

MULBAH SAAMOON, Appellant, v. REPUBLIC  
OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT, TENTH JUDICIAL CIRCUIT,  
LOFA COUNTY.

Argued November 8, 1973. Decided November 23, 1973.

1. When the circumstances under which a crime has been committed indicate the need, the failure of a court to allow an application for a psychiatrist to make an evaluation of the defendant's mental condition and to testify thereon, constitutes reversible error and cause for retrial.
2. When the defendant has sustained the burden of proving insanity at the time of commission of the crime charged, it is a complete defense to a prosecution for such crime.

Appellant and his wife had lived together peaceably with their children in the Town of Telemu in Lofa County. There was no history of an altercation or dispute before the events of a day in 1969, when appellant was found standing over the body of his wife holding a cutlass. He was indicted for murder and subsequently tried. He never denied the killing, but spoke irrationally when explaining why he had committed a homicide without apparent cause or motive. During the trial appellant sought to subpoena a psychiatrist to testify to his mental condition but, in effect, was denied the right by the court, although a physician who was not specialized in psychiatry took the witness stand for the defense. The defendant was found guilty of murder by the jury and an appeal was taken from the judgment. During argument the Solicitor General agreed with appellant's counsel that the crime should be reduced to manslaughter. However, the Supreme Court was of the opinion that the circumstances of the case indicated the need for psychiatric evaluation of the appellant to assist a court and jury in determining whether or not the appellant was of sound mind at the time he committed the homicide. Therefore, because of such need, and by reason of the court's

denial of appellant's application therefor, the judgment was *reversed* and the case *remanded* for retrial.

*T. G. Collins* for appellant. *Solicitor General Roland Barnes* and *Jesse Banks*, of the Minister of Justice, for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

The mysterious circumstance surrounding the episode as revealed by the record in this case is a challenge to any reasonable mind to arrive at a sensible conclusion as to the cause that led to such a brutal and atrocious incident involving the extermination of human life. The record certified to us relates the genesis of this case.

The appellant and decedent were husband and wife who lived at a town known as Telemu, Zorzor District, Lofa County. In 1969, in the Town, District, and County aforesaid, the day, date, and month unknown but on a certain day at noon an alarm was made. The first to have rushed on the scene was Lavala, the father of the deceased, who found appellant standing over his wife lying on the ground with a cutlass in his hand. Upon approaching him the appellant threw the cutlass on the ground. Lavala grabbed the appellant and held him until some of the citizens of the town also reached the scene, where they saw decedent had been cut about the head and several wounds had been inflicted on other parts of the body which had resulted in her death. When questioned as to who killed his wife, appellant replied he did not want his people alone to cry.

Appellant was then taken to Zorzor Headquarters to the District Commissioner where he again confessed the killing of his wife. He thereafter was transferred to Voinjama City, and a grand jury of the County of Lofa

returned an indictment against him charging him with the murder of his wife by means of an iron and wood cutlass with which he inflicted mortal wounds, with malice aforethought.

Appellant was duly arraigned and pled not guilty. Witnesses for the prosecution were qualified and testified. We would like to give an idea of the testimony of the witnesses for the prosecution in substance. Lavala, father of the deceased, gave his testimony.

“The defendant replied (obviously in response to the witness’ question) I am the one who killed the woman, let my people be crying and the woman’s people crying and if I am to be killed, I can be killed. The District Clerk then took the defendant to the District Commissioner and the next morning the town chief buried the deceased. The next day they took the defendant from the prison and brought him before the District Commissioner in Zorzor. The Commissioner asked him whether he was the one who killed the woman and the defendant answered, yes, I killed the woman. The Commissioner asked him further, why, and the defendant explained that he went to a fortune teller and the fortune teller told him that he, the defendant, had but short time to live because he is going to die soon, and the defendant (continuing his explanation) said when he returned he thought it necessary to kill first before he die so that he will meet her there but he did not kill on account of any misunderstanding whatsoever. The Commissioner asked him again, you are a born citizen of Telemu Town and have lived there since your birth, married and have children, have you ever heard of the people in your town killing anyone? And the defendant said no, but I am the first person that the people want to kill in the town but my wife had done nothing bad to me. That’s all I know.”

Before the prosecution rested, the cutlass was identified and admitted into evidence. The defendant took the witness stand and testified on his own behalf.

"Q. What is your name and where do you live?

"A. My name is Mulbah and I live in Telemu Town.

"Q. The Republic of Liberia charges you with the murder of Korto Jaiduah and you are now on the stand; you will kindly state all that you know relating to the said case.

"A. I knew one woman called Jaiduah. I do not know anything about the allegation that I killed one Jaiduah. The said woman Korto Jaiduah and myself were living together as husband and wife and never had fuss whatsoever. We even had three children. I am a sick man and the only thing I can remember is that the late Korto Jaiduah and myself went to burn our farm and when the sickness came on me, I left them there and returned to town. Thereafter, I could not remember any other thing, it is only now and here in this court and at the common jail that I was told that I have killed my wife. That all I can remember."

After the direct and cross-examination of this witness, defense made application for the issuance of a subpoena to bring witnesses for the defense to testify on behalf of the appellant. The names submitted to the court as prospective witnesses for whom subpoenas were requested are set forth: (1) Towor Bomu. (2) Garmi Kpaye. (3) A medical doctor to testify to the insanity of the defendant.

The medical doctor of Tellewoyan Hospital also testified for the defense.

"Q. Are you the medical doctor of Tellewoyan Hospital?

"A. Yes.

