

**JOSEPH T. SARTU**, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

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

Argued November 16-19, 23, 1953. Decided January 22, 1954.

1. It was error to permit a county attorney to testify as to the authenticity of an alleged confession made by accused executed in another county, since he was unable to testify of his own certain knowledge because he was not present.
2. Where testimony shows that homicide was premeditated, a conviction of murder will be sustained.

On appeal from conviction of murder, *judgment affirmed*.

*T. Gyibli Collins* and *Samuel C. M. Watkins* for appellant. *The Solicitor General* for appellee.

MR. JUSTICE DAVIS delivered the opinion of the Court.

On August 13, 1952, the grand jurors of Maryland County presented certain findings against appellant, Joseph Sartu, which resulted in an indictment against him for the crime of murder. Appellant pleaded not guilty. The following facts and circumstances constitute the history of the case. The prosecution's theory is as follows :

"[T] hat appellant was married to one Toe Peti of Forpoh, in the Webbo District, Eastern Province; and that in the month of June, 1951 the appellant and his wife went to Forpoh from Sasstown to visit the relatives of the said Toe Peti, now deceased. While at Forpoh in the home of the foster mother of decedent, a quarrel over a piece of meat given her by a friend in the town took place between her and the appellant, her husband. The mother-in-law, Putu Nyenor, tried in vain to pacify appellant. The morning following the quarrel appellant ordered the decedent to get ready to go with him to her father's people in another town so that he could turn her over to her family, as he did not want her any more. The decedent begged her foster mother, Putu Nyenor, to go along with them. While on their way the appellant, being moved by the instigation of the devil, feloniously, wilfully, and with malice aforethought, with premeditation and deliberation, without any legal justification or excuse, with a loaded single barrel shotgun, did shoot, kill and murder the said Toe

Peti, after saying to her : 'Today we shall settle the matter between us' ; and to Putu Nyenor : ` . . . I will shoot her with an O.O.B. cartridge so that no other man can have her.' When Putu Nyenor, the mother-in-law, who had followed them, commenced to run, after the appellant had killed decedent, he, the appellant, aimed and fired at her, the bullets hitting her in the back and head ; fortunately for her the wounds inflicted did not prove fatal.

"After the appellant had killed his wife and seriously wounded her foster mother, he took to his heels and was only heard of after he had shot Tarneuna Wreh, a messenger in the employ of the Clan Chief of Bolo, who was attempting to effect his arrest. Appellant was subsequently apprehended and taken to Greenville, Sinoe County, and put in the common jail of Sinoe County prior to being sent to Maryland County to stand trial. On his way to Greenville, Sinoe County, appellant is reported to have informed County Commissioner Dickerson that he killed his wife, meaning the decedent, because she had told him that she no longer cared to be his wife.

"In addition to this admission of his guilt, appellant, on June 18, 1951, without any coercion from any source whatsoever, prepared a two page written statement in which he admitted killing decedent, his wife, because of her alleged refusal to continue to live with him as his wife. Said instrument was admitted into evidence as Exhibit 'B' and remains unimpeached."

Appellant, on the other hand, states the following theory:

"During the year 1950, appellant, Joseph T. Sartu, and decedent, Toe Peti, alias Toe-Juah lived as husband and wife at Nana-Kru Chiefdom in Sinoe County. Said decedent was given to the appellant to be his wife by one. Teah Nyeau, with whom she was then residing at Sasstown in said County of Sinoe ; and, not very long thereafter, the couple took up residence at Forpoh, a hinterland village in the Eastern Province, Maryland County.

"After a period of about one year appellant and decedent visited Teah Nyeau and his wife, Putu Nyenor, at their new home in Forpoh; and it was during this visit that the misunderstanding which furnished the basis of the evidence adduced by both sides in this case seemingly took place.

