WILLIAM GABRIEL KPOLLEH et al., Appellants, v. **REPUBLIC OF LIBERIA**, Appellee.

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

Heard: October 10, 1989 Decided: January 9, 1990

1. An accused may elect not to take the stand and testify on his own behalf, and that privilege may not draw an adverse inference therefrom; but when an accused in a criminal prosecution fails to explain any incriminating facts and circumstances in evidence, he takes the chance of any reasonable inference of guilt which the jury might properly draw from the whole evidence.

2. It is harmless error where the first and fifth juror of a panel are being selected as alternate jurors, and same does not invalidate the panel.

3. The judge is under duty to conduct a trial in a proper, legal and dignified manner and with impartiality by giving all parties a hearing; and that where discretion is exercised, same should not be abused nor should it be arbitrary.

4. Where the law makes available to a party a vehicle for the protection of a right, he may not thereafter claim denial of such right upon failure to exercise his prerogative.

5. No party shall assign as error any portion of the charge to the jury unless he objects thereto before the jury retires, stating specifically that matter or omission to which he objects.

6. An indictment which charges an act tending to overthrow the authority of the government or any act treacherous against a commission of breach of allegiance to the government, is sufficient to support a conviction of treason, even though the same act may constitute the crime of sedition.

7. All documents, weapons and instruments found in the possession of persons charged with the commission of a heinous crime and bearing on the commission of the crime should be admitted into evidence.

8. The uncorroborated testimony of the defendant is generally insufficient to support a verdict of acquittal where the evidence against the defendant is clear and cogent.

9. Where several persons conspired to commit a crime, the act and declaration of any co-conspirator pending such conspiracy and in furtherance thereof, are admissible evidence against any conspirator on trial.

10. An accomplice is competent to testify as a witness for the state.

11. Any evidence that assists in getting at the truth of the matter is relevant and therefore admissible, except excluded by some rules of evidence.

12. Persons participating in or contributing to the commission of treasonable acts are regarded as principals and punishable as such.

13. In a treason trial, intent need not be proved by witness but may be inferred from all the circumstances surrounding the overt act.

14. The constitution does not prevent presentation of confessions as corroborative and cumulative evidence to strengthen a direct case or to rebut testimony or inferences on behalf of the accused.

15. In prosecution for treason, the government is entitled to have the jury consider all the evidence admissible under the ordinary sanction of verity that has the rational bearing on the accused's mind, in order to show the intent with which the act laid in the indictment was committed.

16. In all criminal cases, the jury must be persuaded of the truth of the charge made against the accused beyond a reasonable doubt.

17. The corroborated evidence of one witness is ordinarily sufficient to sustain a conviction of a crime.

18. In criminal cases, especially capital cases, the prisoner should be offered every opportunity to establish his innocence; and where he is deprived of any right or privilege guaranteed to him by the constitution or law by a subterfuge of his opponents or action of court, he cannot be said to have had a fair and impartial trial.

19. In criminal trial, everything calculated to elucidate the transaction should be reviewed, since the conclusion depends on a number of links which, standing alone are weak, but when taken together, are strong and able to lead the mind to a conviction.

20. An essential element of fair and impartial trial of criminal case is that the defendants be represented by competent counsel.

21. Any sentence pronounced against the accused which can be shown to have grown out of a trial not in harmony with the procedure of a criminal court, and which infringes on the legal or constitutional rights of the defendant, can not be taken as being the result of a fair and impartial trial.

22. An appellate court has the power to examine, upon merits, every decision, both law and facts, in the proceedings of an inferior tribunal.

23. To convict in a criminal case, not only should there be a preponderance of evidence, but also the evidence must be so conclusive as to exclude every reasonable doubt as to the guilt of the accused.

24. Courts, as dispensers of law and justice, have nothing to do with opinions and sentiments that may surround a case; nor should they be influenced by local prejudice or public opinion but, with their eyes and ears closed to every extraneous influence, decide only upon facts legally introduced into the case.

25. A person is guilty of an attempt if he attempts to commit a crime by doing any act toward a solution or an act with intent to commit a crime tending to accomplish it but fails to accomplish it or is prevented or intercepted in the commission of the crime.

Appellants, William Gabriel Kpolleh, Ceapar A. Mabande, Harrison Gaye, Joseph Kalakpa Cooper, Joseph Lee, John S. Nyanpudolo, Peter Gberrow, William Carr, Apapa Molley and Samuel Gbei, were charged, indicted, tried and convicted by the Circuit Court for the First Judicial Circuit, Montserrado County, of the crime of treason and sentenced to ten (10) years imprisonment. From the conviction and sentence by the circuit court, the appellants appealed to the Supreme Court for a review of the final judgment.

On appeal before the Full Bench, the Court, observing that the parties and their legal counsels had committed incalculable blunders, errors and omissions, as well because of the numerous irregularities in the trial court, *reversed* the judgment and *remanded* the case for a new trial.

J. Lavala Supuwood and *Francis Y. S. Garlawolo* appeared for the appellants. The Minister of Justice, *Jenkins K Z B. Scott,* and the Solicitor-General, *MacDonald f. Krakue,* appeared for the appellee.

MR. JUSTICE AZANGO delivered the opinion of the Court.

It has been said:

"1. The man was noble; but with his last attempt, he wiped it out, betrayed his country, and his name remains to the ensuing age abhorred;

2.That in the clear mind of virtue, treason can find no hiding place;

3.That fellowship in treason is a bad ground for confidence;

4.That though those who are betrayed do feel the treason sharply, yet the traitor stands in the worse case of woe".

Treason is a breach of allegiance and can be committed by only one who owes allegiance either perpetually or temporarily. The citizen or subject owes an absolute and permanent allegiance to his government or sovereign or at least until by some open and distinct act, he renounces it and becomes a citizen or subject of another government or another sovereign. 8 R.C.L., § 368, pp. 336 & 337.

Out of the voluminous and massive records before us, containing about 300 pages, runs a highly sensational and sentimental case of treason allegedly committed by citizens of this Republic. But if judges would make their decision just, they would behold neither plaintiff or defendant, nor pleader, but only the cause itself. Justice discards party, friendship and kindred, and is therefore represented as blind. Were the defendants our brothers, such closeness to our sacred blood should neither accord them the privilege of committing a crime nor paralyzing the unstopping firmness of our upright souls.

However, we shall not forget that perhaps, of the many objects and purposes of all investigation is the society's interest in seeking a just determination of disputes and controversies between persons or bodies of persons. Little progress seems to have been made toward a peaceful solution of the differences of nations; but in respect of the individual, modern systems of judicial investigation have been accepted in almost every part of the world. Appertaining to every judicial system are rules of evidence;

that is, the means by which the truth of any matter of fact is submitted to investigation. In other words, it is that evidence which signifies or makes clear or ascertains the truth of the very fact or point in issue, either on the one side or the other, which must be admitted and examined by a court of law.

We shall weigh the probative force of evidence offered in this case, compare it with the rules governing admissibility of evidence, and decide whether it should be rejected or not. To exclude relevant evidence by any positive and arbitrary rule is not only absurd in the legalistic and scientific view, but it also undermines the process of inquiry in which our judicial system is based. To evade the means devised for the discovery of truth and advancement of justice in any given case is aiding in the perversion of justice. Respectability for judicial authorities subsists where discovery of the truth is the norm, not the exception.

It is the admission of every light which reason and experience can supply for the discovery of truth, and the rejection of that which only rests on propaganda, bewilderment and misinformation, which is the great principle and foundation upon which final judgment of this case rests.

Appearing before us is an indictment in which the Republic of Liberia charges, upon the oath of the grand jurors of Montserrado County, William Gabriel Kpolleh, Ceapar A. Mabande,. Harrison Gaye, Joseph Kalakpa Cooper, Joseph Lee, John S. Nynapudolo, Peter Gberrow, William Carr, Apapa Molley, Samuel Gbeli, Freeman Yanzee, Johnson Wohnuah, Matthew Karflayan and John Sharpe, appellants, with the commission of the crime of treason.

The indictment alleged, as follows:

1. That in violation of an Act to Repeal Sections 11.1, 11.2, 50.12 and 51.3 (7) Relating to Treason of an Act Adopting a New Penal Law, Approved July 19, 1976, and Substituting in Their Places a New Section 13.1 and Section 11.2, consistent with the new Constitution of the Republic of Liberia, which came into force on January 6, 1986, and published in handbills, in which section 11.1(e) treason is defined as abrogating or attempting to abrogate, subverting or attempting or conspiring to subvert the Constitution by use of force, show of force, or by any other means which attempts to undermine the constitution of Liberia.

