accepting that and deliver an acquittal sentence, according to

article 530, chapter 2, of the code of criminal procedure, even if driven by an authentic moral conviction of the guilt of the accused.

Also, there is no shortage of errors in the motivation text of the examined sentence. Accordingly the assumption is totally erroneous in f. 321, according to which in the almost imperceptible grooves of the knife which was considered the weapon of the crime (item 36) DNA samples were attributable to Sollecito and also Kercher. The assumption is, in fact, in conflict with the lengthy exposition in the part concerning the aforementioned item (ff. 208 ss), where the outcomes of the genetic investigations which had attributed trace A to Amanda Knox, trace B to Kercher, a finally, trace I – the examination of which was unjustifiably passed over in the Conte-Vecchiotti survey – attributed after a new test to Knox. As will be stated further, given the attribution of the traces A and I to the current appellant, the reference of the trace B to Kercher cannot have – for the reasons stated above – any possibility of certainty being a low copy number sample meaning a scarce-quantity sample which could allow only one amplification (f.124). It doesn't appear anywhere that the knife carried biological traces related to the genetic profile of Sollecito.

9. The noted errors in judgment and the logical inconsistencies conflict fundamentally with the appealed sentence which therefore deserves to be annulled.

The aforementioned invalidating reasons mount up in the absence of a possible framework of proof that could really be accepted as able to support a verdict of guilt beyond reasonable doubt as required by article 533 of the code of criminal procedure, in the recent text of article 5 of law n. 46 of 2006.

Regarding the discussion of the range of meaning of that rule and its possible reflection on the evaluation of the evidence, this Court of Cassation has more than once had occasion to restate that "the normative prevision of the judgmental rule of beyond reasonable doubt which is based on the constitutional principle of presumed innocence, has not led to a different and more restrictive criteria of evaluation of the proof, but has coded the jurisprudential principle according to which the declaration of the sentence has to be based on certainty with regard to the accused (Section 2, n. 7035 of 09 November 2012, dep. 2013, De Bartolomei, Rv. 254025; Section 2, n. 16357 of 2 April 2008, Crisiglione¸ Rv. 239795).

It is not in essence an innovative or "revolutionary" principle, but the mere formal recognition of a judgment rule already existing in the judiciary experience of our Country and therefore already in firm force regarding the conditions for a sentence, given the preexistent rule of article 530, second chapter, of the code of criminal procedure, according to which, in case of insufficiency or contradiction of the evidence, the accused has to be acquitted. (Section 1, n. 30402 of 28/062006, Volpon, Rv.234374).

On the basis of such premises the principle was enhanced according to which "the judgmental rule contained in the formula for beyond any reasonable doubt requires the pronouncing of a guilty sentence only when the acquired proofs excludes all but the remotest eventualities, even if supposable in theory and considered possible in the nature of things, but it is obvious that in this concrete case, the investigation results lacked any verification during the trial, unless outside the

natural order of things and normal human rationality" (Section 2, n. 2548 of 19/12/2014, dep. 2015, Segura, Rv. 262280); together with the enunciation that alternative reconstructions of the crime have to be based on reliable probative elements, because the doubt which inspires them cannot be founded on merely conjectural hypothesis, even if plausible, but has to be characterized by rationality (cfr Section 4, n. 22257 of the 25/03/2014, Guernelli, Rv. 259204; Section 1, n. 17921 of the 03/03/2010, Giampà, Rv. 247449; Section 1, n. 23813 of 08/05/2009, Manikam, Rv. 243801).

9.1 The intrinsically contradictory quality of the body of proof, the objective uncertainty of which is emphasized by the highlighted irregular progression of the proceeding, doesn't allow us to consider it as having passed the standard of no reasonable doubt, the consecration of which is a milestone in juridical civilization which has to be protected for always as an expression of fundamental constitutional values clustered around the central role of the person in the legal system, whose protection is effected at trial by the principle of presumption of innocence until there is definitive verification, according to article 27, chapter 2, of the Constitution.