"According to the sworn statement of Putu Nyenor as prime witness for the prosecution, the misunderstanding leading to the killing of decedent originated from a quarrel over a piece of meat which decedent was said to have been eating when

appellant inquired as to who gave it to her, and then suddenly grabbed it out of her hand and threw it away, and again picked it up and threw it further away, whereupon a quarrel ensued between them both. It is said that, on the morning after this incident occurred, appellant decided to return home. He bundled up decedent's belongings in a pillowcase and told her to go to her people because he didn't want her any more; he also told her that he was carrying her to her people to give her up. Decedent agreed, and told Putu Nyenor to go along with her and appellant to her people, and she also agreed and went along with them until they reached a high bush near an old farm site where the murder was alleged to have occurred.

"Upon reaching the old farm site appellant loaded his gun and said to decedent that he was going to put an end to the palava between them both, and that he was going to fire the whole load of the gun into her body; whereupon he pushed decedent down on the ground and shot her. Upon seeing this, the said witness ran into the bush, at which time appellant shot her in the head and back.

"According to the appellant's sworn statement, an altercation took place between himself and decedent's relatives, namely, Toe Nyafor, Tas-Sie and Doynah. Said altercation was based on their contention that decedent was not legally married to appellant, and therefore she was not going back to live with him any more. The family also demanded that appellant should deliver up all of decedent's property to them before he left Forpoh ; but he refused to do so because her personal effects were left at Nana-Kru. The relatives of decedent seemed not to have been satisfied with his explanation, and therefore insisted that he should not leave Forpoh until he gave them some guaranty that he would send decedent's property to them on reaching home. Said relatives pursued appellant on the road, and, upon reaching him, an affray ensued through a tussle over his gun which they were attempting to seize from him. Appellant recalled seeing Putu Nyenor as well as the decedent trying their utmost to quiet the affray, but he did not particularly observe any of the two persons just mentioned being shot during the incident. Appellant did remember clearly that he managed to get away from the attack made upon him by his assailant and then running into the bush with his gun."

Comparing the statement of facts submitted by appellant and appellee respectively, one can readily perceive an agreement on the following facts : that he was married to a Toe Peti; that they both went on a visit to Forpoh, where an argument or misunderstanding ensued between him and his wife; that, following this misunderstanding, appellant decided to leave Forpoh the next morning; that they did leave Forpoh the next morning as planned ; that he had a gun which he carried on his

person; and that, on the way, this gun was fired. Appellant differs with appellee as to whether he fired this gun, and as to whether he killed his wife. He contends that, along the wayside, a group of decedent's relatives made an attack upon him; that an affray ensued; and that, during this skirmish, the gun went off. He could not say whether the unpremeditated and accidental discharge of the gun killed his wife; but he did testify that, after the discharge of the gun, he jumped into the bush and made his escape.

The bill of exceptions submitted by appellant contains nine counts of which we shall pass upon only the fourth, which reads as follows :

"4. And also because defendant appellant submits that, during the trial of the case, the prosecution introduced witness A. L. Weeks, County Attorney for Maryland County, to testify as to a certain written admission by the defendant, and as to the method used in obtaining the said statement. Defendant's counsel objected to the qualification of the said witness for that purpose, pointing out specifically that the statement thus sought to be introduced carried the name, Joseph T. Sentu, whereas this trial is of Joseph T. Sartu, which makes the said statement irrelevant and immaterial herein; and, moreover, that it would be in violation of the constitutional rights of the defendant to introduce evidence obtained from him without a showing that the same was obtained voluntarily. To this objection the court entered a ruling denying the same, to which the defense excepted."

Appellant objected to the introduction of a confession alleged to have been made by him when he was in prison in another county, when no testimony was adduced as to the manner in which said document was executed by appellant, that is, whether voluntarily or under persuasion, threats, torture or duress. It is indeed surprising that the trial judge overruled this objection. In our opinion the objection was meritorious. Here was a document, written and alleged to have been signed by appellant in prison, confessing that he killed his wife, that he had intended to do it, that he was tired of waiting in jail, that the Government should hurry up and dispose of this case, and that he could kill his wife ten times again if he saw her. As stated above, this document is alleged to have been executed by appellant when he was in prison in Sinoe County, and to have been sent by the Superintendent of Sinoe County to the County Attorney of Maryland County, who took the witness stand, and, over the objections of the appellant, testified as to the authenticity of the document and its execution.