2. That between the January 1986 following the inauguration of the second Republic up to and including the 16thday of March, A. D. 1986, in the City of Monrovia,

County of Montserrado, Republic of Liberia, defendants, including the late Joe Roberts Kiapaye, a former United States soldier, who upon arrest committed suicide to avoid prosecution, all being Liberian citizens, did within the Republic of Liberia, in concert and cohort, feloniously, criminally, traitorously, intentionally and illegally, with malice aforethought meet together at various times and did conspire to assassinate the President of Liberia, Dr. Samuel Kanyon Doe and overthrow the present government by force and violence, in violation of the Constitution of Liberia; that had said wicked and diabolical plot been successful, the dead body of the President of Liberia, Dr. Samuel Kanyon Doe, was to have been taken and displayed at the Liberia Broadcasting System (LBS) by the defendants aforesaid, thereby permitting the said plotters to broadcast to the nation through a pre-recorded cassette of the overthrow of the Government of President Samuel kanyon Doe, the whereabout of which cassette was unknown to the Grand Jury; and that in furtherance of said wicked and diabolical plot, the defendants aforesaid would have taken the said body to the Barclay Training Center (BTC) to convince the soldiers of the successful overthrow of the Commander-In-Chief, to avoid any uncertainty, and that after all of those acts, the defendants aforesaid would have announced a new government, named and style the "People's Reorganization Council", naming themselves and others presently un-known to the grand jurors, as the council members of said purported new government.

3. That the aforesaid defendants, in furtherance of their said wicked and diabolical act, did secretly and clandestinely procure certain arms and ammunition of the government of Liberia, which were seized from them upon their arrest by the joint security. They are as follows:

1. One (1) M-16 - 9209447 good(green string)
2. One (1) M-16 - 9350326 good (strap)
3. M-1 5575928
4. Uzi- 6587
5. Two (2) Mini grenades (anti riot irritant)
6. Fifty-six (56)rounds of M-1 along with 3 clips;
7. Ten (10) M-16 clips along with 319 live M-16 rounds;
8. TWO (2) Uzi clips along with 62 live Uzi rounds;
9. Five (5) cartridges of bullet shots;
10. One (1) single barrel shot gun;
11. Two (2) steel ports;
12. Two (2) combat helmets;
13. Four (4) pairs combat boots;

14. One (1) pair jungle boots;
15. Six (6) suits of camouflage along with one extra camouflage shirt;
16. Two (2) suits of fatigue;
17. Two (2) camouflage caps; and
18. One (1) binocular in a case.

4. That also in furtherance of said wicked and diabolical plot by the defendants aforesaid, they did keep close surveillance of the places of visits of the President of Liberia, Dr. Samuel Kanyon Doe, at diverse times between the period herein above stated in count one (1) of this indictment, with the intent in so doing to attack and assassinate the President of Liberia, Dr. Samuel Kanyon Doe, at any of such places and install a government by force and violence thereby abrogating and subverting the Constitution of Liberia. But for the mercy of Providence and the timely intervention of the joint security forces of the Republic of Liberia, who uncovered the plot and arrested the plotters, thereby the aforesaid diabolical plot was foiled and averted; then and thereby the crime of treason, 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. (See indictment)

Upon arraignment and ascertaining of the plea of appellants, they entered not guilty. Issues having thus been joined between the Republic of Liberia and the appellants, the prosecution produced several witnesses to substantiate the allegations contained in the indictment. We shall later comment upon their testimonies and other related evidence at the trial.

The prosecution having rested evidence including rebuttals, appellants also took the stand and testified in their own behalf and rested evidence. Argument was entertained by the court for both sides, jurors were charged to return to their room of deliberations and bring in a verdict in accordance with the evidence adduced at the trial.

After carefully considering the issues presented to the court and jury, the jury returned to court and brought a verdict of guilty against the appellants. A motion for new trial was filed, heard and denied. On the 17th day of October, A. D. 1989, the trial court entered a final judgment in the case, affirming and confirming the verdict of the empaneled jury adjudging the appellants guilty of treason and sentencing each of them to ten (10) years imprisonment in the common jail within the City of Monrovia, Montserrado County. The appellants, being dissatisfied with the several

rulings and final judgment of the trial judge, entered exceptions thereto and have therefore appealed to this forum for a final review.

There seems to be no legal bill of exceptions before this Court governing the case at bar, for the document which is present before the Court and which purports to be a bill of exceptions, is vaguely, loosely, unscientifically and unprofessionally prepared. Counsel for the defendants, appellants before this Court, are aware of what this Court has consistently and tenaciously held in many of its numerous decisions over the years. There has been no cause for a change in the position of the Court. These decisions are that:

(a) The Supreme Court takes cognizance only of matters of records upon the face of certified copies of the proceeding had in the lower court transmitted through the proper channel; and where the bill of exceptions or assignment of errors in an appeal fails to show on its face that the exceptions or assignment of errors conforms to and are supported by the records at the trial, the appellate court will not take cognizance of such exceptions upon an appeal. *Elliott v. Dent,* 3 LLR 111 (1929).

(b) A bill of exceptions is a formal statement in writing of exceptions taken to opinions, rulings and decisions of a judge in the course of a trial, and constitutes the foundation of an appeal . . . . Where it does not appear in the records of an appeal, the omission is fatal.

(c) A bill of exceptions is in essence a complaint alleging that the trial judge has committed one or more errors, all therein specified, which have resulted in a final judgment adverse to the contentions of appellant. *Richards v.Coleman,* 6 LLR 285 (1938).

(d) In order to lay a legal foundation upon which a bill of exceptions can be predicated based upon the erroneous verdict, the appellant must except to the verdict of the petit jury when it is presented to the trial judge. *Urey v. Republic,* 5 LLR 120 (1936).

(e) One cannot properly complain that the trial judge had misdirected a jury if during the trial he neither objected to the judge's inclusion in or exclusion from the charge of the part complained of nor took exceptions thereto. *In re Benson,* 5 LLR 343 (1936).

(f) Exceptions taken and noted during a trial but not included in the bill of exceptions are considered as having been waived. *Torkor Teetee v. Republic,* 6 LLR 88 (1937).

(g) An exception is an objection taken to the decision of a trial court upon a matter of law and a notice that the party preserves for the consideration of the appellate court a ruling deemed erroneous. Without an exception, an objection, no matter how intrinsic its merits may be, is lost. *Richards v. Coleman,* 5 LLR 56 (1935).

(h) A bill of exceptions in a case on appeal must show with particularity the alleged errors of the lower court. *Quai v. Republic,* 12 LLR 402 (1957).

(i) Where a bill of exceptions fails to indicate the grounds of exceptions to rulings by the trial court upon admissibility of testimony, an appellate court may decline to review such rulings. *Bokai et al. v. Republic,* 13 LLR 400, 402 (1959).

(j) Questions not raised cannot be heard on appeal. In other words, in appeals, the bill of exceptions must set forth the points upon which it is believed the court decided erroneously and contrary to law; and where the bill of exceptions and other parts of the record in an appeal fail to show what exceptions were taken in the lower court to some ruling of the trial judge, the appellate court will not take cognizance of such exception upon an appeal. *Anderson v. McLain,* 1 LLR 44 (1868).

(k) Only such matters as were interposed in the lower court and appear in the bill of exceptions as record can be taken cognizance of by the appellate tribunal. *Bryant v. African Produce Company, U.S.A.,* 7 LLR 93 (1940).

(l) A point of law not raised in the appellant's bill of exceptions will not be considered by the Supreme Court. *Cooper v. Republic,* 13 LLR 528 (1960).

The records before this Court disclosed that counsel for appellants miserably failed to adhere to these principles of our law, and that therefore our review of the case should have ended here. However, in the exercise of our own discretion, and being aware that this is a capital offense, we have liberally construed the principles governing the bill of exceptions and have permitted counsels for appellants to argue the case on behalf of the appellants. In doing so, they have argued more than thirty (30) points, some of which we shall consider due to their relevance in the determination of the issues before us. In their arguments, counsels for appellants have contended:

1. That the trial judge committed a reversible error when in selecting the jurors as judges of the fact to proceed in their room of deliberation, he wrongfully selected the first and fifth jurors so qualified out of a total of fifteen (15) subpoena to serve as

alternates rather than the last three so qualified as required by law. This irregular and prejudicial act on the part of the trial judge, they say, warrants the reversal of the judgment entered against the appellants in the proceeding in its entirety.

2. That on March 16, 1988, the appellants were arrested in various towns and cities within Liberia, brought to Monrovia and detained at the Post Stockade without bail. On or about June 10, 1988, counsels for appellants filed an application for bail under section 13.1 of the Criminal Procedure Law on their behalf. Just before hearing of the application commenced on June 14, 1988, appellants were served a writ of arrest with an indictment, dated June 13, 1988 while in detention.

3. That the trial judge erred in his conduct of the entire proceeding, in that he wrongfully confirmed and affirmed the verdict of the trial jury even though same was clearly unsupported by the evidence adduced at the trial. Hence, they prayed that the judgment entered thereon, not being binding, warrants an acquittal by this court in favor of the appellants.

4. That fourteen (14) individuals were initially indicted, but prior to the commencement of the trial, the prosecution filed a motion for severance on grounds that four (4) of the defendants could not be served with the indictment because they could not be found. The appellants, defendants in the trial court, interposed no objection. Thus, the motion was granted.

5. Counsel further reiterated that when the case was called on August 8, 1988, fifteen (15) qualified jurors were selected to try the case and all were so qualified. After eight (8) weeks of trial, both parties rested evidence and arguments were heard on Friday, October 7, 1988. The jury was accordingly charged by the trial judge to which counsel for appellants excepted because the trial judge erred in making certain inflammatory statements in his charge, including an instruction to the jury essentially that the testimony of Dr. Edward B. Kesselly, one of the appellants be disregarded.

6. That after the jury was charged and retired into their room of deliberation they brought a verdict against the appellants and the appellants filed a motion for a new trial. The motion was denied and a judgment of conviction entered, thereby sentencing the appellants to ten (10) years imprisonment each.

