

**SAMMY DAHN, Appellant, v. REPUBLIC OF  
LIBERIA, Appellee.**

APPEAL FROM THE CIRCUIT COURT FOR THE THIRD JUDICIAL CIRCUIT, SINOE  
COUNTY.

Heard: November 16, 1987. Decided: February 25, 1988.

1. When a human being is deliberately killed by another, the law will presume malice even though no particular enmity has been proven.
2. "Malice" in its legal sense means the intentional doing of a wrongful act to another without legal justification or excuse.
3. Malice is not grudge or resentment, or vindictiveness against another alone, but it is also a manifestation of a wicked, evil spirit evoked upon the occasion of the act done. It is that malevolence which comes from a depraved heart, regardless of social duty and fatally bent on mischief; and if any act or conduct of the accused is a wicked act or an act denoting depravity at the time, and results in injury to another person, it is a malicious act in law.
4. When the trial of a case has been regularly and properly conducted and the evidence is cogent and not impeached, the judgment will be affirmed.
5. The replacement of a regular juror by an alternate juror on the same panel does not constitute a ground for a new trial.
6. The fact that a non tribal ethnic person is living with another ethnic group and is to stand trial before said group, or that the witnesses who testified on behalf of the prosecution belonged to an ethnic group other than that of the defendant, is not a basis or legal ground for a court to set aside a verdict and grant a new trial.
7. When a trial has been regularly and fairly conducted, and the testimony and other evidence given excludes any hypothesis of reasonable doubt, the judgment of the trial court will be affirmed.

The appellant was charged, tried and convicted of the crime of murder and sentenced to death by hanging. The indictment charged that the appellant had intentionally and with malice aforethought shot the decedent with a single barrel gun. The findings of a coroners jury confirmed that the decedent died as a result of a fatal shot and that appellant had done the shooting. The evidence produced at the trial also showed that the appellant, who was walking along the road with the decedent and another person had pointed the gun towards the decedent and shot him, and that just before the shooting the appellant had threatened to

“play danger” with the decedent if the decedent continued to joke him.

The appellant appealed the conviction and judgment to the Supreme Court, contending that while he had shot the decedent, the shooting was a mistake and was without malice as it had occurred when the single barrel gun which the decedent had given to him, the appellant, to kill an animal fell from his hands. The appellant also testified that he had tried to help the decedent following the shooting, but that this was to no avail.

The Supreme Court affirmed the judgment of the trial court, noting that the evidence produced by the prosecution clearly proved beyond a reasonable doubt that the appellant had intentionally and with malice aforethought killed the decedent. The Court observed that the testimony of the appellant that he had not shot the decedent intentionally was uncorroborated by any other witness, that it failed to show that the act was done out of negligence by the appellant, and that the statement, standing alone, was insufficient to relieve the appellant of the crime of murder. The Court opined that under the circumstances, it had found no legal grounds upon which the trial court could have granted the appellant’s motion for a new trials.

As to the appellant’s contention that the trial judge had erred in replacing a regular juror with an alternate juror during the trial, the Court said that this act was provided for by the criminal Procedure Law, noting that if the Legislature had not intended that such replacement should occur, it would not have provided for alternate jurors. The replacement therefore did not constitute a basis for a new trial, the Court said. In addition, the Court rejected the appellant’s contention that the prosecution’s witnesses were biased against him since they were from the same ethnic group as the decedent. The Court noted that Liberia was divided into various ethnic groups and the fact that the witnesses belonged to an ethnic group other than that of the appellant did not constitute a legal ground upon which the verdict of the jury could be set aside and a new trial granted. the Court therefore affirmed the conviction and the judgment.

*H. Varney G. Sherman* of Maxwell & Maxwell Law Firm

appeared for appellant. *McDonald J. Krakue*, Solicitor-General of Liberia, appeared for appellee.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

This case has come up to us on appeal from the Third Judicial Circuit Court, Greenville, Sinoe County. The appellant was tried on the 5<sup>th</sup> day of April, 1981, for the murder of Johnson Cheteh. The death of the decedent was caused by the appellant, Sammy Dahn, by his shooting of the decedent with a single barrel shot gun.