9.2. The terms of objective contradictions in the proof here can be illustrated for each appellant, in a synoptic examination of the elements favorable to the hypothesis of guilt and the elements to the contrary in the text of the appeal and the defense declarations.

9.3. It is useful to the side by side examination of these profiles to consider that, given the committing of the homicide in via della Pergola, the supposed presence in the house of the current appellants cannot, in itself be considered as a demonstrative element of guilt. In the evaluative approach to the problematic compendium of proof offered by the appellate judge, we cannot ignore the juridical categories of "non-punishable connivance" and "participation of persons in the crime committed by others" and the distinction between them as accepted by indisputables decision of the Court of Cassation.

In this regard, it is well understood that the distinction resides "in the fact that the first postulates that the agent maintain a merely passive behavior, of no contribution to the effecting of the crime, while the second requires a positive participatory contribution - moral or material – to the other's criminal conduct in ways that aid or strengthen the criminal purpose of the appellant" (Section 4, n. 1055 of 12/12/2013, dep. 2014, Benocci, Rv. 258186; Section 6, n. 44633 of 31/102013, Dioum, Rv. 257810; Section 5, n. 2895 of 22/03/2013, dep. 2014, Grosu, Rv. 258953). Equally certain is the effect of this specific distinction in the subjectivity consideration, since in the actual participation by persons in the crime the subjective element can be identified in the conscious representations and will of the participant in cooperating with other subjects in the common realization of the criminal conduct (Section 1, n 40248 of 26/09/2012, Mazzotta, Rv. 254735).

9.4 Now, a fact of assured relevance in favor of the current appellants, in the sense of excluding their material participation to the homicide, even in the hypothesis of their presence in the house of via della Pergola, lies in the absolute absence of biological traces referable to them (apart from the hook of which we will discuss later) in the room of the homicide or on the victim's body, where in contrast multiple traces attributable to Guede were found.

It is incontrovertibly impossible that that in the crime scene (constituted by a room of little dimensions: ml 2,91x3,36, as indicated by the blueprint reproduced at f. 76) no traces would be retrieved referable to the current appellants had they participated in the murder of Kercher.

No trace assignable to them has been, in particular, observed on the sweatshirt worn by the victim at the moment of the aggression and nor on the underlying shirt, as it should have been in case of participation in the homicide (instead, on the sleeve of the aforementioned sweater traces of Guede were retrieved: ff. 179-180).

The aforementioned negative circumstance works as a counterbalance to the data, already highlighted, on the absolute impracticality of the hypothesis of a posthumous selective cleaning capable of removing specific biological traces while leaving others.

9.4.1 Given this, we now note, with respect to Amanda Knox, that her presence inside the house, the location of the murder, is a proven fact in the trial, in accord with her own admissions, also contained in the memoriale with her signature, in the part where she tells that, as she was in the kitchen, while the young English woman had retired inside the room of same Ms. Kercher together with another person for a sexual intercourse, she heard a harrowing scream from her friend, so piercing and unbearable that she let herself down squatting on the floor, covering her ears tight with her hands in order not to hear more of it. About this, the judgment of reliability expressed by the lower [a quo] judge [Nencini, ed.] with reference to this part of the suspect's narrative, [and] about the plausible implication from the fact herself was the first person mentioning for the first time [46] a possible sexual motive for the murder, at the time when the detectives still did not have the results from the cadaver examination, nor the autopsy report, nor the witnesses' information, which was collected only subsequently, about the victim's terrible scream and about the time when it was heard (witnesses Nara Capezzali, Antonella Monacchia and others), is certainly to be subscribed to. We make reference in particular to those declarations that the current appellant [Knox] produced on 11. 6. 2007 (p.96) inside the State Police headquarters. On the other hand, in the slanderous declarations against Lumumba, which earned her a conviction, the status of which is now protected as final judgement [giudicato], [they] had themselves exactly that premise in the narrative, that is: the presence of the young American woman inside the house in via della Pergola, a circumstance which nobody at that time – except obviously the other people present inside the house – could have known (quote p. 96).

