

FLOMO GEDUAL YARSSAH, Appellant, v.
REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT,
NIMBA COUNTY.

Argued April 9, 1970. Decided June 1, 1970.

1. When an indictment alleges that a defendant inflicted fatal wounds upon the body of the deceased, with malice and intent, and the state can only establish that the defendant and the deceased were involved in a dispute, in the course of which they struggled over a bayonet carried by the defendant and it is unable to produce evidence indicating through whose agency the stab wound had obtained, the evidence will be held insufficient to sustain the jury's verdict of guilt and a judgment based thereon will be reversed.
2. Courts shall especially safeguard the rights of persons charged with capital crimes, for there can be no redress for the ultimate penalty exacted in such cases.

The appellant was charged with murder, resulting from a stab wound sustained by the decedent in the course of a dispute. The prosecution could not establish at the trial that the defendant, a member of the Liberian National Guard, had assaulted decedent with his bayonet. It merely established that the dispute had arisen and the two men had struggled over the bayonet, resulting in the fatal wound sustained by the decedent. Nonetheless, the jury returned a verdict of guilt. The defendant appealed from the judgment entered by the trial court against him. In the circumstances, the Supreme Court held that the state had failed to support the allegations in the indictment charging defendant with having maliciously inflicted the fatal wound. *Judgment reversed*, defendant ordered discharged forthwith.

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

MR. CHIEF JUSTICE WILSON delivered the opinion of the Court.

The record reveals that one Corporal Flomo Geduah Yarssah, of the Liberian National Guard, residing at Gbedin on official assignment at the Liberian Government Rice Experimental Station, and one Jacob Garzon, a resident of the area, had a quarrel resulting in a fight. That during the fight, Garzon was wounded by a bayonet and died as a result thereof. The appellant was arrested and indicted for murder, in which it was charged that: "On April 17, 1968, at Gbedin Rice Project area, Nimba County, Republic of Liberia, Corporal Flomo Geduah Yarssah, L.N.G., defendant aforesaid, then and there with malice aforethought did unlawfully, wickedly, maliciously, intentionally, and without any justifiable excuse, stab and kill Jacob Garzon with a bayonet which he held in his hand, made of steel and iron, then and thereby the crime of murder, Corporal Flomo Geduah Yarssah, L.N.G., defendant aforesaid, did do and commit, contrary to the form, force and effect of the laws of Liberia in such cases made and provided against the peace and dignity of this Republic of Liberia. . . ."

We would like to here emphasize that the portion of the indictment charging appellant with malice aforethought and the overt act of stabbing and killing decedent constitute the crux of these proceedings.

Upon arraignment, appellant entered a plea of not guilty. Witnesses for the prosecution testified to the effect that appellant and decedent in the course of their fatal dispute were struggling over a bayonet, commonly carried by military personnel. All efforts on the part of the prosecution to show that appellant did in fact inflict the fatal wound proved futile.

This Court in 1912, speaking through Mr. Justice T. McCant-Stewart in *Lawrence v. Republic of Liberia*, 2 LLR 65, said:

"The dearest of man's inalienable rights is life. We may deprive him of liberty with only temporary effect; we may deny him the pursuit of happiness, but

such denial is not necessarily permanent; but if we take his life, it is the end of all. Courts, therefore, while never forgetting the duty to guard with jealous care the rights of litigants in general, should watch with special care every incident of the trial where human life is at stake.”

Murder is defined by statute as:

“Any person who:

“1. Without legal justification or excuse, unlawfully with malice aforethought, kills any human being; or

“2. Is present unlawfully aiding and abetting another directly or indirectly in the felonious killing of any human being; or

“3. With malice aforethought conspires with or counsels and advises another to kill a human being; or

“4. Unlawfully counsels or advises another to commit suicide, and the person so advised and counselled by any means whatsoever kills himself as a result of such advice and counsel, whether or not such adviser is present when the suicide is committed; or

“5. While sustaining such a relation to another as imposes upon him the duty and obligation of support, nurture and sustenance, maliciously, unlawfully and negligently permits such person to die from lack of medical attention or means of sustenance or support; or

“6. While engaged in the commission of or in an attempt to commit a felony, without a design to effect death, kills a human being; is guilty of murder and punishable with death by hanging.” Penal Law, 1956 Code, 27:232.

The evidence in this case fails, as aforesaid, to support the overt act charged in the indictment and this Court has held that “to convict in a criminal case not only should there be a preponderance of evidence, but also the evidence must be so conclusive as to exclude every reasonable

doubt as to the guilt of the accused.” *Logan v. Republic of Liberia*, 2 LLR 472 (1924).

The evidence in this case lacks that degree of certainty necessary to convict defendant of murder, and this Court declares the verdict returned by the jury erroneous, the judgment is reversed and the appellant discharged without day. And it is hereby so ordered.

Reversed, defendant discharged forthwith.