

**PATRICK SAYE FRANCY, MOHAMED THAIM and MORRIS K. CONSTANCE**, Appellants, v. **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT, CRIMINAL ASSIZES, MONTSERRADO COUNTY.

Heard: December 8, 1987. Decided: February 25, 1988.

1. A trial judge has no authority to sua sponte extend the term of court over which he presides beyond the 42 days jury session prescribed by statute, except that where, prior to the expiration of the term if a jury trial has already commenced, the term is automatically extended until the trial is completed. Judiciary Law, Rev. Code 17:3.8.
2. A trial court is forbidden from beginning a jury case on a day beyond the 42<sup>nd</sup> day sitting of the jury without authority or extension of time from the Chief Justice.
3. Trial judges must keep out of cases they are to hear so as to enable them to handle such cases objectively and without prejudice to the parties.
4. When a trial court misdirects a jury on a matter of law or refuses to give the proper instruction which was requested by the defendants, it constitutes a ground for a new trial.
5. Only the defendant, and not the prosecution, has the right to request the advancement of a criminal case on the trial docket to facilitate a speedy trial in the very term the indictment is brought against a criminal defendant.
6. The right to a speedy trial is a right granted only to and exclusively reserved for a criminal defendant, and not to a prosecutor.

The defendants, who were accused of killing three persons and indicted for the crime of murder, appealed from a verdict of guilty by the empanelled jury of the First Judicial Circuit, Criminal Assizes, Montserrado County, and the rendition of a final judgment confirming the said verdict and sentencing the defendants to death by hanging. The defendants were tried within the same term in which they were indicted upon a motion made by the prosecution for the advancement of the case on the trial docket on the basis that the defendants were entitled to a speedy trial since the offense with which they were charged was not aailable offense. Although the prosecution's application was made on the 42nd day's jury session, the trial judge reserved ruling thereon to the following day, the 43<sup>rd</sup> day's jury session. On that day, the 43<sup>rd</sup> day's jury session, one day after the statutorily prescribed 42 days for jury trial,

the trial by jury of the defendants was commenced, even though no extension had been granted to the trial judge by the Chief Justice and the defendants had informed the court that they were without legal counsel to represent their interest.

Following their conviction, the denial of their motion for a new trial, and the rendition of final judgment sentencing them to death, the defendants appealed to the Supreme Court.

The Supreme Court held that the trial judge had erred in several respects in the conduct of the trial of the defendants. The court held that the trial judge was without jurisdiction in commencing a jury trial beyond the 42 days allowed by statute for jury trial in the circuit court. The court observed that no trial judge had the authority to sua sponte extend the jury term of the court and that in order for a court to empanel a jury beyond the 42nd day jury session, he has to first obtain an extension from the Chief Justice. As the trial judge had not been granted such extension, the empaneling of a jury on the 43' day of the court was without authority and a disregard of the law.

The Court further noted that the defendants were tried in the same term in which they were indicted, upon application made by the prosecution to have the defendants accorded a speedy trial since the offense with which they were charged was not aailable offense. The Court noted that the right to advance a case for trial in the same term in which a defendant is indicted is reserved exclusively to a defendant, and not to a prosecution. In granting the prosecution's application, the trial court was effectively denying the defendants the opportunity to secure adequate counsel and to properly prepare their defense and case, the Court opined. The Court thus concluded that this was error by the trial judge.

Moreover, the Court said, the defendants had already informed the trial judge that they did not have counsel. The Court therefore held that the trial judge was in error in proceeding with the case in light of this information.

The Court also held that the trial judge had erred in not instructing the jury on matters of law, as was requested by the defendants. This omission, the Court said, was a reversible error and constituted a ground for a new trial which the trial judge should have granted. The Court therefore reversed the judgment and remanded the case for a new trial.

