ISAAC TOE, Appellant, *v.* **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Heard: October 21, 1982. Decided: February 3, 1983.

1. A report of the coroner need not be signed by a medical doctor.

2. The coroner need not engage the services of a qualified medical practitioner to perform an autopsy where he determines from preliminary investigation that the cause of death was produced by the acts of the accused without the possibility that death resulted from some other cause.

3. It is the function of the court to admit an article into evidence when its identity is established and when admitted, its credibility and effect is solely within the province of the jury to pass upon the same.

4. It is an error to admit into evidence a medical certificate that is not signed by a qualified medical doctor who holds a diploma from a recognized medical school.

5. The trial judge has the right to charge the jury by summing up all the evidence and instructing the jury that it must weigh the evidence and base its verdict thereon.

6. Where the act of the accused is deliberate and unlawful, malice is inferred or presumed from the act.

7. The uncorroborated evidence of an accused is insufficient to establish his innocence, especially where the evidence against him is clear and convincing.

8. Confession to a crime by an accused is admissible in evidence and may be used against him when properly corroborated.

Appellant Isaac Toe was indicted for murder during the February A.D. Term of the Fourth Judicial Circuit, Maryland County. The jury returned a verdict of guilty and from the final judgment confirming the verdict, appellant excepted and announced an appeal to the Supreme Court. Appellant contended that the shooting was accidental and therefore there was no malice, a vital element of the crime of murder; and that the medical certificate

establishing the cause of death, which was admitted into evidence, was not signed by a qualified medical doctor. The Supreme Court, upon review of the case, found that the killing by appellant was deliberate and not accidental, and, hence, malice is inferred or presumed; and that although the court erred when it admitted the medical certificate not signed by a qualified medical doctor into evidence, its exclusion from the evidence does not vitiate the probative value of the testimony of the witnesses. Accordingly, the Supreme Court *affirmed* the judgment.

John A. Dennis appeared for appellant. The Acting Solicitor General *Flaawgaa R. McFarland* appeared for appellee.

MR. JUSTICE YANGBE delivered the opinion of the Court.

During the February A. D. 1981 Term of the Fourth Judicial Circuit, Maryland County, appellant was indicted for com-mission of the heinous crime of murder in connection with the death of Mohammed Smith of Jaye Township, Barrobo Statutory District, Maryland County, Republic of Liberia. Accordingly, during the A. D. 1982 May Term of the aforesaid court, appellant was arraigned and he pleaded not guilty to the charge, whereupon a jury was duly empanelled to hear evidence and decide the issue thus joined. The trial culminated in a final judgment against the appellant to which he excepted, announced an appeal and as a result, the case is now before this Forum of dernier resort for a review.

There are several procedural issues raised in the bill of exceptions but we will only deal with salient points and review the evidence as a whole for a fair and just decision in this case.

In Count 1 of the bill of exceptions, appellant complained against the trial judge for overruling his objections and admitting into evidence items marked by Court P-1 to P-3, respectively, on the grounds that (1) said items were insufficiently identified and (2) the coroner's report and the medical certificate are not signed by a qualified medical doctor who holds a diploma from a recognized medical school.

With reference to insufficiency of identification of the articles offered into evidence, the records in this case clearly show that all the items were testified to, identified, marked by court and confirmed. Therefore, the question of the lack of sufficiency of identification is not supported by the record in this case, hence, same is not sustained.

With respect to the absence of signature of a qualified medical doctor on the coroner report, the statute provides that:

"The coroner may, if he is unable to ascertain the cause of death by preliminary examinations, perform, if he is a competent medical practitioner, or authorize to be performed by a competent medical practitioner, an autopsy on the body of the deceased for the purpose of determining the cause and circumstances of death. Every such autopsy must be witnessed by two credible and discreet residents of the county, territory, or district in which it is performed and the coroner shall have the power to compel their attendance by subpoena". Criminal Procedure Law, Rev. Code 2: 7.4.

The Criminal Procedure Law provides, *inter alia,* that:

"The report of the coroner shall be accompanied by a copy of the report of the medical practitioner, if any, and a certified copy of all the testimony taken under section 7.2. " *Ibid.,* 2: 7.5.

