

**MNAH TENDI**, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

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

Argued March 30, 31, 1954. Decided May 28, 1954.

Where a verdict of guilty of murder is contrary to the evidence, a judgment of conviction thereupon will be reversed.

On appeal from judgment of conviction for the crime of murder, *judgment reversed*.

*D. B. Cooper* for appellant. *The Solicitor General* for appellee.

MR. JUSTICE SHANNON delivered the opinion of the Court.<sup>1</sup>

Mnah Tendi, appellant herein, was indicted for murder by a grand jury in the Circuit Court of the Fourth Judicial Circuit, Maryland County. She was convicted and sentenced to death. The primary ground of her appeal to this Court is that the verdict upon which the judgment was based was contrary to the evidence. The facts constituting the charge against the appellant as set out in the indictment was substantially as follows:

"Mnah Tendi, a resident of Grand Cess, Maryland County, did . . . grab with her hands and pull the testicles of one Wreh Kaekae of said place, thereby fatally wounding said Wreh Kaekae, from which wound Wreh Kaekae did then and there die."

It is to be observed that the regularity of the trial in the court below has not been attacked. Instead, appellant complains that the evidence did not warrant the conviction. In *Dunn v. Republic*, 1 L.L.R. 401, 405 (1903), this Court declared :

"It is a well settled principle in criminal law, that 'every one is presumed to be innocent until the contrary is proven.' It is also an established rule, that the *onus probandi*, or burden of proof, rests upon him who maintains the affirmative. . . . In civil cases the jury may decide according to the preponderance of evidence, but in criminal cases—cases affecting life or liberty—the evidence must be so conclusive as to exclude every rational doubt of prisoner's guilt; for if, after hearing all the evidence, the mind of the jury is in such condition, that it cannot say it feels a moral certainty

of the truth of the charge, then there arises a doubt which must operate in favor of the accused." Accord : *Dyson v. Republic*, 1 L.L.R. 481 (1906).

Let us examine the record of the testimony taken at the trial and certified to us. Only three persons deposed on behalf of the prosecution, namely, Wollo Sebo, Gbleh, and Kaekae Sekleh, son of the decedent, who testified as follows:

"When my father, decedent, came from the farm one day, he asked the defendant: 'What did you leave for me to eat?' The defendant then said to the decedent: 'There is not anything here.' The decedent in turn said to the defendant: 'Go and get some cassavas and cook them, but when you cook them do not leave me any.' The defendant in turn said to decedent: 'I do not care.' Some cassavas were on the fire cooking at this time. The decedent then went to the fire and took the cassavas and wasted them and said 'I do not care too'. The defendant then got vexed and took the raw cassavas that were in the house and carried them outside. At that time the decedent pulled the cassavas from the defendant, and they got into a tussle. Then the decedent carried the cassavas back into the room. just as he went to bend down to put the cassavas on the ground, defendant being behind him, she pulled his testicles. Decedent then made an alarm. At this time, one old man by the name of Wollo Sebo arrived on the scene and met the decedent on the ground and the defendant on him. He then took the defendant from off decedent. The decedent's testicles commenced swelling and he took sick from the pulling of his testicles by the defendant. He asked to be brought for medical attention, and whilst on the way the decedent died, and we returned with the decedent's body to Grand Cess. This is all I know."

Wollo Sebo testified as follows:

"I was in the quarters of the decedent when the alarm was made. Upon my arrival on the scene, I met raw cassavas outside of the decedent's house. I then asked decedent why did he throw these cassavas outside. The decedent said that he told the defendant that he was going to town and that, whenever she cooked cassavas, she should not leave any for him. After the decedent said this the defendant was carrying some raw cassavas outside of the house, but the decedent did not agree for defendant to carry the cassavas outside. At this time the decedent and the defendant commenced tussling over the cassavas. After the decedent took the cassavas from the defendant, he went into the room with them and then they commenced tussling over the cassavas again. I heard when decedent said that defendant had caught his testicles. I then reached the scene and took the defendant from the decedent. I then left. The next day the decedent took sick and his testicles were swollen. Whilst they were

bringing him to Harper for medical treatment he died. This is all I know."