It is interesting to note the following ruling of the trial judge on this question :

"When it comes to establish how the statement made by the accused came into the possession of the prosecution, which statement is intended to be offered for admission into evidence, if proof thereof can be had by no other means than by the testimony of the County Attorney, [of Maryland County] it would seem to the mind of the court that . . . he should be permitted to testify as to that alone. . . ."

We consider the foregoing ruling erroneous. Whatever testimony County Attorney Weeks gave at the trial was not of his personal knowledge, for he only testified to what was written to him either by Superintendent Grigsby or County Attorney Minor of Sinoe County, which evidence was no proof of the authenticity of the statement alleged to have been voluntarily made by the accused while in prison and paraded before the jury by the prosecution. The prosecution offered the statement as evidence against the appellant on the theory that it contained a confession alleged to have been voluntarily made and reduced to writing by appellant. We ask why Commissioner Dickerson, at whose headquarters the document was alleged to have been executed, or some other person who witnessed its alleged voluntary execution, was not called as a witness.

It was error, therefore, for the court below to have admitted into evidence against a man whose life hangs in the balance of justice a document so irregularly obtained and perversely presented.

Therefore we discard, eliminate, and totally disregard this document. Were it not for other evidence, especially the testimony of the appellant himself on direct examination, our position would have been different. We now turn our attention to other evidence. Putu Nyenor, the star witness of the prosecution, testified as follows :

"On a morning I left decedent, Toe Peti, and defendant Joseph T. Sartu, at home and went to the farm. When I returned that evening, I did not meet the decedent at home. I then went to the sleeping quarters. There I met the decedent. I asked the decedent why the fire had gone out. She said in reply : 'My husband and I have been making palava since you left.' She further said to me: 'One of my friends gave me a piece of meat.' While me and my husband and defendant were eating, the defendant asked decedent what caused the woman to give her that piece of meat. With this, defendant took the piece of meat from the decedent and threw it away. Then I said : 'We being women, it is the cause of her giving me that piece of meat.' With this, defendant took the piece of mea and threw it further than first. Then I asked the de fendant : 'What was the trouble?' He then said t me : 'I have no time to discuss any matter.' Then said

to the defendant : 'If I ask you, could not you explain things to me? Who will ask you if I do not ask you?' The defendant, then said to the decedent: `Do not go around your mother.' Then I said to the defendant: 'I have never seen things of this kind before.' The defendant then said to the decedent: 'Go and bring my rice and meat which I have bought.' I then said to the defendant: 'Since you all arrived here, I have been cooking for you all. Why is it that you now say that your wife must bring your food.' The next morning very early the decedent was going in the toilet. The defendant also accompanied her. On their way, they saw one woman who hailed the defendant. The defendant then returned in town ; and then the defendant gathered the decedent's things, and put them in a pillow case, and told her, the decedent, to go to her people. He further said : 'I will carry you to your people.' Then I, the mother, said to the defendant : 'You took the decedent from me.' Then the defendant said : 'I do not want the decedent any more. I will not marry her.' Then the decedent said to me, the mother : 'Let us go to our family's quarters. Since he has said that he does not want me, I will return home.' While we were going we reached a farm where bush was. The defendant said to the decedent : "Today we shall settle the matter between us.' I then said : 'What is the trouble?' He loaded his gun and I asked him : 'What are you about to do?' Then the defendant said to me : 'I will shoot her with an O.O.B. cartridge so that no other man can have her.' Then I made an alarm and said to the defendant: 'If you do this, it is left with you and your God.' The defendant then shoved the decedent from him and shot her, and the decedent fell. I commenced to run. He, the defendant, also shot at me. The bullets hit me in my back and my head. What I saw is what I have stated.

"Q. Refresh your memory and say on what part or parts of decedent's body you observed the fatal wounds inflicted.

"A. He shot her in the back, and the bullets penetrated her stomach.

