LAWOR KELLENG, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

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

Argued January 22, 1934. Decided January 26, 1934.

1. In spite of the rule that a witness may be interrogated on cross-examination as to matters affecting his credibility, yet the exact extent to which this cross-examination may go rests almost entirely in the discretion of the trial court.
2. A bow and two arrows were properly admitted in evidence when there was testimony that the arrows were extracted from the mortal wounds and that the bow was found in the possession of defendant, who admitted having discharged the arrows from the bow at the deceased.
3. Malice, in its legal sense, means the intentional doing of a wrongful act towards another without legal justification or excuse, or in other words, the wilful violation of a known right.
4. In homicide cases the corpus delicti, that is the body of the offense or substance of the crime, has at least two component elements, the fact of the death and the criminal agency of another person as the cause thereof.

Appellant was convicted of the crime of murder in the Circuit Court of the First Judicial Circuit, Montserrado County, and was sentenced to death by hanging. On appeal from that conviction, *judgment affirmed.*

W. O. Davies-Bright, Jr., for appellant. *The Attorney General* and *Anthony Barclay* for appellee.

MR. JUSTICE DIXON delivered the opinion of the Court.

This case is before this Court upon an appeal from the Circuit Court of the First Judicial Circuit, Montserrado County. From an inspection of the records in the case we find that the appellant was indicted and tried at the May term of the said Circuit Court, 1933, for the atrocious crime of murder, to which charge the appellant pleaded "not guilty." A jury was impanelled to try the issue as pleaded by appellant, and after hearing the evidence in the case and the arguments by counsel for and

against the accused, the case was submitted to the jury, who after deliberating returned a verdict of guilty against the accused, upon which verdict the trial judge, on the 12th day of June, 1933, rendered sentence to the effect that the defendant, now appellant, shall suffer death by being hanged on a gallows. To this judgment, as well as to the several rulings of the court below during the trial, the appellant excepted and appealed to this Court upon a bill of exceptions for its review.

This Court will now proceed to consider the several exceptions set out in appellant's bill of exceptions. The first count having been withdrawn by the counsel for appellant, we shall now give our attention to the others as laid.

Counts 2, 3, and 4 are exceptions taken to the ruling of the court below in disallowing questions put to witnesses Kekula and Quellie Suah on the cross-examination by defendant, now appellant, as follows:

> "And how were they, (the arrows) discharged, both at the same time or one after the other? So then you do not know as to whether or not this woman (decedent) received treatment, not so? Mr. Witness, in your direct statement you made mention of 'Merican palaver' and subsequently of 'Government palaver;' that is to say, you said that prisoner said, they told you long time to mind us since we started that 'Merican palaver,' and with respect to the 'Government palaver' you said now this is 'Government palaver.' Must I leave you up there? Please state for the benefit of the court and jury this 'Merican palaver' and 'Government palaver'?"

which questions this Court finds to be irrelevant to the issue, they not tending in any way to prove or disprove the issue. The court below was justified therefore in disallowing them. Evidence must relate to, and be connected with, the transaction it is offered to elucidate, and in this connection must be immediate and not remote and

far-fetched. It is an established rule governing the production of evidence that the evidence offered and elicited should correspond with the allegation and be confined to the point at issue. In spite of the rule that a witness may be interrogated on cross-examination as to matters affecting his credibility, yet "the exact extent to which this cross examination may go rests almost entirely in the discretion of the trial court." 28 R.C.L. 609, § 198.

As to count five of the bill of exceptions in which appellant contends that it was error on the part of the court below to overrule his objection to the admission of the evidence marked "A1" by the court, this being the bow and the two arrows, the instruments with which the wounds from which the decedent died were inflicted, on the grounds of insufficiency of identification, we will remark that all the witnesses on the part of the State having testified to the arrows being those extracted from the wounds and the bow being found in the possession of the prisoner when he was captured, and the prisoner having confessed to witness Sewah Yarn, in the presence of the other witnesses who testified at the trial, in answer to the question which witness Sewah Yarn propounded to him as follows: "This bow and these arrows, whose are they?" that, "They are mine and these two are the very ones with which I shot my wife last night," the identification was sufficient, and the trial court committed no error in admitting them as evidence.

