

**YARSIA KROMA**, Appellant, *v.* **REPUBLIC OF LIBERIA**, Appellee.

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

Heard: May 15, 1984. Decided: June 28, 1984.

1. Involuntary manslaughter exists where a person, in committing an unlawful act which is not felonious, or tending to do great bodily harm, or in committing a lawful act without proper caution or requisite skills, unguardedly or undesignedly kills another.
2. A judgment of conviction in a criminal case must be supported by proof of all the necessary elements of the crime charged beyond a reasonable doubt.
3. When the facts in a case as given by the testimonies of witnesses are considered and it cannot be clearly seen that the verdict is justified by the oath the jury took, the judgment based on such a verdict will be reversed.

The appellant was convicted and sentenced to death by hanging for the death of a young girl named Zogba Bai. The only eyewitness to the shooting of the little girl by the appellant was Yamba Monie, the sister of the decedent, who testified that the shooting was deliberate. The appellant maintained that the shooting was accidental and his position was buttressed by the fact that the prosecution did not rebut his testimony. The other two prosecution witnesses were not present on the scene when the shooting occurred; therefore, the court opined that their testimonies should have been dismissed as hearsay. Moreover, there was no evidence of prior misunderstanding and/or altercation between the decedent and the appellant.

The Supreme Court therefore found that the appellant negligently handled his gun and that the resulting action was involuntary. There was no showing of malice aforethought, which is a critical element of the crime of murder. The conviction for murder was accordingly reversed and the crime reduced to manslaughter, carrying a five-year sentence commencing from the date of the appellant's arrest.

*Robert G. W. Azango* appeared for appellant. *S. Momolu Kiawu* appeared for appellee

MR. JUSTICE SMITH delivered the opinion of the Court.

The indictment under which the appellant herein was tried and convicted for the crime of murder recites substantially that in violation of the provision of title 27, section 232 of our

Penal Law as found in 3 LCL (1956), pages 268-269, which reads: "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..." The indictment further stipulated that "the defendant, now appellant before this forum, did unlawfully, wrongfully, illegally, deliberately, feloniously, wickedly and with malice aforethought, shoot and killed one Zogba Bai on her father's farm with a single barrel shotgun in the month of April 1975, the exact day and date being unknown to the grand jurors." The said indictment having been issued during the May Term of the Tenth Judicial Circuit Court, 1975, the case came on for trial during the August Term, 1975, of the court below on September 10, 1975, and ended with a jury verdict of guilty of murder, followed by a judgment of conviction and a sentence of death by hanging imposed on the defendant. Whereupon, the defendant noted exceptions and has appealed the case to this Honourable Court on a fourteen-count bill of exceptions.

It is useless for us to belabor on the bill of exceptions count by count because counsel for appellant, in his argument, submitted that while he was not waiving any of the counts in the bill of exceptions he, however, found it unnecessary to argue them *seriatim* since his principal defense was that of the reduction of the crime from murder to manslaughter, considering that the facts, circumstances and unrebutted testimony of defendant did not support a finding that malice aforethought was involved in the homicide.

For the benefit of this opinion, we quote hereunder the defendant's testimony in chief in answer to a question posed on the direct examination in support of his plea of not guilty:

"Q. The Republic of Liberia has charged you with the commission of the crime of murder and, upon your arraignment, you pleaded not guilty. Now that you are before the court and jury to testify for and in your own behalf, you may now proceed to say to the court and jury all facts and circumstances touching the said cause in support of your plea of not guilty?

"A. One afternoon I went to the bush and I shot at two monkeys. It was late that day so I did not carry the monkeys home but decided to return for them the next day. Early the next morning I went to the place but did not see the monkeys and, on my way back, I killed a 'Follentonga' which I carried to Kpangbeh's farm where I sold it. At that farm there was a girl who cooked for me, but I discovered that the food I ate was not enough for me. I therefore decided to eat to my satisfaction. On my way I passed through the old farm spot of one woman called Na-Belle-Wulle, then I saw a black goat. I loaded my gun but was unable to kill the black goat, and then I forgot to take away the cartridge from the gun. I then proceeded to Kolyan's farm. When I reached on the farm, I met Yanga Monie and her younger sister. I sat on the bench to rest a little. Under that rough bench my elder brother killed a wild cat last night. Are you not coming to the farm to kill one tonight (sic)? I said no