Stephen B. Dunbar appeared for appellants. McDonald J. Krakue, Solicitor-General of Liberia, appeared for appellee.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

The grand jury for the County of Montserrado , sitting in the August Term, A. D. 1984, of the Criminal Court, First Judicial Circuit, upon being duly selected, sworn and empaneled to inquire into things and matters offensive to the public good, made a presentment to the said court, charging that Patrick Saye Franey, Mohamed Thaim and Morris K. Constance had committed the heinous crime of murder. The defendants were therefore indicted for the commission of the said crime.

The Indictment was laid in words and text as follows:

"The grand jurors for the County of Montserrado, Republic of Liberia, upon their Oaths, do present: That Patrick Saye Franey, Mohamed Thaim and Morris K, Constance, defendants, of the City of Monrovia, County and Republic heretofore, say to wit:

That it is a violation of subsections (a) and (b), section 14.1, chapter Fourteen of the New Penal Code of Liberia which states:

"MURDER: 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 indifference to the value of human life.

The grand jurors, good and lawful citizens of the Republic of Liberia, residing in Montserrado County, R.L., duly selected sworn and empaneled to inquire into, for and on behalf of the Government of the Republic of Liberia, do upon their oaths, present: That Patrick Saye Franey, Mohamed Thaim and Morris K. Constance, defendants, for a felony to wit: Murder committed in the City of Monrovia, County of Montserrado, in manner and form as follows:

1. That the aforesaid Patrick Saye Franey, Mohamed Thaim and Morris K. Constance, previous to the finding of this indictment, that is to say, that on the 21st day July, A. D. 1984, at about the hour of 7:30 p.m. in the evening of the same day, in the home of Mr. & Mrs. Shawki Shahadi Lebanese Nationals, at Water Street, City of Monrovia, Montserrado County and the Republic aforesaid, the said Patrick Saye

Franey, Mohamed Thaim and Morris K. Constance, defendants did then and there, maliciously, unlawfully, feloniously and intentionally combine, confederate and conspire and agree together to kill Shawki Shahadi, Salma Shahadi, Fatima Shahadi and Mariam Shahadi, respectively; and in furtherance of their said concerted malicious and felonious desire, the defendants aforesaid, at the time aforesaid, taking advantage of the cover of darkness, and with a hammer made of iron and steel with a wooden handle and wheel ring made of iron and steel, said instruments being dangerous and deadly weapons which the said defendants, had and held in their hands, the said defendants, not having the fear of God in their hearts, but being men of wicked and malignant minds and hearts, design and purpose, with wanton disregard for human life, did then and there unlawfully, purposely, wickedly, wilfully, maliciously, deliberately, feloniously, with premeditation, and with malice aforethought, did hit, batter, knock and wound the aforesaid Shawki Shahadi, Salma Shahadi, Fatima Shahadi and Mariam Shahadi, respectively, on divers parts of their bodies with intent to kill and murder the said Shawki Shahadi, Salma Shahadi, Fatima Shahadi and Mariam Shahadi, contrary to the statute laws of Liberia and against the peace and dignity of the State.

2. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that from the dangerous and deadly weapons aforesaid, which the said Patrick Saye Franey, Mohamed Thiam and Morris K. Constance, defendants, had and held in their hands and with which they did knock, hit and wound the said Shawki Shahadi, and as a result of which the said Shawki Shahadi did sustain mortal wounds and injuries of his head, and from said mortal wounds the said Shawki Shahadi instantly died; and by the means aforesaid, the defendants aforesaid, unlawfully, wickedly, purposely, wilfully, maliciously, deliberately, feloniously, premeditatively and with malice aforethought, did do and commit the crime of murder, contrary to the form, force and effect of the statute laws of Liberia, in such cases made and provided and against the peace and dignity of Liberia.

3. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that from the hammer and wheel ring, the dangerous and deadly weapons aforesaid, which the defendants Patrick Saye Franey Mohamed Thiam and Morris K. Constance, had and held in their hands and with which they did wound the aforesaid Fatima Shahadi, a female about three years of age, at the time and place aforesaid, the said Fatima Shahadi did sustain mortal wounds and injuries and instantly died; by the means aforesaid, the aforesaid Patrick Saye Franey, Mohamed Thiam and Morris K. Constance, defendants, did then and there, unlawfully, wickedly, purposely, maliciously, deliberately, feloniously, premeditatively and with malice aforethought,

did do and commit the crime of murder contrary to the statute laws in such cases made and provided and against the dignity of the Republic of Liberia.

4. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that from the hammer and wheel ring, the dangerous and deadly weapons aforesaid, which the said Patrick Saye Francy, Mohamed Thiam and Morris K. Con-stance, defendants, had and held in their hands, and with which they did wound Salma Shahadi aforesaid, a female about two years old, at the time and place aforesaid, the said Salma Shahadi did sustain mortal wounds and injuries, and as a result, did instantly die; by the means aforesaid, the aforesaid Patrick Saye Francy, Mohamed Thiam and Monis K. Constance, defend ants aforesaid, did then and there, unlawfully, wilfully, wickedly, purposely, deliberately, maliciously, feloniously, premeditatively and with malice aforethought, did do and commit the crime of murder, contrary to the statute laws of Liberia, in such cases made and provided, and against the peace and dignity of the Republic of Liberia.

5. That the grand jurors upon their oaths aforesaid do further present that from the said hammer and wheel-ring, the dangerous and deadly weapons aforesaid, which the said Patrick Saye Francy, Mohamed Thiam and Morris K. Constance, defendants had and held in their hands, with which they did hit, knock and wound Mariam Shahadi, at the time and place aforesaid, the said Mariam Shahadi sustained fatal wounds and injuries on her face, neck left shoulder and several other parts of her body which but for the timely medical attention and treatment she received and through the mercies of God, could and would have caused her death, and from which fatal wounds she is still undergoing medical treatment with severe pains and agony; which they, the said Patrick Saye Francy, Mohamed Thiam and Morris Constance, defendants, with intent to kill and murder the said Mariam Shahadi, contrary to the statute laws of Liberia and against the peace and dignity of the State.

And the grand jurors aforesaid, upon their oaths aforesaid, do present: That Patrick Saye Francy, Mohamed Thiam and Morris K. Constance, defendants aforesaid, at the time and place aforesaid, in the manner and form aforesaid, the crime of MURDER the defendants did do and commit; contrary to the form, force and effect of the statute laws of Liberia, in such cases made and provided, and against the peace and dignity of this Republic."

According to the records certified to us, on September 28, 1984, 40th day's jury session, the plaintiff (Republic of Liberia), through its prosecuting attorney, filed a motion to docket and advance the case on the trial docket for hearing in the same

August A. D. 1984 Term. That portion of the motion which is of interest is hereunder quoted:

"1. Plaintiff says that she is ready for trial, having her witnesses ready for the case and in order to ensure to the defendants a fair, speedy and impartial trial, it would be but fair to them were the case heard this term of court.

2. Plaintiff further says that the crime charged is not bailable in order for the defendants to enjoy their civil liberty and under the law an accused is presumed innocent until his guilt is proved beyond all reasonable doubts. Defendants not being able to file a bond by prohibition of law, should be given a speedy trial."

His Honour, the presiding judge, had the clerk of court call the case on the same date of the filing of the motion. The defendants were placed in the dock and were questioned by the judge as to whether they had a lawyer or lawyers to represent their legal interest. To this query, the defendants answered as follows:

"A. I, Morris K. Constance, say in regard to the court's question, I have no lawyer because I know nothing about the case and the crime;

A. I, Mohamed Thiam, say I have no lawyer and I know nothing about the case;

A. I, Patrick Saye Franey, say I have no lawyer and I have to get in touch with my parents."

Thereafter the motion was ordered read and same was read.

The ruling on the said motion was then reserved until Monday, October 1, 1984, at the hour of 9:00 o'clock in the morning, same being the 41st session.

On October 2, 1984, same being the 42nd day jury sitting of the August A. D. 1984 Term of court, the trial commenced. It ended in a unanimous verdict of guilty against the defendants on the 10th day of October A. D. 1984. To this verdict the defendants/appellants excepted and filed a motion for a new trial. The motion was denied after which the trial judge rendered the court's final judgment on the 15th day of October A. D. 1984. In his final judgment, His Honour Napoleon B. Thorpe, affirmed and confirmed the unanimous verdict of the empaneled jury and sentenced the defendants to death by hanging by the necks, and for them to remain hanging by the necks until they were pronounced dead, dead, dead.