It was further contended by appellant, in count seven of his bill of exceptions, that it was error on the part of the trial court to deny his motion for a new trial, which contained five counts. Four of the counts set out in the said motion not being of any legal importance nor supported by any principle of law, this Court will proceed to pass on count two of the said motion in which appellant contended that inasmuch as none of the witnesses who testified on behalf of the State gave evidence of any altercation between prisoner and decedent previous to, nor at

the time of, the commission of the crime, although from the evidence the charge was substantially proven, proof of malice was wanting in order to warrant a conviction for murder. Malice

> "is a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief, the existence of which is inferred from acts committed or words spoken. . . . Malice, in its legal sense, means the intentional doing of a wrongful act towards another, without legal justification or excuse, or, in other words, the wilful violation of a known right." 18 R.C.L. 2, § 2.
>
> "The presumption of malice, from a wrongful and injurious act wilfully done, is not an arbitrary, technical, or artificial rule invented for the particular occasion, but is the result of a mode of legal reasoning which is of general application, and has been said to be a natural inference drawn by a fair course of reasoning, from the laws of nature, the experienced course of human conduct and affairs, and the connection usually found to exist between certain things, and, in this respect, standing on the same footing as inferences from the known laws of nature." *Id.* at 3, § 3; see also 13 *id.* 741, §§ 46, 47; 2 Wharton, Criminal Evidence (10th ed., 1910), § 764.

We would remark before proceeding further that this case being one which involves the life of a human being, we feel it our duty to thoroughly investigate the whole issue so far as it has been brought within the grasp and purview of this Court, in order that we may justly and impartially ascertain whether or not substantial justice has been meted out by the lower court. And in doing this we shall not confine ourselves to the points submitted for our consideration by the counsellors in the case with respect to the legality or illegality of the various rulings handed down in the court below, but shall extend our investigation to all the facts and circumstances surrounding

the case in order that we may better ascertain whether the judgment of the court below should be reversed or not.

In homicide cases the corpus delicti, that is the body of the offense, the substance of the crime, has at least two component elements, the fact of the death and the criminal agency of another person as the cause thereof. We shall then proceed to analyze the evidence adduced at the trial to ascertain the proof of the corpus delicti. It was given in evidence by Kerkla Gbarmu that the prisoner, now appellant, shot decedent about midnight with a bow and arrows when she made the alarm, "You all come. Lawor Kelleng has killed me." At the alarm witnesses Kerkla Gbarmu, Quellie Kpallor, and others rushed to the scene of the tragedy where decedent was found with two arrows in her side. The prisoner, to evade detection by the crowds approaching the scene, took flight to the roof of the house, whence he was forced down and secured. When he was questioned by Savah Yarn, who made his appearance at the time, in the presence of witnesses Kerkla Gbarmu and the other witnesses who testified in behalf of the State, "Lawor Kelleng, what strings are these about your waist? What has happened to you that they are calling?" The prisoner said in answer to the question, "I have shot Gbanga-vay-yum," meaning the decedent. He, the prisoner, further said to Savah Yarn and those present that "A person has done a thing and then you still ask him about it?" The witnesses testified further, "The wounded woman was there, fourteen days after which she died." This testimony of Kerkla Gbarmu was corroborated in principle by Kwannah Kpallah, Quellie Suah, and Savah Yarn, all of whom testified on behalf of the State and whose evidence remains unimpeached.

It having been substantially established in the records that the body of the decedent was identified to have been subjected to violence, there being found in the body

arrows which had caused said wounds; and the witnesses having all testified to the decedent's coming to her death fourteen days after the infliction of the wounds and that said wounds were not received accidentally or from self-infliction; and the death of the decedent having been satisfactorily attributed to the wilful and unjustifiable act of the prisoner who in turn voluntarily, without coercion or threats or inducement, confessed his having intentionally inflicted the wounds; and the instruments with which the wounds were inflicted having been shown to be sufficient to cause death; and there appearing in the records of the case an authorized certificate from a competent medical expert to the effect that the defendant shows no physical sign of imbecility and that he possesses all the attributes of a sane and rational man; and the trial below having been regularly conducted; this Court regrets the necessity on its part in the circumstances to have to affirm the judgment of the court below; and it is so ordered.

Affirmed.