Sammy Dahn, the appellant herein, was indicted during the May Term, A. D. 1981, of the Third Judicial Circuit Court. The indictment read as follow:

"INDICTMENT

We, the grand jurors, good and reputable citizens of and for the County of Sinoe, Republic of Liberia, duly selected, sworn and empaneled to enquire for and on behalf of the Government of the Republic of Liberia do upon our oaths, present Sammy Dahn, defendant, for a felony, to wit:-MURDER, which was committed at Dee's Town, Ceedpreboe Township, Snoh Butaw Clan, Koah Chiefdom, Butaw District, Sinoe County Republic of Liberia, in violation of the Penal Law, Rev. Code 27: 14.1 in manner and form as follows:

A person is "GUILTY" of murder if he--

- (a) Purposely or knowingly causes the death of another human being or
- (b) Causes the death of another human being under circumstances manifesting extreme difference to the value of human life.

A rebuttable presumption that such indifference exist arises if the defendant is engaged or is an accomplice in the commission of or attempt to commit, or take flight after committing or attempting to commit treason, robbery, burglary, kidnaping, felonious restraint, arson, rape, or aggravated danger to human life. Murder is a felony of the first degree but a person convicted of murder may be

sentenced to death or life imprisonment as provided in section 50.5 and 51.3.

And the aforesaid Sammy Dahn, defendant previous to the finding of this indictment, did do and commit the crime of murder between the 1st day of April A. D. 1981 to the 30th of April A. D. 1981, the exact day and date being unknown to the grand jurors, at Dees Town, Ceedpreboe Township, Snoh Butaw Clan, Koah Chieftdom, Butaw District, Sinoe County, Republic of Liberia, the aforesaid Sammy Dahn, defendant, did unlawfully, wilfully, wrongfully, intentionally, deliberately purposely, feloniously, with premeditation and deliberation and with malice aforethought and intention to effect the killing and murdering of the aforesaid Johnson Cheteh, by discharging a single barrel shot gun on the left breast of the late Cheteh, while walking along the road between Jimmy and Tugbe's Town, Ceedpreboe Township, Snoh Butaw Clan, Koah Chieftdom, Butaw District, Sinoe County, Republic of Liberia, which caused the late Johnson Cheteh to drop and die on the spot. The aforesaid Sammy Dahn, defendant, did do contrary to the New Penal Laws of the Republic of Liberia, in such cases made and provided and against the peace and dignity of the Republic of Liberia.

And the grand jurors, aforesaid, did upon their oath present the said Sammy Dahn, defendant at the time and place aforesaid and in manner and form aforesaid, did do and commit the crime of murder, contrary to the form, force and effect of the New Penal Law of the Republic of Liberia and against the peace and dignity of the State."

That, in effect, is what the indictment charges.

The trial commenced on the 20th day of August, A. D. 1981. The witnesses for the prosecution were called and they deposed on the direct and were cross-examined before a jury duly selected, sworn and empaneled. After the prosecution rested oral evidence, the following species of evidence which had been testified to, identified and marked by the court as "ME1", "ME2", "ME3" and "ME4", were offered for admission into evidence to form a cogent part of the evidence adduced at the trial. As no

exception were taken from the defendant, the documents and instruments were ordered admitted into evidence.

Thereafter, the defendant/appellant took the witness stand and testified in his own behalf. Following this testimony, the defendant rested evidence. Arguments were held and the jury duly charged by the judge. They then retired to their room of deliberation and returned in open court with a unanimous verdict of guilt against the defendant/appellant for the crime of murder. The defendant thereafter filed a motion for a new trial, but same was denied. On the 9th day of September, A. D. 1981, the trial court confirmed and affirmed the verdict of the empaneled jury, and sentenced the defendant to death by hanging.

It is from this judgment of the trial court below that the defendant has excepted and appealed to this Honourable Court for a final adjudication. The jurisdictional steps required for an appeal were taken and the case is now before us on a bill of exceptions containing five counts which we hereunder quote:

- “1. Because defendant strongly contends that the verdict of the empaneled jury was manifestly against the evidence adduced at the trial in the case of murder when the prosecution did not establish that murder was wilfully, intentionally, purposely, with premeditation and deliberately with malice aforethought committed by the defendant Sammy Dahn, as charged in the indictment; yet, Your Honour upheld the verdict of the aforesaid empanelled jury and denied defendant’s motion for a new trial, to which defendant excepted. *Lawrence v. Republic of Liberia*, 2 LLR 65 (1912).
2. Defendant also says that of the six witnesses who testified in favour of the prosecution, Joe Jallah was the only eye witness who told the court and jury that the deceased and defendant were close friends and there never existed any altercation between them. The other five witnesses were coroner jurors who simply testified to the examination performed, which testimonies were uncorroborated on the whole. The testimonies of the five witnesses referred to were circumstantial and not of the best grade in criminal cases, especially murder. Defend-

ant also contends that wilful murder was never established at the trial. Defendant said in open court on record that it was in the process of putting the gun on his shoulder when the said gun went off. Defendant maintains that Your Honour erred in upholding the verdict of the empaneled jury for "wilful murder", instead of a lesser degree of homicide as found on page 70 of the New Penal Law, approved July 19, 1976.

