KAWALU JUSU, Appellant, v. **REPUBLIC OF LIBERIA,** Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE TENTH JUDICIAL CIRCUIT, LOFA COUNTY.

Heard: November 5, 1986. Decided: January 23, 1987.

1. In a trial for murder, the court cannot, as a basis for conviction, accept the confession of a defendant to the exclusion of other testimonies.

2. Ignoring the testimony of the defendant himself, any evidence of fact is in law sufficient to establish the fact unless rebutted.

3. The absence and disappearance of a defendant from the scene of a murder amounts to flight, and where a crime has been committed, flight in itself is an offence against the law and carries with it a strong presumption of guilt.

4. Circumstantial evidence culled out of the testimonies of the prosecution witnesses which evolves around the defendant and leaves no iota of doubt in the court's mind, even in the face of the non-admission into evidence of the coroners jury report and the absence of a pathologist report, may form the basis for conviction of a defendant.

5. A defendant may not be set free on the strength of his lone testimony, as against those given by two or more witnesses.

Appellant was charged, indicted by the grand jury, tried and convicted by the Circuit Court for the Tenth Judicial Circuit, Lofa County, for the murder of his wife. The witnesses for the prosecution testified that the appellant and his deceased wife had gone to their farm but that the deceased had failed to return to their home; that the appellant had confessed to the murder; that the appellant had taken flight from the scene of the 'murder and that later, when he was arrested, he had escaped from detention. The appellant for his part denied killing his wife, testifying instead that at the time of the death of his wife, he was at a magisterial court where he had gone to pay the costs of that court. As to the confession made by him, the appellant testified that he had admitted to the killing because he had been severely beaten. He admitted escaping from custody but denied that this was due to any guilt relating to the death of his wife. Rather, he said, his flight was to avoid further mistreatment by the police.

No motion for a new trial was filed for the appellant following the jury's verdict of guilty. The trial court therefore proceeded to render judgment, sentencing appellant to death by hanging.

On appeal, the Supreme Court affirmed the conviction and judgment, holding that the evidence presented by the prosecution and not rebutted by the appellant, was sufficient to

sustain a conviction. The Court pointed to evidence showing disputes between the appellant and the decedent growing out of the decedent's refusal to permit the appellant to wean their two year old child and her threats to divorce him for his slothfulness, stating that such evidence sufficiently indicated the basis for inferring malice aforethought by the appellant in committing the murder. The lone testimony of the appellant, with no corroboration by any other witness, it said, was insufficient to overcome the prosecution evidence.

The Court also rejected the appellant's contention that he had confessed because of severe beatings which he alleged had been meted on him by security officers, noting that the appellant had failed to produce any witnesses to substantiate the allegations or medical reports or other evidence to confirm that such injuries were found on the appellant's body. The Court observed, moreover, that the disappearance by the appellant from the scene of the crime amount to flight and carried with it a strong presumption of guilt.

Thus, not finding any error by the trial court, and noting the insensitivity shown by the appellant towards the death of his wife, which it believed the appellant committed, the Supreme Court *affirmed* the conviction and the judgment.

Robert G. W. Azango appeared for the appellant. The Solicitor General of Liberia, McDonald J. Krakue, appeared for the appellee.

MR. JUSTICE TULAY delivered the opinion of the Court.

During the November Term of the Circuit Court for the Tenth Judicial, Lofa County, 1977, defendant, Kawala Jusu, was indicted for the crime of murder. The defendant was brought under the jurisdiction of the court named above by the indictment quoted hereunder:

"Republic of Liberia, Plaintifff Versus Kawala Jusu, Defendant (CRIME: MURDER)

INDICTMENT

The Grand Jurors, good and lawfully men and women of the County of Lofa, Republic of Liberia, being duly selected, sworn and empaneled to inquire in and for the County of Lofa, and in the name and by the authority of the Government of the Republic of Liberia, upon their oaths do present: That Kawala Jusu, defendant of the town of Haleipo, Kolahun District, County and Republic aforesaid, and within the jurisdiction of this Honourable Court, in violation of title 27, section 232, chapter 8, pages 968 & 969, volume 3 of the Liberian Code of Laws, which reads thus:

'MURDER- Any person who without legal justification or excuse, unlawfully with malice aforethought, kills any human being . . . is guilty of murder and punishable with death by hanging.'