"Q. Were you to see the shotgun that was used by the defendant in killing decedent, could you recognize and identify it?

"A. Yes.

"Q. I hand you this shotgun. Look at it and say what you recognize and identify it to be.

"A. This is the gun."

The record continues :

"Prosecution respectfully ask the court for mark of identification to be placed on said gun and submit. The application is granted, and the mark, 'A,' placed on the gun for identification. Prosecution rests on the direct examination with the usual reservation."

On cross-examination Putu Nyenor testified as follows :

"Q. Were you at Forpoh particularly because your daughter, that is decedent, Toe Peti and defendant, were palavering, or because you resided there?"

"A. I reside there.

"Q. Please say whether or not there was any fighting at Forpoh in your presence between the defendant and decedent in which other male relatives of decedent joined.

"A. There was no fight between decedent, Toe Peti, and defendant.

"Q. To the best of your knowledge please state the period of time which elapsed after the defendant jerked out of the hand of decedent a piece of meat and threw it away, and before this alleged killing of decedent by the defendant.

"A. The same day.

"Q. After the defendant jerked the piece of meat out of the hand of decedent, did they commence quarrelling and continue until the alleged shooting of decedent by defendant took place?"

"A. The decedent and defendant lived by themselves and whether they had any palaver or not, I cannot say.

"Q. Besides decedent, Toe Peti, the defendant, and yourself being present at the time of this alleged happening, was there anyone else present who was related to decedent?"

"A. No.

"Q. At the time that decedent was shoved off by defendant, before this alleged killing,

to the best of your knowledge was he in anger or heat of passion, or was there any peculiar circumstance which took place between the defendant and decedent that could have caused sudden provocation, and, if so, explain the same for the benefit of court and jury.

"A. While we were going, I saw in the defendant an attitude of anger. Then the defendant commenced quarrelling with the decedent. In the meantime the defendant placed a cartridge in his gun. Then I said to the defendant: 'Son-in-law, what is the trouble? I am a woman and cannot control you. If the decedent does anything to you that you do not like, tell me. Look how far we are. No other man is present.' At that time the defendant shoved the decedent off from him and shot her."

Wreh Bolo, a witness for the prosecution, testified as follows :

"A. What I know is, I am messenger to the Clan Chief of Bolo. The Clan Chief received a letter from the Paramount Chief of Forpoh that a woman had been killed by a man, and the man is gone into the bush. One day a man went out of town and upon his return said to the Chief : 'I saw a man looking like that man that the Chief wrote us about, and I am of the opinion that this is the man that did the killing, as he looks like a criminal.' The Chief then sent me to overtake him. I went after him for a long distance. After he passed about two towns I caught him. Before I could get opposite him, the defendant, he asked me where was I going. I said to him: 'The old man whom you asked for in that town says I should come and call you.' He then pointed his gun at me, and I said to him, 'What are you pointing your gun at me for? The Chief says that you and I should come.' The defendant then commenced to run, and I pursued after him. Just a moment before I caught him, he, the defendant, shot at me. After the gun fired I fell. The sound of the gun was heard in the nearby town, and the people of that town came and carried me away. This is all I know.

"Q. Refresh your memory and say whether or not the gun balls did strike you and, if so, will you please exhibit to the jury the place which carried the scars on your body?"

"A. Yes. I now exhibit them to the jury.

"Q. Did you, at any time during the said incident, see the gun used by the defendant, and, if so, would you identify it to be the gun that was used?"

"A. Yes, I can identify it.



"Q. I hand you this single barrel shotgun. Look thereon and say whether you recognize and identify it to be the shotgun used by the defendant.

"A. Yes, this is the gun."

