

WILLIAM TOLBERT, Appellant, v. REPUBLIC  
OF LIBERIA, Appellee.

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

Argued October 29, 30, 1968. Decided February 7, 1969.

1. Confessions of guilt which are not obtained from a defendant in a criminal case without the least taint of coercion, are frowned upon by the Supreme Court.
2. The best testimony as to the genuineness of any writing is the acknowledgement of the writer and, thereafter, a person who saw the writing made and is able to identify it as such writing he saw made.
3. The prosecution need not prove each and every circumstance in a crime, but is to prove its case beyond a reasonable doubt upon the total evidence presented, proving each indispensable element necessary to establish the commission of the crime with which the defendant is charged.
4. The legal requirement to establish guilt "beyond a reasonable doubt," is difficult of exact definition, but broadly speaking, it is self-evident in an intelligent mind, and is more than a shadow of a doubt.
5. A variance is a difference, or a disagreement, between two parts of the same proceeding, which ought to be in consonance and harmony.
6. Where an indictment sets forth the manner in which a decedent met death, and the proof embraces both it and a contributing factor as the cause of death, there has been no variance of proof.

The defendant was charged with the murder of his wife. At the trial he renounced his confession, and the evidence tended to support his contention that it had been extorted from him. The prosecution introduced testimony of witnesses seeming to link him with the crime, and presented personal articles belonging to defendant which had some probative value. After the jury found him guilty as charged, the defendant appealed from the judgment of the court. *Judgment affirmed.*

*S. Raymond Horace and the Dunbar, Horace law firm, by Tilman N. Dunbar, for appellant. The Solicitor General for appellee.*

MR. JUSTICE MITCHELL delivered the opinion of the court.

This is a case of murder. According to law the willful killing of a human being without justification or excuse is classified as murder when it is done with premeditated design. It is punishable by death.

In such a case, the responsibility devolves upon the State to prove the guilt of the accused with certainty, either by positive or circumstantial and presumptive evidence, except in cases where the accused sets up justification. In which instance, the law shifts the burden of proof to the accused.

And when the circumstances surrounding the act of willful killing connects the criminal agency with the crime by proof of corroborating witnesses, a variance does not result when the indictment alleges only one criminal agency and the proof admits of two.

The grand jury at the February 1965 term of the First Judicial Circuit Court, Criminal Assizes, charged William Tolbert with committing the crime of the murder of Annie Tolbert on January 11, 1965, in the Township of Paynesville, Montserrado County, by willfully, unlawfully, wickedly, feloniously, without legal justification or excuse, and with malice aforethought, making an assault upon her with a certain dangerous and sharp weapon, a piece of iron, from which wounds so inflicted she died.

This case was called for trial on August 10, 1966, in the Criminal Assizes of the First Judicial Circuit Court, and the defendant on being arraigned pleaded not guilty.

After some days of trial the jury returned a verdict against the defendant, finding him guilty of the charge. To this verdict the defendant noted his exceptions and filed a motion for a new trial. This motion, in substance, reads:

"1. That the verdict of the jury is contrary to the

evidence adduced at the trial and the law controlling, in that the prosecution did not establish by proof the allegations laid in the indictment insofar as it appertained to the cause of death, because the expert testimony of Dr. Jeremiah Cox, the Liberian Government pathologist, shows that the cause of death was due to the Lysol or some unidentified matter breathed in, creating a laryngeal spasm, resulting in the swelling of the upper part of the windpipe, closing it. They contended that such testimony from an expert witness for the prosecution created a variance between the allegation laid in the indictment and its proof.

"2. That the verdict of the jury was contrary to the weight of the evidence adduced at the trial, in that the criminal agency had never been proved at the trial.

"3. That the verdict of the jury was contrary to the evidence and law controlling, in that although witness Henry Nelson swore to the identity of the iron bar as the instrument of death, yet he testified that he was not present when the murder took place. Then further testifying said that the instrument purported to have been used had three holes through it, yet, when the said iron bar was introduced into evidence, it was found to have four holes, which was a variance and besides, the whole evidence of the said witness was based upon facts that he had heard, not being present on the scene when the alleged murder took place. Hence, this rendered his testimony insufficient to convict the defendant.

