ARTHUR WLARYE, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT, SINOE COUNTY.

Argued November 7, 1960. Decided December 16, 1960.

1. The essential elements of proof of guilt of homicide, each of which must be established beyond a reasonable doubt, are the death of the person alleged to have been killed, and the fact of the killing by the defendant.
2. Malice is an essential element of the crime of murder, and may be defined as the intentional doing of a wrongful act towards another without legal justification or excuse.
3. In a prosecution for murder, the element of malice may be established by proof that the act was committed by the defendant with a depraved mind, fatally bent on mischief, and void of social duty.

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

Joseph R. Crayton for appellant. *Assistant Attorney General J. Dossen Richards* for appellee.

MR. JUSTICE HARRIS delivered the opinion of the Court.

This case is before this Court upon an appeal from the Circuit Court of the Third Judicial Circuit, Sinoe County. From an inspection of the records in the case we find that the appellant was indicted during the November, 1959, term of the said court for murder of one John Dudue. During the February, 1960, term of said court, the case came on for trial. The defendant was arraigned and pleaded Not Guilty. A jury was empanelled to try the issue thus joined, and after hearing the evidence as well as arguments *pro et con,* the court proceeded to instruct them and ordered them to repair to their room of deliberation and return a verdict in keeping with the evidence adduced during the trial. The jury, after de-

liberating, returned a verdict of Guilty against the accused, to which verdict the defendant excepted and filed a motion for new trial, which was denied, and the court proceeded to render its judgment based upon the verdict of the petty jury to the effect that the defendant be hanged by the neck between the hours of 6 o'clock in the morning and six o'clock in the evening on the first legal Friday in May, 1960, until he be dead—and may God have mercy upon his soul and give it a resting place.

"1. Because he says that the verdict of the jury is manifestly against the weight of the evidence adduced at the trial, in that said evidence is wanting in a material or essential element in the crime of murder, which material or essential element or ingredient is malice; which did not appear in the above cause.

"2. And also because appellant further says that, even if malice was intended to have been shown from the evidence adduced at the trial, which the State purports to assume, and which did not appear, it was only in the bush that a sudden quarrel arose between decedent and appellant, such as is termed in law, provocation or heat of passion, which is legally sufficient to reduce the crime of murder to manslaughter."

We shall now turn ourselves to the evidence adduced on the trial of this case in order to ascertain under what circumstances the killing was done. The first witness for the prosecution, and the only one on the scene when the killing took place, was one William Kanswen, who testified as follows:

"While we were in the kitchen the defendant went into bush, but we did not know of it. After my mother returned from the spring we told her (that is, decedent and I), that we were going to cut palm nuts that we saw, and she said: 'All right.' When the decedent and I went in the bush, we cut a pole for the tree, and cut

one bunch of the palm nuts. When I took the pole to the other tree for the other bunch of palm nuts, I climbed the tree, and also decedent. When I saw that the bunch of palm nuts was rotten, I called decedent's attention to it and he came down and I followed. When we saw defendant in the dock appear. Defendant asked us what had we come for. I told him that we had already cut a bunch of palm nuts and wanted to cut another, but the one we saw was rotten. When we said this, defendant took a gun from his shoulder and laid it beside a stick. The defendant then looked up in the tree and saw the bunch of palm nuts and said that it was not rotten. Decedent said that it was rotten. Defendant asked: 'If he goes up the tree and discovers that the palm nuts are not rotten, what must he do to both of us?' Decedent said to him: 'Then you can knock our heads.' Decedent also said: 'If you climb up the tree and you see that the palm nuts are rotten, what must we do to you?' Defendant said that we must knock him also. Decedent said: 'O.K.,' and then the defendant climbed and saw that the palm nuts were rotten and came down. Decedent asked him how was the bunch of palm nuts, and he said it was rotten. Decedent then asked defendant if he sent us to cut palm nuts. Then decedent told defendant to come and receive his knock. Defendant said to decedent that the day was a bad day; that if he knocked him again he would shoot him. Then I said to defendant: 'My father, when he was going, told us not to trouble his gun; and that is the very gun you have brought in the bush and say you will kill decedent with.' I said, further, that if he wanted to play any danger he should first give me my father's gun, and when he goes to Juarzon he could do just what he felt like doing. When I was talking this, defendant had taken up the gun and then put it down again. Decedent said to me: 'What kind of danger the defendant will play; you

take the pole and let us be going; I will knock him again.' Then I took my cutlass and started to take the pole away from the tree, and heard decedent saying: 'What will you do with that gun?' Within a second I heard the report of the gun, and then I looked around, and decedent fell on me, and both of us fell to the ground, and as I was fighting to get up from the ground I saw that decedent's guts were coming out and saw blood streaming from his body, and I tried to put his guts back into his stomach. When I got up and looked around I saw defendant standing beside us with the gun. I asked him (defendant) why he did that, and he said: 'I did not do anything bad.' I said to him: 'If you have not done anything bad, then let us take up decedent and carry him home.' When I said this, defendant started to run. I tried to take up decedent, but he wanted to bite me. On my way the defendant saw me as I was going home to report the matter to my mother. At this time he had both the gun and cutlass on his shoulder and commenced running behind me, and after I got out of sight, I hid myself in the bush and was calling out for my mother. When she came she did not see me. This is all I know."

