

Motivation sheet

Ruling at first instance

Article 365-1 of the Code of Criminal Procedure

Regarding the accused John :

The Assize Court was convinced of John's guilt for the crime of attempted voluntary manslaughter, by means of a weapon by destination, namely a screwdriver, on March 26, 2021, in Paris, on the person of Bill because of the following incriminating elements, which were discussed during the debates and which constituted the main incriminating elements exposed during the deliberations conducted by the court and jury prior to the votes on the questions. Article 121-5 of the French Penal Code presupposes that an attempt to commit an offence has been initiated, and that it has been suspended or failed to take effect "by circumstances beyond the control of the perpetrator". Testimonies indicated that the accused and the victim had already had a falling out in the bar. Also, the accused took an active part in the brawl in the parking lot. He grabbed the screwdriver, which he could not have been unaware could be used as a weapon. By grabbing the screwdriver and attempting to stab several times the victim, he began to carry out the *actus reus* of manslaughter. It emerged from the debates that it was only the confusion of the brawl that enabled the victim to escape from the fatal outcome of the deliberate stabbing. The withdrawal from the criminal action was therefore not of the accused's own volition. The offence is therefore constituted.

The Assize Court was also convinced of John's guilt for the crime of failing to render aid to a person in danger, on March 26, 2021, in Paris, on the person of Bill. Article 223-6 of the French Penal Code states that the offence of failing to render assistance to a person in danger is constituted either by failing to prevent the commission of a crime or an offence against the physical integrity of a person (first paragraph), or by failing to render assistance to a person in danger by one's own action or by provoking assistance (second paragraph). The offence provided for in the second paragraph has been established. Admittedly, his blood-alcohol level of 2.4 mg/l did not enable him to perform first-aid procedures, if he knew them at all, but it did not totally impair his discernment, according to the expert reports. The debates confirmed that John's behaviour could be likened to voluntary failure to act, since he neither asked his friends nor attempted to contact the emergency services himself, even though there was no risk for himself or for the people present in the parking lot. The offence is therefore well constituted.

The Assize Court was not convinced of John's guilt for the offence of failing to render aid to a person in danger, on the night of March 26-27, 2021, in Paris, on Olivia. Article 223-6 of the French Penal Code states that the offence of failing to render assistance to a person in danger is constituted either by failing to prevent the commission of a crime or an offence against the physical integrity of a person (first paragraph), or by failing to render assistance to a person in danger by personal action or by provoking assistance (second paragraph). The forensic report showed that the multiple brain injuries caused by the impact prevented John from intervening directly or calling for help. Without the need to retain any intention to abstain, the offence is not constituted.

Regarding the accused Jack :

The Assize Court was convinced of Jack's guilt for the offence of involuntary manslaughter by acting recklessly, on the person of Olivia, on the night of March 26 to 27, 2021 in Paris, by means of a motorized land vehicle. Article 221-6 of the French Penal Code requires that manslaughter be caused by negligence. John drove through the streets of Paris at 130 km/h and then at 120 km/h, even though the speed limit is laid down in article R413-3 of the traffic regulations, and caused Olivia's death. Jack's driving in the city, ignoring all road signs and speed limits, also directly exposed others to an immediate risk of death, as evidenced by the accident he caused, which resulted in Olivia's death. The offence was therefore constituted.

The Assize Court was convinced of Jack's guilt for the offence of failing to render assistance to a person in danger, on March 26, 2021, in Paris, on Bill, on the basis of the following evidence. Article 223-6 of the French Penal Code provides that the offence of failing to render assistance to a person in danger is constituted either by failing to prevent the commission of a crime or an offence against the physical integrity of a person, or by failing to render assistance to a person in danger by one's own action or by provoking assistance. It is also clear from the testimonies that when Jack saw his friend armed with a screwdriver and after he had made death threats, he had no doubt that a crime was about to be committed. However, he never intervened during the altercation. He refrained from doing so without having been prevented from doing so by external circumstances. However, the situation could have represented a danger to him, and he was therefore legally exempt from obeying the law. On the other hand, by not calling for help and organizing his friend's escape, he meets the criteria of the second paragraph. Not only did he demonstrate his awareness of the seriousness of the facts, but he also showed voluntary abstention, by not directly helping the victim and not calling for help, an attitude constituting the offence provided for in paragraph 2 of the aforementioned article.

The Assize Court was also convinced that Jack was guilty of the hit-and-run offence provided for in article 434-10 of the French criminal code, as the driver of a vehicle knowing that he had caused or intended to cause an accident, of failing to stop and thus attempting to avoid criminal liability, on the night of March 26 to 27, 2021, in Paris. It emerged from the proceedings that Jack had noticed Olivia, but was no longer in control of his vehicle. He was therefore fully aware that he had caused an accident. Even when he hit the pole, he was physically in a position to come to Olivia's aid, even if she had died, which Jack could not have known until he stopped. He therefore consciously decided not to stop. The offence is therefore constituted.

