The second assessor said: "I have no doubt as to the story of Jorfui Morwo and Kadie Bangura. . . ."

The learned judge himself said: ". . . I have no doubt in my mind that the witnesses Kadie Bangura 1 p.w., Jorfui Morwo 6 p.w., Corporal Vandy 3 p.w., Smart Fatoma and Joseph Fatoma have told this court the truth. I accept their story. I do not believe the story of the accused. . . ."

Having regard to the evidence and to the fact that the learned judge and the assessors had the benefit of seeing the witnesses, it is not possible for a Court of Appeal to say that the verdict is unreasonable and such as cannot be supported.

The whole matter was very sad and unfortunate. Whatever the accused may have meant by his comment to Jorfui that he "was going to do bad with the people," it seems impossible that he could have intended to kill anyone at that moment or to do anybody any serious injury. He took no weapon with him and but for the misfortune of his noticing the knife, it is unlikely that anything serious would have happened. This may be an extenuating circumstance.

In law, however, malice aforethought can be such even if only aforethought for a very short space of time. The circumstances contain no element of provocation (the woman was not his wife) and a conviction for murder was correct in law, if the woman was believed. It is also to be noted that the doctor said that he saw no evidence of first aid or medical attention having been given to the wound (which might have prevented his bleeding to death). This court, however, cannot consider these extenuating aspects of the matter, although they may be considered elsewhere, and we hope that they will be.

The application is dismissed.

Freetown
July 16,
1962

Ames P.,
Dove-Edwin
J.A.,
Bankole Jones
J.

[COURT OF APPEAL]

JOHANNES JOHNSON *v.* REGINA

[Criminal Appeal 7/62]

Criminal Law—Larceny—Trial—Evidence.

Appellant was convicted of stealing certain pieces of furniture from the Government Quarters known as No. 3 Prefabricated House in the Government Reservation, Kenema. He was caretaker of the Government Rest House and had access to No. 3 in December, 1961, when it was occupied. In January, 1962, when it was unoccupied, the furniture was checked and certain items were found to be missing. A pane of glass in the door was found to be broken in such a way that the door could be unlocked.

In the third week in January, appellant began to offer furniture for sale. On February 3, he sold a wardrobe, which a friend moved for him from the Government Rest House to the purchaser's house. The purchaser became suspicious and went to the police, who laid a trap. The purchaser pretended to want to buy a bookshelf, and appellant delivered it on the 8th. When appellant came for his money on the 9th, a Mr. Coomber was in hiding to overhear the conversation. There was also evidence that appellant sold a dressing-table to another witness.

At the trial, the purchaser of the bookshelf gave evidence of the appellant's coming to him on February 9 to discuss payment, and he also referred to the fact that Mr. Coomber had overheard their conversation. Mr. Coomber, however, was not called as a witness. Appellant argued, as one of his grounds of appeal, that Mr. Coomber should have been called.

Held, dismissing the appeal, that it could not be said that the finding of guilty of larceny was unwarranted or unreasonable.

But, the court said, obiter, that either Mr. Coomber should have been called as a witness or his existence should not have been referred to at all, as such reference might tend to mislead the assessors.

The appellant appeared for himself.

Nicholas E. Browne-Marke for the respondent.

AMES P. The appellant was convicted of stealing the pieces of furniture, set out in the information, being the property of the Government, from the Government Quarters known as No. 3 Prefabricated House in the Government Reservation, Kenema. The conviction was under section 2 of the Larceny Act. The pieces set out were two beds, one dressing-table, one Vono mattress, one bookshelf, one wicker chair and one wardrobe.

The appellant was the caretaker of the Government Rest House. Sometimes visitors were put into an empty Government Quarter (if there were one) and the appellant then had access to that quarter. No. 3 had been last so used in December. In January the furniture in it was checked, it being then unoccupied. A pane of glass in the door was broken and a hand could be put through the hole and the Yale lock opened from the inside. The pieces of furniture, set out in the information, were missing from the house—except that there was only definite evidence that one bed (and not two) was missing.