"4. Because the verdict of the jury was further contrary to the weight of the evidence adduced since it was based principally upon the testimony of witness Henry Langford, an agent of the NBI, and his other confederates, in that it fell short of proof because Langford's entire testimony embraced alleged facts entirely uncovered by agents of the NBI and set forth in their report. Therefore, his evidence, as such, was

hearsay evidence. The agents of the NBI who investigated the crime, being the best evidence in that regard, should have corroborated the testimony of the said Henry Langford. Nor did the prosecution show reasonable grounds why they were not produced to testify at the trial to prove their said report. This rendered the evidence adduced at the trial insufficient to convict the defendant on the charge of murder because there was no corroboration.

"5. That any verdict based upon the testimony by the witness, Langford, is without foundation, in that the confession referred to by Langford was proved to have been extorted from defendant by methods unsanctioned by the law, for it was established by defendant's three witnesses that it was obtained by torture and starvation since defendant was kept in handcuffs, starved and sweated to make such alleged confession and therefore, was not admissible. Besides, it was not signed by the defendant and further, was witnessed by two NBI agents, who, though present, were never called, nor were expert witnesses produced to prove the thumb print affixed to the confession was that of the defendant.

"6. That although circumstantial and presumptive evidence may be used to convict an accused of the commission of a crime, such evidence must be corroborated in every detail link by link, thereby excluding every doubt as to the guilt of the defendant, which element is wanting in the present case.

"7. That although the defendant requested the court to charge the jury on certain points of law, and although the court proceeded to do so, yet it did not in a clear and certain way expatiate on such points to the jury, especially on the question of a variance, which must have influenced the jury to bring in the verdict as it did.

"8. And lastly because the prosecution in its argu-

ment before the jury, referred to the defendant as 'that murderer' which was an inflammatory remark that must have influenced the jury in arriving at its verdict and was sufficient under the law for setting the verdict aside and awarding a new trial."

The prosecution opposed the motion for a new trial, and at the hearing the court denied the motion.

Final judgment affirming the verdict was rendered, and the defendant excepted to the judgment and prayed for an appeal.

Before going into the bill of exceptions, which consists of 41 counts, we feel that it is important to make an observation. At the trial of a criminal case, the following are some of the principal precautions to be observed by the prosecution in its attempt to establish the guilt of an accused:

(1) The establishment of the corpus delicti, which is the proof that a human being's life has been taken, and proving the identity of the person charged with the killing.

(2) That the killing was unjustifiable and inexcusable.

(3) The means by which decedent came to his death.

(4) Corroborative facts in the chain of evidence.

On a trial, therefore, for murder, all evidence which does not tend to prove the foregoing with some degree of certainty, either by presumptive or circumstantial evidence, may be regarded as insufficient to convict. And all questions which are merely intended to entrap the witness by clouding his testimony must be disallowed as are all questions, whether on cross- or direct examination, which have a tendency to unfairly influence the jury.

"No fact, as already shown, which on principles of sound logic does not sustain or impeach a pertinent hypothesis is relevant; therefore, no such fact, unless otherwise provided by some positive prescription of

law, should be admitted as evidence on a trial. The reason is that such evidence tends to draw away the minds of the jurors from the point in issue, and to excite prejudice and mislead them. . . ." WHARTON'S EVIDENCE IN CRIMINAL CASES, 11th ed., § 227.

In this case, the defendant pleaded not guilty and it became the duty of the prosecution to prove his guilt beyond a reasonable doubt. We have very carefully and closely examined the bill of exceptions containing forty-one counts, most of which are unnecessary to consider, for many of the objections taken and, therefore, set forth in the bill, were obviously designed by defendant's counsel to build a record, and without justification.

For a short while we will go into the evidence, before continuing with the bill of exceptions. On inspecting the record before us a document is found, from the Central Laboratory of the National Public Health Service, Republic of Liberia, dated January 14, 1965, and signed by Jeremiah Cox, M.D., pathologist, addressed to Mr. Henry Langford, District Supervisor, National Bureau of Investigation, Monrovia.