The defendants/appellants have appealed from the judgment and have brought the case up for review on a bill of exceptions containing 21 counts. They have also filed a brief summing up their arguments into six issues.

They contend, among other things, that the State failed to establish a prima facie case against them. Further, they contend that His Honour Napoleon B. Thorpe, the trial judge, had the case called for trial one day over and above the 42nd day statutory requirement for a jury sitting, and over which he had no trial jurisdiction; and that the trial judge inadvertently did not charge the jury on the points of law as was requested by the appellants. The appellants also contend that at the time of the motion for the advancement and hearing of the case, the defendants/appellants had no legal representation, and that the trial judge, His Honour Napoleon B. Thorpe, granted the motion without giving the defendants/appellants an opportunity to resist the said motion.

In response to the six issues covered in the appellants' twenty-one count bill of exceptions, the appellee has filed a brief containing 6 counts. In count 5 of its brief, the appellee concedes count 18 of the bill of exceptions of the defendants/appellants. In that connection, the appellee concedes that the trial judge inadvertently did not charge the jury on the points of law requested by the appellants. Thus, instead of traversing the entire bill of exceptions, we shall traverse only the points (issues) raised in the appellants' brief, taking for granted that these points cover the bill of exceptions.

We note that even though a defense counsel was appointed by the court to represent the defendants, in keeping with the Criminal Procedure Law, Rev. Code 2:2.24, yet we are puzzled as to whether what we have seen on record did fully comply with the statute. Under our statute, an accused person or persons must have adequate legal representation. Ibid., 2:2.4(1-4), under the caption "Adequate Legal Representation of an Accused "

Appellants contend that the trial judge, His Honour Napoleon B. Thorpe, commenced the trial on the 2nd day of October, 1984, the 43rd day jury sitting, without any authority from the Chief Justice for an extension of his time. From our perusal of the records, the same do not show whether or not the trial judge had any authority from the Chief Justice for an extension.

Our question is whether or not a judge can sua sponte extend a term of court? Our answer is no, a judge has no right to sua sponte extend a term of court over which he presides. However, where a trial has already begun, especially a trial by jury, the term is automatically extended until the trial is completed. Judiciary Law, Rev Code 17:3.11. It is further provided by the Judiciary Law as follows: "No jury shall be empaneled after the forty-second day of any quarterly trial session; Ibid , 17:3.8.

The crime for which the defendants were tried was one for which the defendants/appellants could lose their lives. The term of court having expired the trial judge should not have started the case on a day beyond the 42nd day sitting of the jury without authority or extension of time from the Chief Justice of the Supreme Court of Liberia. Trial judges must keep far out of cases that they are to hear so as to enable them to handle such cases objectively and without prejudice to the parties. They must realize that they are but part of a great institution and that they must keep to the rules and procedures hoary with the ages, for in no way will this Court ignore the apparent disregard of the law by any trial judge.

The defendants/appellants further contend that after they were arraigned and the indictment was read to them, they entered a plea of not guilty; that a jury was empaneled and witnesses for prosecution and defendants were qualified and permitted to testify and depose; that a unanimous verdict of guilty was returned by the empanelled jury against the defendants; that the defendants excepted to the verdict and filed a motion for new trial; and that the motion was denied and judgment rendered sentencing them to death. According to the defendants/appellants' motion for a new trial, they contended that they had requested His Honour, the trial judge, to charge the empanelled jury on points of law, but that he had failed to do so. The appellee's counsel, in count five (5) of the appellee's brief, concedes this point. The Criminal Procedure Law specifically provides that when a court misdirects a jury on a matter of law or refuses to give the proper instruction which was requested by the defendants, it constitutes a ground for a new trial. Ibid., 2:22.1.