That on or about the 22nd day of November, A D. 1977, Kawala Jusu, defendant aforesaid, of the town of Haleipo, Kolahun District County and Republic aforesaid, and within the jurisdiction of this Honourable Court, while on a farm near Haleipo Town with his wife, Jenneh Nyoun, the decedent, then and there being not having the fear of God before his eyes, but moved and seduced by the instigation of the devil, and bent chiefly on mischief, without any legal justification or excuse, in, at, upon and against the body of the aforesaid Jenneh Nyoun, his wife, the decedent, unlawfully, wrongfully, willfully, intentionally, deliberately, purposely, and feloniously, with premeditation and malice aforethought, did make an assault; and with certain dangerous and deadly weapons known to the Grand Jurors aforesaid as a piece of wood and a cutlass, the latter being made of wood and iron, which the defendant aforesaid then and there held in his, defendant's hands, unlawfully, wrongfully, willfully, intentionally, deliberately, purposely, wickedly, and feloniously, with premeditation and deliberation, and with malice aforethought, did with force and violence, beat, strike, cut, wound and inflict the following mortal and fatal injuries to wit: (3) three wounds on the forehead and (1) wound on the left hand of Jenneh Nyoun, his wife, the decedent aforesaid; and as a result of the wounds so inflicted by the defendant aforesaid, in manner and form aforesaid, the aforesaid Jenneh Nyoun, his wife, the decedent did languish for a while and in the peace of God and of the Republic did die; then and thereby the crime of MURDER the aforesaid defendant did do and commit, contrary to the form, force and effect of the statute laws of Liberia, in such cases made and provided, and against the peace and dignity of this Republic.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: That Kawala Jusu, defendant aforesaid, of the Town of Haleipo, Kolahun District, County and Republic aforesaid, did after unlawfully, wrongfully, willfully, intentionally, deliberately, purposely, wickedly and feloniously beating, striking, cutting, wounding and inflicting mortal and fatal injuries upon the body of the aforesaid Jenneh Nyoun, his wife, the decedent, in manner and form aforesaid, at the time and place aforesaid, did escape justice, leaving the said Jenneh Nyoun, his wife, the decedent in the nearby bush to suffer and die, and had to be caught several days thereafter, then and thereby the crime of MURDER the aforesaid defendant did do and commit; contrary to the form, force and effect of the statute laws of Liberia, in such case made and provided and against the peace and dignity of this Republic.

And so, the Grand Jurors, aforesaid, upon their oaths aforesaid, do present: that Kawala Jusu, defendant aforesaid, of the Town of Haleipo, Kolahun District, County and Republic aforesaid, at the time and place aforesaid, in the manner and form aforesaid, the crime of MURDER the aforesaid defendant did do and commit; contrary to the form, force and effect of the statute laws of Liberia, in such cases made and provided and against the peace and dignity of this Republic.

REPUBLIC OF LIBERIA PLAINTIFF BY:

Sgd. C. Benedict Kennedy

C. Benedict Kennedy

COUNTY ATTORNEY, LOFA COUNTY

WITNESSES:

1Sallay Bollav

2. Paul B. Galimah

3. Mark Karou Sr,

4. Seipo Haleipo

5 William S. Jepigaye

6. Mallay Haleipo

F. 0. C. - One short piece of wood

One cutlass

Certified true and correct copy of the original:

Sgd. William S. Sengbe

CLERK OF COURT"

On Thursday, February 16, 1978, trial of the defendant commenced. It ended with a unanimous verdict of guilty on the 24th day of February, 1978. There being no motion for new trial, the court subsequently entered judgment on the verdict, sentencing the defendant to death by hanging.

His counsel appealed from the judgment and has brought the case up for our review, stating, among many things, that the state had failed to establish a case against the defendant.

We shall now paraphrase the evidence given for the prosecution, as well as the lone testimony of the defendant, to see if the state failed to make out a case against the defendant.

