DECISIONS AND OPINIONS

OF THE

SUPREME COURT

OF THE

REPUBLIC OF LIBERIA.

APRIL TERM, A. D. 1925.

MATTHEW C. H. LEDLOW, ABRAHAM B. MALONEY and GARKPAH, Appellants, *v.* REPUBLIC OF LIBERIA, Appellee.

ARGUED APRIL 14, 15, 16, 1925. DECIDED APRIL 18, 1925.

Johnson, C. J., Witherspoon and Bey-Solow, JJ.

1. In criminal cases, especially capital cases, the prisoner should be afforded every opportunity to establish his innocence; and when he is deprived of any right or privilege guaranteed to him by the Constitution or law, by the subterfuge of his opponent or the action of the court, he can not be said to have had a fair and impartial trial.
2. In all criminal cases it is illegal to demand fees from parties.
3. It is a wicked and mischievous thing in capital cases to deprive a prisoner of the testimony of his witnesses, because of some technicality or because of his failure to pay the fees of the officers of the court.
4. On a trial for murder the declaration of decedent made in the presence of the prisoner before the murder as to an aggravated assault recently made upon decedent by said prisoner, is not hearsay. It may become important as a link in the chain of evidence, connecting prisoner with the said crime of murder.
5. Declarations are not necessarily hearsay because those of a person not under oath.
6. The examination of a prisoner's body by medical experts, called by the State, in order to prove that prisoner was not suffering from lumbago, but that his illness was caused by blows and wounds, is not a violation of the constitutional rights of the prisoner.
7. In a criminal trial everything calculated to elucidate the transaction should be received, since the conclusion depends on a number of links which alone are weak, but taken together are strong and able to lead the mind to a conclusion.

8. Circumstantial or presumptive evidence is allowed in all cases where direct and positive evidence of the prisoner's guilt can not be procured, and it is often as satisfactory as direct and positive evidence.

Mr. Chief Justice Johnson delivered the opinion of the court.

Murder. The appellants, Matthew C. H. Ledlow, Abraham B. Maloney, and Garkpah, were indicted by the grand jury for the County of Grand Bassa for the crime of murder and tried in the Circuit Court of the second judicial circuit. The said trial resulting in their conviction, they have therefore brought the case up to this court, by bill of exceptions, for review.

The facts in the case, so far as can be ascertained from the records, are substantially as follows:

Some time in the month of May, A. D. 1924, one Susan Ledlow, an old lady living in the lower ward of the City of Buchanan, complained to several persons that on the previous night her residence had been entered by thieves led by Matthew Ledlow, her nephew and one of the appellants in this case, and that said Ledlow had struck her on her face and had a confederate to carry away one of her trunks containing valuables. She further complained that Ledlow told her that he had come for her money; and that when he came back she would have to tell him where her money was or he would kill her. Witnesses J. G. Montgomery, Caroline Payne-Diggs, Lulu Montgomery and others testified that at the time that decedent made this statement, there were marks of violence on her face.

The deceased subsequently charged Ledlow to his face with having been one of her assailants, whereupon it is alleged that Ledlow replied: "Oh! farce." On the fourth day of June of the same year the deceased was found brutally murdered in her bedroom and there were indications which showed that there had been a struggle between her and her assailants.

It also appeared from the records that Maloney, one of said appellants, charged Ledlow with being the perpetrator of the murder; saying, *inter alia,* that: "if Mrs. Caroline Payne wanted to know who killed her mother (meaning Susan Ledlow) she should ask him as he was a member of the secret gang in Lower Buchanan." The reason why Ledlow was ailing at the time of the murder was from serious blows that he had received from Mrs. Susan Ledlow.

He is also alleged, by a witness for the prosecution, to have said: "if they wanted to know who killed Aunt Susan (meaning Susan

Ledlow) why do they not ask Maloney, I am in all of those things and I know a lot of things; nothing the matter with Ledlow only the old lady gave him a good blow." Subsequently Maloney fearing that he would be arrested, fled to Monrovia, but was arrested by order of the Attorney General and returned to Bassa.

A true bill was found against Ledlow, Maloney, Garkpah and Boe-Me-Boe, and appellants were convicted of said offense. Counsel for appellants set out in the 6th point of their brief that "the Constitution of Liberia secures to every person criminally charged the right to have compulsory process for obtaining witnesses in his favor, to have a speedy, public and impartial trial by a jury of the vicinity." Upon the review of the records of this case it is very evident that prisoners were deprived of this great constitutional right by the court below. This case has had the careful consideration of the court, and we are constrained to make the following observations.

In all criminal cases, especially in capital cases, the prisoner should be afforded every opportunity to establish his innocence; and when he is deprived of any right or privilege guaranteed to him by the Constitution or laws, by the subterfuge of his opponent or the action of the court, he can not be said to have had a fair and impartial trial.

Now in the trial of the case at bar, there were certain irregularities committed which call for strong comment by this court; for instance, (1st) The sustaining of objections to questions asked by counsel for defense in support of the alibi set up by prisoners; (2nd) The refusal of the court to allow Frank to testify; (3rd) Omitting to give Maloney and Garkpah an opportunity to say why sentence of death should not be passed upon them; (4) Carrying on the trial and concluding the case at mid-night, or Sunday morning, although counsel for defense asked that the trial be continued until the ensuing week, (a) because one of the counsellors for prisoners was ill and tired; (b) because some of the witnesses for defense were not present; (5th) The court refusing to entertain the motion for the arrest of judgment because it was not stamped. These were grave errors and vitiated the entire proceedings. In all criminal cases, it is illegal to demand fees from parties. See ruling in case of *R. H. Dennis, Clerk of the Supreme Court, R. L.* at this session of the court.

