It is useless to consider this matter in the light of those decisions, because the Ordinance has been repealed by the Courts (Appeals) Ordinance, 1960 (No. 18 of 1960), and this latter Ordinance, by which this court is bound, does not contain any such provision as that of the repealed section 7.

[COURT OF APPEAL]

Freetown
March 19,
1962

Ames Ag.P.
Bankole Jones
Ag.C.J.
Marke J.

JOE GBONDO *v.* REGINA

[Criminal Appeal 3/62]

Criminal Law—Homicide—Murder—Malice aforethought—Trial—Whether trial judge correct in allowing witness to answer hypothetical question—Whether verdict unreasonable.

Accused was the lover of one Kadie Bangura, a woman whose husband was away from home. During the farming season they had a joint rice farm. One day the accused went to her in her house for his share of the rice from their farm; she gave him some rice and he went away. Later, he came back, found the door closed and asked her to open it. When she did so, he went in and saw her husband's brother lying on the bed. He asked her why the brother was there, and hit her, whereupon she called to the brother to come to her assistance. According to her testimony, the accused then stabbed the brother in the arm with a pocket knife. (Accused denied this in his testimony.) A witness who arrived shortly thereafter testified that he saw the brother lying on the ground in a pool of blood with accused holding him around the waist. Another witness said that he saw the brother lying on the ground and the accused standing near him. A third witness, who lived in the same house, testified that when accused had come to the house the second time he had said that he had not been given his fair share of rice and that "he was going to do bad with the people." A chiefdom police corporal found a blood-stained pocket knife belonging to Kadie Bangura's husband underneath some leaves on top of a container of cassava. The brother died on the way to the hospital.

Accused was convicted of murder by the Supreme Court (Cole J.) sitting at Bo with two assessors. He applied for leave to appeal on two grounds: (1) that the verdict was unreasonable; and (2) that the judge wrongfully allowed a witness to answer a hypothetical question put to him by one of the assessors.

Held, dismissing the application, (1) that, having regard to the evidence and to the fact that the judge and assessors had the benefit of seeing the witnesses, it was not possible to say that the verdict was unreasonable; and

(2) that it was within the discretion of the judge to allow a witness to answer a hypothetical question put to him by one of the assessors.

Claudius Doe-Smith for the appellant.
John H. Smythe (Solicitor-General) for the respondent.

AMES AG.P. This is an application for leave to appeal against a conviction of murder had in the Supreme Court at Bo before Cole J., sitting with two assessors. We allowed it to be argued on the grounds of appeal, as an appeal.

There are two grounds of appeal. The second is that the learned judge wrongfully allowed a witness to answer a hypothetical question put to him

by one of the assessors. It appears on page 18 of the record, lines 1–16. Each of us doubts if he would have allowed the question to be put; but it was within the discretion of the learned trial judge. The answer was a matter of common sense; we see nothing detrimental in its admission in evidence.

The other ground of appeal is that the verdict was unreasonable and such as cannot be supported having regard to the evidence.

It is necessary to go into the evidence in some detail, as was done by both Mr. Doe-Smith for the appellant and the learned Solicitor-General for the Crown.

The deceased died of haemorrhage caused by a wound with a pocket knife in an arm which cut a branch of the brachial artery. It happened after dark, although the precise time is not known, and death occurred at about 10.20 p.m. while the deceased was being carried in a hammock from Ngelehun Badjie to hospital at Bo.

The principal witness for the prosecution was one Kadie Bangura, a woman whose husband was away from home at the time. The accused and she had had a joint rice farm and had had sexual intercourse during the farming season. According to her she had confessed this to the husband and it had ended upon the accused paying "the woman damage." (The accused denied that it had so ended.)