3. Defendant says further that even though Joe Jallah, the only eye witness, and Jackson Roberts of the CID testimonies were uncorroborated, as the east is from the west, yet Your Honour denied defendant's motion for a new trial in an infamous crime, penalty of which is death, leniency should be exercised for transparent justice, especially is the instant case where there were many reasonable doubts. *Logan v. Republic*, 2 LLR 472, 475 (1923).
4. And also defendant says, contends and maintains that Your Honour erred in sustaining count four of plaintiff's resistance to his motion for a new trial which were based on mere technicalities that were not material and did not affect the merits of the case, especially when an accused was on trial for his life; yet Your Honour denied defendant's motion for a new trial, to which ruling defendant excepted.
5. Defendant also contends and maintains that because Your Honour sustained objections to questions propounded to witnesses by him on the cross examination which if were allowed to be answered would have brought out the kernel of the case which might have operated in favour of the accused. Defendant further contends that all of the witnesses who testified for the prosecution were of the same tribe (Sarpo) as the deceased, and their testimonies were of interest. The defendant was of a different tribe (Gio) and was living with them because of employment when the incident occurred, which Your Honour was not aware of when you denied his motion for a new trial, to which ruling the defendant excepted."

Before traversing the issues raised in the bill of exceptions, as well as the counter arguments of the appellee, we wish to note that the case now under review involved only three characters: The deceased, witness Joe Jallah and the defendant, now appellant, Sammy Dahn. The incident occurred when the three were traveling on a lonely road. According to the records certified to us from the trial court, the coroner's inquest was held and a report submitted to the county attorney, prosecuting attorney for Sinoe County. Based upon the report, the defendant/appellant was charged, subsequently indicted and tried. The coroner jurors' report is hereunder quoted:

"CORONER JURORS' VERDICT

April 5, 1981

Honourable Nathaniel Duncan  
County Attorney for Sinoe County  
Greenville, Sinoe County  
Mr. County Attorney:

We the coroner's jurors, selected and sworn to hold an inquest over the remains of the late Mrs. Johnson Cheteh who died on Sunday, April 5, 1981, which incident occurred between Doe and Tugbe's Towns, Ceedorboe Township, Butaw District, Sinoe County, find that Sammy Dahn, then and there loaded his single barrel shot gun with cartridges, then and there aim and fired the gun at the late Mr. Johnson Cheteh on his left breast, which caused the late Mr. Johnson Cheteh to drop on the ground where he died on the spot.

When I arrived there I then summoned fifteen (15) coroner's jurors to hold an inquest over his remains and statement was taken by the coroner's jurors from Mr. Joe Jallah, who was present on the scene when Mr. Sammy Dahn shot and killed the late Johnson Cheteh. Please find thereto attached Mr. Joe Jallah general statement taken on the spot where we met the late Mr. Johnson Cheteh lying down dead on the ground.

Therefore, from careful observation and examination we discovered that the late Mr. Johnson Cheteh was shot with a single barrel shot gun on his left breast and was killed on the spot.

- |                      |                                    |
|----------------------|------------------------------------|
| 1. /s/ Joseph Pajibo | 9. /s/ Thomas Gbober               |
| 2. /s/ Ben Smith     | 10. /s/ Thomas Brown               |
| 3. /s/ John Gleekan  | 11. /s/ Sampson David              |
| 4. /s/ Peter Sarpee  | 12. /s/ Wah Saydee                 |
| 5. /s/ William Clay  | 13. /s/ David Soweh                |
| 6. /s/ David Keih    | 14. /s/ David Brown                |
| 7. /s/ William Brown | 15. /s/ Joseph Shagbe -<br>Foreman |

Respectfully submitted:

/s/ Benjamin Karteh

CORONER FOR SINOE COUNTY"

A summary of the evidence adduced by the prosecution's witnesses, in persons of Joe Jallah, Jackson Roberts and Benjamin Katotah, are as follows:

Joe Jallah, who was on the scene of the incident, said that on April 6, 1981, the decedent, Johnson Cheteh, invited them (that is, he and the defendant/appellant) to Cheteh's town, and that while thereat, they decided to go to Tugbeh's Town to collect some breadfruits because the defendant/appellant could not eat dumboy. On their way going, the decedent, who had the gun, told the defendant/appellant that he should take it and that if he saw any squirrel, he should kill it so they could have it for soup. While on the road, the decedent commenced joking the defendant/appellant who became annoyed and said to the decedent that he was returning home, but that the decedent insisted that they should continue their journey; that after this incident, the defendant/appellant said to decedent, "if you hold me again I will play danger"; that right there and then he (defendant/appellant) fired the gun at the decedent, killing him; and that he started to run after Joe Jallah in an attempt to shoot him also, but Joe Jallah ran away from him and made a report of the incident to the town men of Tugbeh, who then came on the scene and had the defendant/appellant arrested and carried to the commissioner of Butaw.

Jackson Roberts, the other prosecution witness, stated that on the 5th day of April, A. D. 1981, the decedent and defendant/appellant decided to visit the town of Tugbeh to collect some breadfruits. The witness testified that along with them was one



Joe Jallah. He said that the decedent had a basket on his back and a single barrel shot gun which he gave, along with two cartridges, to the defendant/appellant to kill some birds which they could have for soup; that when they got near the town, the decedent said jokingly to defendant/appellant, "you said that you were not coming, I have jabbed you people; now we are almost to Tugbeh's Town"; that the defendant Sammy Dahn, who was ahead of them with the gun, became annoyed and said that he was returning; that the decedent then insisted that they should continue because he was only joking; that the defendant/appellant again said to the decedent that if he did not leave him, he (defendant/appellant) would play danger; that just then, he (defendant/appellant), having the gun, aimed it at the decedent, Johnson Cheteh, and shot him, causing him to drop to the ground and die; that because Joe Jallah was on the scene and had witnessed the incident, the defendant/appellant attempted to shoot him also, but that he ran away to the town; that because defendant/appellant could not carry out his wicked design, he decided to shoot himself; that when the town's men heard the news, they rushed to the scene where they found both the decedent and defendant/appellant lying on the ground; that the town's men thought that both the decedent and the defendant/appellant were dead, but later they discovered that the decedent was the only one dead, and that the defendant/appellant was still alive; that they then arrested the defendant and took him to the commissioner of Butaw District, from where he was later sent to the police detachment at Greenville; and that during the interrogation of the defendant, he admitted to the killing the decedent.

Mr. Benjamin Katotah, the next witness for the prosecution, took the stand and confirmed that he was appointed as a coroner juror and that he went on the scene and saw the body of the decedent which had been shot with a gun. This testimony was confirmed and corroborated by witnesses Joseph Sahbe, Sampson David and John Cleeken who also served as coroner jurors and examined the body of the decedent, Johnson Cheteh.

The prosecution having rested evidence and submitted its case, the defendant/appellant, Sammy Dahn, then took the stand

and testified in his own behalf. He testified that on the 5<sup>th</sup> day of April, A. D. 1981, the decedent, Johnson Cheteh, invited him to his town; that upon arriving thereat, he (the defendant) waited for the decedent until he was finished sweeping, so they could go together to pick some breadfruits. The defendant/appellant told his friend, the decedent, that there were some breadfruits in the back yard which they could pick to prepare their soup, and that there was no need to proceed to Tugbeh's Town. The decedent rejected the suggestion because he said the tree was too tall and he would not venture climbing it to pick the breadfruits. According to the defendant/appellant, he then asked the decedent for a pair of short trousers which he would wear to climb the tree and pick the breadfruits because he did not wish to go to Tugbeh's Town with Joe Jallah traveling with them. However, he said, he finally agreed to go. The defendant said further that on their way going, the decedent gave him a shot gun which he (the decedent) had and told him to kill birds or animals which they could use with the fish the decedent's father would collect from the creek. According to the defendant, when they got near the town, he decided to go on a bye-road in search of games, while decedent and Joe Jallah traveled to Tugbeh's Town. The defendant/appellant stated that he had the gun on the ground in the position of post arms, as a soldier does; and that while he was speaking to his friend and taking the gun to put it on his shoulders to proceed by himself on the bye-road, the gun fired, causing his eyes to get dark and he to almost fall. Coming to himself, the defendant said, he observed his friend, Johnson Cheteh (the decedent), going down on his knees. He (defendant/appellant) at once began calling his friend, but the decedent failed to answer. Looking back, he said, he saw Joe Jallah running away; that he (defendant/appellant) called Jallah, inquired as to why he was running, and requested him to come to his aid. At the time, he said, he (defendant/appellant) was holding decedent by the arms, but that the decedent dropped to the ground. The defendant/appellant stated also that he made a second attempt to take decedent from the ground, but that it was all in vain. At this time, he said, his friend, Joe Jallah was out of sight.