7. That the trial judge committed a reversible error when he, without any investigation, discharged the jury from further serving on panel notwithstanding appellant's information that said jury had been tampered with. Further, that the trial

judge also erred when he discharged the jury from further serving on the panel and allowed the said jury to remain sequestrated until the next day. All of these legal blunders warranted the reversal of his purported judgment which they say was not in conformity with the statutes controlling in this jurisdiction.

8. That the charge of the judge to the trial jury instructing them that Dr. Edward B. Kesselly, for his part, told you that he cannot say whether the appellants plotted to overthrow the Government of Liberia and that his appearance before you and his non-appearance before you are equal. This instruction by the judge took Dr. Edward B. Kesselly's testimony out of context completely and operated to exclude appellants' evidence without legal basis. That clearly shows that this attitude by the judge was prejudicial and invaded the province of the jury. The functions of the jury, being judge of the facts and of the judge being that of the law, it was but legally untenable for the judge to have instructed the jury on what part of the evidence portion to accept and what to reject. Such intrusion into the province of the jury, they say, provides grounds for reversing the lower court's judgment since courts should be free from reproach or the suspicion of unfairness. According to appellants' counsel, the act of the trial judge was not within the standard contemplated in the various opinions of this Honorable Court under such conditions and therefore warrants the reversal of the judgment to protect the dignity of the judiciary.

9. That the trial judge also erred and committed reversible error when he denied two of the appellants from testifying. The exercise of this privilege not to testify is a fundamental guarantee provided by the Constitution, statutes and common laws controlling as in keeping with Article 20 of the Constitution of Liberia; especially so, since the privilege not to testify by an accused is a fundamental and indispensable element of the right to a free, fair and impartial trial. All of these irregular acts committed by the trial judge during the entire trial being prejudicial also warrant the reversal of the judge's judgment.

10. That the trial judge's instruction to the jury to consider the failure of two of the appellants to testify as an admission, when in fact all of the appellants pleaded not guilty, clearly denied appellants the right to a free and fair trial. A verdict therefore based on such instruction violates the neutrality required of judges and therefore cannot be said to have resulted from a free and fair trial. Therefore, the judge's interference with the jury was not only in conflict with the law, it but denied appellants their right to a fair trial by jury and raised suspicion that the judge was in alliance with the prosecution. Hence, the judgment based on such verdict is as defective as the verdict itself, and must therefore crumble upon scrutiny.

11. That appellants were charged under the wrong law and that the charge of treason has not been proven, and the testimonies of all of the witnesses for the prosecution testifying in the case were contradictory, confusing, and inconsistent.

12. That the testimonies of the witnesses adduced at the trial were not corroborated and therefore such testimonies can not convict the appellants, William Gabriel Kpolleh, Ceapar A. Mabande, et al., for the commission of the crime of treason under no circumstances since there is a reasonable doubt of guilt or conviction. Therefore, appellants most respectfully pray this Court to reverse the ruling of the trial judge, thereby setting the appellants free without day in court or answering to any crime of treason, in accordance with law, justice and fair play in this jurisdiction.

13. That to prove the crime of treason, the prosecution introduced about twenty-two (22) witnesses. Out of this number, nine (9) were rebuttal witnesses and about seven (7) of the general witnesses were in detention by the prosecution throughout the entire trial. Appellants requested this Honorable Court to take judicial notice of the testimonies of Witnesses Sarah Lawrence, Harold Ndama, John Cooper and Karamoko Sissie.

14. That as to Co-appellant Kpolleh, the only connection the prosecution attempted to establish was that one Joe Roberts sent his girlfriend, State Witness Sarah Lawrence, with a letter to Kpolleh informing him that he, Joe Roberts, had decided to overthrow the Liberian Government by violence and that he wanted to see him. Allegedly, Kpolleh traveled from Gbarnga to Monrovia and attended a meeting in Gardnersville, where plans to overthrow the government were discussed. The letter to Kpolleh through Sarah Lawrence was allegedly delivered in Gbarnga to prosecution's witness, Rev. Borsey Nyomo, at his residence.

15. That evidence adduced by the prosecution being materially at variance, contradictory, conflicting, confusing, inconsistent, reasonably doubtful, the verdict of the empaneled jury was indeed contrary to the weight of evidence. The trial judge therefore committed reversible error when he confirmed and affirmed the verdict.

16. Counsel for appellants repeated that the testimonies of various witnesses were conflicting and did not corroborate. Under the circumstances, the evidence of the witnesses not having been corroborated, the verdict therefore did not conform to the weight of the evidence adduced during the trial. Hence, appellants prayed that the

judgment be reversed and that the appellants be discharged from detention without a day in court, especially so since the jurors have been tampered with.

17. Counsel for appellants also argued that the crime of treason, as purportedly committed by the appellants as far as a matter of law and fact, has not been established as to the identification of the uniform worn by the plotters and that the weapons, M-16 guns, were never identified as items found with the appellants. Hence, treason was never proven beyond all reasonable doubt by the prosecution against the appellants because the trial judge interfered with the trial of this case in the court below.

18. Appellants' counsel further argued with greater emphasis that the prosecution has not proven a *prima facie* case to convict the appellants because the purported verdict brought by the empaneled jury was not in keeping with the weight of the evidence adduced at the trial in the court below. That it is sufficient ground to reverse the judgment entered therefrom and thereby acquitting the appellants from further detention in the name of justice, fair play, and equity.

19. That the trial judge erred in handling the entire trial of the controversy and therefore prayed that the verdict not having equally been satisfactory to the weight of the evidence and for fair play and justice, the judgment entered therefrom based upon such erroneous verdict, same should be reversed by this Court especially so since the jurors selected as the first and fifth regular jurors were wrongfully discharged by the trial judge and made alternates, a procedure not justifiable to convict the appellants in these proceedings for the period of ten (10) years. .

Countering these issues and contentions of appellants, the prosecution, in arguments before us, maintained that based on the history of the case, together with the evidence produced by the testimonies of the prosecution's witnesses, as well as the laws relied upon in the prosecution of the crime the following has been established:

(1) That the bill of exceptions was improperly and vaguely stated.

(2) That the trial judge did not commit any reversible error when jurors Catherine Merchant and George Lansanna were named as alternates and discharged from the panel prior to the jury retiring into their room of deliberation, as this act of the court was discretionary and did not prejudice the interest of the appellants nor was any harm done to them.

(3) That the trial judge committed no reversible error in his charge to the jury making reference to Appellants Apapa Molley and John S. Nyanpudolo not taking the stand. Here is that portion of the judge's charge to the jury:

"Under our statutes, all the defendants have the right to take the stand or not to take the stand. If you feel that those defendants who did not take the stand are not in any way connected to the case, you should say so... If on the other hand, they were connected but refused to take the stand and rebut what was said about them, then you should say so.

That while it is true that an accused under our statute may elect not to take the stand and testify in his own behalf, that privilege may not draw any adverse inference therefrom, however when an accused in a criminal prosecution fails to explain any incriminating facts and circumstances in evidence, he takes the chance of any reasonable inference of guilt which the jury might properly draw from the whole evidence."

(4) That the entire bill of exceptions as a matter of fact have been drawn in a very unscrupulous and confusing manner, in that the judge did not commit any reversible error in charging the jury on the evidence; but what the trial judge did was only to summarize the evidence for the jury which he was legally bound to do under the law. This exercise could not be interpreted as being inflammatory as the judge could not under the law charge the jury out of context of the evidence.

(5) That the verdict supports the facts drawn from the evidence and the law relied upon. Hence, the judge had no alternative but to deny appellants' motion for a new trial, as the granting or denial of same was within the sound discretion of the trial judge, especially so when there was no miscarriage of justice during the trial proceeding. He therefore had no alternative but to enter a final judgment confirming the verdict of the jury after he had denied appellants' motion for a new trial.

Issues and contentions of appellants in counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, are deficient because (1) from the records, no exceptions were taken to the opinions, rulings and decisions of the judge in the course of the trial; (2) the bill of exceptions did not specify the particular errors committed by the judge; (3) no exception was taken to the verdict of the empaneled jury; (4) there was no objection to the judge's inclusion or exclusion from the charge of the part complained of nor were exceptions taken thereto; (5)there was no statement with particularity of the alleged errors committed by the trial judge or the court below; (6)

there was no indication of the grounds of exceptions to rulings by the trial court upon admissibility of testimonies. This Court therefore declines to review such rulings. The appellants having failed to show what exceptions were taken in the court below to some rulings of the lower court, this Court will not take cognizance of them.

Appellants' counsel has laboriously dwelt on procedural technicalities which do not embrace and dispose of the substantive merits of the case at bar.

According to authorities, the jury is to be drawn in the manner prescribed by the statutes which are usually discretionary. In other words, the provisions of the statute ordinarily are construed as directory, unless a contrary intent is manifested, and should be liberally construed. Statutorily, provisions as to material matters designed to secure a fair and impartial trial are mandatory especially in criminal cases and must be substantially complied with.

It is also provided by law, the most important requirement is that the panel shall be drawn and not arbitrarily selected and any act on the part of the clerk or any other officer infringing on this requirement is ground for challenge to the array; and where the jury is drawn and selected in strict accordance with a valid statute, the selection cannot be said to be arbitrary. 50 C.J.S., *Jurors and Jury, § 164*.