According to the slanderous statements of Ms. Knox, she had returned home in the company of Lumumba, who she had met by chance in Piazza Grimana, and when Ms. Kercher arrived in the house, Knox's companion directed sexual attentions toward the young English woman, then he went together with her in her room, from which the harrowing scream came. So, it was Lumumba who killed Meredith and she could affirm this since she was on the scene of crime herself, albeit in another room.

Another element against her is the mixed DNA traces, her and the victim's one, in the "small bathroom", an eloquent proof that anyway she had come into contact with the blood of the latter, which she tried to wash away from herself (it was, it seems, diluted blood, while the biological traces belonging to her would be the consequence of epithelial rubbing).

The fact is very suspicious, but it's not decisive, besides the known considerations about the sure nature and attribution of the traces in question.

Nonetheless, even if we deem the attribution certain, the trial element would not be unequivocal, since it may show also a posthumous touching of that blood, during the probable attempt of removing the most visible traces of what had happened, maybe to help cover up for someone or to steer away suspicion from herself, but not contributing to full certainty about her direct involvement in the murderous action. Any further and more pertaining interpretation in fact would be anyway resisted by the circumstance – this is decisive indeed – that no trace linkable to her was found on the scene of crime or on the victim's body, so it follows – if we concede everything – that her contact with the victim's blood happened in a subsequent moment and in another room of the house.

Another element against her is certainly constituted by the false accusations [calunnia] against Mr. Lumumba, afore-mentioned above.

It is not understandable, in fact, what reason could have driven the young woman to produce such serious accusations. The theory that she did so in order to escape psychological pressure from detectives seems extremely fragile, given that the woman [47] could not fail to realize that such accusations directed against her boss would turn out to be false very soon, given that, as she knew very well, Mr. Lumumba had no relationship with Ms. Kercher nor with the Via della Pergola house. Furthermore, the ability to present an ironclad alibi would have allowed Lumumba to obtain release and subsequently the dropping of charges.

However, the said calunnia is another circumstantial element against the current appellant, insofar as it can be considered a strategy in order to cover up for Mr. Guede, whom she had an interest to protect because of fear of retaliatory accusations against her. This is confirmed by the fact that Mr. Lumumba, like Mr. Guede, is a man of colour, hence the indication of the first one would be safe in the event that the latter could have been seen by someone while entering or exiting the apartment.

And moreover, the staging of a theft in Romanelli's room, which she is accused of, is also a relevant point within an incriminating picture, considering the elements of strong suspicion (location of glass shards – apparently resulting from the breaking of a glass window pane caused by the throwing of a rock from the outside – on top of, but also under clothes and furniture), a staging, which can be linked to someone who – as an author of the murder and a flatmate [titolare] with a formal ["qualified"] connection to the dwelling – had an interest to steer suspicion away from himself/herself, while a third murderer in contrast would be motivated by a very different urge after the killing, that is to leave the apartment as quickly as possible. But also this element is substantially ambiguous, especially if we consider the fact that when the postal police arrived – they arrived in Via della Pergola for another reason: to search for Ms. Romanelli, the owner of the telephone SIM card found inside one of the phones retrieved in via Sperandio – the current appellants themselves, Sollecito specifically, were the ones who pointed out the anomalous situation to the officers, as nothing appeared to be stolen from Ms. Romanelli's room.