In the third week in January the appellant was offering furniture for sale. A witness agreed to buy a wardrobe. On February 3 the appellant delivered it; a friend of his (a witness), who drives a lorry, moved it for him from the Government Rest House to the purchaser's house. The purchaser would not pay unless the appellant agreed to give him a paper. The appellant made excuses for not doing so ("that it was not necessary as he had sold several other pieces of furniture," and "in the evening," and "next morning"). This went on till the 7th, when the purchaser reported to the police.

A trap was laid: the purchaser was to pretend to want to buy the bookshelf: and the appellant delivered it on the 8th; and on the 9th the appellant was told to come for the money, which he did.

Also in February (date not stated, except that it was "about two months now," which was said on April 5) the appellant sold a dressing-table to another witness. The appellant took the purchaser in his van to collect it from somewhere in the Government Reservation. Where exactly is not stated. Ten pounds were paid and the appellant gave a written receipt. (This must have taken place before the 9th.)

The appellant gave evidence denying all these transactions, and denying having given the receipt for £10 and denying having stolen anything from No. 3.

The appellant's grounds of appeal, which he drafted himself, complain that the evidence was not corroborated in some matters where it could, and should (as he argued), have been, that the purchaser who reported to the police should have been corroborated by the person to whom he reported; that the person who delivered the bookshelf should have been called to say whether the

appellant told him to deliver it; and that a person said to have been present, in hiding when the trap was set, in order to overhear the conversation on the 9th, should have been called as a witness. The former two points are without any substance.

The witness who pretended to want to buy the bookshelf gave evidence of the appellant's coming to him on the 9th to discuss payment and he said also that there was one Mr. Coomber in hiding and listening to their conversation. This Mr. Coomber was not called as a witness. In a trap like that, either the hidden auditor should be called as a witness, or else his existence should not be mentioned at all. To lead evidence disclosing his existence is a completely fallacious subtlety which might mislead the assessors (or a jury in a jury case) into thinking that the witness's account of what was said and done on the occasion must be correct because it was overheard by the hidden auditor. We are satisfied that in this case no injustice has resulted from it.

Another ground of appeal complains that two witnesses were related.

We have before us the learned trial judge's summing-up. He directed the assessors (inter alia) that if they were not satisfied that larceny had been proved they should consider the offence of receiving, which he then discussed.

Both assessors found the appellant guilty of larceny, and so did the learned trial judge, who said: "The offence of larceny has, in my view of the evidence, been clearly proved."

Some juries might have preferred a verdict of receiving stolen property: but it cannot be said that the finding of guilty of larceny was unwarranted or unreasonable and such as having regard to the evidence cannot be supported.

The appeal will be dismissed and the conviction upheld with this modification, namely, that as far as the beds are concerned it is limited to one bed (and not two).

Freetown
July 16,
1962

Ames P.
Dove-Edwin
J.A.,
Bankole Jones
J.

[COURT OF APPEAL]

SAYO KOROMA *v.* REGINA

[Criminal Appeal 6/62]

Criminal Law—Homicide—Murder—Insanity—Medical report.

Appellant killed the deceased by striking him on the back of his neck with a cutlass. At his trial for murder before a judge and two assessors, he raised the defence of insanity, but was found guilty and sentenced to death. He appealed.

Held, dismissing the appeal, that the appeal had no substance.

The court said, obiter, that in cases where insanity is likely to be raised as a defence a medical report on the mental condition of the accused should be made available to the defence.

Cases referred to: *Rex* v. *Abramovitch* (1912) 7 Cr.App.R. 145; *Rex* v. *Oliver Smith* (1910) 6 Cr.App.R. 19.

Claudius Doe-Smith for the appellant.

Nicholas E. Browne-Marke (Acting Solicitor-General) for the respondent.