A perusal of the indictment shows that the defendants were charged with the heinous crime of murder. We have also stated supra that this Court will not ignore any apparent disregard of law by any trial judge. The trial judge should therefore have granted the motion for a new trial.

Let us digress a bit for the safeguard of other cases that might arise. There is no direct citation available in our law to support the contention that only the defendant in a



criminal case has the right to request a trial in the term in which he is indicted and that the prosecution has no such right; the prosecution has to wait until the succeeding term before it can request a trial. The statutes make no direct reference to the right, and our law reports are similarly silent, probably because the issue has not been raised in the Supreme Court for a ruling to be made thereon, and therefore not reported in our law reports. However, there is no doubt that only the defendant, and not the prosecution, can request the advancement of a criminal case on the trial docket to facilitate a speedy trial in the very term the indictment is brought against a criminal defendant.

Therefore, all we need in such situation is the rationale for holding that the defendant, and not the prosecution, has the right. From legal information we have gathered, it would appear that the rationale is that to grant the prosecution the right to indict and arraign a defendant for trial in the same term of court is to rush the defendant into a criminal litigation without adequate preparation. The prosecution, on the other hand, indicts defendant in a criminal matter only after adequate preparation, by first obtaining evidence and counsel. Therefore, the defendant must be allowed reasonable time in which to prepare his or her defense, obtain counsel, and prepare to face a trial with the needed evidence. That is why it has always been customary in this jurisdiction to indict a criminal defendant in one term and allow the prosecution to proceed to trial only in the succeeding term or thereafter.

In fact, the right to a speedy trial is a right granted only to a criminal defendant, and not to a prosecutor. That is why our 1986 Constitution provides as follows:

"No person shall be held to answer for a capital or infamous crime except in case of impeachment, cases arising in the Armed Forces and petty offenses, unless upon indictment by a Grand Jury; and in all such cases, the accused shall have the right to a speedy, public and impartial trial by a jury of the vicinity, unless such person shall, with appropriate understanding, expressly waive the right to a jury trial. In all criminal cases, the accused shall have the right to be represented by counsel of his choice, to confront witnesses against him and to have compulsory process for obtaining witnesses in his favour. He shall not be compelled to furnish evidence against himself and he shall be presumed innocent until the contrary is proved beyond a reasonable doubt. No person shall be subject to double jeopardy." LIB. CONST., art. 21(h) (1986).

From the foregoing, especially the portion underlined or emphasized above, there is no doubt that the right to a speedy trial is a right exclusively reserved to a criminal

defendant, and guaranteed under our Constitution. Hence, while a defendant has the right to request a trial in the term indicted, no such right exists for the prosecution. The prosecution can only request trial in the succeeding term, in order to afford defendant an opportunity to exercise his rights to obtain counsel and witnesses, as guaranteed by the constitutional provisions quoted supra, and only defendant can waive any of the rights granted under the quoted Article; and even then, he can only do so with sufficient or adequate understanding. Neither the courts nor the criminal prosecutor can deny a criminal defendant of these constitutional rights. The constitutional right of an accused to a speedy trial is a right left to his own convenience; it is not a right granting to a criminal prosecutor an excuse for rushing the defendant into trial without the adequate preparation guaranteed under our Constitution.

Without touching the other alleged irregularities on the part of the trial judge, His Honour Napoleon B. Thorpe, as enumerated by the appellants in their bill of exceptions, and concerning how the trial was handled, we are inclined to think that the principle of impartiality, disinterestedness and fairness on the part of the judge, which is as old as the history of the court, did not exist during the trial. The actions of any court which disregard the safeguard of the litigants tend to deter the administration of justice. "Judges ought never to hurry to dispose of a matter, if so doing would be prejudicial to the interests of the parties." *Davies v. Yancy et. al.*, 1 OLLR 89 (1943).

From the evidence above enumerated, as well as the judge's flagrant disregard for the rule of law, we are left with no other alternative but to reverse the judgment and remand the case to the lower court for a retrial. And it is hereby so ordered.

*Judgment reversed; case remanded*