FLOMO YON KOLLIE, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

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

Decided May 15, 1931.

1. Where one who intends to kill another becomes voluntarily intoxicated for the purpose of carrying out his intentions, the intoxication will have no effect upon the act.
2. Where the *corpus delicti* is clearly proven and other attendant circumstances are satisfactory to the jury, the verdict or judgment will hardly be disturbed.
3. In criminal cases an arrest of judgment should be based upon some material error apparent on the face of the indictment.

Defendant was convicted of murder in the Circuit Court, and his motion for arrest of judgment denied. On appeal to this Court, *affirmed*.

A. B. Ricks for appellant. *The Solicitor General* for appellee.

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

The appellant, Flomo Yon Kollie, was indicted at the August term of the Circuit Court of the First Judicial Circuit, Montserrado County, in the year of our Lord 1931 for the murder of one Beh Zobo, the wife of said appellant, at a native town in the hinterland of Liberia, known as Zolowo.

The facts in the case are substantially as follows: It appears from the evidence adduced at the trial of the case that appellant, on account of a disagreement between himself and decedent, left her, and resided in another house in the said town. The chief of the town, Yah-Pah Wolo, who was absent at the time, on returning home and learning of the estrangement between the said parties, sent for

appellant and advised him to return to his wife, in order that he might find out what was the trouble.

Appellant refusing to return to his wife, her father requested that since said appellant did not care to live with decedent she should be allowed to return to him. But the Chief of the said town with the hope that he would be able to adjust the differences between appellant and wife, permitted her to remain in his house until he returned from his farm and defendant paid the dowry, as he had previously promised to do.

It was subsequently agreed that the Chief and the brothers of appellant would assemble the parties together and talk the matter over, but on the day appointed, the Chief having been called off suddenly, the conference was not held. He was subsequently called home and informed that appellant had shot and killed decedent that night and had fled from the town. He at once instituted a search for appellant, who had fled into the bush where he remained for a fortnight.

Appellant was subsequently found and taken to the District Commissioner, where he confirmed, in the presence of a number of persons, the confession which he had made when he was first caught, that he had killed decedent with a gun because she did not care to live with him.

The case was tried and determined at the November term of the Circuit Court, 1930, the petty jury who were empanelled to try the case bringing in a verdict of guilty. Judgment was duly passed upon him, sentencing him to be executed on the 27th day of December, 1930.

Appellant being dissatisfied with the verdict of the petty jury and the judgment of the court, filed a bill of exceptions, and brought the case up to this Court for review and final adjudication.

The bill of exceptions is voluminous, containing nine points, but as the first three are based upon the attempt of appellant's counsellor to prove that prisoner was drunk

at the time of the commission of the crime, we will consider them together.

Mr. Bouvier makes the following observation on drunkenness in criminal cases: "In England it is said, drunkenness has never been admitted in extenuation for an offence committed under its immediate influence." "A drunkard who is *voluntarius dæmon,*" says Coke, "hath no privilege thereby: Whatever ill or hurt he doth, his drunkenness doth aggravate it."

While it has been held in a number of cases that when a man is so intoxicated as to render him incapable of forming a wilful, deliberate and premeditated design to kill and murder, it reduces what would otherwise be murder in the first degree to murder in the second degree, yet it is also held that "where one who intends to kill another becomes voluntarily intoxicated for the purpose of carrying out his intention, the intoxication will have no effect upon the act. . . ." 1 B.L.D. 945 (Rawle Rev.).

In the case at bar, there was nothing in the records to show that prisoner was intoxicated or that his conduct at the time of the commission of the crime tended to show that he was not in his right mind. On the contrary, the evidence of the witnesses for the prosecution established the fact that appellant, after shooting decedent, fled into the bush where he remained concealed for some time. This act showed that he was conscious at the time that he had committed a grave crime, and fled to escape punishment.

Moreover, prisoner's confession of guilt at the time of his arrest supports the theory that he was sober when he killed decedent.

The court below therefore did not err in disallowing said question.

The only remaining points which seriously claim the consideration of the Court are those relating to the verdict of the petty jury, the judgment of the court and the

motion in arrest of judgment, and these we will now proceed to discuss.

The *corpus delicti* was clearly proved by the state; the witnesses for the prosecution testifying that they heard the report of the gun and subsequently found the dead body of decedent, who was shot with a gun, and these facts together with the flight of appellant and his voluntary confession made on his arrest and several times thereafter were in our opinion sufficient evidence to warrant the petty jury in arriving at a verdict of guilty and the court below in pronouncing judgment against said appellant.

Coming to the motion in arrest of judgment, we find the point in the bill of exceptions relating to said motion stated as follows:

> "Because the means of death of the said decedent had not been sufficiently established in that (a) the gun with which said decedent was shot, although supposed to be in the possession of plaintiff, was never produced."

We are of the opinion that the court below did not err in refusing to arrest judgment on the motion of appellant. This Court in its judgment handed down in *Brewer* v. *Republic,* 1 L.L.R. 363 (1900), made the following observations on the motion in arrest of judgment which was offered in the court below, in that case:

> " 'Any want of sufficient certainty in the indictment (as in the statement of place, where material) of the person against whom the offence was committed, or of the facts and circumstances constituting the offence, or otherwise, which is not aided by the verdict, is a ground for arresting the judgment. In criminal cases an arrest of judgment is founded on exceptions to the indictment.' . . ." *Id.* at 365.

In the case at bar, the motion was based upon the fact that the gun with which decedent was shot and killed was

never offered in evidence at the trial, although it was in the possession of appellee.

Appellant having confessed that he shot and killed decedent, and the *corpus delicti* having been clearly proved, the mere omission to offer the gun in evidence was not sufficient to warrant the court to arrest judgment.

It results from the above reasoning that the judgment of the court below should be confirmed and the sentence passed upon appellant should be executed at such time as the Executive shall appoint, and it is so ordered.

Affirmed.