The first witness for the state, Paul B. Galima, testified that on November 22, 1977, the Town Chief of Harlipo, Mr. Koliwoley, sent to inform him that the defendant and his wife, Jenneh Nyoun, had gone to their farm, but had not returned; that a team of searchers was then sent to the farm to look for them; that after a diligent search, the body of Jenneh Nyoun was discovered thirty-seven yards away from the farm kitchen, but that the defendant could not be traced at the time; that after a period of three days, the defendant was arrested at Sigisu, a town thirty-seven miles away from his home, the scene of his wife's violent death; that when the defendant was brought back home and investigated, he confessed to murdering his wife whom he said had not permitted him to wean their two year old daughter and who had threatened to divorce him because of his slothfulness; that he, the defendant, then and there broke a stump off the ground, which he used to beat his wife until she fell on the ground; that using the woman's own cutlass, he (the defendant) struck her three times on

her head and once on the hand; that he dragged her body into a small bush at the edge of the farm; and that he identified the cutlass and the club/stump he had testified to.

The next witness was Malley Haleipo. He testified that it was reported that defendant and his wife, Jenneh Nyoun, had gone to their farm but had failed to return; that later on, information reached them that Jenneh Nyoun's dead body had been discovered; that the Chief informed the police and, upon arriving on the farm, he and others were selected to serve as coroner jurors; that they had inspected the body and had discovered three cuts on her head, one cut on her hand and some bruises on the back of the neck; that it was not until after the burial of Jenneh Nyoun that the defendant was arrested; and that at the police station, the defendant had confessed to killing his wife whose behavior, he said, did not satisfy him; that prior to killing her, he had said to her, "you are finished today"; that the defendant, continuing his confession, had said that he had first knocked his wife down with a piece of stick and had then proceeded to beat her on the neck until she had fallen to the ground; that he, the defendant, stated that he had remained with her until she died; that he thereafter attempted to carry his wife's body down to a valley, but that a log obstructed his movement; and that although her lappa had dropped off her body, he had still managed to drag her body to the nearby bush.

The third witness for the prosecution, Mr. Seepo of Haripo, testified that while harvesting the rice on his farm, he was informed that Jenneh Nyoun's mother had gone to the farm to look for her daughter who had gone to the farm and had failed to return to the town on the night past, but that the mother had not find her daughter; that the Clan Chief had appointed a team of searchers as coroner jurors, he, the witness, being among them; that upon their arrival at the farm they saw a track indicating that something weighty had been dragged on the ground; that they had followed the track and had discovered the body of Jenneh Nyoun lying in the valley; that they had cleared the surrounding bushes and each of them had inspected the body closely; that they had discovered three different wounds on the forehead of the deceased, as well as some marks of violence on both sides of her body and on the back of her neck. The witness testified further that he was then ordered to look for the defendant, who was subsequently found at Sigisu Town and brought to Kolahun.

The fourth witness for the prosecution, Sallay Boley of Nynwelahun said, among other things, that while he was sleeping at home, the Clan Chief sent two men to him to say that the defendant and his wife had gone to their farm but that they had not returned that day; that upon investigation, and seeing blood all over the place, they had requested the defendant to accompany them to Kolahun, along with some people who had been brought along to be sent to the farm; that he, the witness, was appointed chairman of the group sent to the farm; that they went to the farm the next morning and found the body of Jenneh Nyoun; and that they saw three wounds on her head, one on her left hand, and some knocks

on her right side and on her back. According to the witness, they reported that Madam Jenneh Nyoun had not died a natural death.

When the prosecution rested evidence, the defendant took the stand. Testifying on his own behalf, he told the court and jury that on one Monday in 1977, he and his wife, the decedent, had gone to their farm to grind sugar cane and had returned home that night. The next day, he said, the decedent had again gone to the farm, but that this time he had not joined her because he had to go to Kolba City to buy yeast. His wife, he said, had not returned to town that night but that this was not unusual as they had been spending some nights on the farm. He testified further that when he returned to Harlipo, his step daughter told him that her mother had not returned from the farm, and so he and the little girl went to the farm where he saw blood scattered all around; that he returned to Harlipo Town to report what he had seen; that the Chief then informed the higher authorities; and that when they got back to the farm and found his wife's dead body, he was arrested and mercilessly beaten. Because of the brutal treatment he received, he said, he had to admit to killing his wife. He admitted that when he was left alone he went away and was caught at Sigisu Town, from where he was sent back to Kolahun under escort. According to the defendant, when he was taken to Voinjama, he had refused to sign the statement of confession but was compelled to touch the pen before the justice of the peace court where the statement was signed.

On the 27th day of March A. D. 1978, the defendant tendered a 16 count bill of exceptions which was approved by the trial judge.

