CASES ADJUDGED

IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA

AT

APRIL TERM, 1930.

ZEAHMA GARNGAJUAH, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

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

Decided May 15, 1930.

Where the evidence proves that decedent was the aggressor and defendant, without premeditation but upon sudden provocation and in self defense, stabbed decedent and death ensued, the crime is manslaughter and not murder.

Defendant was convicted of murder in the Circuit Court. On appeal to this Court, *reversed* and sentence modified.

PER CURIAM.

This case originated from the First Judicial Circuit Court for Montserrado County, at its August term 1929, and was tried at the ensuing November term of said court by His Honor Martin N. Russell, Judge, presiding by assignment. The facts disclosed during said trial are as follows:

1. The appellant (defendant below), was indicted by the grand jury for the County of Montserrado for the alleged murder of one Singby Sonjor; and said

appellant and his mistress as well as the said Singby Sonjor, the decedent, were all living in the same house at Gon's Town situated in the Hinterland of Montserrado County.

2. It further appeared that decedent and appellant were on friendly terms and had always been so up to the alleged occurrence, as it came out in the evidence that decedent's mother was the sweetheart of appellant.
3. It also appeared that on a Sunday during the month of April 1929, appellant and decedent went into an old farm either for work or game purposes and they remained there the whole day until evening, eating and drinking nothing save palm wine, and that when they returned home at evening they were hungry, whereupon decedent asked his mother to prepare food for them which she did.
4. It also appeared that after the meal was over the said three persons, that is decedent, his mother and appellant were sitting around the fire hearth in the kitchen whereupon a quarrel ensued between decedent and appellant, and that during said quarrel appellant said to decedent: "How you treat me as if you and I have one wife or woman?" which said expression caused decedent to become very angry with appellant, and decedent said to appellant, "If you repeat said expression I will fight you."
5. It also appeared that appellant repeated said expression whereupon decedent rose up, made for appellant, struck him and seized him for a fight. Durthe fight decedent threw appellant upon the ground and while fighting, appellant managed to roll over on decedent and it was not until they reached this stage that they were parted: it was very dark in the said night.
6. It further appeared that upon being parted from decedent, appellant rose up and went from the house

for a short while, but soon returned; the decedent had to be helped up, as he said he did know why he could not get up, neither did he make any alarm at having been cut during the fight, but when the bamboo torch was lighted it was found that the said decedent was stabbed.

7. It further appeared that decedent was taken on a long journey both by water and land, from said Gon's Town to Kakata and was carried the whole way on his face, and that notwithstanding the said journey, the said decedent, did not die until ten days thereafter, that is, after said stabbing.
8. It further appeared that appellant admitted having a pen knife opened in his hand during the fight which he had borrowed for ordinary use from his friend and that it was opened in his hand at the time decedent attacked him for a fight and he had not had the time nor presence of mind to close said pen knife.
9. It also came out in the evidence that decedent was angry with said appellant from an early hour during said Sunday which seems to have grown out of the fact that appellant had gone to decedent's palm wine tree and that although the quarrel had stopped, yet decedent was either vexed or drunk for it was he, the said decedent, who was the first to give the blow and then jumped on appellant for a fight and threw him on the ground.

The judgment of the lower court, predicated upon an illegal verdict which sentenced him to death, is illegal and entirely unwarranted from the evidence adduced at the trial and therefore the said judgment should be reversed for the following legal reasons, to wit:

Because when on the 13th day of November, 1929, during the course of said trial, attorney for defendant (now appellant) cross-questioned State's witness Towor as follows: "You having said that prisoner and decedent had always been on good terms, is it not a fact to the best

of your knowledge, that prisoner and decedent had been drinking palm-wine the whole day of the alleged occurrence?" The court disallowed said cross-question on the authority of rule No. XX of the Circuit Court. Criminal Code 4, § 14; 1 Russell, *Crimes* 87–9; 2 Greenleaf, *Evidence* 351.

This Court says the question asked in the prisoner's defense by his counsellor ought to have been answered, as it would have thrown light upon the condition of the minds of decedent and prisoner before the fight.

Let us see what the law regards as murder in the first degree, and murder in the second degree? 1 Revised Statutes 672, § 721 says that murder in the first degree is:

> "1. The killing of any human being with premeditation, deliberation and malice aforethought, and without legal excuse.
>
> "2. The killing of any human being by an act imminently dangerous to others and evincing a depraved mind regardless of human life, although without any premeditative design to effect the death of any particular individual."

We have extended our investigation so as to ascertain whether the judgment is reversible upon the facts submitted and the surrounding circumstances on which this case rests. In doing so we have not confined ourselves and our consideration to the points submitted to us above, but after diligently and carefully scrutinizing the whole case, we are of the opinion that this homicide falls in the category or grade of crime known as manslaughter of the first degree, as the prisoner was struck suddenly and thrown down by the decedent. Kenyon of the High Court of England has said: "For the provocation which the slayer has received may have been so sudden and so extreme as to deprive him for the time being of his ordinary powers of self-control, and consequently to render his violent feelings of hostility less blameable; blameable enough still to merit punishment but not punishment of

death." The suddenness of the act of homicide is thus an essential condition of guilt.

The fact that the weapon appellant used was one which he already had in his hand at the time he received the sudden blow and the provocation may be important as evidence to show that the blow was not premeditated; and further, one of the most common cases of voluntary manslaughter is that of its being committed in the anger provoked by a sudden combat. Thus, if upon a quarrel which was not premeditated or at least was not premeditated on the part of prisoner, persons fall to fighting and then in the heat of the moment either of them (for the combat affords matter of provocation to each) inflicts some fatal injuries on the other, prisoner will not be guilty of more than manslaughter. 1 Revised Statutes 673, section 722 defines manslaughter of the first degree to be the killing of any human being in the heat of passion, upon any sudden and sufficient provocation or upon a sudden combat with a dangerous or deadly weapon not usually carried on the person.

Therefore in consideration of the above cogent evidence and facts, the judgment is hereby reversed, and the appellant is sentenced to a term of five years imprisonment in the common jail, with hard labor. And it is so ordered.

Reversed.