Therefore, in our opinion, a report of the coroner need not be signed by a medical doctor, and in this case no autopsy was performed on the body of the deceased. Where it can easily be determined from the preliminary investigation conducted by the coroner, that the cause of death was produced by the acts of the accused without possibility that death resulted from some cause other than the acts of the accused, the coroner need not engage the services of a qualified medical practitioner to perform an autopsy.

It is the function of the trial court to admit an article into evidence when its identity has been established, and, when admitted, its credibility and effect is solely within the province of the jury to pass upon same. 22 C.J.S., *Evidence,* § 624.

We will again discuss and pass upon the necessity of an autopsy in a homicide case.

In *Taylor v. Republic*, 14 LLR 524 (1961), this Court, citing by reference 30 C.J., *Homicide*, § 531, said:

"The manner and means in and by which the crime was committed is not an element of the *corpus delicti*, and the exact manner of the killing need not be proved. It is sufficient to show the finding of a dead body, and the appearance thereof showing acts of violence. Where a cause sufficient to produce a complication resulting in death is shown, and no other cause is shown to have existed, a sufficient basis for the conclusion that the result arose from the known cause is afforded. A mere possibility that death resulted from some cause other than the act of accused, will not overcome facts proved leaving no rational grounds for doubt, nor will an influence from incompetent evidence. The cause of death and the criminal agency may be established by circumstantial evidence, especially when no question as to the

cause of death is raised at the trial.... It is not necessary that the evidence that death was caused by criminal means should be obtained from the body of the deceased. So an autopsy is not essential." *See also Dwe Wlo Flo v. Republic,* 29 LLR 3 (1981).

It is therefore our opinion that it was clearly established that the appellant shot the deceased in his buttock, in the presence of eyewitnesses who testified at the trial that shortly after the shooting, the deceased died. Consequently, an autopsy was unnecessary to establish the cause of death, especially so when the cause of death was not doubtful.

Here are some of the relevant testimony of the two eye witnesses for the prosecution with reference to the cause and circumstances leading to the death of the deceased. The first witness was Jerome Wesseh and this is what he said:

"On December 16, 1981, Wednesday morning, I was going to the farm, Milton Brown, Mohammed Smith, Attorney Hinneh, had asked Mr. Brown for his file to sharpen my cutlass. Mr. Smith asked to help me to sharpen the cutlass and I left and went to the other house, and after a while on my return I met Isaac Toe, the defendant, asking for the same file; Mr. Milton Brown refused; after his refusal to give the file to Mr. Toe, Milton Brown was running and while running he threw the file to Mohammed Smith and Smith picked it up, and he begun to sharpen my cutlass. Isaac Toe, the defendant, went back to Smith asking him to move his cutlass and put his own there ....The defendant pointed his gun at Smith, and Smith told me saying please tell Isaac, the defendant, to stop harmburging (bothering) me". I told the defendant, Isaac Toe, to stop playing with gun; gun is not something to play with. While he was still troubling the boy, I took the file from Smith, bending my head, I heard the gun shot. When I lifted up my head, Smith said here what I was telling Isaac Toe to tell you not to trouble me "you see now, gun is not something to play with. He said to me " I didn't know that shot was inside. Then I ran through the town to call people to come. After that we carried him to the dresser, the dresser examined him and treated him for the shot. The dresser wrote the quarter chief about what had happened and after that he died. That is all I know."

The second witness, Milton Brown, in corroborating the testimony of the first witness stated that:

"I told Mohammed to give me the file then Isaac Toe, the defendant, said "give me the file" and he pointed the gun at my chest, and so I was afraid and I threw the file to him, Isaac Toe. The defendant took the file and gave it to Mohammed Smith, he said "Mohammed file my cutlass; and Mohammed said "Let me finish with Jerome Wesseh's cutlass then I will file yours. Jerome said to Isaac Toe, the defendant, "leave the children let them file their

cutlasses, he said 'no, file my cutlass I am the eldest man'. Mohammed was then bending his head, sharpening his cutlass and Isaac Toe, the defendant, pointed the gun in his butt (buttock) he did it three times and the boy said to him "it is disturbing me". "After that, Isaac Toe, the defendant, walked back about three feet and said "if you do not file my cutlass I will shoot you, and he raised up and while he was bringing it down it fired; and so those of us who were around there scattered." Then we took the decedent to the other town (Foloken) to the dresser whose name is Sampson, he treated Mohammed, after treating him he told us to put him in one room and there he died. We took Mohammed and carried him back to our place which is Big Jaye (Town). That is all I know about it."