In as much as we sustain counts 1, 2 and 13 of said bill of exceptions, we hold that the answers to these questions do not in themselves prove defendant's guilt. At best, they constitute errors which are not weighty enough for a reversal of the verdict and judgment.

Count three of the bill of exceptions, wherein the appellant complains concerning his apprehension, is also overruled, as a man accused of murder is not permitted to be at large. In like manner, count four of the bill of exceptions is also overruled.

As to count five of the bill of exceptions, we hold that the trial court properly permitted the question propounded to be answered, as we do not consider that the question was a cross-examination by the prosecution of own witness. Count five is therefore overruled.

We also overrule count six of the bill of exceptions regarding the admission into evidence of the murder objects. Once objects or instruments are testified to and marked by the court, they should be admitted into evidence to enable the trial jury to pass upon their credibility.

We further overrule count seven of the bill of exceptions which asserts that the trial court erred in overruling appellant's objection to the question posed by the prosecution to the appellant with respect to the name of his step daughter. We hold that for the prosecution to ask the defendant for the name of his step daughter who had informed him that Jenneh

Nyoun had not returned from the farm, where she went the day before, cannot be said to be irrelevant.

Count eight of the bill of exceptions is also overruled as the question in point was neither entrapping nor a misquotation of the defendant's testimony. Count nine of the bill of exceptions is similarly overruled as the trial judge committed no error in sustaining the objections interposed to these questions referred to in the said count. As to count sixteen of defendant's bill of exceptions, we also overruled the same, since, in the absence of a motion for a new trial, the entry of final judgment by the court on the evidence and verdict was not error.

The contentions raised in counts ten, eleven and twelve of the bill of exceptions, not forming part of the exceptions properly taken in the trial court and not supported by law are also overruled.

Having reviewed the sixteen count bill of exceptions, we now address ourselves to the ten questions which the defendant has requested we answer in his favor.

Our answer to question number one is that it is not the responsibility of the trial court to deputize a defense counsel for the defendant. The counsel is appointed and paid by the government to represent indigent persons who appear before the court for trial on criminal charges preferred against them. In the instant case, the counsel conducted the trial from its onset to the end, culminating in his filing of the approved bill of exceptions. He had his reason for not filing a motion for a new trial which, had it been filed and overruled, would only have added one more count to the bill of exceptions. As much as we consider the prosecution's omission in withdrawing the notices given for production of rebuttal witnesses to be wanton and careless, we are not moved by said omission to accept the defendant's lone testimony as given on sheets 5, 6, 7, 8, 9 and 10 to be sufficient in itself to warrant his acquittal. See also *Zaiglor v. Republic,* 2 LLR 624 (1926).

With regards to the confession made by the defendant and reduced into a written statement by police officer Paul Galima, this Court has *ever and anon* stated its unwillingness to accept such confession to the exclusion of other testimonies.

As the coroner jury's report was not offered and admitted into evidence, it is pointless to dwell on it at length, except to say that we have failed to find any decision of this Court in which the defendant was acquitted simply because the coroner jurors' verdict and autopsy report had failed to pin point the defendant as the murderer. These two species of evidence were collected long after the murder had been committed -*rigor mortis* had set in or had even already subsided. Not having the fear of God before his eyes and being moved by the instigation of the devil *et cetera,* are all psychological phenomenon which are not conceivable to the naked eye, but may safely be inferred from the homicide committed. Thus, in a case in

which a scientist, curious to know how long it takes the belly of a man to burst after death, killed a stranger and secluded the body, visiting it everyday, he was properly charged with committing murder with malice aforethought, even though he had no previous contact with the victim. The fact that he killed the victim proved malice aforethought, premeditation, the lack of fear of God before his eyes, and all other words which qualify a man for murder. In the cases *KohGiddu v. Republic* and *Kpahn v. Republic,* 8 LLR 140 (1943), this Court, speaking through Mr. Chief Justice Grimes, said: "To constitute malice aforethought in murder, there need not be an old quarrel or a long period of resentment, envy, or spite."