This lone testimony of the defendant/appellant was never corroborated by any other witness.

This Court has held and will ever hold that when a human being has been deliberately killed by another the law will presume malice even though no particular enmity has been proven, *Glax v. Republic*, 15 LLR 181 (1963); *Darnenoh v. Republic*, 4 LLR 308 (1935). Our law further holds that "malice in its legal sense means the intentional doing of a wrongful act to another without legal justification or excuse." *Collins v. Republic*, 21 LLR 366 (1972). "Malice is not grudge or resentment, or vindictiveness against another alone, but is also manifestation of a wicked, evil spirit, evoked upon the occasion of the act done. It is that malevolence which comes from a depraved heart, regardless of social duty and fatally bent on mischief . . . but if any act or conduct of his, to the injury of another, is a wicked act, or act denoting depravity at the time, it is a malicious act in law." *Brown v. Republic*, 21 LLR 65, 77 (1972).

It is proven beyond all doubts that the defendant did deliberately shoot and kill the decedent with a single barrel shot gun; and that before shooting the decedent he had said that "if you hold me again, I will play danger" and immediately thereafter shot the decedent. Moreover, the gun was produced and admitted into evidence. Also, a coroner's inquest was held and it confirmed that the defendant/appellant did shoot and kill the decedent. At the trial, the said coroner's report was admitted into evidence.

The defendant/appellant contends that the killing was not wilful but he failed to show that his act could be imputed to negligence; instead, the lone eye witness to the commission of the crime testified that the defendant did aim and fire the gun at the decedent, and the coroner's report confirmed that the decedent was hit in the left breast and that this caused his (decedent's) death. "When the trial of a case has been regularly and properly conducted, and the evidence is cogent and unimpeached, the judgment will be affirmed." *Williams v. Republic*, 5 LLR 353, 357 (1937).

We find no legal grounds upon which the motion for new

trial could have been granted by the trial judge. The testimonies of the prosecution's witnesses did corroborate, that is, the testimonies of Joe Jallah, CID Jackson Roberts as well as the five witnesses from the coroner jury who testified to the examination of the decedent's body.

Further, the fact that the trial judge replaced Agnes Diobi, a regular juror with an alternative juror on the same panel did not constitute a ground for new trial. If the law makers did not intend for a regular juror on a panel to be replaced by an alternate juror, there would be no alternate jurors to serve on any panel to hear a case on trial. The records do not show why juror Agnes Diobi was replaced, or that any exception was taken thereto by the defendant at the time juror Agnes Diobi was replaced. "The fundamental purpose of pleadings is to provide notice to the parties of issues which are to be raised on trial." *Shaheen v. Compagnie Francaise De L'Afrique Occidentale*, 13 LLR 278 (1958).

As to the defendant's contention that the prosecution witnesses were all from the decedent's ethnic group, we note that Liberia as a nation is composed of many ethnic groups. The fact that a non tribal ethnic person is living with another ethnic group and is to stand trial before said group or that the witnesses who testified on behalf of prosecution belonged to an ethnic group other than that of the defendant or that they belonged to the same ethnic group to which the decedent belonged is no basis or legal ground for a court to set aside a verdict and grant new trial.

From the facts above enumerated, the circumstances narrated herein, the law applicable thereto, and the evidence presented at the trial of this case, we conclude that the defendant intended to do harm to the decedent; that he did do harm to him, resulting in his death; and that the death was caused maliciously in the manner described. *Peehn et. al. v. Republic*, 5 LLR 192 (1936). "When the trial has been regularly and fairly conducted, and the testimony and other evidence given excludes any hypothesis of reasonable doubt, the judgment of the court below will be affirmed."

In view of the foregoing, we hold that the defendant is guilty of deliberate murder. Hence, the final judgment of the trial court

is hereby affirmed. And it is so ordered.

*Judgment affirmed.*