The most important requirement is that the panel shall be drawn and not arbitrarily selected. The argument of appellants' counsel not being that the jurors were drawn by unauthorized persons or officers of court rather that the alternate jurors were irregularly drawn. The fact that the first and fifth jurors were selected as alternates does not invalidate the panel. From our view point, this was a more procedural technicality, which is not fatal. It is a harmless error which does not affect the substantial rights of the parties in this case. It should therefore be disregarded, in keeping with the provisions of our statute which states.

"No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The Court at every stage of the proceeding must disregard any error which does not affect the substantial rights of the parties. Civil Procedure Law, Rev. Code 1:1.5.

Appellants' second contention was that on March 16, 1988, the appellants were arrested in various towns and cities within Liberia, brought to Monrovia and detained at the Post Stockade without bail. This Court takes the position that this was not an act of the court or the trial judge; hence, not reviewable by us.

The other contention that on or about June 10, 1989, counsel for appellants filed an application for bail under section 13.1 of the Criminal Procedure Law on behalf of appellants and that just before hearing of the application commenced on June 14, 1988, appellants were served a writ of arrest with indictment, dated June 13, 1988 while in detention. The court further says that the conduct complained of is not irregular and was done within the scope of the statutes. Therefore this is not an error for review.

Appellants' third contention was that the trial judge erred in conducting the entire proceeding in that he wrongfully confirmed and affirmed the verdict of the trial jury, even though the said verdict was clearly unsupported by the evidence adduced at the trial; hence the judgment entered thereon is not binding. Appellants therefore prayed for an acquittal by this Honourable Court.

From our view point, the trial judge in the court below allowed all matters which he believed were related to the orderly conduct of the trial or were necessary to the proper administration of justice in the court below.

According to the records before us, the trial was conducted in an orderly and dignified manner, in a proper and legal manner, and with impartiality, by giving all the parties a hearing. With respect to the conduct of a judge during trial, party litigants should remember what generally this Court has said:

"The judge is not to be restricted to the functions of a mere umpire or referee in a contest between opposing parties or counsel, but is charged by law and conscience with fundamental duty of seeing that truth is established and justice done under the statutes and rules of law designed to bring about such truth, and his control of the situation. He should accordingly see to it, whenever possible, without doing violence to rules of practice and procedure, that cases are heard and disposed of on their merits and, if consistent with the orderly administration of justice, the procedure should be favored which will result in a determination of the merits of the case.

Steps necessary to be taken to secure the orderly conduct of a trial and proper decorum in the court room should be taken by the trial judge in such way that the jury may not be censured or become prejudiced against either of the parties.

The trial judge should clarify and narrow the issues in a case whenever it is possible to do so, and he should confine the trial to the issues presented, excluding irrelevant matters and extraneous influences or consideration, and he must conduct the proceedings on some consistent theory, or practical lines, and rule in accordance with his best judgment on every question raised, which is pertinent to the issues. The duty of a trial judge is performed when he rules correctly on the points presented to him, and his rulings, right or wrong, are to be respected and followed. It is also his duty to give the case such direction as will prevent a result inconsistent with the law. A judge should not deliberately err in the trial of a case in order to intentionally give litigants the benefit of some things to which they are not entitled." 88 C.J.S., *Trials, §* 36.

Having observed from the records before us that the trial judge, confined himself to these principles of law, we are in disagreement with appellants' contention that "the trial judge erred in conducting the entire proceedings". The trial being regular, we hold that the verdict and judgment founded thereon were regular and that the trial judge did not commit error by confirming and affirming the said verdict and rendering judgment thereon.

Appellants, in an attempt to exculpate, vindicate, or exonerate themselves from the charge of treason laid against them have denied any knowledge of a coup plot to overthrow the Government of Liberia and assassinate the President. They have denied ever having met together with the intent to assassinate the Head of State. They alleged some bitter experiences and inhumane treatment meted out to them by soldiers while they were in prison cells, including the post stockade. They testified and alleged torturous acts committed on their bodies while in the hands of guards of the prison cells. They alluded to conversations that ensued between the Minister of Justice and the inducement he offered to John K. Cooper to be willing to appear as a witness for the State whenever the case came up for trial. They testified to threats and intimidations imposed upon them by prison guards so as to extort confession from them to be used at the trial but all proved abortive. They testified that it was not their desire to lie on anyone. They denied also ever procuring guns for the purpose of overthrowing the Liberian Government. Among the coappellants, John Cooper also attempted to set up an *alibi* to say that he was not on the scene of the crime, never associated with anyone to overthrow the Government of Liberia. Co-appellant Edward Grant testified that he knew nothing of the case. He only heard on the radio

about the arrest of William Gabriel Kpolleh and Ceapar A. Mabande. He also testified that he did not know any of the appellants until they met in the cell. Testifying further, in the same vein like the other co-appellants, William Tarr testified that he was not guilty of the crime, how he was taken to National Security Agency (NSA) back and forth without drinking and eating food. It was suggested to him to abandon William Kpolleh because Kpolleh was a politician. He testified that the state prosecuting witnesses lied on him, and wanted him to lie on some people.

Co-appellant Harrison Gaye testified that he was not guilty of the crime charged. He disclaimed any knowledge of the entire case. He never sat with anyone to discuss the overthrow of the government. He testified to other reasons in justification thereof. He stated also the ill treatment he suffered in prison. According to him, he was intimidated, seriously manhandled and brutally treated so as to extort confession from him. He was compelled to give extra-judicial confession.

Co-appellant Samuel Gbei testified in his own behalf that he was not guilty of treason. He never planned by himself or with anybody to overthrow the Liberian Government or to kill anybody. He was not a killer. He knew nothing about a coup plot. He also testified as to other justifications. Co-appellant Joseph Lee testified that he was not guilty of treason; he never knew of any coup plot.

By way of summary of the testimonies of co-appellants William Gabriel Kpolleh, Ceapar A. Mabande, Harrison Gaye, Joseph Cooper, Joseph Lee, Joseph S. Nyandolupu, John S. Lopowulu, Peter Barrow, William Tan, Apapa Molly and Samuel Gbee, they in their own testimonies and in an attempt to vindicate themselves, categorically denied any knowledge of their involvement in the commission of the crime of treason. They contended that the testimonies of the State witnesses were false, and they alleged their maltreatment and torture were meted out upon them. According to them, they did not know each other until they met in prison. They also alleged some shocking and alarming experiences being carried out on them by soldiers while in the post stockade. They further re-emphasized that they were not guilty. They had never sat with any group of people to plan to overthrow the legitimate government of Samuel Kanyon Doe. Co-appellants testified to other justification.

These testimonies and arguments are supported by the testimony of Joseph K. Cooper found in the minutes of the trial court at sheets 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 of Thursday, August 8, 1988, the 26thday's jury sitting, as well as answers to questions propounded to him on cross-examination.

The allegations are also borne out and contained by the testimony and cross examination of Edward Grant, recorded in the minutes of the trial court, on sheets 5, 6, 7, 8, 9, 10, and 11 of Friday, September 9, 1988, during the 27thday's jury sitting. They are further supported by the testimony and answers to questions posed on the cross-examination of William Tarr, found on sheets 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the minutes of the trial court of Friday, September 9, 1988, 27thday's sitting as well as sheets 8, 9, 10, 11, 12, of Monday, September 12, 1988, 20thday's jury sitting, and sheets 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of Tuesday, September 13, 1988, 30thday's sitting. In addition, they are supported by the minutes of the trial court containing the testimony and answers to questions on the cross-examination of Harrison Gaye, found on sheets 12, 13, 14, 15, and 16, Tuesday, September 13, 1988, 30thday's jury sitting, and sheets 1, 2, 3, 4, 5, 6, 7, 8, and 9, September 14, 1988, Wednesday, 31th day's jury sitting.

The contentions of Co-appellant Moses Dennis are culled out from the minutes of court dated Wednesday, September 14, 1988, 31st day's jury sitting on sheets 9, 10, 11, 12, 13, 14, 15, and 16. They are also supported from the minutes of court containing testimony and answers given on cross-examinations of Samuel Gbee, as found on sheets 1, 2, 3, 4, 5, 6, 7, 8, 9,10 and 11, Thursday, September 15, 1988, 32nd day's jury sitting, as well as on sheets 2, 3, 4, 5, 6 and 7, Friday, September 16, 1988,33rd day's jury sitting. They are also supported by the minutes of the trial court containing answers to questions posed on the cross examination of Joseph Lee on sheets 1, 2, 3, 4, 5, 6, 7, 8, and 9, Monday, September 19, 1988, 34th day's jury sitting. Further, they are also borne out by the minutes of lower court containing the testimony and cross-examination of William Kpolleh, found on sheets 10, 11, 12, 13, 14, and 15, Monday; September 19, 1988, 35th day's jury sitting and also the minutes of the trial court found on sheets 1, 2, 3, 4,5, 6, 7 and 8 of September 20, 1988, 36th day's jury sitting, as well as the minutes of said court for the 37th day's jury sitting, Wednesday, September 21, 1988, found on sheets 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 and sheets 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of September 29, 1988, 38t h day's jury sitting, Thursday, as well as Friday, September 23, 1988, 39' day's jury sitting, found on sheets 2, 3, 4, 5, and 6. They are likewise reflected in and supported by the minutes of the trial court containing testimonies and answers given on the cross-examination of and concerning Peter Barrow, found on sheets 6, 7, 8, 9, 10, 11, 12 and 13, September 23, 1988, Friday, 39thday's jury sitting and on sheets 1, 3, 2, 3, 4, 5, 6, and 7. We also find support in the minutes of the trial court containing testimonies and answers given on cross-examinations by Dr. Edward B. Kesselly which are recorded on sheets 8, 9, 10, 11, 12, and 13 of Monday, 26th September, 1988,41st day's sitting,

Tuesday, September 27, 1988, 42nd day's sitting, at sheets 2, 3, 4, 5, 6, 7,8, and 9. In addition, the allegation are confirmed by the minutes of court containing testimonies and answers given on cross-examinations of Co-appellant Ceapar Mabande on sheets 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14, 43rd day's jury sitting, Wednesday, September 28, 1988 and sheets 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17,18 and 19 of the 44th day's sitting, September 29, 1988.