While we agree that the report of the health officer, not being that of a qualified medical practitioner, standing in isolation, must be accepted with caution, we repeat, however, that no medical certificates issued by pathologists and/or competent medical practitioners ever point a finger to the murderer. We concede also that the blood stain on the defendant's clothing was never examined by experts to say if it was human or inferior animal blood and that no autopsy report was put into evidence to show the cause of death. However, the four cuts or wounds and the bruises found on the body of Jenneh Nyoun were all fresh; the cutlass and the club, testified to by the witnesses, were smeared with blood — blood that was spilled all around the farm kitchen; the marks on the ground indicated that something weighty had been dragged on the from the farm kitchen and these led to the discovery of the body in the nearby bush. All of these naturally leads one to dispense with the idea or notion of snake bite, lightening and/or other accidental death.

All of the prosecution witnesses testified that the defendant was nowhere around from the day Jenneh Nyoun's body was discovered to the day her body was laid to rest, and that it was not until three days thereafter that he was arrested at Sigisu Town, thirty seven miles away from his home town.

The defendant, testifying on his own behalf, stated that on the morning following the night his wife failed to return to town, he and Town Chief Koliwoley went to Kolba City to pay costs at the magisterial court; that when he returned to the farm where his wife's body was found, he was arrested and brought back to the town; that when he was later released, he, without permission, went away from his home in order to avoid further brutal treatment at the hands of the police, but that he was eventually arrested at Sigisu. From this statement of the defendant, we take it that he was not present when his only wife, the mother of his two year old child, was buried. None of the people who participated in the search for Jenneh Nyoun were brought by the defendant to testify that he was seen around on the fatal day and the day after, which would perhaps, have served as an alibi for him. This was a dear omission.

Thus, besides the defendant's lone testimony that NBI officers extracted self-incriminating confession from him, there is no other evidence to corroborate this testimony. Nor do the

records show that he displayed to the court and jury the scars of the brutality allegedly inflicted on his body by the investigating officers. More importantly, the testimonies of the three prosecution witnesses, excluding police officer Galima who denied torturing and extorting confession from the defendant, are silent on this issue. Instead, the witnesses testified to the contrary. These testimonies attached criminal culpability to the accused.

It was been sufficiently established by all the witnesses who testified for the State that Jenneh Nyoun was found dead on their farm on the 22nd of November 1977. The witnesses also testified that the cutlass and the club/stump found at and around the farm kitchen - the scene of the murder - were smeared with blood, thereby establishing, circumstantially, the truth that these two instruments were used in the commission of the crime of murder. Therefore, ignoring the testimony of the defendant himself, "evidence of fact is in law sufficient to establish the fact unless rebutted. . . ." BOUVIER LAW DICTIONARY 2683, under *prima facie*. Moreover, it was brought out at the trial that the defendant was not seen by anybody in and around the towns of Harlipo and Haloya, his homes, from the 21st of November 1977, the day the defendant and the victim went to their farm, up to and including the day Jenneh Nyoun's body was laid to rest. Indeed, he was not seen until he was caught and arrested at Sigisu, thirty seven miles away from the scene of the murder. Yes, defendant Kawala Jusu was not present at the burial of his wife, to at least shed some crocodile tears to indicate his love for her. We hold that the absence and disappearance of the defendant from the scene of the murder amounted to flight, and that "where a crime has been committed, flight in itself is an offence against the law and carries with it strong presumption of guilt." *Paye v. Republic,* 10 LLR 55 (1948).

Additionally, malice, premeditation and all such psychological phenomenon or notion which tend to goad one to commit murder can all be attached to Kawala Jusu, the defendant herein. Jenneh Nyoun's refusal to permit the defendant to wean their two year child and her threats to divorce him for his slothfulness were more than enough reasons to generate malice in and goad him to commit murder. Many a men have committed murder because the victimized woman refused their approaches.

The circumstantial evidence culled out of the testimonies of the prosecution witnesses leave no iota of doubts in our mind as to the guilt of the defendant, having pointedly evolved around the defendant (disregarding the coroner's report, not admitted into evidence, the legal inadequacy of the report of the health officer and the absence of pathological report). It is therefore our holding, based on the circumstantial evidence presented by the prosecution, that Kawala Jusu is guilty of the murder of Jenneh Nyoun. Deuteronomy 17:6. "At the mouth of two witnesses, or three witnesses, shall he that is worthy of death be put to death; but at the mouth of one witness he shall not be put to death." And we may add, neither shall he be set free on his own lone testimony set against that given by the mouth of two or three

witnesses. We therefore affirm and confirm the judgment entered against the defendant, sentencing him to death by hanging. And it is hereby so ordered.

Judgment affirmed.