“Q. For the benefit of the court and jury, please say if you can whether you can determine the insanity of any person or persons?”

“A. I can not.”

It appears from the record that the defense counsel requested the court that he be allowed to interview his other witnesses before having them qualified to give testimony. This application was resisted by the prosecution and denied by the court.

It seems that having been denied the opportunity to interview his witnesses before being qualified to take the witness stand, defense counsel became annoyed or discouraged at the denial of his request by the judge. For this reason he waived further presentation of witnesses to testify on behalf of defendant, except for the psychiatrist he had requested.

Defense counsel renewed his application for a psychiatrist, requesting a doctor from the Rehabilitation Center in Monrovia, where such specialists were available.

The application was opposed, and the court ruled thereon denying the application for the reasons stated.

“It will be recalled that on Friday, November 13, 1970, it being the fifth day’s sitting of this court, the defense applied for a writ of subpoena to be issued on a psychiatrist or medical doctor to appear and testify as to the insanity of the defendant and accordingly and over the objection of the prosecution the application was granted. The application being in alternative, a writ of subpoena was ordered issued on the medical officer for Lofa County. Upon the return of the said writ of subpoena the said medical officer, Ponniah Nadarash of the Tellewoyan Hospital, Voinjama, appeared and informed the court that he is a qualified medical doctor and surgeon and specialized in preventive medicine and although he has studied mental diseases generally, he is not specialized in psy-

chiatry. The defense, relying upon the plea of insanity, did not endeavor to even have the doctor say anything concerning mental diseases and when the court questioned the said doctor, the defense's objection was sustained. Now to entertain another application to subpoena a psychiatrist is, to us, unreasonable. More than this, the defense, relying on this plea, in the mind of the court should have requested for a psychiatric examination of the prisoner before the commencement of the trial, for even a mere knowledge of psychiatry without an examination of the prisoner himself would not suffice. Because of the foregoing, the application is denied."

A careful analysis of the evidence in this case reveals that all of the material and essential facts set forth in the indictment were corroborated by the prosecution's witnesses.

However, the question is whether or not the appellant at the time of the commission of the crime was of sound mind. According to the record before us, appellant was suffering from a mental derangement, illustrated by the unusual circumstances as related.

The application for a psychiatrist to be subpoenaed to testify on behalf of the appellant was erroneously denied by the trial judge. Eminent law writers have considered insanity as a defense.

"That insanity is a complete defense to a prosecution for crime is admitted by every rational system of jurisprudence; and the principle extends to the crimes predicable of homicide equally with less heinous offenses. Indeed it has been invoked almost entirely in homicide cases. Of course, the actor must have been insane in fact; and the mental derangement relied on must have been of the sort that is recognized as rendering persons exempt from punishment. Inasmuch as purpose, intention, malice, or whatever equivalent term may be used, is a mental state or condition, a

state existent only in the case of the intelligent normal mind, it cannot exist where the mind is unsound or deranged. Where insanity is relied on as a defense, a special plea is not necessary under the codes of some states; proof may be made under a plea of not guilty, or in case the defendant refuses to plead and the court orders a plea of not guilty to be entered for him." 13 RCL 708.

"It may well be that the disagreement is entirely or to all practical purposes a verbal one—for a subject so much mooted as the burden of proof can hardly be expected to be understood by the ordinary jury—but, in any event, it would seem that where the state clearly establishes an intentional killing by the use of a deadly weapon, an illegal homicide is presumed, and if the defense is insanity, the burden of sustaining it is upon those having charge of the defense." 13 RCL 713.

Counsel for defense in argument centered his whole contention around the failure of the prosecution to prove malice against the appellant in this case. He paid very little or no attention to the issues raised in his bill of exceptions, nor did he traverse his own brief or that of his adversary. He maintained that malice is an essential element in the proof of murder and for failure to prove this element the judgment should be reversed.

In his concluding argument, however, he contended that the crime should be reduced to manslaughter, which was eventually acquiesced in by the Solicitor General in submitting his side of the case.

The Solicitor General in his argument contended that the final judgment in this case should be affirmed due to the fact that the murder of decedent according to the circumstances and evidence adduced at the trial was willful and intentional. However, although malice is presumed, but realizing that from all indications appellant did suffer from some mental disturbance and being convinced that malice was not proved as required by law,

the Solicitor General eventually concluded that the crime should be reduced to manslaughter and he consequently agreed with appellant's counsel, as said.

This case presents a very strange phenomenon, for the appellant and his wife, the deceased, lived peaceably in Telemu Town along with other families, and there was no evidence to indicate any misunderstanding or estrangement between them. There must be some unusual or hidden reasons why such a tragic incident should occur in cold blood. It stands to reason, therefore, that appellant could have been mentally disturbed. To determine this phase of the case a psychiatrist should have probed appellant's mental condition by his examination so that the court and jury could have intelligently determined the sanity or insanity of the accused in this case.

Therefore, in view of the foregoing, although the evidence is conclusive that appellant did commit the homicide charged in the indictment, this Court is unwilling to uphold the verdict of murder in view of the fact that the appellant was not given the opportunity to be examined by a psychiatrist pursuant to the application of the defense counsel.

Realizing that the appellant was not given a fair and impartial trial by virtue of the denial of his application for the issuance of a subpoena for a psychiatrist to give expert testimony, to determine whether or not he was of sane mind at the time of the commission of the crime, the judgment should be reversed and the case remanded.

Consequently, the judgment of the lower court is hereby reversed and the case remanded for a new trial. It is so ordered.

*Reversed and remanded.*