John Jearbo, a witness for the prosecution, testified as follows :

"A. I was not present when he was caught, but I am the Commissioner's messenger. The defendant was caught and carried to the Commissioner. The Commissioner asked him: 'What have you done?' He, the defendant, said : 'I have killed my own wife.' The Commissioner then asked the defendant : 'What did your wife do to you?' The defendant said : 'My wife said that she doesn't want me to marry her anymore.' The Commissioner said : 'Because your wife said that she doesn't want you, is that the reason why you killed her?' He, the defendant, replied : 'Yes.' The Commissioner asked the defendant again : 'Did you kill her because she doesn't want you?' He again replied : 'Yes.' The Commissioner asked the defendant again : 'Did you kill her because she doesn't want you?' He again replied : 'Yes, I meant to kill her.' The Commissioner ordered us to carry him to Sinoe to have him imprisoned. We accordingly did so. And that is all I know.

"Q. Refresh your memory and say whether force, threats, inducements, influence or persuasion were made by the Commissioner which caused the defendant to make such a statement?

"A. No."

The foregoing constitutes what we consider the relevant chain of evidence made and submitted by the prosecution. There was, of course, testimony of other witnesses, including Commissioner Richard Watkins and J. Benny Wilson, but in our opinion their evidence was irrelevant.

Appellant introduced himself, his wife, Rade, and one Teah Nyeau as witnesses. Appellant himself testified as follows :

"Before I can give any statement I thank the Almighty God who has preserved my life up to the present day. This Toe Peti, whom they have in the indictment, I do not know her by that name. The only girl I know as my wife, her name is Toe Juah, and before I could get this girl to be wife I got her through one man by the name of Teah Nyeau of Sasstown, at Commissioner F. W. Darbo's farm. I went to Sasstown. There

I stopped with this man, for he had a house in Sasstown, and I saw this girl. I asked Teah Nyeau if she was married. He said : 'No.' I then said to Teah Nyeau, in a conversation, that I would like to marry this girl and make her my wife. Then Teah Nyeau said to me : 'If you want her to be your wife, speak to her, and also tell my wife, Putu Nyenor. If she agrees, and my wife Putu Nyenor also agrees, then I have something to say.' Then I spoke to the girl and told her that I love her and want her to be my wife. She said in turn : 'Yes, I hear what you say, but if you really love me and want me to be your wife see my uncle, Teah Nyeau, and my uncle's wife, Putu Nyenor.' I then went and told Putu Nyenor. Putu Nyenor said to me : 'This girl, Toe Juah, is not my own daughter. She is my husband's niece, so if you want her, I will call her and ask her whether she loves you as you love her.' At this time she called the girl. When she called the girl, she told her what I expressed of her. Toe Juah said to Putu Nyenor : 'He has told me also.' Putu Nyenor then asked Toe Juah what she had to say. Then Toe Juah said : 'I also love him, but as you know I cannot say anything without my uncle being present.' I then left and went to her uncle and told him that I wanted to marry this girl, Toe Juah. He also agreed, so I married Toe Juah and carried her home. She remained with me one year and some months. We were informed that her uncle had moved from Sasstown to Forpoh. She then said to me : 'Since we have been informed that uncle has moved to Forpoh, I would like for you and myself to go to Forpoh.' I said : 'All right.' We then started. She and myself, together with one man who was living with us by name of Juah, left for Forpoh. After a long journey we reached Forpoh. We stopped with her uncle, Teah Nyeau. The next morning her father came to the house with other members of the family. Teah Nyeau then called me and said to me : 'Your wife's father has come together with her family.' I went and greeted them. After I greeted them I sat down. I heard the father say to Teah Nyeau, the uncle, that he had come for his daughter, Toe Juah. Then Teah Nyeau said to the father of Toe Juah and her family: 'This is your daughter's husband, and here is your daughter.' The father and the family said to Teah Nyeau : 'We only know our daughter and not the husband. How did he come to be the husband of our daughter?' Then the girl's, Toe Juah's, uncle said to her father : 'I gave her to him.' They said further: 'How can you give our daughter a husband without informing us?' The uncle then said to them : 'Since I reared this girl, although you are the father according to our country custom, you have never been to get her from me.' Then the father said to the uncle, Teah Nyeau : 'How will I not take this girl from you? I married your sister. She left me and came back to you, and you have not returned her nor my money to me. Then you are the very one who has now took my daughter and gave her a husband. I will take my daughter.' And the father took his daughter. When the father took his daughter from me the girl said to her father : 'I have not told you that I do not want my husband. I want my husband. We are here just to find from my uncle the purpose