because I had walked around too much within these few days without killing any animal, therefore I will rest myself for the few days from that day. As I sat on this rough bench, decedent Zogba Bai came and laid herself on one of my legs; I told her to move away from my leg because I was hungry and therefore I was ready to go away. She left and sat down in the hammock. Then I said Oh' little girl how all of you resemble one another? Then Yangba Monie said: 'How can you afford to speak evil of us when you have our elder sister with you?' I said no, what I said is not derogatory remark, if you people resemble there is no harm in saying so, but since you take it that way, let me go away. Decedent Zogba Bai left the hammock again while I was still sitting down on the rough bench; she beat me on my thigh and I beat her on her hips. Then she went and stood by one of the beams supporting the farm kitchen. All this time, I had forgotten that the cartridge was still in the gun. I had an old ragged trousers on me. Just as I was about to get up the 'cuke' of the gun hitched on some part of the ragged trousers, and as I tried to get up by force, the gun went off and hit the decedent Zogba Bai. I fell down myself because the powder from the cartridge went over all my face, and it was not until five minutes thereafter before I came to myself. When I looked and saw the body of decedent Zogba Bai on the ground, I took to my heels and ran to report myself to the people in the town. On my way to the town, I met my uncle but did not stop until I got to the town where I reported that I had accidentally killed Zogba Bai on her father's farm. The authorities had me shocked (sic). Afterwards I was questioned and I told them that I did not intentionally kill Zogba Bai, the decedent. I was further asked if there had existed any ill feelings between the little girl and me. I told them that no ill feelings had ever existed between us. As a matter of fact, I am keeping their elder sister as wife and the little girl and her elder sister were together on the farm. I did not kill the bigger one therefore there was no reason whatsoever for me to have killed the little one intentionally. From there I was carried to Belle Yalla and from Belle Yalla we proceeded to Bopolu from where I was sent to Voinjama. I rest".

Counsel for the state argued that the charge of murder was established at the trial and that therefore there was no legal justification for reduction of the crime to manslaughter as prayed for by appellant's counsel. This argument of the state's counsel leads us to take recourse to the trial records and examine the evidence of the prosecution to see whether or not the elements of the crime of murder were established at the trial beyond all reasonable doubts.

At the trial of this case the state produced three witnesses, two of whom were not present at the scene where the defendant is alleged to have shot and killed the decedent. The testimonies of the three witnesses do not show the age of the decedent but, however, described her as a little girl whose elder sister named Gbailor is living with the defendant as wife. There is no showing in the evidence of the state that prior to the incident or during the

commission of the crime, defendant and his said wife, elder sister of the decedent, or the decedent herself nor any of their parents were in misunderstanding or confusion which might suggest an assumption of premeditation on part of the defendant to commit the crime of murder. The evidence of the state also does not show that any previous quarrel occurred between the defendant and the decedent or any of her parents nor any expression of threat previously made by defendant about the decedent or against her parents or her elder sister living with him as wife, tending to establish a bad motive on part of the defendant when he shot and killed decedent. We will quote the testimony of witness Yanga Monie who was the only witness present at the scene of the incident. Here is what she said:

"Decedent Zogba Bai and myself were on the farm. We saw the defendant come (sic) to ask where the animal was killed that day. The decedent was chewing a bone. Decedent said that the animal was killed behind the farm kitchen. Then defendant said to decedent, 'your nose is as large as that of your sister'. By this defendant was referring to the elder sister of decedent. Decedent's sister is the wife of the defendant. Zogba Bai, the decedent, then said to him: 'My sister lives with you as wife and you dare to make such bad expression of her?' Right away defendant took his gun and shot the little girl, decedent Zogba Bai. I then ran away to call my father and others for all this happened in my presence, as I was lying in the hammock in the farm kitchen. My father and I came back from the place where he was felling the trees for the farm kitchen. My mother and others who were at the creek or river fishing heard my shouting and came and saw what had happened. They then ran to the town to inform the townsmen. Defendant was caught and tied up by the townsmen, and the next day he was carried to Belle Yalla and my father and I followed the next day. At Belle Yalla, the defendant was asked why he did this, and he said that he did not mean it, so the only way out is for government to have mercy on him, I rest."

After this witness rested, she was asked to identify the gun, which she did and the prosecution rested on the direct examination without any further attempt to establish the element of the crime of murder before the witness was turned over for cross-examination. Here are few of the questions posed on the cross-examination and the witness' answers thereto:

"Q. Were you acquainted with the defendant prior to the alleged killing of decedent?"

"A. Yes, I knew him before he killed the decedent.

"Q. Since your answer is in the affirmative, and in your general statement you told the court and jury that decedent's sister is the wife of the defendant now in the dock, could you say then for the benefit of the court and jury whether or not there ever existed any

altercation, either between the decedent and/or her elder sister and the accused prior to the alleged killing?

"A. I do not know if there existed any altercation between defendant and Zogba Bai or her elder sister, as we do not live in the same house; defendant and his wife live by themselves and I live with my father in a different house."