On the cross examination the following questions were asked and answered as follows?

Ques: Since your head was bending down, I take it that you did not see the defendant when he fired the gun, not so?

Ans: That is what I said. I bent my head down when the gun fired.

Ques: Who fired the gun that you heard?

Ans: The defender, Isaac Toe.

Ques: How come you by this information when your head was bending down?

Ans. He was holding the gun and crying saying "I did not mean it."

Ques: By your last answer, am I correct to presume that Defendant Isaac Toe did not intend to shoot and kill Mohammed Smith, not so?

Ans: What I know is that Isaac Toe fired and killed Mohammed Smith, whether he mean it or not, I don't know."

We will now move on to the contention of counsel for appellant in respect to the admission into evidence of the medical certificate signed by Sampson Weah, who treated the deceased after the shooting by the appellant.

The ground of objection to the admissibility of the certificate is that Sampson Weah is not a qualified medical practitioner who holds a diploma from a recognized school. Appellant cited for reliance the case *Dunn et. al. v. Republic*, 1 LLR 401 (1903)

In principle, we are in complete accord with the contention of appellant because there is no evidence in the records before us in this case that Sampson Jean is a qualified medical doctor. Therefore, the court below erred when it admitted into evidence the certificate signed by him. However, another important phase of this issue which deserves our comment is, the testimony of eyewitnesses that appellant shot the deceased in his buttock and appellant's tacit admission that he didn't know the gun was loaded. It was also testified to that decedent died shortly after the shooting. Consequently, the exclusion of the alleged medical certificate from the evidence of the prosecution does not vitiate the probative value of the testimony of the witnesses we have already quoted above.

In count two of the bill of exceptions, appellant has charged the trial judge for having influenced the verdict of the jury in his charge to the effect that appellant did not produce witnesses to rebut the evidence of the State and appellant also claimed that he was not compelled to testify in his own behalf or produce evidence. Here is pertinent portion of the charge of Court to the jury:

"If you believe that this statement of one of the coroner jurors is insufficient to bring the defendant down guilty, then when you shall go into your room of deliberation, you may bring in a unanimous verdict of not guilty. But on the other hand, if you believe that the defendant had failed to produce evidence to rebut the statement of prosecution's witness, John Hinneh, then you may bring in a unanimous verdict of guilt against the defendant." (See trial records, sheet 10, May Term 1982, 22nd day's jury session June 4, 1982.)

According to the Civil Procedure Law, the trial judge has the right to charge the jury by summing up all the evidence and instructing the jury that it must weigh the evidence and base its verdict thereon. Criminal Procedure Law, Rev. Code, 2: 20.7 and 20.8 . The trial judge in this case, did not abuse his right devolved upon him by the statute in keeping with the portion of his charge we have quoted hereinabove. Therefore, count two of the bill of exceptions in this respect, not been well taken, is overruled.

Appellant further contended that he produced evidence which established his innocence, yet the trial jury found him guilty and the court confirmed the verdict. This issue has drawn our attention to the evidence of the appellant adduced at the trial. When the appellant took the stand in his own behalf he testified as follows:

"Last year December 11th, I was going to the farm and I bothered with boys right in town; they were sharpening their cutlasses and I asked one of them, Milton Brown, that he may sharpen my cutlass with the file in his hand; and he said that he was to sharpen the cutlass so I turned around to Mohammed Smith and he said OK. Then Milton handed me the file and

then I gave it to Mohammed Smith to do the sharpening of my cutlass and then he said OK lend me the cutlass; while bringing them down from my shoulder, my hand just got it and my finger touched the trigger and fired.

Not knowing that a shot was in the gun; before the gun fired I said to myself that I went in the bush last night and not knowing that a shot was in the gun until it fired. That is how it happened that Mohammed Smith died in my hand; and that was not my intention to kill him..... "

Johnson Musah was the next witness for appellant and he said: 'Isaac Toe belonged in my town. He is a hunter. Since he started hunting he has never done anything contrary. One time I went out of town in the bush and upon my return I was informed that defendant Isaac Toe killed Mohammed Smith. When I heard this, I said "Oh what kind of thing happened today," so the messenger took Isaac Toe to the commissioner, from the commissioner then they sent him to the Superintendent of Barrobo Statutory District, Maryland County. When I heard again they said they had taken Isaac Toe to Cape Palmas. Later I received a subpoena from this Court through the defense counsel to come and testify for Isaac Toe, the defendant.....This is all I know." After this witness, appellant rested evidence.