Gbleh testified as follows:

"What I know in this matter is, the decedent was leaving New Cess and going to Grand Cess. Decedent said to defendant: 'The food that you are preparing, when it gets done, do not leave me any.' The defendant in turn said : 'I do not care.' With this the decedent got angry and took the pot of cassavas from off the fire and threw it away. The defendant went to get the raw cassavas that were in the house, and the decedent went and grabbed the pot from the defendant. In tussling over the cassavas the defendant grabbed the testicles of the decedent and pulled them. This pulling caused the decedent to become ill, and he was being brought to Harper for medical treatment when he died. This is all I know."

Upon examination of these three witnesses, the following facts have been shown in the evidence and must be considered in arriving at a decision: (1) Although Kaekae Sekleh, son of the decedent, was twenty-one years old at the time of the trial, and admittedly was in the same house with the defendant and the decedent, he made no effort whatsoever to go to his father's rescue, and left him at the mercy of the defendant who never released him from the hold she had obtained by grabbing and pulling his testicles until one Wollo Sebo, who was not at the time in the same house, but in the family quarters, came on the scene and effected the decedent's release. (2) Although Kaekae Sekleh testified that, when witness Wollo Sebo came on the scene, the defendant was on top of the decedent, who was on the ground, and that the defendant was grabbing and pulling the decedent's testicles, the said Wollo Sebo did not so state but, instead, simply testified that he reached the scene and took decedent from the prisoner. (3) Although Wollo Sebo testified that he did not reach the scene until the decedent gave the alarm to the effect that the defendant had caught his testicles, Wollo Sebo nevertheless described all that transpired prior to his arrival on the scene. (4) Kaekae Sekleh, who never entered the room in which the defendant allegedly caught and pulled the decedent's testicles, described all that allegedly happened in said room even to the extent of testifying that Wollo Sebo "took the defendant from off the decedent." (5) Witness Gbleh's testimony was contradictory to that of Kaekae Sekleh, who testified that, whilst the decedent was bending to put the cassavas down, the defendant grabbed his testicles. On the other hand, Gbleh testified that, when the defendant went into the house to get the cassavas, the decedent followed and grabbed the pot away from the defendant; and, in the ensuing tussle, the defendant grabbed and pulled the decedent's testicles.

This conflict of testimony indicates that the witnesses were not testifying from their respective personal knowledge. Moreover, the record does not disclose the nature of the means of transportation employed in the decedent's last journey, when he died on the way to Cape Palmas, that is whether it was by canoe, rowboat or launch, or whether decedent was walking or being carried in a hammock. Nor has it been expertly shown that the *cazisa mortis* is traceable to the grabbing and pulling of the decedent's testicles. Proof that the decedent died as a result of the said injury would be necessary to sustain a conviction in this case, in view of evidence that decedent recovered from the injury to his testicles, but took sick from other causes.

The defendant made the following deposition:

"The decedent, Wurehdi Kaekae, was my foster father ; my sister left us and went to Monrovia. She left me in the home cooking for the decedent. One day the decedent went to the farm. Upon my return, as I also went to the farm, I cooked some cassavas for his son, for the decedent told me that if I cook I should not leave him any food, for he would not come back until about six of the clock, and to my surprise, instead of the decedent returning at six as he had told me, he returned at noon. Upon his arrival he asked me whether I had left him any of the food that I cooked. I answered : 'No, I did not leave you any of the food that I cooked, for you told me that you were not coming until six, and not at noon.' He then asked me why I did not leave him any cassava. I then went and got some cassavas for dinner. Whilst the cassavas were on the fire I said to the decedent : 'Have a little patience, the cassavas will be soon done and you will eat some of them, and then you can go to Grand Cess.' The decedent then became angry and took the cassavas off the fire and threw them on the ground. Knowing the decedent to be a man of high temper I went and gathered raw cassavas from in the house, and put them in a pan, and carried them outside. The decedent grabbed the cassavas out of my hands, and threw me down, and took the cassavas and carried them into the room. I then went into the room for my cloth that was hanging up, and when I entered the room the decedent came and caught me by the neck, he being a man stronger than I am. I could not barely catch my breath. When I came to myself I grabbed the decedent's testicles. One Wollo Sebo came on the scene and he parted us. After Sebo parted us, the decedent then took a stick and struck me on my arm, the scar of which I now exhibit. The decedent began to chase me, and I ran into one of the nearby houses. The decedent's family took me and gave me to the Chief to be kept in his custody for three weeks, and then the decedent, not seeing me, began to ask for me. He sent one of his family men to call me that I should come home, for he was better. I returned home, and, after about a month and a half, the decedent began to complain that his head and body were

hurting him. Before that he was going about, for he was well. And eventually the decedent fell sick in bed and died. The decedent's people then said that I was the cause of his death, and they brought me to the authorities. This is all that I know."