Elements of strong suspicion are also in the inconsistencies and lies which the suspect woman committed over the statements she released on various occasions, especially in the places where her narrative was contradicted by the telephone records showing different incoming SMS messages; by the testimonies of Antonio Curatolo about the presence of [the same] Amanda Knox in piazza Grimana in the company of Sollecito, and of Mario Quintavalle about her presence inside the supermarket the morning of the day after the murder, maybe to buy detergents. Despite this, the features of intrinsic inconsistency and poor reliability of the witnesses, which were objected to many times during the trial, do not allow to attribute unconditional trust to their versions, in order to prove with reassuring certainty the failure, and so the falsehood, of the alibi presented by the suspect woman, who claimed to have been at her boyfriend's home since the late afternoon of November 1st until the morning of the following day. Mr. Curatolo (an enigmatic character: a clochard, drug addicted and dealer) [48] besides the fact that his declarations were late and the fact that he was not foreign to judiciary showing-off in judicial cases with a strong media impact, he was also contradicted about his reference to young people waiting for public buses to leave in the direction of disco clubs in the area, since it was asserted that the night of the murder the bus service was not operational; and also the reference to masks and jokes, which he says he witnessed that evening, would lead to believe that it was on Halloween night, on October 31., and not on Nov. 1. instead. The latter point apparently balances – still within a context of uncertainty and ambiguousness – the witness' reference to (regarding the context where he reportedly noticed the two suspects together) the day before the one when he noticed (at an afternoon hour) an unusual movement of Police and Carabinieri, and in particular people wearing white suites and head covers (as if they were extra-terrestrials) entering the house in Via della Pergola (obviously on November 2., after the discovery of the body).

Mr. Quintavalle – apart from the lateness of his statements, initially reticent and generic – did not offer any contribute of certainty, not even about the goods bought by the young woman noticed on the morning subsequent to the murder, when he opened his store, while his recognizing Knox in the courtroom is not relevant, since her image had appeared on all newspapers and tv news.

Regarding the biological traces, signed with letters A and I (the latter analysed by the RIS) sampled from the knife seized in Sollecito's house and yielding Knox's genetic profile, they constitute a neutral element, given that the same suspect lived together with Mr. Sollecito in the same home in via Garibaldi, although she alternated with the via della Pergola home, and – as for what was said – the same instrument did not have blood traces from Ms. Kercher, a negative circumstance that contrasted the accusation hypotheses that it was the murder weapon.

On that point, it must be pointed out that – again following a disputable strategic choice by the scientific police genetic experts – it was decided that the investigation aimed at identifying the genetic profile should be privileged, rather than finding its biological nature, given that the quantity of the samples did not allow a double test: the quality test would in fact would have "used up" the sample or made it unusable for further tests. A very disputable option, since the detecting of blood traces, referable to Ms. Kercher, would have provided the trial with a datum of a formidable probative relevance, incontrovertibly certifying the use of the weapon for the committing of the crime. The verified presence of the same weapon inside Sollecito's house, where Ms. Knox was living together with him, would have allowed then any possible deduction

in this respect. Instead, the verified identification of the traces with genetic profiles of Ms. Knox resolves itself in a not unequivocal and rather indifferent datum, given that the young American woman was living together with Mr. Sollecito, sharing time between his dwelling and [49] the Via della Pergola one. Not only that, but even if it was possible to attribute with certainty trace B to the genetic profile of Ms. Kercher, the trial datum would have been not decisive (since it's not a blood trace), given the promiscuity or commonality of inter-personal relations typical of out-of-town students, which make it plausible that a kitchen knife or any other tool could be transported from one house to the other and thus, the seized knife could have been brought by Ms. Knox in Via della Pergola for domestic use, in occasion of convivial meetings or other events, and therefore be used by Ms. Kercher.

What is certain is, that on the knife no blood traces were found, a lack which cannot be referred to an accurate cleaning. As was accurately pointed out by the defence attorneys, the knife had traces of starch, a sign of ordinary home use and of a washing anything but accurate. Not only, but starch is, notoriously, a substance with remarkable absorbing property, thus it is very likely that in the event of a stabbing, blood elements would be retained by it.

