

JOHN B. DELANEY, Appellant, v. REPUBLIC OF
LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Argued December 15, 1970. Decided January 22, 1971.

1. When the defendant on trial for murder, presents no evidence in his behalf after the prosecution produces witnesses to the incident resulting in the death of the person assaulted, identifying the defendant as the other person involved, and the unchallenged finding of the pathologist that death was caused by the blows struck by the defendant, the jury's verdict cannot be set aside as contrary to the weight of law and evidence.

The appellant was indicted for murder, tried, convicted, and sentenced to death. It was established at the trial that he had been exchanging punches with his wife, who died shortly after the fight. The pathologist who testified at the trial said that a bruise on her forehead, inflicted by her husband during the fight, could have been the competent producing cause of the cerebral hemorrhage from which she died. The defendant rested his defense without presenting any testimony or evidence. He appealed from the judgment of death. *Affirmed.*

J. Dossen Richards for appellant. *Solicitor General Henries* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

On April 3, 1969, at a notorious area within the Commonwealth District of Monrovia, known as West Point, appellant, John B. Delaney, is alleged to have assaulted his wife, Alice Koffa, without any justifiable or legal cause, thereby unlawfully, maliciously, and with premeditation beating, battering and bruising her with his

hands, which resulted in wounds inflicted on her forehead and other vital parts of her body, resulting in her death.

Appellant was indicted for the crime of murder by the grand jury of Montserrado County, at the May Term, 1969, of the First Judicial Circuit Court, Criminal Assizes, Montserrado County, sitting in its Law Division. The case came up for trial at the August Term, 1969, of the aforesaid court, Hon. D. W. B. Morris presiding. Upon arraignment, appellant pleaded not guilty. Witnesses for the prosecution testified and a medical certificate, together with other written evidence, was introduced by the prosecution. Appellant, contending that a *prima facie* case against him had not been established, waived the production of evidence.

The jury was duly charged and after deliberation returned a verdict of guilty against the defendant, to which he excepted. He filed a motion for a new trial which was opposed and denied by the trial judge. Accordingly, final judgment confirming the verdict of the trial jury was rendered against the defendant on September 10, 1969. It is this final judgment and other interlocutory rulings of the trial court to which defendant noted exceptions and from which he has appealed to this Court on a three-count bill of exceptions which, substantially, complain of the court's denial of a new trial and the judgment of the court.

We shall first consider the grounds of the motion for a new trial which we deem essential to incorporate in this opinion.

(1) Because defendant submits that the verdict of the jury is manifestly and palpably against the evidence in this case adduced by the prosecution, because there was not a shred of evidence to convict the defendant with the commission of the crime or charge, that is to say, there was no evidence establishing the truthfulness of the allegation in the indictment that the defendant inflicted mortal wounds on the head and other vital parts of the

body of the decedent; on the contrary, the testimony of the prosecution's star witness, the pathologist, was that there were no mortal wounds on the body of the decedent when he held a post-mortem examination.

(2) And also because defendant contends that there was a material and fatal variance between the indictment and the evidence as to the most important element in a charge of murder, that is, the cause of death. The indictment alleges that the death of the decedent was caused by the mortal wounds inflicted by the defendant, while the evidence on the score is that the death was caused by cerebral hemorrhage.

(3) Defendant submits further and very strongly contends that the testimony of the pathologist respecting the cause of the cerebral hemorrhage was most exceedingly speculative and uncertain, and, in view of the circumstances and said uncertainty of his testimony, the jury was not bound to have accepted it as conclusive; they should have used their own good judgment and common sense.

(4) With respect to the bruise which the pathologist claimed that he saw on the front of the head of the decedent, there exists a great doubt as to how and by whom such a bruise, if any, was inflicted. This, the pathologist said, he has no knowledge of.

(5) Defendant says that the case was full of rational doubts and uncertainties that should have operated in defendant's favor, but which the jury failed to apply.

This motion for a new trial by appellant was opposed by the prosecution, as aforesaid.

Checking the evidence, it is seen that the prosecution witnesses did prove the facts laid in the indictment beyond a reasonable doubt. The arresting officers, Stephen Greenfield and James Tockpa, while on the witness stand, testified to conversation with the appellant in which he made known the fact that he and the decedent had had a quarrel and he had slapped her several times. They also testified to a knot or bruise on her forehead. Rudy

Togba said, *inter alia*, that he saw appellant fighting with his wife like two men in a fist-fight and that appellant was striking her in the face. It was this witness who intervened and persuaded the appellant to stop and go home. The pathologist who examined the body of Alice Koffa, the deceased, submitted a medical certificate which was admitted into evidence. While on the witness stand the pathologist was asked on cross-examination: "You have testified to observing bruises on the front of decedent's head, could these bruises that you observed have caused the death of decedent, in other words were they mortal wounds?" In answer to this question, he said: "Inasmuch as the cerebral hemorrhage could result from the bruise, I regard the bruise as a mortal wound." Then another question was further propounded by the cross-examiner: "But had cerebral hemorrhage not resulted, would you still have regarded it as a mortal wound?" He answered: "If cerebral hemorrhage had not resulted we probably would not be in court today." Following the same trend, the cross-examiner put to the witness another question: "Then what do you mean when you said, if cerebral hemorrhage had not resulted we probably would not be in court today." In answering this question the pathologist tried to clarify when he said: "What I meant was that the cause of death in this case was due to cerebral hemorrhage."

From the testimony of the witnesses it is crystal clear that the trial jury did not err in arriving at the verdict of "guilty" in this case. The defendant waived his right to present evidence in his behalf and did not make any attempt to rebut the evidence introduced by the prosecution. For example, the bruise discovered on the forehead of decedent is presumed to be the bruise or knot inflicted during the fight between defendant and his wife. There is no evidence to prove that the decedent had this bruise on her forehead prior to the fight. Consequently, it is conclusive that the bruise on the forehead of the decedent

which resulted in cerebral hemorrhage was inflicted by the appellant.

The grounds upon which the motion for a new trial are based are unmeritorious. Therefore, the ruling of the trial judge denying the motion for a new trial is affirmed. The final judgment rendered in consonance therewith, sentencing appellant to death by hanging, is hereby sustained, since the statute provides for the death penalty. Penal Law, 1956 Code, 6: 232.

Therefore in view of the foregoing, the judgment of the lower court is hereby affirmed.

Affirmed.