"The autopsy of Mrs. Annie Tolbert who expired on the 11th of January, 1965, was performed at 13:45 of the same date. The gross pathological findings are as follows:

- "—Right subdural hematoma.
- "—Laryngeal oedema, acute tracheobronchitis.
- "—Acute gastroduodenitis.
- "—A typical pneumonia.
- "—Superficial head injuries.
- "—Multiple uterine fibroma and cystic ovares.

"From the microscope picture it is evident that the deceased expired as a combined result of head injury resulting in a subdural hematoma together with toxic effects of an organic solvent which was found in the stomach causing an acute gastroduodenitis, and also found in the trachea and bronchi where it created an

acute tracheobronchitis with an important laryngeal oedema of the thyro-epiglottic region.

"The histological examination is in process and the complete report will be forwarded to the Attorney General at its completion."

In another part of the record, a purported statement is found and is said to be the statement made by William Tolbert, the appellant, while before the National Bureau of Investigation.

"Montserrado County,

"City of Monrovia.

"Date: January 13, 1965. 4:25 P.M.

"Before me, J. Colston Johnson, special agent in charge general investigation, National Bureau of Investigation, Executive Mansion, Republic of Liberia, on the above-stated date and time there personally appeared *William Tolbert*, nationality, *Liberian*, the signatory of this statement, who after being informed of his/her legal and personal rights and duly sworn as the truth and veracity of this statement, deposes and says:

"I am William Tolbert (43). I live in Paynesville with my wife by the name of Madam Annie Tolbert (46). There has been a bitter talks between us, on account of one Mr. Simeon to Sepha an ex-employee of the NBI (National Bureau of Investigation) for almost two (2) years now.

"We, on the 11th of this month, January 1965, at about 10:00 A.M., while two of us were on a drinking mood, and at the same time, drinking, she brought about this Sepha's affairs again. I had then returned from taking bath, and cut a good shot of Gordon Gin, and bottle of Stout, with few draws from my pipe. I then lay across the bed, then there she came over me and went as far as to say you can do anything in this world, I will not leave that Sepha man. I will even

put his name in the Deed for the Lot on which we are building the house. That aggravated my feelings very, very much so I jumped on her for a fight.

"I first slapped her, then she fell down. I then took a piece of iron, that I have just identified before the Assistant Director, Mr. Joseph G. Gono and Mr. Samuel B. William, all of the NBI, and gave her two (2) knocks, the first on the forehead, the second in the center of her head. But this was caused by being drunk, and too much annoyed over this Sepha man's affairs. I did not mean to kill my lovely wife, but when I came to myself, it was too late, she had died. While she was about to die, and at the same time fighting for the last breath, that was the time she knocked the Lysol bottle down and all wasted. Forgive me, of course, she has been sleeping with Sepha on my own bed.

"Moreover, she held me on my seeds, very tightly, until my eyes began to come out of sight. The only way I was able to get off her hands, was to knock her.

"So this was what happened. I did not mean to kill my wife, I repeat my people."

The foregoing document was admitted into evidence as a confession made by the defendant when he was held in custody by the NBI. To what extent this confession was voluntary or involuntary has been testified to by witnesses Clara Addo, David Kollie, Alius Cortor, and Robert Tolbert, all for the defendant, who said *inter alia*, that they visited the defendant while he was in the custody of the NBI and met him with handcuffs on. They also testified to the fact that his arms were swollen from the effect of the handcuffs. In *Gio v. Republic of Liberia*, 17 L.L.R. 681, (1966), the Court expressed its repugnance for coerced confessions.

When Henry Langford was on the stand for the prosecution, he said that the confession put into evidence was the one which was made voluntarily by the defendant.



But it is strange that although he made this statement, yet he was not present on the scene when the purported confession was made, nor did the prosecution introduce as a witness J. B. Williams, who is supposed to have witnessed the signature of William Tolbert to the confession, so both the document, as well as the uncorroborated testimony of Henry Langford, must be treated with the greatest caution.

Besides that, the law requires that the execution of any document should be proved to certify its genuineness.