It is particularly noteworthy that, although the above-quoted testimony of the defendant tended to undermine the case for the prosecution, no effort at all was made to bring in any rebutting evidence thereto. Consequently that part of the defendant's testimony which showed that the decedent got better about three weeks after the altercation over the cassavas took place, and sent for the prisoner who had been detained at the Chief's quarters in Grand Cess, and lived with her for about one month and a half before the onset of his terminal illness, remains uncontradicted. We also note, in this connection, that, although the defendant testified that the Chief and his messenger sent her home to the decedent, neither of these persons was produced by the prosecution to testify in rebuttal. To say that it was the prisoner who should have produced them in corroboration might be a plausible argument; yet, the defendant's uncontradicted testimony strongly tends to disprove the evidence introduced by the prosecution, and to create at least a reasonable doubt as to her guilt.

It is also to be noted that the defendant testified that she grabbed the testicles of the decedent only after he had caught her by the neck in such a manner that she could hardly catch her breath; and that she grabbed and pulled his testicles in an effort to release herself from the deathly hold the decedent had on her ; and that, even after Wollo Sebo parted them, the decedent took a stick and struck her on the arm, thus creating the scar which she exhibited at the trial. She further testified that she had to run from the decedent into a nearby house; and this testimony was corroborated by the sick woman in whose house she took refuge, who testified that, when the defendant ran into her home, she asked the defendant the reason, and the prisoner answered that her stepfather and herself were making a fuss, and he chased her. This woman also testified that she saw blood on the defendant's arm and running from the defendant's eyes.

The very phraseology of the indictment tends to corroborate the defendant's testimony to the effect that the decedent survived the altercation by more than two months, a major portion of which time elapsed after recovery from any injuries inflicted by the defendant. The indictment states that the offense was committed between September 15 and December 1, 1952, a period of two and a half months. No witness, either for the prosecution or for the defense, was able to give any more exact date for the commission of the crime.

The evidence thus fails to show that the cause of the decedent's death was the grabbing and pulling of his testicles by the defendant. Moreover the defendant's testimony to the effect that, after she grabbed the decedent's testicles in self-defense, the decedent chased her and struck her with a stick causing a scar which she exhibited during the trial, bespeaks an attack which would have been impracticable had the grabbing and pulling been of such a degree as to incapacitate him. The failure of the complaining witnesses to report the matter until after the decedent died must also be taken into consideration.

It is settled law that, unless the cause of death is traceable to the conduct of the defendant, and proved beyond a rational doubt, the defendant must be acquitted.

"A person is not criminally responsible for a homicide unless his act can be said to be the cause of death. Although one may have feloniously assaulted, beaten, or wounded another, he is not to be deemed guilty of homicide where the death of such other person results proximately from a wound inflicted by a third person or from some other intervening cause." 26 AM. JUR. 189 *Homicide* § 45.

"To warrant a conviction for homicide, the death must be the natural and probable consequence of the unlawful act and not the result of an independent intervening cause in which the accused does not participate, and which he cannot foresee. If it appears that the act of the accused was not the proximate cause of the death for which he is being prosecuted, but that another cause intervened, with which he was in no way connected, and but for which death would not have occurred, such supervening cause is a good defense to the charge of homicide." 26 Am. JUR. 192 *Homicide* § *so*. See, also: *Leiner v. State*, 156 Tenn. 68, 299 S.W. 1049, 55 A.L.R. 915 (1927) ; 40 C. J.S. 851 *Homicide* § 11.

The judgment of the lower court is therefore reversed, and appellant, defendant below, is ordered discharged forthwith.

*Reversed.*

MR. CHIEF JUSTICE RUSSELL read and filed the following dissenting opinion.

The reasons why I am unwilling to join my colleagues in signing the judgment in this case, are as follows:

First, nowhere in the records certified to this Court does it appear that, prior to the

commission of the offense complained of in the indictment, that the decedent was sick in any way or that prior to the alleged pulling of his testicles, he was suffering from any ailment.