of him moving from Sasstown, and to also pay him a visit.' Her father said to her : 'Let us go to the house.' Whilst going, the girl commenced to cry. She then said to me : 'You hear what my father has said.' I said : 'Yes.' She said : 'Tut don't mind that. I am still your wife.' And they went. The next day the father and the family together with the girl, my wife, came to 'Teah Nyeau's home. My wife then said to her family upon their arrival: 'I have not said that I do not want my husband, for we have made our farm, and all of my things are at his home. It is true that you all are my ones who born me and I cannot refuse what you all say, but how will I manage to get my things?' They then said to 'Teah Nyeau, her uncle : 'It is you who took our daughter and gave her to this man to be his wife, so you must please ask your son-in-law for our daughter's things.' The uncle, 'Teah Nyeau, said to them : 'Isn't the man himself present? You all must tell him to give you all your daughter's properties:'. 'Teah Nyeau then asked me, saying the family have come for the girl's properties. I then said to 'Teah Nyeau: 'As you are aware, we come to see you, and to find from you the cause of your moving from Sasstown, and we did not bring our properties.' Then 'Teah Nyeau, the uncle, explained the circumstances to the family. After his explanation they said : 'It is you who gave her to him. We want our daughter's property.' After they made these remarks they began to quarrel. When they began to quarrel the man whom I carried along with me by the name of Juah said to Nyeau : 'It is you who brought all of this quarreling. You know that this girl is not your daughter. Then you took and gave her to this man to be his wife. You will stand for this property.' 'Teah Nyeau said that he will not stand for it. One of the relatives by the name of 'Toe Nyafor said to 'Teah Nyeau: 'Since you have said that you will not stand for the property, your stranger will not go until we get our daughter's property.' Then 'Teah Nyeau, the uncle, said to the family: 'You all hold him until he brings the property; I cannot hold him.' Then the family said : 'All right. We know what we will do.' Then they left.

"The next day 'Teah Nyeau informed me that he was going to Sasstown the following day. I said to him : 'I will also be leaving for home on tomorrow.' The next day 'Teah Nyeau left. The man who went along with me by the name of Juah went to see his people, and he had not returned up to the time 'Teah Nyeau left. He returned that same day very late in the evening. I then said to Juah upon his arrival : 'We will be leaving on tomorrow.' Juah said : 'All right.' The next morning we left for home. On the way from the town the bush is very high all the way. After we left the town I put a cartridge in my gun for my protection on the way—sometime I might have come across a snake or leopard. Immediately after we left the town I heard some people calling me, saying: 'Ha, ha!' Then I looked back and I saw somebody telling me by signs to stand up. The men, 'Toe Nyafor, 'Tas-Sie, 'Doinah, and 'Toe Juah reached me.