Regarding the accused Mary :

The Assize Court was not convinced of Mary's guilt for the offence of failing to render assistance to a person in danger, on March 26, 2021, in Paris. Article 223-6 of the French Penal Code states that the offence of failing to render assistance to a person in danger is constituted either by failing to prevent the commission of a crime or an offence against the physical integrity of a person (first paragraph), or by failing to render assistance to a person in danger by personal action or by provoking assistance (second paragraph). It is clear from the debates that the offence of the second paragraph did not exist at the time of Mary's arrest by the police. She had indeed taken a voluntary positive action to try to help the victim through her personal action, even if this could have been more productive. The Court is convinced that panic clouded Mary's judgement and she did not make the best decisions to rescue the victim. Moreover, the obligation to render assistance under article 223-6 al. 2 of the French Penal Code must be

understood as an obligation of means, in other words, to do everything possible in the circumstances of the case, and not as an obligation of result. The offence is therefore not constituted.

Sentences motivation

The other factors taken into account in determining the quantum of penalties were as follows.

The circumstances in which the crimes described were committed must take into account the degree of involvement of each convicted person in the acts and their seriousness.

The Court assessed the quantum of the sentences in the light of the seriousness of the facts and the personal situation of each of the defendants.

Account must also be taken of the conduct at the hearing, and in custody, of the convicts who appeared in custody at the Court's hearings.

The sentences handed down appear to the Court to be necessary to punish offences of a certain seriousness, but sufficient to protect society, prevent the commission of new offences and restore the social equilibrium.

John's sentence

The Court ruled that John should be sentenced to thirteen years' imprisonment. Attempted murder is punishable by thirty years' imprisonment. Since attempted murder is punishable by the same penalties as the act itself, the Court had to base its decision on this offence to determine and individualize John's sentence. It took the following factors into account. The convicted offender, aged 25, is not a first-time offender. However, he is not a recidivist. He was convicted of theft five years ago. However, Article 132-10 of the French Penal Code requires the commission of the same offence or a similar one. As voluntary manslaughter cannot be assimilated to theft, John is not in a state of legal recidivism.

The court therefore decided to sentence him to 13 years' imprisonment, with a 6.5-year minimum period.

To do this, the Court took into account the guarantees of rehabilitation, his social dangerousness, the time spent in preventive detention and his behaviour during this period. The time spent on remand will be deducted from the sentence to be served.

John presents certain guarantees of rehabilitation. Although he left school at the age of 17, John has developed recognized professional skills in car mechanics, to the extent that he was rehired by his employer after his first incarceration. Despite his conviction for theft, John's hiring demonstrates his professional skills and sociability. Even though he was dismissed after his arrest in this case, these skills may suggest that he could be rehired following his incarceration in the future. However, this will only be possible if the convicted offender undergoes a genuine process of self-improvement and self-questioning. The psychological assessments show that John does not seem to have any regard for the safety of others. The defence argued that John's blood alcohol level had abolished his discernment and that he could not be imputed with culpable intent, thus challenging the charge of attempted voluntary manslaughter. Yet, the psychiatrist found no impairment or abolition of discernment. Moreover, John resisted when Mary, his co-defendant, tried to separate them. Moreover, at no time did he express regret or try to help his victim.

Moreover, at no time did he express regret or try to help his victim. Nor can the argument of self-defence be accepted. By fighting with the victim with the screwdriver in his hands, it is clear from the debates that at no time did he use it as a deterrent tool against an unjustified attack on him, as required by the Penal Code. Furthermore, attempting to cause the death of an individual in response to a car scratch cannot be considered as satisfying the proportionality criterion relating to such a criminal excuse. The victim's behaviour may well have been a trigger that led to the manifestation of this culpable intent. But it can in no way constitute an excuse for the beginning of the execution observed, namely the insertion of the screwdriver into the victim's carotid.

In addition to his attempt to manslaughter, the fact that he only installed an airbag on the driver's side is another example of his disregard for others. According to forensic evidence, however, he has no particular social issues. He is capable of socialization, as previously envisaged, and has been living in a common-law relationship for 5 years. Nevertheless, he seems to have developed alcohol-related disorders.

The high level of alcohol in his blood at the time of his attempt, and his regular bar-hopping prior to the case, although not affecting his criminal responsibility, show that John had embarked on a dangerous path for himself and others, which could have been fatal to the victim had others not come to his aid. John should therefore be kept away from society for some time.

To ensure this, the court decided to attach several additional penalties to the sentence.