Concluding his testimony, Co-appellant Caephar A. Mabande requested the court to clarify certain doubts about the question and his relationship with the Unity Party (UP). The request was granted and he proceeded to record on the minutes of the court during the 44th day's jury sitting, as appears on sheets 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, his testimony on that subject.

Appellants further re-emphasized that the State had not proved a *prima facie* case against them even though they had taken the witness stand and testified as appeared from the records of the trial court.

The prosecution introduced several witnesses in support of the allegations contained in the indictment. The first of its wit-nesses was Sarah Lawrence. Here is how she testified in the case:

"First of all, I would like to appeal to the court, the jurors, the State as a whole for we the witnesses and our brothers in the dock that what we did was against the State and the President of the Republic of Liberia and I am asking for clemency for everyone of us. I knew Joe Roberts Kaplah in the year 1974. From the beginning of 1974 to the end I stop seeing him. I again saw Joe Roberts in August, 1987 in front of the Telecommunications Headquarters near the Chinese restaurant on Lynch Street while coming from E. J. Roye Building. Joe Robert called me and we greeted each other. I asked him why I have not been seeing him for so long time. He told me that he was in the United States of America. After some chatting, he asked .me to direct him to my house on the Old Road. I told him that I was living on the Old Road in Monrovia. Joe Roberts visited my house in September, 1987 and after some chatting again, he left for home. After that, he and I started loving.

In the same September of 1987, Joe Roberts started bringing some of the defendants to my house and he introduced them to me as his friends. It was after this introduction that they started their meeting in my yard and at that time, I didn't know that they were planning to overthrow the Liberian Government. I asked Joe Roberts what he was doing with these men and what kind of meeting were they having. It was

at this time he, Joe Robert Kapiah, told me that he and his friends or are planning to overthrow the government. I told him that I was afraid and he further told me it is secret and if I should tell anyone or make report to anybody, he was going to get rid of me. He further said if any of them who were in the group run their mouth they, the plotters, were going to get rid of that person or persons. When we talked all of these things, I took them to be a joke at the time, but later on, he started bringing the rest of the people again. So with this fear in me, I joined them because I didn't want to die.

In October, 1987, I told Joe Robert Karpiah that I was going to Gbarnga, Bong County to visit my mother. This was the time he asked me whether I knew Mr. Kpolleh and I told him yes, I knew Mr. Kpolleh. I told him I knew Mr. Kpolleh during his campaign in Gbarnga in 1985. He also asked me whether I knew where Mr. Kpolleh was living in Gbarnga. I told him yes. I told him that Mr. Kpolleh lives in one Mr. Flomo Borsay's house in Gbarnga, and I knew Mr. Borsey from youth. I am friendly with his children and I used to visit his house when I was in Gbarnga before I came to Monrovia. As I left for Gbarnga in October, 1987, that afternoon Joe Robert Karpiah walked me on the road and he told me to go and tell Mr. Kpolleh that he wanted to see he Kpolleh down in Monrovia. I asked him to tell me the reason why he wanted to see Mr. Kpolleh so that when Mr. Kpolleh asks me, I will tell him. Then he, Joe Robert Karpiah, told me that I should tell Mr. Kpolleh that he and his friends have planned to overthrow the government so he wants to see him down here in Monrovia to talk with him.

Upon my arrival in Gbarnga, I went to Mr. Borsay's house around 7:30 p.m. I met Mr. Kpolleh and his wife and some guests who went to Mr. Kpolleh. I greeted them and Mr. Borsay gave me a seat. We all sat in the piazza for a long time while Mr. Kpolleh and his visitors were keeping company. Then, Mr. Borsay called me on the other side and asked me why I was there for so long. I told him that I have a message for Mr. Kpolleh and he then asked me what was the message. I told Mr. Borsay that the man who sent the message told me to tell only Mr. Kpolleh. So he continued to ask me and it was at that time I told Mr. Borsay the message that Joe Robert Karpiah told me to tell Mr. Kpolleh that he and his friends have planned to overthrow the Government of Liberia.

When Mr. Nyomo heard this message, he too was afraid. And so he told me to wait so that I can deliver the message to Mr. Kpolleh himself. I again sat for some time. When the visitors left Mr. Kpolleh, he called me in the house. He and myself were standing in the house when I explained to him that Joe Robert Karpiah told me to tell

him that he and his friends have planned to overthrow the Liberian Government, so he Joe wanted to see Mr. Kpolleh in Monrovia to talk to him. Mr. Kpolleh then told me that he was coming down to see Joe Robert Karpiah but he did not show me the time. Before I left Mr. Borsay's house, Mr. Kpolleh told me to reach to Mr. Harold Ndama at his office at Demonstration School in Monrovia and tell him that he, Mr. Kpolleh, was coming down and he, Mr. Ndama, will take us, Joe Robert Karpiah and myself, to the house where Mr. Kpolleh was stopping. After this, I left Mr. Borsay's house.

I spent four (4) days in Gbarnga and came back to Monrovia with the feedback from Mr. Kpolleh to the late Joe Robert Karpiah. The next day, I went to Mr. Ndama's office and explained to him. In January 1988, William Carr brought one long gun to my house and gave it to Joe Robert Karpiah. Your Honour, I want to explain something that happened in November, 1987 before getting to January, 1988. One evening, Joe Robert Karpiah came to my house and told me that Mr. Kpolleh was in town and asked me to go with him to meet Mr. Kpolleh. Robert and myself got on the bus on the old road. We went down Waterside and from Waterside, we got into another bus to go to Gardnersville. When we got to Gardnersville, we stopped at the market and Joe Robert Karpiah took the road that leads to Mr. Ndama's house. Although Mr. Ndama had earlier directed me to his house when I met him at his office at the Demonstration School, but I forgot the description. Joe Robert Karpiah remembered the direction and the description so he led us to the house. When we got to Mr. Ndama's house, we met him at his house and he walked us back on the road in front of the market. We took a path that leads to Mr. Kpolleh's house. When we got to the house of Mr. Kpolleh, he was leaving that night and we met Mr. Kpolleh and Mr. Mabande at Mr. Kpolleh's house and a lady that was in the house; but there was no light in the porch where we were sitting. When we got to the house, Mr. Ndama introduced Mr. Joe Robert Karpiah to Mr. Kpolleh saying here is the Joe I was talking to you about. From there, Robert began explaining his story. He told Mr. Kpolleh and Mr. Mabande and those of us who were there that he and his friends have planned to overthrow the Liberian Government but he needed assistance from them. Mr. Kpolleh asked Joe Robert Karpiah what he wanted them to do and Joe Robert Karpiah told him that he wanted them to help him with money for transportation because the money he has with him is almost finish. So Mr. Kpolleh told Joe Robert Karpiah that the money he too brought down has been used but promised to send Joe Robert Karpiah some money when he reached to Gbarnga. Mr. Ndama also promised to help Mr. Joe Robert Karpiah with money too. After the meeting that night, Mr. Kpolleh asked Mr. Mabande to drop us home, meaning Joe Robert Karpiah and myself. We got in Mr. Mabande's car in the yard and drove

home. He dropped Joe Robert Karpiah to Paynesville Red Light and carried me on the Old Road to my house. When we got in front of American Cooperative School (ACS), he picked up James Weah-Weah and dropped two of us near my house because car cannot get to my house. The place where I am living is surrounded by fence and car cannot reach there. The house I was living in is a zinc house with ceiling top inside and is owned by one Miss Winifred John. She is a Sierra Leonean and I knew this woman in September, 1986 and I moved in her house in November 1987.