Second, it is crystal clear from the aforesaid records that the testimony of the prosecution witnesses proved beyond a reasonable doubt that the defendant Mnah Tendi, inflicted the injury upon the decedent by means of grabbing and pulling his testicles. The evidence further proves that the defendant and the decedent lived together in the same house; that the decedent was married to an aunt of the defendant who had left the defendant in the house as housekeeper; that on a day between September 15, 1953 and December 1, 1953, the decedent returning from his farm asked his niece-in-law, the defendant, what she had for him to eat. The defendant replied that there was nothing in the house. The decedent then suggested that the defendant should get some cassavas and cook them, but that she should not leave him any; whereupon the defendant retorted : "I do not care." At this stage the decedent found out that some cassavas were already on the fire cooking. He went and took the pot down and wasted the contents, saying: "I do not care too."

This act of the decedent enraged the defendant to the extent that she took the remaining raw cassavas then in the house out of doors. The decedent grabbed them from her. Whilst he was going into the room with the cassavas a tussle ensued. The decedent finally succeeded in taking the cassavas from the defendant and carried them back into the room ; but just as he bent down to put the cassavas on the floor, the defendant being behind him, she then and there being moved and instigated by the devil, did unlawfully, feloniously, deliberately and without legal justification or excuse, pull with her hands the testicles of the decedent with such force that she pulled him to the ground and thereafter sat on top of him. She was only taken off her victim by witness Wollo Sebo who then arrived on the scene.

It is on record that, as a result of the wicked and murderous attack by the defendant, the decedent's testicles at once commenced swelling, and that he took sick immediately thereafter, from which illness he died whilst on his way to Harper for medical aid. The death of the decedent can be clearly traced to the attack made upon him by the defendant. Said attack was undeniably the cause of his sickness, which confined him for some days; and, in attempt to proceed to Harper to procure medical attention, he died on the road. Therefore I am of the opinion that the death of the decedent must be ascribed to the felonious act of the defendant.

In *Ruling Case Law* we have the following : "Obviously, a person is not to be held

criminally responsible for homicide unless his act can be said to be the cause of death ; and this fact must, of course, be proven by the prosecution. But when it is made to appear that the accused wounded or injured the deceased, the burden of proof shifts, it seems, and the defense must prove, if such is its contention, that death was the result of other injuries than those inflicted by the accused. No responsibility for a homicide is incurred under the rule of the common law unless death ensues within a year and a day from the time of the injury. If death does not take place within this period, the law draws the conclusion that the injury is not the cause of death; and neither the Court nor the jury may draw a contrary conclusion." 13 R.C.L. 747-48 *Homicide* § 52.

Although it was contended that defendant did not receive medical attention, when it was proven that he died on his way to Harper for medical treatment, I quote hereunder the following:

"While the courts may have vacillated from time to time it may be taken to be the settled rule of the common law that one who inflicts an injury on another will be held responsible for death, although it may appear that the deceased might have recovered if he had taken proper care of himself, or submitted to a surgical operation, or that unskilled or improper treatment aggravated the wound and contributed to the death, or that death was immediately caused by a surgical operation rendered necessary by the condition of the wound." 1 R.C.L. 751 *Homicide* § 57.

The principle upon which this rule is founded is one of universal application and lies at the foundation of all criminal jurisprudence. It is that every person is to be held to contemplate and to be responsible for the natural consequence of his own acts.

If a person inflicts a wound in such a manner as to put life in jeopardy, and death follows as a consequence of this wicked and felonious act, it does not alter its nature or diminish its criminality to prove that other causes cooperated in producing the fatal result. Indeed it may be said that unskilled and improper treatment were of themselves consequences of the criminal act for which the defendant is to be held responsible. This rule seems wise and practical. A different doctrine would tend to condone crime and to take away from human life a salutary and essential safeguard. Amid the conflicting theories of medical men and the uncertainties attendant upon bodily ailments and injuries, it would be easy in many cases to raise doubts as to the immediate cause of death, and thereby to open a wide door through which persons guilty of murder might escape conviction.



As summarized in the syllabus of *Darnenob v. Republic*, 4 L.L.R. 308 (1935) : "1. Any person who shall, without legal justification or excuse, unlawfully, and with malice aforethought kill any human being thereby commits murder. 2. Malice aforethought may be either expressed or implied. 3. When a human being has been deliberately killed by another the law will presume malice even though no particular enmity has been proven." In the light of the foregoing principles of law as applied to the facts at bar I have felt compelled to dissent from my colleagues in the present case.

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<sup>i</sup> ' Mr. Justice Harris, who had acted as trial Judge in this case before his elevation to the Supreme Court, recused himself.