The next witness who took the stand for the prosecution was one Nyemah Kanswen who testified as follows:

"After my husband had gone, the boys said they wanted to go for palm nuts, and I told them that I was going for water, and on my return they could go. Then I left them in town and went to the spring. When I returned from the spring, and as I was taking my water from the fire to take my bath, the defendant, decedent, and William Kanswen told me that they were going, and I said: 'O.K.' Meanwhile when I went to the spring, the defendant had taken the gun from the house without my knowledge. After I got through taking my bath, and was sitting down on the

bench, I heard the report of a gun, and in the meantime I heard some one yelling out: 'Mother, come to me, come to me.' As I was going in the direction in which I heard the noise, I still heard the crying and asked what had happened. I did not see my own son that was calling for me, but saw the defendant in the dock, and asked him what was wrong, and he said that he shot his little brother. Then I asked where he got the gun. He said he got it from the house. I asked which of the brothers did he shoot, and he said: 'Dudue, alias D.C.' I said: 'Oh, my!' Then I asked him what part of his body did he shoot. He said right below the abdomen and thorax, and I said to him he had killed my brother's son. I then ran to the scene, and when I arrived there the decedent was dead. When I saw he was dead I came to the town to call some people. The chief himself and some people of the town went to the scene. This is what I know."

One Benjamin Deedo was the third witness who took the stand for the prosecution, and he testified as follows:

"One day a woman by the name of Nyemah Kanswen came to call me saying one boy had killed his friend. Myself, Torplu Tuelee, Kwa Kwa, and L.F.F. went into the bush and met decedent's body lying under a palm tree. I asked the defendant in the dock what had happened. Defendant answered that he had killed his friend. Then I asked if they had any altercation, and he replied: 'No.' I asked again why he killed decedent. He said that he went to hunt. Then I asked him who gave him the gun that he carried to hunt with. He said that no one gave it to him but he took it up himself. Then I asked him if he, decedent and William Kanswen came to the bush together, and he said: 'No.' He said, further, that he came to hunt, and that William Kanswen and decedent came to look for palm nuts. He went on to say that he met them under the palm tree playing. Then he asked them if

they had not seen the palm nuts ripe in that tree, and they told him that the palm nuts were rotten, and he refuted it. Defendant said that he told them that, if he went up the tree and found out that the palm nuts were not rotten, he would beat them. William Kanswen and decedent said that, if he went up the tree and found that the palm nuts were rotten they would beat him. All of them agreed to this. The defendant then climbed up the tree, and found that the palm nuts were rotten, and came down. When he came down, decedent asked him how did he find the palm nuts, and he said that they were rotten. Decedent then gave him a slap. The defendant said he told him not to repeat the slap; for if he did, something else would happen. Defendant said that, as soon as he said that, decedent prepared to give him another slap. Defendant said to decedent that if he attempted to give him another slap it would be trouble; and then he said he took hold of the gun, and when decedent went to take it from him, he shot him."

Witness Torplu Tuelee also took the stand on behalf of the prosecution and corroborated witness Benjamin Deedo's statement as to defendant's confession that he did kill the decedent, and of the circumstances under which he did it, which also corroborates the testimony of Nyemah Kanswen and of William Kanswen. After the prosecution had rested, the defense produced no witnesses but placed upon record the following:

"At this stage the defense for the defendant does not seize the opportunity of bringing the defendant to the stand because, as far as he has consulted with the defendant, he will not be able to bring in evidence to corroborate his statement. So we submit and permit the case to travel before the jury."

The defendant having failed to produce any evidence whatsoever in his favor tending to disprove the charge of murder alleged against him, or to mitigate the charge, the

evidence of the prosecution therefore remains unrebutted.

Counsel for the appellant strongly contended before this bar during his argument that malice, which is an essential element to convict for the crime of murder, was wanting; and therefore the offense did not amount to murder and asked the court not to convict for murder in the first degree. This is why we have taken the patience to quote the testimony of the witnesses for the prosecution. In homicide cases the *corpus delicti,* that is the body or substance of the offense or crime, has two component elements: the death of the person alleged to have been killed, and the criminal agency of the defendant as the cause thereof. No person can be convicted of murder unless the death of the person alleged to have been killed, and the fact of the killing by the defendant, as alleged, are each established beyond a reasonable doubt. We are of the considered opinion that, in the instant case, both of these essential elements of the *corpus delicti* have been proved beyond a reasonable doubt. The additional element of malice, which is essential for proof of murder, may be defined as the intentional doing of a wrongful act towards another without legal justification or excuse, or in other words the wilful violation of a known right. See *Kelleng* v. *Republic,* 4 L.L.R. 33 (1934). No sane mind can gather from the evidence that the act committed by the defendant was a rightful one, or that he was justified or had legal excuse under the circumstances.

> "In the sense of the criminal law, motive may be defined as that which leads or tempts the mind to indulge in a criminal act. It is an inferential fact, and may be inferred not merely from the attending circumstances, but, in connection with these, from all previous occurrences having reference to and connected with the commission of the offense. 'Malice' in its legal sense does not necessarily signify ill-will towards a particular individual, but denotes that condition of mind which is manifested by the intentional

doing of a wrongful act without just cause or excuse. Therefore the law implies malice where one deliberately injures another in an unlawful manner. In common parlance, the word 'wilful' is used in the sense of intentional, as distinguished from accidental or involuntary; but when used in a penal statute it means with evil intent, or legal malice, or without reasonable ground for believing the act to be lawful." 8 R.C.L. 63–64 *Criminal Law* § 13.

On the whole we are of the considered opinion that the defendant is of a depraved mind, fatally bent on mischief, and void of social duty, and hence guilty of wilful murder. The judgment of the lower court is therefore affirmed, and the clerk of this Court is ordered to send down a mandate to the court below informing it of this judgment.

Affirmed.