In January 1988, William Carr carried one long gun to my house. The day he was carrying this gun, he was dressed up in army uniform and gave it to Joe Robert Karpiah. This gun was part of the items that they were going to overthrow with, according to him. In the same month, William Carr brought two suits of army uniforms with a pair of army boots to Joe Robert Karpiah again. Joe Robert Karpiah used to keep these things between the ceiling and the zinc that divided the bathroom and the other rooms in the house where I was living. The house was a two-room apartment. In the same January, 1988, he also brought one army fellow by the name of Captain Freeman Yancy and another officer by the name of Johnson Wehnuah. He also brought another person in civilian clothes by the name of Joseph, who he said was his brother. These three men were part of the group too. In the same January 1988, Mr. John Morris brought fifty ($50.00) dollars from Mr. Mabande towards the transportation that Joe Robert Karpiah asked them for. Mr. Harold Ndama also sent fifty ($50.00) dollars by Mr. John Morris towards the transportation. Mr. John Morris himself donated fifty ($50.00) dollars towards the same transportation. In the same January 1988, Mr. Matthew brought one suit of army uniform to Joe Robert Karpiah. In the month of February, 1988, Captain Freeman Yancy brought a parcel to my house and gave it to me and said that it is for Joe Robert Karpiah. At that time Joe had not come yet. While he was giving the message that I should give the parcel to Joe Robert Karpiah, Joe came and I gave him the parcel. When Mr. Yancy left, Joe Robert Karpiah told me that it was gun shots in the parcel, but I did not open it and he did not open it for me to see.

In the same month, Johnson Weahnuah also brought some gun shots to Joe Robert Karpiah and he Joe Robert Karpiah hid it from me and hid it in the wall. In the same month of February, 1988 Joe Robert Karpiah directed me to a house on the Old Road where he told me to go and ask for one lady by the name of Hawa. Then I asked him, Joe Robert if I see the lady what should I tell her? He said I want to know whether she is in town. Joe Robert told me to tell the lady if I happen to see her that I want her to help me for letter of recommendation for job and when any other

person ask me in the yard I don't see her, I should tell them the same thing. So I went in the yard and asked for Hawa. Hawa was not present and I saw a lady in the yard and when I asked her, she told me that Hawa was out of the country, but she was to be back soon. So she asked me why I was looking for her. So I explained to her what Joe Robert Karpiah told me when I was going. I left the area and went home and told Joe Robert that Hawa was not there. In the same month, the gentlemen who were brought by William Carr, Joseph, narrated to us in the meeting that he was once living in Schieflin in Margibi County and at this time, he was from Ivory Coast. Joseph said that he was with some other group in the Ivory Coast who also planned to come and overthrow. According to Joseph, he said that these people were not serious, they usually leave the base and go in town and drink liquor. So when he came to Monrovia, his brother William Carr told him about Joe Robert Karpiah and his group. So according to Joseph, he told Carr that he wanted to come at my house to see Joe Robert Karpiah, and it was at that time William Carr brought him to my house and introduced him to us; and he, Joseph, said he wanted to join us at that time when he saw Joe Robert and the others. Joseph told Joe Robert Karpiah that he was a medicine man and he could help them to make some medicine for them to disappear in time of the operation and also when the President disappears, he will be able to see him.

So he, Joseph, said he needed money to go to Nimba County and bring this medicine. He left from my house that day and went home. After three days, Joseph came back to my house and Joe Robert Karpiah gave him twenty-five ($25.00) dollars and he left to go to Nimba.

After four days, Joseph came back and said that he brought the medicine but he did not show us the medicine and he said it was at the house. Joseph then asked Joe Robert Karpiah that he wanted them to look for one house where he will be able to put them in one room for four days so that he will fix the medicine for them. It was this time Joe Robert Karpiah refused and he said Joseph was making ass out of them. So Joseph left that evening and said he was coming back and I never saw him again. Joe Robert Karpiah also told me that the binocular that he was using to spy at the President to the house he sent me to go and ask for Hawa was given to him by one Mr. Summerville. He also said that Mr. Summerville used to help him with some money.

On Tuesday, March 6, 1988, I left to go to Gbarnga to attend my late baby's funeral. I came back on the 15thof March, 1988 and I was arrested on the 16thof March, 1988, at the hour of 8:30 P.M. by one plain clothes officer from the Executive Mansion.

During the time he came to arrest me, he did not beat or do any other thing to me. He told me that I was needed at the police station and I walked with him there. He carried me to zone III police station in Congo Town and locked me up for ten minutes. Later, I was taken to the Mansion. He took me to General Zulu's office and there, General Zulu asked me few questions. Later on, I was taken up to the sixth ,floor of the Mansion to the President. The President asked me for my name and I gave him my name. He also asked me whether I know Joe Robert, and I said yes. He asked me who was Joe Robert to me? And I told him that we were loving. While he was asking me, Joe Robert was escorted on the sixth floor with some security officers and I observed Joe Robert wearing a short yellow trousers. He was without shoes and shirt. I also observed that Joe was not maltreated or manhandled by the security and they brought him and the President asked for his name. And he said his name is Joe Robert Karpiah. The President also said, oh so that you want to kill me? In response, Joe Robert Karpiah said 'No sir.'

The President also asked Joe Robert Karpiah, then what were you going to do with these guns, but Joe Robert Karpiah did not answer. He complained that he was cold so one of the security gave him cloth to wear. The President said they should take Joe Robert down stairs and I was taken down stairs too. The next day on the 17thof March, 1988, they again carried me on the sixth floor to the President. I met Joe Robert sitting there along with Sesay Kalamoko. The President then asked whether I have eaten that day. I told him yes. At that time, Joe Robert was drinking a bottle of grape fanta and the President was asking Joe Robert Karpiah whether he had written document or recorded cassette for the coup plot. Joe Robert Karpiah said no. The President also asked him whether he was married. To my surprise, Joe Robert said yes. I remember him calling his wife name, Madam Gwee. So General Zulu said they should go and bring the woman. Then the President again asked Joe Robert Karpiah, why he did not tell his wife his plan and came and told me. Joe Robert Karpiah said in response that it was because his wife can talk too much. So I was then surprised and just sitting down listening to them. Then the President ordered that the security should carry Joe Robert Karpiah at his house in order to bring his wife.

When Joe Roberts' wife came, she was asked whether she knew about her husband's plan. Madam Gwee said no. Then the President told her, here is what your husband has done, they were planning to kill me. The President also told her, what you think I should do to him? In response, Madam Gwee said, I am sorry, Mr. President. I cannot tell you what to do now. It was at this time the President told her to go home. While she was leaving, she looked at the late Joe Robert Karpiah and told him that she is sorry. When she left, I was taken in the waiting room where we were divided by

curtain. I left Joe Robert Karpiah outside along with Karlamokor Sesay and the President with other people there. Three minutes later, I heard Joe Robert Karpiah saying I am sorry Mr. President, I wrong you and it was within this time I heard a feet sound then the President shouted, he said, your catch that man. Then I stood up, but the soldiers were guarding me so I was afraid to go out. The soldiers who were guarding me ran to go outside and see. As he was running going, he too shouted, "Oh, the man has killed himself." So General Zulu told the soldier to come and get me to go and see what Joe Robert Karpiah had done. The soldier held me by my hand while I was standing on the sixth floor looking down at Joe Robert Karpiah's body. From there, I was taken down stairs. Before I end my statement, W/O Peter Gbehwolo brought to my house also a half rice bag full of army uniforms with a pair of army boots.

On the 21st of March, 1988, I was taken to NSA where I was in jail until today we are in court. I would like the court and the jury to know that when I was arrested, I was not manhandled by anybody because people usually say whenever they arrest you and carry you the soldiers can rape you. I was not raped by any soldier or any other security. I was well protected and was not forced to explain anything. Just what we did that is what I am explaining. I have nothing against my brothers in the dock and against any other person and nobody paid me to lie on anybody. I am willingly explaining what I know to the court. And this is all that I know." (See testimony of Sarah Lawrence on Sheets 5, 6, 7, 8, 9, and 10, Thursday, August 11, 1989, during the 4th day's jury sitting).

This testimony of Sarah Lawrence was corroborated by witness Kalamoko Sesay, the prosecution's second witness. (See sheet 3 of Tuesday, August 23, 1969, 13th day's jury sitting). It was also corroborated by the prosecution's third witness, Manah Kromah on sheets 4, 5, 6, 7, and 8 of Thursday, August 25, 1989, 14th day's jury sitting. Additionally, it was corroborated by the prosecution's 4th witness, John Cooper, who also began his testimony with the following statement:

"Yes, thank you first of all. I would like to first of all appeal to the judge, the jurors, and my fellow citizens. I ask you all to please have clemency on my friends in the dock and also on my fellow state witnesses and likewise myself standing here. I will also like to tell the court and the public that I am standing to tell nothing but the truth and if I do lie on anyone, God is there and he is the best judge. With so doing, I am now going to talk what I know in connection with this coup plot."

John Cooper told the court how he met Joe Roberts a long time ago through friend Matthews at his house on the Police Academy Road. They formed acquaintances. Joe Roberts was identified as a former U.S. Army personnel and held the rank of captain. Several conversations were held among them. During one of the conversations, Joe Roberts is alleged to have informed Matthews that the U.S. Government sent him to overthrow the Liberian Government and that he Robert had some friends in the Liberian Army who would assist in carrying out the plot. He made connections with other plotters such as his cousin Joseph Cooper and John Sharpe. Roberts briefed them on his mission to Liberia. Discussions ensued and training plans began with Roberts and some of his friends, together with few weapons they had. Meetings were held frequently at the home of Sarah Lawrence, one of the plotters at which meeting William Can was present. Military weapons such as M-16, Uzi, grenades were procured from Schefflin and left at the home of Sarah Lawrence. (See testimony of John Cooper on sheets 9, 10, 11, 12, 13, 14, and 15, Thursday, August 25, 1989, 14th day's jury sitting and Friday, August 26, 1989, 15thday's jury sitting, sheets 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, 15thday's jury sitting). Other corroborative testimonies were given by Harold Ndema, John Morris, Isaac Moses, James B. Weawea, Lt. Col. Joseph Blamo, all leading to the commission of the crime. (See records).