It is completely implausible the accusative assumption on the point, that the young woman would be used to carrying the bulky item with her for a self-defence purpose, using – it is said – the large bag she had for that purpose. It wouldn't be actually understandable why the woman, if warned by her boyfriend to pay attention during her night time movements, was not in possession of one of the small pocket knives surely owned by Sollecito, who apparently had the hobby of that kind of weapon and was a collector of a number of them.

Finally, the matching with the current appellant woman of the footprints found in the place location of the murder is far from being certain.

9.4.2 Also the evidential picture about Mr. Sollecito, emerging from the impugned verdict, appears marked by intrinsic and irreducible contradictions.

His presence on the murder scene, and specifically inside the room where the murder was committed, is linked to only the biological trace found on the bra fastener hook (item 165/b), the attribution of which, however, cannot have any certainty, since such trace is insusceptible of a second amplification, given its scarce amount, for that it is – as we said – an element lacking of circumstantial evidentiary value.

It remains anyway strong the suspicion that he was actually in the Via della Pergola house the night of the murder, in a moment that, however, it was impossible to determine.

On the other hand, since the presence of Ms. Knox inside the house is sure, it is hardly credible that he was not with her.

And even following one of the versions released by the woman, that is the one in accord to which, returning home in the morning of November 2. after a night spent at her boyfriend's place, she reports of having immediately noticed that something strange had happened (open

door, blood traces everywhere); or even the other one, that she reports in her memorial, in accord to which she was present in the house at the time of the murder, but in a different room, not the one in which the violent aggression on Ms. Kercher was being committed, it is very strange that she did not call her boyfriend, since there is no record about a phone call from her, based on the phone records within the file. Even more if we consider that having being in Italy for a short time, she would be presumably uninformed about what to do in such emergency cases, therefore the first and maybe only person whom she could ask for help would have been her boyfriend himself, who lived only a few hundred meters away from her house. Not doing this signifies Sollecito was with her, unaffected, obviously, the procedural relevance of his mere presence in that house, in the absence of certain proof of his causal contribution to the murderous action.

The defensive argument extending the computer interaction up to the visualization of a cartoon, downloaded from the internet, in a time that they claim compatible with the time of death of Ms. Kercher, is certainly not sufficient to dispel such strong suspicions. In fact, even following the reconstruction claimed by the defence and even if we assume as certain that the interaction was by Mr. Sollecito himself and that he watched the whole clip, still the time of ending of his computer activity wouldn't be incompatible with his subsequent presence in Ms. Kercher's house, given the short distance between the two houses, walkable in about ten [sic] minutes.

An element of strong suspicion, also, derives from his confirmation, during spontaneous declarations, the alibi presented by Ms. Knox about the presence of both inside the house of the current appellant the night of the murder, a theory that is denied by the statements of Curatolo, who declared of having witnessed the two together from 21:30 until 24:00 in piazza Grimana; and by Quintavalle on the presence of a young woman, later identified as Ms. Knox, when he opened his store in the morning of November 2. But as it was previously noted, such witness statements appeared to have strong margins of ambiguity and approximation, so that could not reasonably constitute the foundation of any certainty, besides the problematic judgement of reliability expressed by the lower [a quo] judge.

An umpteenth element of suspicion is the basic failure of the alibi linked to other, claimed human interactions in the computer of his belongings, albeit if we can't talk about false alibi, since it's more appropriate to speak about unsuccessful alibi.

Finally, no certainty could be reached [was acquired] about the attribution to Mr. Sollecito of the footprints found in the via della Pergola house, about which the technical reports carried out have not gone beyond a judgement of "probable identity", and not of certainty (p. 260/1).

9.4.3. It is just the case to observe, that the declaration of the lacking of a probative framework, coherent and sufficient to support the accusatory hypothesis regarding the more serious case of the homicide, reverberates on the residual, accessory charges referred in point d) (theft of the phones) and e) (simulation of crime).

10. The intrinsic contradiction of probative elements emerging from the text of the appealed sentence, undermines in nuce the connecting tissue of the same sentence, causing the annulment of it.