It would seem to us that by the answers of this witness on the cross-examination, the counsel for the state had the responsibility to have established the essential element of murder, which is malice aforethought, by showing the deliberate and/or premeditated act on part of the defendant on the redirect examination of the said witness, or by some other testimonies. Instead, the prosecution waived redirect examination and produced no rebuttal to the defendant's testimony. We hold that the expression: "Your nose is as large as that of your sister" which defendant is alleged to have made, or as the defendant himself puts it: "How all of you resemble one another" has no malicious intent to commit a felony or any other crime for that matter, neither does the expression: "My sister lives with you as wife and you dare to make such bad expression about her" has any provocative value to lead a normal man to take the life of another, especially where the defendant was not seen loading his gun to shoot and kill decedent. What appears to us to be the case, and which has been established beyond all doubts, is that the defendant was careless when he failed to remove the cartridge from his gun before entering the village and, subsequently, holding the loaded gun on his lap while the decedent and he engaged in what appeared to be horseplay (she slapping his leg and he slapping her hips).

The statute under which defendant was indicted, tried, and convicted for murder reads as follows:

"Murder.--Any person who:

- “1. without legal justification or excuse, unlawfully with malice aforethought, kills any human being; or
2. is present unlawfully aiding and abetting another directly or indirectly in the felonious killing of any human being; or
3. with malice aforethought conspires with or counsels and advises another to kill a human being; or
4. unlawfully counsels or advises another to commit suicide, and the person so advised and counseled by any means whatsoever kills himself as a result of such advice and

counsel, whether or not such adviser is present when the suicide is committed; or;

5. while sustaining such a relation to another as imposes upon him the duty and obligation of support, nurture and sustenance, maliciously, unlawfully and negligently permits such person to die from lack of medical attention or means of sustenance or support; or
6. while engaged in the commission of, or in an attempt to commit a felony, without a design to effect death, kills a human being, is guilty of murder and punishable with death by hanging.

The mental element of the crime of murder is "malice afore thought". The indictment charges the defendant with violation of chapter 8, title 27 of the 1956 Penal Code of Liberia, section 232(1), pages 968-969, which states that: "Any person who, without legal justification or excuse, unlawfully with malice aforethought, kills any human being . . ."

Law writers define malice, which may be either express or implied, to mean: "A settled anger against a person, a desire to revenge". In the definition of murder, malice means: "A forwardness of mind, a wicked, depraved, malignant spirit, a heart, regardless of social duty, fatally bent on mischief. Express malice is where one with a settled, deliberate mind and formed design, kills another, or with former grudge and concrete plan to do the person caused grievous bodily harm or to kill him; antecedent threats and by lying in wait to kill another". The evidence of the state in this case does not establish any of the elements of express malice.

Malice is said to be implied where the killing happens in the execution of some other unlawful action, there being no intention of killing or of causing bodily injury to the person killed.

One of the meanings of malice aforethought is the killing of a person by one engaged in the commission of a felony--whenever a man happens to kill another in the execution of a deliberate purpose to commit a felony.

In this case, the defendant is not shown by the evidence of the state to have engaged in the commission of a felony, neither is it shown that at the time of the killing of the decedent, he was engaged in an unlawful act, nor was he engaged in the execution of a deliberate purpose to commit a felony.

As we have said earlier in this opinion, the defendant in this case negligently handled his gun

which caused the death of the decedent. This much was admitted by the appellant in his testimony. In this respect, his act was involuntary and fell short of malice aforethought, which is the main ingredient and characteristic of the crime of murder. Involuntary manslaughter exists where a person in committing an unlawful act, not felonious or tending to do great bodily harm, or in committing a lawful act without proper caution or requisite skill, unguardedly or undesignedly kills another. See BLACK'S LAW DICTIONARY 1116 (4th ed.) and 44 ALR 572. In the case *Johnson and Toomey v. Republic*, 15 LLR 66 (1962), this Court held that: "A judgment of conviction in a criminal case must be supported by proof of all the necessary elements of the crime charged beyond a reasonable doubt". Also, in *Padmore v. Republic*, 3 LLR 418 (1933), this Court held that: "When the facts in a case as given by the testimonies of witnesses are considered, and it cannot be clearly seen that the verdict is justified by the oath the jury took, the judgment based on such a verdict will be reversed".

In view of all the facts and circumstances in this case, and the legal citations we have quoted herein, it is our opinion that the judgment of conviction for murder with the sentence of death by hanging be, and the same is hereby reversed, and the defendant, Yarsia Kroma, appellant herein, is adjudged guilty of manslaughter, instead of murder, and sentenced to five years imprisonment from the date of his arrest and incarceration. Since the records show that the defendant was arrested and incarcerated in the common jail of Lofa County since 1975, where he is still in custody, it is hereby ordered that he is released from further incarceration, having already served the sentence of five years imprisonment. And it is hereby so ordered.

*Judgment reversed.*