Giving the facts as culled from the records in this case, let us now try to answer the following questions which have arisen in this case:

1. Do the actions of the appellants constitute treason in keeping with Article 76 of the Constitution of Liberia and the Act to Repeal Sections 11. 1, 11.2, 11.12 and 51.3 (7) of the Penal Law Relating to Treason Substituting In Their Places a New Section 11.1 and Section 11.2 as are Consistent with the New Constitution of Liberia; which came into force on January 6, 1986?

2. Was the trial regular and in conformity with the laws of Liberia?

3. Was it made clear whether or not the Constitution requires that the overt act must manifest virtually on its face an obvious intent to commit treason or whether the treasonous character of the act in itself might be demonstrated by surrounding testimony and evidence?

4. Has the appellee, the Republic of Liberia, established and proven beyond a reasonable doubt the guilt of appellants of every material elements of the offence of treason?

5. Was the evidence of the appellants relevant, competent and material as defense to the offense charged, and was it sufficiently corroborated to entitle them to acquittal?

6. What is the effect of the confession of Sarah Lawrence and other accomplices and conspirators?

7. Were there corroborations in the testimonies of the appellants so as to determine their credibility?

One may wish to entertain the notion that the crime charged has come about as a pure political accusation against rivals of Samuel Kanyon Doe in persecuting opponents by arbitrary, brutal and repressive rule of the government, the systematic use of torture, and the use of the judiciary as an instrument of repression. Should such notion supercede the evidence, law and facts and the substantive issues in the case? Should we conclude that with the lonely testimony of each appellant unsupported by any independent credible witness the crime of treason has been disproved by appellants as laid against them?

We wish to remark that these notions shall never detract or dissuade us from the path of righteousness and our conviction of the law appertaining to the substantive issue of the case. This Court shall never be an agent of the government or a party to repression. Indeed, if anything, it shall aid and assist in the democratization of the Liberian public and avoid a political order that seems to be a blatant violation of the human and constitutional rights of the people.

This Court has held on several occasions: (1) that where the law makes available to a party a vehicle for a protection of a right, he may not thereafter claim denial of such right upon a failure to exercise his prerogative. *Fahnbulleh v. Republic,* 19 LLR 99 (1969); (2) that no party shall assign as error any portion of the charge to the jury unless he objects thereto before the jury retires stating specifically the matter or omission to which he objects; (3) that an indictment which charges any act tending to overthrow the authority of the government or any treacherous act against or commission of a bridge of allegiance to the government is sufficient to support a conviction of treason even though the same acts may constitute the crime of sedition. *Fahnbulleh v. Republic,* 19 LLR 99 (1969).

In other words, the pivotal issue before us is concerned with whether the indictment charges an offense under our law. Looking at section 11.1 of the Penal Law, Rev. Code 26, treason against the Republic of Liberia consists of: "(c) abrogating or

attempting to abrogate, subverting or attempting or conspiring to subvert, the constitution by use of force or a show of force or by any other means which attempts to undermine the Constitution of Liberia."

In treason trials, this Court has held that treason may consist of any subversive acts committed by citizens tending to impair the safety of organized government within the territory of the Republic of Liberia thereby disrupting and interfering with the smooth running of organized government and tending to overthrow its authority. This court held that treason maybe committed without an overt act. *Horace et al. v. Republic,* 16 LLR 341 (1958). This Court has also held that all documents, weapons or instruments found in the possession of persons charged with commission of a heinous crime and bearing on the commission of the crime should be admitted into evidence.

The trial judge therefore did not err when he admitted into evidence all of the arms and ammunition together with any weapon that was found on the premises and in possession of the appellants.

This Court has further held that the unsupported testimony of an alleged accomplice is insufficient for corroboration of the testimonies of another alleged accomplice to the same crime and that when the evidence against the defendants in a criminal prosecution is clear and cogent, the uncorroborated testimony of the defendant is generally insufficient to support a verdict of acquittal. This court has further held that treason may be committed without an overt act.

Here are some of what the authorities have to say on evidence in criminal prosecution, which are relevant to this case:

"That where several persons are proved to have unlawfully conspired to commit a crime, the acts and declarations of any conspirator pending such conspiracy, and in furtherance thereof, are admissible as substantive evidence against any co-conspirator on trial. The same rule is applicable and the same principle controls in the case of an unlawful combination of persons though not necessarily a conspiracy. That is, persons may not conspire to commit a crime, or the prosecution may be unable to prove a conspiracy, but yet, the evidence adduced may show that the persons involved in a crime were acting in concert in the commission of the crime charged. In such case, then, the rule applies that where several persons are proved to have acted in concert in the commission of a crime, and have thus combined for the same unlawful purposes, the acts and declarations of one co-actor in pursuance of the

common act or design are admissible against any other coactor on trial for the crime. Once the conspiracy or combination is established, the act or declaration of one conspirator or accomplice in the prosecution of the enterprise is considered the act or declaration of all, and therefore imputable to all. All are deemed to assent to, or command, what is said or done by anyone in furtherance of the common object.

After proof of the existence of a conspiracy, the acts and declarations of the conspirators in pursuance of the common plan and with reference to the common object are admissible against any member thereof, and the rule is the same regardless of when one becomes a party to such conspiracy. One who joins a conspiracy after its formation is liable as a conspirator just as much as those with whom the conspiracy originated with any party or all of the coconspirator, because every person entering into a conspiracy or common design already formed is deemed in law, a party to all acts done by any of the parties before or afterwards, in furtherance of the common design." 2 Wharton' s Criminal Evidence 1193-1194, §708.

Equating and interpreting these common law principles, we feel that they should be applied against the appellants in this case to indicate that it having been established by evidence that the conspirators did meet on divers occasions and in various places to discuss in common acts to commit the unlawful acts of treason, they are all liable for the offense.

Moreover, inasmuch as *aprima facie* case of conspiracy was established by the prosecution, which satisfied the trial court, such evidence was sufficient to present a question of fact for the jury as to whether the conspiracy existed. Since the truthfulness of the evidence was shown as foundation for the admissibility of the acts and declarations of the conspirators, the position taken by the trial court confirming and affirming the verdict of the jury should not be disturbed.

We now turn to the appellants' contention that many of the prosecution's witnesses were accomplices in this case and that there cannot be a conviction based on the testimony of an accomplice unless corroborated by other evidence which in itself and without the aid of the testimony of the accomplice tended to connect the defendants with the commission of the crime, and the prosecution's counter argument that the jury having been cautioned against conviction, the trial judge did not err in confirming and affirming the verdict of the empaneled jury, since the jurors are trier of the facts in a given case, and that hence, said judgment should not be disturbed.

It is a settled principle of law that an accomplice testifying for the prosecution not withstanding the turpitude of his conduct is not on that account an incompetent witness; the fact that a witness is an accomplice as a matter of law does not preclude the use of his testimony by the state. The same is true even though he has pleaded guilty. This is likewise true even though the accomplice witness confesses his criminal culpability or testified under promise of immunity." 2 Wharton's Criminal Evidence 1224, § 729.

Reference to the confession of Sarah Lawrence and other witnesses for the state, it is our opinion that in as much as they were made freely and voluntarily and were so made satisfactorily free from inducement, and the records not having shown anything to the contrary that there were corporal violence, duress, threat of physical violence, use of weapons, threat of mob violence, threat to prosecute, promise of immunity, promise of leniency, mitigation, inducement indirectly made by adjuration, absence of counsel, we take the view that they were properly admitted into evidence and there was no miscarriage of justice in this respect.

Being convinced from the evidence in the records that the prosecution or the state has proved each and every material element of the offense charged beyond a reasonable doubt, the judgment of the court should not be reversed and remanded for a new trial.

Reference to the relevance, competence, and materiality of the appellants' testimonies or evidence in defense to the charge of treason against them or the prosecution's evidence to establish a *prima facie* case, we recognize that facts are admissible as relevant which might establish the hypothesis of innocence. But any evidence that assists in getting at the truth of the matter is relevant and is admissible unless because of some legal rule, it is declared incompetent as evidence in the judicial tribunal. 1 Wharton's Criminal Evidence, § 221, at 257.

In our opinion, this justifies the admissibility of all the evidence or testimonies of the prosecution's witnesses to establish the truth of the crime charged against the appellants and to prove their guilt. In other words, any fact which tended to prove a material issue to show the appellants' guilt or to assist in proving the allegations of the indictment and the truth of the issue was relevant if it did not conflict with other formal rules of evidence and if it was properly received. This was especially applicable in the instant case where the prosecution had shown by evidence that the arms, ammunition and weapons were identified and represented faithfully that the object portrayed were relevant to establish the fact concerning which they were offered.

We must remark here that the confession of Sarah Lawrence and other witnesses in the case were solely related to the existing conditions and to the intention of appellants to commit the crime of treason. It would seem that the prosecution has shown by its evidence that the guilt of the appellants in the case was not inferred from the fact that they had the ability to commit the crime charged. It should have been shown by the prosecution to prove appellants' malice, intent and sinister design against the Government of Liberia because evidence which tends to prove an intent for the doing of the acts of treason is always competent against the accused of the crime.