He will thus be subject to socio-judicial follow-up under the terms of articles 131-36-1 to 131-36-13 by virtue of article 221-9-1, for a period of ten years. It is essential that John is followed up after his incarceration, so that the judicial authorities can ensure that he is no longer a social risk.

Since his car was used in an offence, it will also be seized under article 131-6-10. It is vital that John understand his responsibilities as a vehicle owner.

He will also be subject to an obligation of care under article 132-45 of the penal code. This obligation may be declined depending on the courts' decision. The court decided to subject the convicted offender to paragraphs 3, 5, 11, 13 and 23, namely:

"3° Being submitted to medical examination, treatment or care, even if hospitalized. These measures may consist of the therapeutic injunction provided for in articles L. 3413-1 to L. 3413-4 of the Public Health Code, when it appears that the convicted person is using narcotics or habitually and excessively consuming alcoholic beverages. A copy of the decision ordering these measures is sent by the sentence enforcement judge to the doctor or psychologist who is to monitor the convicted person. Expert reports drawn up during the proceedings are sent to the doctor or psychologist, at their request or at the initiative of the sentence enforcement judge. The judge may also send them any other useful document in the case file". It is essential for John to come to terms with his alcoholic tendencies before reintegrating into society. Given their seriousness, John needs to be supported in this process for the duration of his sentence. This sentence will also last 5 years after his release.

"5° Paying for all or part of the damage caused by the offence, according to his or her ability to pay, even in the absence of a decision on the civil action". While the attempted homicide may not have caused any material damage *per se*, the medical care provided to the victim to preserve

his life have been significantly costly for him but also for the community services. So that he understands the consequences of his actions on the community as well as on his victim, he will have to contribute to the costs inherent in Bill's recovery.

"11° Staying away from drinking establishments". In line with the paragraph 3 treatment, John must stay away from all drinking establishments on French territory for a period of five years after his incarceration.

"13° Refraining from entering into relations with certain persons, including the victim, or certain categories of persons, in particular minors, with the exception, where applicable, of those designated by the court". The Court has decided that John must abstain from meeting his victims for a period of five years after his release, except in the context of a restorative justice procedure provided for in article D1-1-1 of the Code of Criminal Procedure. The circumstances of this case demonstrate that the repair of social ties between the victim, his family and the convicted offender will require a judicial framework, given the seriousness of the acts committed.

"23° The obligation to justify the surrender of confiscated property". The Court ruled that the car used in the manslaughter must be confiscated. However, as John has not been found responsible for the homicide, it is to be feared that he will not reluctantly entrust his vehicle to the authorities. The Court therefore requires proof of surrender be presented to the sentence enforcement judge.

Any breach of these obligations will result in an additional year's imprisonment.

Jack's sentence

The Court ruled that Jack should be sentenced to five years' imprisonment. The sentence for complicity in attempted voluntary manslaughter is the same as that incurred by the principal perpetrator. However, the court had to take into account Jack's minority, and reduced the maximum sentence to 2.5 years' imprisonment on the grounds of diminished responsibility. If he appears before the Court as an adult, he was a minor at the time of the events, a period which the Court takes into consideration when determining the sentence.

The court therefore decided to sentence him to 2.5 years' imprisonment, suspended for 1.5 years and placed on probation, in accordance with article 131-3 al 1° of the French penal code.

In doing so, the Court took into account the guarantees of rehabilitation, his social dangerousness, the time spent in remand custody and his behaviour during this period. The time spent on remand will be deducted from the sentence to be served.

Jack has good rehabilitation prospects. He is a young adult, has no criminal record, is a good pupil at school and does not drink alcohol. However, his behaviour during the night suggests that he poses a risk to society if triggering factors are present. His loyalty to his friend seems to take precedence over the safety of others. He was fully aware that he was driving recklessly and risking the safety of another driver or pedestrian. He nonetheless decided to continue.

The court also decided to subject the convicted driver to one year's community service under article 131-3 para. 3 of the French penal code. This sanction will enable Jack to put himself at the service of the community he neglected during the night of March 26, 2021.

It also decided to subject him to the additional penalty of refraining to interact with the victim and his friends for a period of three years after his release, except in the context of a restorative justice procedure provided for in article D1-1-1 of the Code of Criminal Procedure. The circumstances of this case demonstrate that the repair of social ties between the victim, his family and the convicted offender will require judicial supervision, given the seriousness of the acts committed.

Any breach of these obligations will result in immediate incarceration for a further year.

Mary's acquittal

The Court decided to acquit Mary of the offence of failing to render assistance to Bill. As previously stated, the offence was not constituted. In addition, even though the result was twice inoperative, or even counter-productive, the Court cannot sentence the accused to any penalty, especially as she presents no criminal danger. Her track record as a volunteer shows that she is aware of the needs of others, and her attitude during the altercation shows that she knows how to discern the merits of any behaviour she may encounter.