Upon their arrival Toe Nyafor said to me : 'Where are you going?' I replied : 'I am going home.' He said to me : 'You cannot go.' I then asked him: 'Why?' Toe Nyafor said : 'We are going to Teah Nyeau and you for our daughter's property.' I said to them : 'I do not know you all, as you all said at the time when to Teah Nyeau.' Nyafor then asked me : 'Where is Nyeau?' I told him that he had gone to Sasstown on yesterday. They then said : 'You cannot go until Teah Nyeau comes and we get our daughter's property.' I then said : 'You all cannot hold me, for you all do not know me.' They still insisted that I should go back. I said to them: 'I must go.' I then told the man who went along with me to let us go as soon as we began to move off. Toe Nyafor, at that time, caught me. My gun was swinging on my shoulder; he, Toe Nyafor, caught hold of my gun. I also caught hold of the gun and asked him: 'What is the trouble?' At that time Doinah came and caught hold of me. Whilst Toe Nyafor had the gun they commenced to push me. Tas-Sie went and caught hold of my things from Juah and said that we should go back. I said that I will not go back. We began to fight over the gun. Toe Nyafor said : 'If you want to go home before Teah Nyeau comes from Sasstown you will leave your gun and your other things.' I said : 'I will not do it. If you all still insist that I will not go, I will see how you all say I will not go.' We then commenced to fight over the gun, at which time the noise reached town, the place not being very far from town. The people came. Putu Nyenor was among the people who came; the people who came, I do not know their names. I only know Putu Nyenor. Upon Putu Nyenor's arrival I went between Nyafor and Doinah and told them to wait. Even Toe Juah told them to wait and explain it to my uncle's wife. They refused to listen to her. They began to tear my clothes. Two of the people were holding the gun. I then began to run to the Paramount Chief's compound. They fired at me. The shots did not hit me. I then jumped in the bush. When I jumped in the bush, I then ran among some reed stalks. When I went under the stalks they could not locate me again. I then climbed a tree and there I sat in the bush. At that time a multitude of people had reached the scene. They, some of them, had cutlasses, and they commenced to cut the bush, and they did not locate me. At that time it was very late. They returned. I slept in that tree. The next morning I began to walk in the bush to find a way to get out, for they had fired at me there and also had cut the bush. I was afraid that if they saw me they would kill me. I walked in that bush until it got night. I did not come across a road, and I had to sleep in that bush again. The next morning, I came to another road. When I reached that road the sun was behind me. I said to myself : 'Where is this road coming from? Is it inland or am I lost?' I then followed the way the sun was shining. I walked until I reached to a certain place, one small stream. As soon as I crossed the stream I heard footfalls, and I looked back and saw Tyana Wreh together with other people, and he had a cutlass in his hand, and he lifted it up to strike. He was in front and the rest of the people were behind him.

Then he said to me: 'If you move I will kill you.' I then commenced to run, seeing the position of his cutlass. Whilst I was running I looked behind and fell. When I fell he reached me and before I could get up he struck me with his cutlass on my right arm. I again fell. When I fell he again struck me on the leg and the people reached me, at which time I was weakened, and the people took me and carried me to the Chief. When we reached to the Chief, the Chief said : 'You all carry him.' They then tied sticks to my legs and arms and back and carried me to the Commissioner. Whilst they were carrying me to the Commissioner we met the Commissioner on the way. The Commissioner ordered two soldiers to carry me to Sasstown Barracks. The soldiers accordingly carried me. Upon our arrival the people who carried me gave a letter to the Commissioner, but what was its contents I do not know. I left my gun with the Chief. The next morning the Commissioner sent me to Sinoe with four soldiers. This is all I know."

Appellant's wife, Rade, testified as follows :

"When they took the defendant from Sasstown and carried him to Sinoe County I went there to carry his food. The jailer said to me: 'Bring some water to be applied on the wounds on defendant's back.' Whilst I was attending the wounds of defendant the jailer asked the defendant what was the cause of the scars appearing on his back. The defendant replied to the jailer and said : 'When I came out the bush and reached in the road they beat me. That is the cause of these scars on my back.' I attended the scars and they got well. This is all I know."

Although appellant's counsel had qualified the aforesaid Teah Nyeau as one of his witnesses, for some unexplained reason he failed to call him to the stand. Instead, he proceeded to make the following request of the trial court after witness Rade was discharged:

"Defense, at this stage, predicated upon the principle that a witness or a party shall not be required to give evidence against himself, especially so when it is clear from the circumstances that such evidence would result in the prosecution of said person for a criminal offense, respectfully requests the court, this being a matter of law, to take judicial notice of the fact that the defendant has testified substantially that he, and Tyana Weah, and one Gofa, and others, entered a physical duel which resulted in the discharge of a shotgun. Since the said witnesses, under their privilege, are immune from corroborating this fact because it would subject them to criminal liability, we ask the court to take judicial notice of this fact."

The trial court correctly denied this request. Appellant then rested.

The testimony of witness Rade, appellant's wife, only tended to show that there were scars on the accused's back, and did not contradict the statement made by prosecution's witnesses respecting the killing of the decedent by appellant. In other words, it furnished no support for appellant's plea of not guilty.