And in fact, when facing a picture marked by such contradiction, the appeal judge was not supposed to issue a conviction but rather – as we observed above – they were compelled to issue a ruling of acquittal with reference to art. 530 paragraph 2 of penal procedure code.

At this point the last question remains, about the annulment formula – that is, whether it should be annulled with remand or without remand. The solving of such question is obviously related to the objective possibility of further tests, which could resolve the aspects of uncertainty, maybe through new technical investigations.

The answer is certainly negative, because the biological traces on the items relevant to the investigation are of scarce entity, as such they can't undergo amplification, and thus they won't render answers of absolute reliability, neither in terms of identity nor in terms of compatibility.

The computers belonging to Amanda Knox and to Ms. Kercher, which maybe could have provided information useful to the investigation, were, incredibly, burned by hazardous operations by investigators, which caused electric shock following a probable error of power source; and they can't render any further information anymore, since it's an irreversible damage.

The set of court testimonies is exhaustive, given the accuracy and completeness of the evidentiary trial phase, which had re-openings both times in the instances of appeal [rinvio; sic].

Mr. Guede, who was sure a co-participant to the murder, has always refused to cooperate, and for the already stated reasons he can't be compelled to testify.

The technical tests requested by the defence cannot grant any contribution of clarity, not only because a long time has passed, but also because they regard aspects of problematic examination (such as the possibility of selective cleaning) or of manifest irrelevance (technical analysis on Sollecito's computer) given that is was possible, as said, for him to go to Kercher's house whatever the length of his interaction with the computer (even if one concedes that such interaction exists), or they are manifestly unnecessary, given that some unexceptionable technical analysis carried out are exhaustive (such are for example the cadaver inspection and the following medico-legal examinations).

Following the considerations above, it is obvious that a remand [rinvio] would be useless, hence the declaration of annulment without remand, based on art. 620 L) of the procedure code, thus we apply an acquittal [proscioglimento *] formula [see note just below] which a further judge on remand would be anyway compelled to apply, to abide to the principles of law established in this current sentence.

[Translator's note: The Italian word for "acquittal" is actually "assoluzione"; while the term "proscioglimento" instead, in the Italian Procedure Code, actually refers only to non-definitive preliminary judgements during investigation phase, and it could be translated as "dropping of charges". Note: as for investigation phase "proscioglimento" is normally meant as a not-binding decision, not subjected to double jeopardy, since it is not considered a judgement nor a court's decision.]

The annulment of the verdict of conviction of Ms. Knox as for the crime written at letter A), implies the ruling out of the aggravation of teleological nexus as for the art. 61 par. 2 Penal Code. The ruling out of such aggravating circumstance makes it necessary to re-determine the penalty, which is to be quantified in the same length established by the Court of Appeals of Perugia, about the adequacy of which large and sufficient justification was given, based on determination parameters which are to be subscribed to entirely.

It is just worth to note that the outcome of the judgement allows to deem as absorbed, or implicitly ruled out, any other objection, deduction or request by the defences, while any other argumentative aspect among those not examined, should be deemed manifestly inadmissible since it obviously belongs to the merit.

11. For what previously stated, we have to provide as disposed.

THEREFORE

According to article 620 lett. a) of the code of criminal procedure, it is annulled without appeal the challenged sentence in relation to the crime of paragraph b) of the rubric for being extinct for prescription;

according to articles 620 lett. I) and 530, chapter 2 of the code of criminal procedure, in relation to the crime of slender, annuls without appeal the challenged sentence in relation to the crime of paragraph a), d) and e) of the rubric for having not committed the act.

It is restated the inflicted sentence against the appellant Amanda Marie Knox, for the crime of slander at three years of prison.

Thus the court has decided the 27th of March, 2015

Reporting Judge The president

Paolo Antonio Bruno Gennaro Marasca

Registered the 7th of September 2015

COURT OFFICIAL

Carmela Lanzuise