It is a wicked and mischievous thing, especially in capital cases, to deprive the prisoner of the testimony of his witnesses because of some technicality or because of his failure to pay the fees of the officers of the court. This court has repeatedly held that in criminal cases no fees shall be demanded by the clerk or sheriff. This applies as well to the action of the court, in regard to the motion in arrest of judgment, which was not entertained because it was not stamped. As the Government neither pays nor receives costs, it is unfair to compel persons criminally charged to pay fees, which, in case of their acquittal, they cannot recover from the State. See ruling in case *R. H. Dennis, Clerk of the Supreme Court,* given at this term of the Supreme Court. But with regard to the point raised by the defense that they were denied the request to continue the case until the ensuing week, because of the illness of one of the counsellors for defense and because of some of their witnesses were absent, we must say that the action of the court was arbitrary, tyrannical and illegal. The request was a reasonable one and should have been allowed by the court. The judge, however, seemed to have regarded the action of the counsel for defense as a personal insult; and hence became so biased, as was admitted by the Attorney General, as to prevent him from fairly considering the questions raised by the defense. Again Maloney and Garkpah, not having been represented by counsel, should have been allowed an opportunity to say something in their own behalf.

In view of the foregoing, we are of the opinion that the case should be remanded to the court below for a new trial; but before doing so we deem it necessary to comment upon the evidence which was admitted at the trial, particularly the declaration made by decedent, as to assault alleged to have been made upon her in the month of May, and the evidence of the medical experts.

Ordinarily, this declaration is regarded in law as hearsay, and standing alone would have no value; but in the case of circumstantial evidence it may become important as a link in the chain of evidence connecting prisoner with the crime. Mr. Bouvier says that declarations are not necessarily hearsay because those of a person not under oath. Now in the case at bar the declaration was made to a number of persons, who testified to same in court, and was supported by circumstances which corroborated the statement of decedent to a certain extent. Witness L. E. Montgomery testi-

fied as follows: "I asked her did you really see him yourself? She said a lamp was beside her bed in a chair. She said 'I was looking at him just as I am looking at you now.' I asked her what did he have on, she said he had on his large Chesterfield coat. I asked her did you mean he was standing talking to you all that time? She said yes. She said that when she found out that prisoner was determined, she went to the bureau and picked up an old lamp to throw at prisoner but he knocked it out of her hand on the floor and it broke; she showed me a piece of the broken lamp. She said prisoner then put the lamp out and struck her a blow on the side of her face. I bathed her face." Several other witnesses testified that decedent made a similar statement to them, and showed them her injured face. Under the circumstances, we are of the opinion that the court below did not err in admitting in as evidence the said declaration of decedent, especially since this declaration was made in the presence of the prisoner in a conversation between decedent and prisoner. (See Lib. Stat., ch. X, p. 53, sec. 25.)

It is claimed by counsel for defense that the examination of prisoner's person by the two medical men called by the State was a violation of the constitutional right of the prisoner. We cannot concur in this opinion. The prisoner, who became so disabled as to be unable to walk, shortly after the murder, claimed that he was suffering from lumbago; it was competent for the State to show that his illness was caused by blows and wounds, which was another link in the chain of evidence tending to connect prisoner with the crime.

Circumstantial evidence has been admitted in every age of the common law and it is to be acted on after it has generated full conviction. Everything calculated to elucidate the transaction should be received, since the conclusion depends on a number of links which alone are weak, but, taken together, are strong and able to bring to a conclusion.

People do not always commit offenses publicly in the open day, but oftener commit them in secret, or at night, and if circumstantial evidence were excluded all secret offenses might be committed with impunity. Circumstantial or presumptive evidence therefore is allowed in all cases where direct and positive evidence of the prisoner's guilt can not be procured; and it is often as satisfactory as direct and positive evidence.

The State having made out a *prima facie* case against the prisoner Ledlow and the latter setting up an alibi, a very important question that arises is where Ledlow was on the night when the murder was committed. He himself stated on the stand that he left Lower Buchanan on Monday the 2nd and returned to his farm, and that he remained there until Friday the 5th; but several witnesses deposed that they saw him in Lower Buchanan on Tuesday the 4th of June.

Another link in the chain of evidence is that, when on the morning of the alleged assault upon decedent in May, decedent was describing how prisoner was dressed the previous night, saying that he had on his Chesterfield coat, a witness deposed that, just then Ledlow came into the decedent's house, having on a Chesterfield coat.

On the trial of this case, prisoner Ledlow called Francis Hill to prove that at the time of the alleged assault, he did not have the Chesterfield coat as he had left it at Mrs. Carter's for some days and also to prove that he had slept at Mrs. Carter's in Upper Buchanan on the night of the alleged attack, but failed in his proof.

In view of the foregoing, we are of the opinion that the case should be remanded with instructions to said court to hear all evidence that is produced by both parties that tends to throw some light upon the case. The medical certificate and evidence being still admitted as evidence. This case taking precedence of all other cases on the docket.

Barclay and *Barclay,* for appellants.

L. A. Grimes, Attorney General, for appellee.

In re ROBERT H. DENNIS, Clerk of the Supreme Court, demanding cost for docketing the case M. C. H. Ledlow et al., Appellants, *v.* REPUBLIC OF LIBERIA, Appellee.

ARGUED APRIL 6, 1925. DECIDED APRIL 17, 1925.

Johnson, C. J., Witherspoon and Bey-Solow, JJ.

1. The Government neither pays nor receives costs.
2. The statutes requiring appellants to pay costs on taking an appeal do not apply to criminal cases.
3. The "fee bill" found in the Statutes of Liberia, Old Blue Book (Compilation of 1856), pages 28-32 of the Appendix shall be the guide for computing costs, and shall always be strictly followed in all civil cases.