

**KOMBA v THE STATE**

CA

**COURT OF APPEAL FOR SIERRA LEONE**, Criminal Appeal 15 of 1978, Hon Mr Justice Ken E O During JA, Hon Mr Justice F A Short JA, Hon Mr Justice S M F Kutubu JA, 25 May 1979

**[1] Criminal Law and Procedure – Murder – Confession statement – Misdirection by trial judge – Defendant only admitted to wounding deceased – Not a confession to murder**

The main issue in this appeal against conviction for murder was a comment by the trial judge in his summing that referred to a statement by the defendant as a “confession statement”. In his statement, the defendant admitted wounding the deceased but did not confess to having murdered him.

**Held, per Ken During JA, quashing the conviction and acquitting the defendant:**

1. The statement made by the appellant was not a confession statement in respect of the charge of murder. The appellant only admitted that he caused the injury sustained by the deceased. This was a serious misdirection by the judge and one which was fatal. The appellant’s defence was that of accident. He did not confess to having murdered the deceased.

**Appeal**

This was an appeal by Sahr Komba (alias Sugar Boy) against his conviction for murder and sentence to death. The facts appear sufficiently in the following judgment.

*Mr L D A Millar for the appellant.*

*Miss M A C Jones, Senior State Counsel, for the State.*

**KEN DURING JA:** The appellant who was charged with murder at the Session of the High Court held in Kenema was convicted and sentenced to death. The presiding judge was Golley J who sat with a jury. The appellant is the brother of the widow of the deceased.

The widow of the deceased gave evidence on behalf of the prosecution. In her evidence before the court she stated that she and her late husband had a quarrel and that as a result went to her father’s house at Gayia; the deceased, the appellant and herself stayed in the same premises; the appellant occupied one room in the premises. She stated that the appellant met her at her father’s house and asked for the keys to their premises and that she told him they were with the husband and that she had a quarrel with the husband which had been settled by her father. According to her all three met in the house where they stayed and the appellant repeatedly stated that the deceased was too quarrelsome and he told her to pack her belongings and go to her father. Whilst she was packing her belongings the husband went out and locked both herself and the appellant inside the parlour and also locked the entrance to the parlour. According to her, when the door opened she saw her husband standing in the verandah, he had wanted to get into the house and she ran away. She said that the appellant shouted out “open the door” when they were inside.

One of the prosecution witnesses in his evidence said that the appellant admitted he damaged the wooden door and also wounded the deceased.

The statement made by the appellant to the police was put in evidence by the prosecution. In his statement the appellant said inter alia:



"it is true that the wound I inflicted on the head of deceased Komba Ngeihun made him to be admitted in Hospital and did not recover but died. The wound was inflicted on his head when the door of the parlour I damaged opened and at the same time the deceased entered and I hit him on his head. This happened when the deceased went to the veranda and locked the parlour door with a Yale lock and to get out took a hoe and started damaging it. During this time the deceased suddenly opened the door while I was still hitting it, his head came in contact with the hoe."

In his notes of summing up, the learned presiding judge stated:

"refers to confession statement, to be treated with caution – accused relies on statement – statement also evidence for prosecution case."

With respect to the learned judge, the statement made by the appellant was not a confession statement in respect of the charge of murder. The appellant only admitted that he caused the injury sustained by the deceased. In my view this was a serious misdirection by the learned Judge and one which is fatal. The appellant's defence was that of accident. He did not confess to having murdered the deceased.

I would quash the conviction and substitute a verdict of acquittal.

Reported by Anthony P Kinnear