Her evidence was that the accused went to her in her house for his share of the rice from their farm. The deceased was then in her room, the deceased being a brother of her husband. She gave the accused the rice and he went away. Later on he came back again, found the door closed, asked the woman to open it, saying he wanted some water to drink, and it was opened and he went in. There was a lamp alight. He saw the deceased lying on the bed (not with the woman; she was sitting elsewhere). He asked the woman why the deceased was there and hit her. Thereupon she shouted to the deceased to come to her assistance. After she shouted, the accused picked up the knife and stabbed the deceased in the arm with it, while he was still on the bed. Blood spouted out onto the mosquito net and the woman became frightened and broke open the window and jumped out.

The next to come upon the scene were two brothers. Their evidence was that they heard sounds of struggling inside the room; that they had to force the door open (presumably accused had shut it); that by this time the deceased was not on the bed but on the ground in a pool of blood. One of the brothers said that the accused was holding the deceased round his waist as if struggling. The other one said that when he got into the room the deceased was lying on the ground and the accused standing up and neither was holding the other. Both these statements could be the truth; the difference may be due to what the first to enter saw and what the second to enter saw.

The police were sent for and a chiefdom police corporal came. He made an investigation and questioned the deceased and the accused. The latter denied having killed the deceased and said that the deceased had hit him with a bottle. He searched for a knife and found a blood-stained pocket knife underneath some leaves on top of a container of cassava. It was this witness who arranged for the deceased to be carried in a hammock to obtain treatment at Bo Hospital.

Another witness for the prosecution was a woman, Jorfui Morwo, who lived in a different room in the same house. She said that when the accused

had returned that evening he had said to her that he had not been given his fair share of the rice and that "he was going to do bad with the people."

Another witness put in evidence the statement made to the police by the accused when he was charged.

The accused at various times has made different statements as to what happened, to the chiefdom police corporal, to the police when arrested, to the magistrate at the preliminary investigation and to the judge at his trial. He has said that he does not know how the deceased got stabbed; that the deceased shouted out that he had stabbed himself; that the deceased was wounded by falling on the knife, and that "the woman brought all this about; she wants to see me killed." But he has consistently denied that it was he who stabbed the deceased and asserted (except in the short statement to the magistrate) that the deceased set upon him in response to the woman's call for assistance. One must agree that it seems a very likely thing that, when he went into the bedroom on his return and hit the woman and the woman called for assistance, the deceased should have got up from the bed and set upon this former paramour of the woman, who was demanding to know what he was doing there.

The knife was the husband's knife and had been left behind by him and was lying on top of a box in the room. It was an exhibit. One might think that the person most likely to know of its existence in the room was the woman. The case for the prosecution presumes that the accused noticed it in the lamplight and picked it up, and that it was he who hid it under the leaves. According to him the deceased was picking his teeth with it while lying on the bed.

The case against the appellant depended mostly on the evidence of the woman, but not entirely. There was also medical evidence which went to support the case for the prosecution.

The doctor said: "It is inconceivable for combatant to sustain such a cut if both are struggling on the floor and one holding a knife. If that was possible I would have expected to find a ragged wound."

He had already said: ". . . the cut was a straight fine cut. If the deceased had fallen on the knife, I would not have expected such a type of cut."

Both deceased and accused had some abrasions. The doctor said that these could have been caused simultaneously during a struggle on the ground between the two. He also said: ". . . The deceased could have had strength to engage in a struggle immediately after the blow which caused the cut had been delivered . . . the strength of the deceased after the stab wound had been inflicted would have lasted five to six minutes. I would describe such strength as failing strength."

This goes to indicate the possibility of the case for the prosecution that the deceased was wounded while on the bed, and thereafter engaged in a short struggle with the accused, causing noise which attracted the other witnesses and being consistent with the second brother's seeing him lying on the ground and the appellant standing over him.

The learned judge summed up, both at length and fairly, and he drew the attention of the assessors, and so of himself, to the argument for the defence, that the woman's story was so highly improbable and fantastic that no reasonable person could believe it and that anyhow it should raise great doubts in their mind, which should go to benefit him.

The first assessor said: ". . . I accept the evidence of 1 p.w. Kadie Bangura. I believe. I have no doubt about her story. . . ."

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.