“The best testimony as to the genuineness of any writing is, first, the acknowledgment of the alleged writer, that he did write it; second, the witness who saw the writing made and is able to identify it as such.”

WHARTON'S EVIDENCE IN CRIMINAL CASES, 11th ed., § 813.

Now, let us go further into the evidence. John Minor, in his testimony, said:

“A. Last January, while sitting in the group of Mr. George Henry Nelson and G. Victor Outland, up came Mr. William Tolbert, without a top shirt and sweating. He said to us that something had happened but that he did not know how it happened. I went to the Commissioner's place but I did meet him. He said further that one man had jumped in the house and had almost killed Annie Tolbert. We said to him, let us go; whilst going I observed on him some blood and the scent of Lysol. When we got to the house of Miss Annie Tolevert, we met her lying on the floor with a stab on her left breast and a hole in her head as if something had struck her head. Also Lysol was all on the body and face. On the floor by her were a piece of iron and some Lysol. At this time she could not talk. I went into another room and traced some blood from one room where she was lying.

I then said to defendant Tolbert, where were you when this thing happened? He said, all that I saw is that one man came here and did what you see. I went to the back in the house and saw a shirt hanging on the nail, on that shirt was some blood. I asked him whose shirt it was, and he said it was his shirt. I then asked him, then you told me that a man came in and did what I saw; why is it then that your shirt has blood on it? Being a Justice of the Peace, I had him arrested and sent for some CID who interrogated him and brought him to Monrovia. A few minutes afterwards Annie Tolevert died. This is what I know.

“Q. In your testimony you referred to several instruments used by the defendant; were you to see these instruments could you identify them?

“A. Yes.

“Q. I hand you this instrument; look at it and say what you recognize it to be?

“A. I recognize it to be the piece of iron I saw on the floor in the room by Miss Annie Tolevert when she was wounded. I also recognize this parcel to be the shirt of William Tolbert that I saw with the blood on that day and also this towel with blood on it. I recognize this Lysol bottle to be the bottle I met on the floor in the room beside the decedent.

“Q. You have testified further to the fact that you saw blood on the defendant; did you ascertain from him how did he come by having the blood on him?

“A. Yes, I did, but he said he did not know how the blood got on him.”

George Nelson, the next witness for the prosecution, in testifying, said, among other things:

“On the morning when William Tolbert, defendant,

met John Minor, George Outland and himself, they were at his home. The defendant came in and told them that he went to call them because one Cephas had beaten his girl friend almost to death. They asked him where he was to have allowed the man to beat his girl friend and he replied that he had just arrived from Bensonville that morning so they accompanied him. Upon entering the yard the defendant told them that the woman was in the room and they could go in. He, George Nelson, was in front of the group as they entered the house and saw the decedent lying on the floor, the whole room smelling with Lysol; the Lysol bottle laying beside the woman. John Minor wanted to touch the decedent but he, Nelson, advised him not to do so, rather that they should ask the defendant what his Lysol bottle was doing there. As they turned to make this inquiry he grabbed defendant's hand and smelled it, it was full of Lysol. The undershirt also that he wore at the time had blood on it, so they called in other people and suggested that it would be best to detain the defendant while Nelson came to Monrovia to call the NBI. He asked him before leaving for Monrovia for the other persons who lived in the house and he told them that he had sent one of the boys to the TB Hospital and the other boy had been sent out by the decedent. Whilst awaiting to get transportation to come down to Monrovia, one Miss Caroline called us to see the defendant's shirt hanging against the wall, so we took this shirt and brought it down to the NBI's office."

This witness thereafter was asked the following question:

"Q. If at the time when you and others, according to you, accompanied the defendant to the home where decedent's body was at the time lying, the defendant made any confessions touching the death and/or remarks thereat or subsequently

thereafter, that is to say, from Paynesville to Monrovia as well as in Monrovia, please state same for the benefit of the court.

