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.

DOVE-EDWIN J.A. The appellant was found guilty of murder and sentenced to death on April 3, 1962, on a unanimous opinion of the two assessors who tried him and with which the trial judge agreed.

The facts were that whilst deceased was waiting for a tax receipt to be made for him in favour of appellant, appellant came from behind him and struck him on the back of his neck with a "cutlass" which caused the injury from which he died.

The defence of appellant was that he had been threatened by deceased, whom he said was planning to kill him and, to use his own words, "to free myself I went and took a matchet and stabbed him at his verandah on his shoulder."

The learned trial judge in his summing-up to the assessors left the defence of insanity quite rightly to the assessors.

On the evidence the assessors rejected the defence of insanity.

Learned counsel for appellant said that at the time appellant committed the offence he was suffering from some delusion, and quoted the case of *Rex* v. *Abramovitch* (1912) 7 Cr.App.R. 145.

In our view, on the evidence, this appeal has no substance and must be dismissed; but, we feel, however, that in cases such as this where insanity is likely to be put up as a defence, a medical report on the mental condition of the accused should be made available to the defence and it will then be up to the defence to use it or reject it.

In other words, as it was mentioned in the case of *Rex* v. *Oliver Smith* (1910) 6 Cr.App.R. 19, "it is not proper for the Crown to call evidence of insanity, but that any evidence in the possession of the Crown should be placed at the disposal of the prisoner's counsel to be used by him if he thought fit."

The appeal is dismissed.

[COURT OF APPEAL]

Freetown
July 16,
1962

REGINA . . . . . *Respondent*

v.

KABBA TURAY . . . . . *Appellant*

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

[Criminal Appeal 2/62]

Criminal Law—Receiving stolen property—Necessity for record of judge's summing-up to jury—Rule 47 (1) *of Court of Appeal Rules* (*Vol. VI, Laws of Sierra Leone*, 1960, *p.* 338).

Appellant was convicted of receiving stolen property, and appealed. At the argument of the appeal, it appeared that there was no record of what the judge had said in his summing-up to the jury.

Held, reversing the conviction, that in a jury trial summing-up is an essential part of the trial, and that a record of the summing-up is necessary so that the appeal court can determine whether the jury was properly guided in arriving at its verdict.