The gist of appellant's defense is that he did not deny shooting and killing Mohammed Smith on the date and place alleged in the indictment, but he contended that it was an accident and therefore, there was no malice aforethought. Appellant also introduced his character into the picture. The evidence of prosecution is to the effect that Isaac Toe, the accused, pointed his gun at Smith, the deceased, and the deceased said "please tell Isaac to stop bothering me". Jerome Wesseh also confirmed this statement when he said:

"After that, Isaac Toe, the defendant, walked back about three feet and said "if you do not file my cutlass I will shoot you, and he raised up the gun and while he was bringing it down it fired; and so those of us that were around there scattered."

In the face of this testimony, can we logically and fairly accept the lonely statement of the accused quoted herein above? We feel free to say "no". Civil Procedure Law, Rev. Code, 1: 25.5.
We will now examine the authority on malice. This Court said on the issue of malice aforethought, as follows:

"Malice in law does not necessarily mean hate, ill will or malevolence, but consists in any unlawful acts willfully done, without just excuse or legal occasion to the injury of another

person. It may properly be said not to be a thing or entity, but rather a metal state or condition prompting the doing of an overt act without legal excuse or justification, from which act another suffers injury. Where the act is done with the deliberate intention of doing bodily harm to another, it is called express malice; otherwise the malice is inferred or presumed from the act."

"Evil intent is legal malice, so also is gross and culpable negligence whereby another suffers injury. To constitute malice aforethought in murder there need not be an old quarrel or a long period of resentment, envy, or spite." *Taylor v. Republic,* 14 LLR 524, 531 (1961), citing by reference 1 WHARTON CRIMINAL LAW*,* §146-147*,* (11th ed. 1912).

The evidence of the prosecution, quoted above, and the legal citations given hereinabove, have resolved the issue of existence or non existence of malice aforethought as raised by the accused. Therefore, we are of the considered opinion that the killing of Mohammed Smith by appellant was deliberate and not accidental as claimed by appellant.

The law dictates that a defendant shall not be compelled to furnish or give evidence against himself. The State must prove the guilt of the accused beyond a rational doubt in criminal cases. Criminal Procedure Law, Rev. Code 2: 2.1. However, it is a basic principle of law that the uncorroborated evidence of a person charged with criminal offense is insufficient to acquit him. Therefore, when a defendant in a criminal case elects to take the stand as a witness for himself, he should produce evidence, positive or circumstantial, to substantiate his defense in point of facts.

It is admitted on both sides, that the shooting by the appellant which resulted in the death of the decedent occurred in a town and there were several persons around who witnessed the incident, but appellant only produced a character witness instead of any of the persons who witnessed the act to testify in his favor with the view of corroborating his testimony concerning the alleged accident and the circumstances which led to the death.

This Court has held in numerous cases, including *Dwe Wlo Flo v. Republic*, 29 LLR 3 (1981) and *Kamara v. Republic,* 3 LLR 204 (1930), that the uncorroborated testimony of a person accused of a crime is insufficient to establish his innocence, especially where the evidence against him is clear and convincing. It was also held that a confession of a crime by an accused is admissible in evidence and may be used against him in the prosecution of a murder when properly corroborated.

Therefore, we are of the considered opinion that the evidence of the prosecution as quoted hereinabove is sufficient to sustain the judgment rendered against the appellant in this case

and therefore should not be disturbed.

Appellant has also argued, with emphasis, that he was indicted under the Penal Law approved July 19, 1976, published April 3, 1978, which act was repealed and the 1956 Code restored by PRC Decree #42. Therefore, appellant contended that the court had no jurisdiction to try him under the Act approved July 19, 1976, under which he was indicted. Appellant also argued that the case should have therefore been nolle prosequi and that he should have been reindicted under the 1956 Code.

We hold that the lower court had jurisdiction over this case, and that appellant was correctly tried under the 1976 code under which he was indicted, which was the law extant at that time when he was indicted.

In view of the above, the judgment of conviction for murder is hereby confirmed and affirmed.

The Clerk of this Court is instructed to send a mandate to the lower court to resume jurisdiction over the case and to enforce its judgment. And it is hereby so ordered.
Judgment affirmed