“A. After we smelt the Lysol on the defendant’s hand and saw the singlets he wore with small speck of blood on it, then Victor asked the defendant, if someone else had beaten the woman, what was the blood doing on the shirt and on his hands? I also asked him why was it that if he came and met decedent in that condition, why did he send the two boys out of the yard? He said that he had sent them to carry some fruits to the T.B. Hospital. The other little boys were at Mr. Brown’s home. In that time the boy that went to carry the fruits came back, so I called him and asked whether or not he was at home when his father, the defendant came, he answered me, yes. I asked him again, what happened? He said that he was about to go to work, when he came and stopped her, saying that it was going to be hell. I then suggested that there was no need for us to keep the defendant there no longer, but the best thing to do was bring him to Monrovia.”

The witness further said that he saw the fresh blood coming from the head of the decedent as a result of a blow she had sustained to her head and the only instrument he saw near her body was the piece of iron bar. He also saw many bruises over her body. On cross-examination he stated that upon entering the room he saw decedent was unconscious and approximately three minutes thereafter she died. He further said that the piece of iron bar was the instrument used to effect the wounds and bruises on the decedent’s body because it was the only instrument seen there in the room beside the decedent. That the Lysol which they saw on the body was from the bottle they saw near her in the room. That the clothes she wore had

been torn into rags and that it was no one else who committed the crime of killing the decedent except the defendant, William Tolbert. That the shirt which they saw was bloodstained was the defendant's because he had seen it on him several times and knew it to be his.

The only rebuttal made thereto was by defendant's three witnesses, whose testimony attempted to establish that defendant did not make the confession voluntarily.

Although the law requires the prosecution to prove the guilt of the defendant beyond a reasonable doubt, even in the absence of any defense, yet in a case such as this, the circumstances surrounding the case made it imperative for the introduction of more probative evidence by the defendant than that introduced. The criminal agency was proved by presumptive and circumstantial evidence, because the boys whom defendant met in his home on his arrival were sent away by him and one stated that the defendant on arrival that morning told his mother, the decedent, that it would be hell that morning, and then and there stopped her from going to her vocation where she had prepared to go. The logical deduction is that the defendant intended to commit the act in secrecy. Still better, if he was not involved in the killing then why could he not account for the blood on his clothes? Such circumstances, in our opinion, give rise to abiding conviction that he and no one else committed the crime.

At common law, necessity of proving guilt does not mean that the proof should establish guilt beyond a possible doubt, nor does it mean that the state must prove each and every circumstance in the crime. The rule is predicated upon the consideration of the evidence as a whole, and upon such parts thereof as are indispensable factors for a verdict of guilt. Where the facts adduced by the prosecution so tend, guilt and the criminal agency will be considered well established.

The law writers maintain that it is difficult to define the phrase "beyond a reasonable doubt," to make it

clearer by definition than that which is self-evident and generally understood by an intelligent mind from the phrase itself.

When this appeal was called for hearing the appellant raised the issue of a variance in the evidence advanced from the allegation laid in the indictment. This is another point that we would like to deal with.

As accepted by all legal authorities, "variance" means a difference or a disagreement between two parts of the same proceeding which ought to be in consonance.

The defendant maintains that the indictment charged that decedent was killed by a piece of iron bar and the medical certificate submitted by the pathologist alleged that her death was caused by the application of Lysol. This argument seems unfounded, because the medical finding tendered by the pathologist certified that death was caused both by the use of an instrument as well as superficial head injuries. This medical finding was corroborated by the testimony of Dr. Jeremiah Cox.

The other point raised by the appellant is that the trial judge in his charge to the jury failed to explain certain legal points defined by law. This argument must fail, because it was not necessarily incumbent upon the court to explain in detail the law applicable to the case on both sides so long as his charge did not direct a verdict or impose on the functions of the jury.

The motion for a new trial was based upon objections to the means by which questions were propounded and the rulings of the court thereon. It is the opinion of the Court that the trial judge did not err in denying the motion and, therefore, the final judgment in this case should not be disturbed, because all of the essential requirements of the law with respect to the sufficiency of evidence for conviction were present, even discarding the purported confession made by the defendant under torture and coercion.

Therefore, it is our unanimous opinion that the judg-

ment of the court below be affirmed, and the same is hereby affirmed, and the clerk of this Court is hereby ordered to send a mandate to the lower court informing it of this judgment. And it is hereby so ordered.

*Affirmed.*