The testimony of the accused was never corroborated; for no witness other than Rade testified. The accused neither denied that his wife was killed by him nor contended that the killing was done in self-defense. Instead he insisted that there was a skirmish and a tussle over his gun, and that, during this skirmish and tussle, the gun went off; but he did not know and could not say that his wife was killed by the discharge of his gun. He undoubtedly intended to convince us that, even if his wife had been killed by the discharge of his gun during the skirmish and tussle, the killing was not intentional ; moreover, there was neither malice nor premeditation. Thus he endeavored to place the death of his wife in a category where it would more reasonably resemble accidental homicide than any other killing under our law. An argument of this nature might, at first blush, seem plausible ; but, when the facts given in evidence by prosecution witnesses are considered, an entirely different picture is presented.

*Corpus Juris* states the following with reference to premeditation, malice and deliberation in connection with the crime of murder :

"The acts and conduct of accused and the other circumstances and facts attending the homicide may be shown on the question of malice, premeditation or deliberation. The fierceness and atrocity of the attack, the circumstances under which it was made, the nature and extent of the injury inflicted, the condition of the body and wearing apparel, the deadly nature of the weapon used and the manner of using it, are proper subjects of inquiry. Evidence is admissible of matters occurring before the homicide which legitimately tend to show malice, or premeditation. So also, within proper limits, evidence of previous declarations and threats by accused, and of the state of feeling between the parties, is also admissible. . . . Threats of accused to do violence to the person eventually slain, although not communicated to deceased, and all declarations and demonstrations of personal hostility, are admissible in evidence, as evincing malice and premeditation and tending to prove the criminal intent charged in the indictment. Such evidence is of special importance when accused claims that the homicide was excusable or justifiable." 30 C. J. 153-54 *Homicide*, §§ 366-67.

Now let us see from the evidence of the prosecution whether any testimony tending to prove circumstances and facts attending the homicide was introduced at the trial by any of the witnesses for the prosecution. Reference to the testimony of Putu Nyenor as witness for the prosecution shows that the evidence of this witness is pregnant with facts tending to establish matters occurring before the homicide which tend to prove malice or premeditation. For example, when the accused and the decedent were eating, and he found that the piece of meat they were eating was given her by a certain woman, he grabbed the piece of meat and threw it away and began a quarrel. The testimony of Putu Nyenor discloses facts tending to prove the fierceness and atrocity of the attack, the circumstances under which it was made, the nature and extent of the injury inflicted, the deadly nature of the weapon used, and the manner of using it.

Added to the foregoing was the appellant's attitude while on the stand as a witness in his own behalf. Although, before he took the stand, the prosecution had put in evidence the statement which we have seen fit to eliminate, which contained confessions and declarations alleged to have been made .by him while in prison at Sinoe County, appellant failed to deny or even make reference to said statement while testifying in his own behalf. We are even more surprised by his counsel's unexplained failure to cure this serious blunder. It is possible that a man charged with an atrocious crime like murder may, while on the witness stand in his own behalf, because of his passion and anxiety, lose sight of and fail to mention some important fact to contradict what the prosecution has put on record against him. However, counsel for appellant could not be expected to overlook such a situation, especially when this Court has made it clear that a party producing a witness has a right to solicit from the witness facts which he omitted to state in his general statement by asking him questions before the cross examination commences. *Cummings v. Republic*, 4 L.L.R. 16 (1934). Therefore, if, for any reason, appellant forgot to deny writing said document and making the confessions contained therein while he was on the stand as a witness in his own behalf, his counsel still had the right to draw out these facts from him by questions on direct examination. But this he failed to do.

In view, therefore, of the foregoing facts and circumstances, and the authorities quoted, *supra*, we conclude that, after discarding, disregarding, and eliminating from the evidence the statement of confession alleged to have been made by the accused, there is still, in our opinion, sufficient evidence in the record to establish the guilt of the accused. We hereby affirm the judgment of the lower court; and it is so ordered.

*Affirmed.*