We observed that a wide latitude in the admission of such evidence was permitted particularly when intent constitutes an important element of the offense of treason. The evidence showed that the appellants knew of the acts they were committing. The evidence also showed the plan, design, or scheme to overthrow the Government of Liberia. By reasonable inference, therefore, one could conclude or establish that the commission of the crime of treason was clear and cogent. The evidence showed that appellants met together in concert and in a manner under circumstances warranting the belief that their acts were an agreement among them and that they committed other acts constituting one systematic scheme with natural connections, knowing that any one act taken by itself cannot be seen as tending to prove a conspiracy but that when taken in connection with other acts, tend to prove a series of criminal acts. From the evidence of the prosecution, it is clear that the motives of appellants were shown in the commission of the crime of treason. Such evidence assists in determining the degree of the offense of treason. From the testimonies of witnesses for the prosecution, there would seem to be no doubt that by such circumstances, the defendants contemplated and made preparation to commit the crime of treason.

Treason under our law being a breach of allegiance to the Government of Liberia, and as there was no evidence of rebuttal or otherwise from any of the appellants showing that they were not Liberian citizens or that they did not owe allegiance to the Republic, and that hence, it was not possible for them to have committed the crime of treason against its Government and its President, it seems clear from the evidence that appellants had treasonable intent; an intent not merely to commit the overt acts complained of but the intent of the appellants was to betray the trust and confidence reposed in them as natural citizens of the Republic of Liberia by use of force and arms.

We must remark here that in keeping with international standards and authorities on the crime of treason, an overt act is some physical deed done for the purpose of carrying out treasonable plan. If there is an actual assemblage of men for the purpose of opposing the government, it is not material that the force is inadequate to accomplish the proposed design. We hold that any assemblage of men for the purpose of revolutionizing by force the government established by the Constitution and laws of Liberia in any of its domain, their activities are still criminal offenses. Treason is committed by an act which is done with intent to, and has the effect of, or tends to have the effect of criminal intent. In determining whether an act is treasonable, it is not decisive whether the contribution to the act was minor or crucial. It is the nature of the act that is important. One who, whilst bound by his allegiance to the Republic of Liberia, procures or aims to overthrow the government, knowing the purpose, is certainly guilty of treason.

It is a settled and standard rule of law which provides that whoever owes allegiance to the Republic of Liberia and has knowledge of the commission of any treason against it conceals and does not as soon as possible disclose and make known the same to the President of Liberia or some authority in Liberia or to inform them that some individuals are about to incite, set on foot, assist, or engage in insurrection against the authorities of the Republic of Liberia or the laws or gave aid and comfort thereto or who were engaged in seditious conspiracy is guilty of treason.

We re-emphasize that treason is a breach of allegiance and can be committed only by one who owes either perpetual or temporary allegiance to the state. Allegiance is not synonymous with loyalty but refers to the duty or obedience which one owes a sovereign power within whose jurisdiction he finds himself. It is a duty which is owed in return for the protection which he receives from the sovereign and any violation thereof is a crime of treason. Therefore, all persons participating in or contributing to the commission of treasonable acts are regarded as principle and punishable as such, although their acts may be such as would in connection with other felonies make them only accessories or aiders and abettors. There does not appear before us any defenses which have negated the evidence of the crime of treason charged, neither have the appellants claimed that they acted under duress or coercion, which could have been a valid defense when established by facts.

This Court is undoubtedly motivated by a high minded conviction that in a constitutional democracy, the offense of treason must be defined as narrowly as possible so as to remove the possibility that the overt act in question must manifest virtually on its face an obvious intent to commit treason or the treasonous character

of an act innocent in itself might be demonstrated by surrounding testimonies and evidence. To do otherwise will make subsequent convictions for treason all but impossible; primarily, it will make it absolutely necessary to establish the intent of the overt act itself through the testimonies of witnesses. It is therefore necessary to resort to the intent of the Legislature as stated in the statue fully defining treason. Sections 11.1, 11.2, 50.12 and 5.3 (7) of "An Act Adopting a New Penal Law Relating to Treason Are Hereby Repealed and New Sections 11.1 and 11.2 Are Herewith Substituted in Their Places, and, as Consolidated, Providing for Both Definition of and Punishment for Treason" read as follows:

"SECTION 11.1. TREASON - Treason against the Republic shall consist of:

(a) levying war against the Republic;

(b) aligning oneself with or aiding and abetting another nation or people with whom Liberia is at war or in a state of war;

(c) acts of espionage for any enemy;

(d) attempting by overt act to overthrow the government, rebellion against the Republic, insurrection and mutiny; and

(e) abrogating or attempting to abrogate, subverting or attempting or conspiring to subvert the Constitution by use of force, show of force or by any other means which attempts to undermine the Constitution of Liberia.

SECTION 11.2. PENALTY FOR TREASON. - Any person who is convicted of treason shall:

(a) be sentenced to a term of imprisonment for not more than twenty (20) years nor less then ten (10) years where no death or property damage ensues from the acts of the offender or offenders;

(b) be sentenced to a term of imprisonment for not more than twenty (20) years nor less than ten (10) years where no death ensues from acts of the offender or offenders but substantial property destroyed growing out of the acts of the offender or offenders;

(c) be sentenced to death where death ensues from the act or acts of the offender or offenders ;

(d) forfeit any public office he holds and shall be disqualified from any or a specified public office or category thereof for a period not longer than five (5) years following the completion of the fine imposed. The fruit of crime so committed shall be confiscated."

It is provided by law that an attempt is sometimes defined as any overt act done with the intent to commit a crime which, except for the interference of some causes preventing the carrying out of the intent, would have resulted in the commission of the crime. In other words, a person is guilty of an attempt if he attempts to commit a crime by doing any act towards a solution or an act with intent to commit a crime tending to accomplish it but fails to accomplish it or fails or is prevented or intercepted in the commission of the crime. See 1 WHARTON'S CRIMINAL EVIDENCE, §§ 71 & 72.

We wish to state that new emergencies often call for new statutes and a new interpretation is necessary. As aforesaid, the framers of our Constitution have deliberately defined treason narrowly in reaction against the practice in other countries where the offense has been loosely defined to include a variety of political acts against the state. In this case, we shall adhere to the framers' narrow conception of treason. Squaring the above definition with Sub-sections (d) and (e) of Section 11.1 of the Penal Law, we must interpret the said statute in the light described below:

"There are many citizens and foreigners who would adhere to rebellious, disintegrating state, encouraging disloyal activities that could not be attributed to full treason but whose objectives are designed to bring about disunity in the state by carrying on treasonable correspondences, plotting to overthrow the government; others profess loyalty to the state but openly oppose it and denounce its government's policies. Also the complex nature of internal security problem necessitates the repeal of the former law on treason and a adapting a new law which defines as a crime disloyal acts that are less treasonous. The seditious conspiracy act of the past provided fine or imprisonment for anyone convicted of conspiring to overthrow the Liberian Government or to oppose by force the authority of the government."

We believe that this new act was promulgated to adopt an internal security policy of dealing with suspected persons because the national situation is usually critical at times.

We believe sufficient investigations or evidence showed and provided reasonable basis for a definite charge of treason against the appellants. We believe that the acts of appellants were intended to encourage disloyal practices, affording aid and comfort to persons of treasonable intent. Under the circumstances, we believe there should be no manifest considerable circumspection and leniency. While we consider that an overt act might in itself be innocent and demand its perpetrator's character from intent involved, the evidence of witnesses to the acts in question having established the traitorous intent of appellants beyond a reasonable doubt, that they voluntarily met together, no doubt ate and drank together in their sober attempt, conversed together at some length to commit treason, they are guilty of the crime of treason.

Moreover, we believe that not only are appellants guilty of obvious treason but of constructive treason as well, especially so when in treason all are principals and that the appellants as procurers of the unlawful gathering are as guilty as any of the other appellants who attended the meetings and advised such actions in a treasonable assemblage.

"It is the law that if an assemblage was gathered to affect a treasonable purpose by force as was attempted in the instant case, all who performed a part in it, however minute or remote, are traitors, especially when the overt acts were attested to by witnesses for the prosecution."

From the evidence, it is clear that the appellants were active members of a political theater.

Another issue to be decided by this Court is whether the overt act had to be openly manifested treason or if it is enough when supported by proper evidence, it shows the required treasonable intention. We take the view that every act, movement, deed, and words of the appellants charged would seem to constitute treason once they were supported by testimonies of witnesses, which have been done in the instant case. We hold that appellants treasonable intentions were sufficiently shown by the overt act as attested to by the witnesses for the prosecution.

We further hold that no matter whether appellants' mission was benign or traitorous, known or unknown to them, their acts were aids and comfort to others of the same

conspiracy. In the light of their views, their advice and instructions, they were more than casually useful; they were aids in steps essential to their design for treason. We hold further that conversations and occurrences prior to the indictment were admissible evidence on the question of appellants' intent; and more importantly, we hold that the constitutional requirement for witnesses to the same overt acts or confessions in open court does not operate to exclude confessions and admissions made out of court where legal basis for the conviction has been laid by the testimony of witnesses, and corroborated. Intent need not be proved by witnesses but may be inferred from all the circumstances surrounding the overt act. For truth of treasonable intents in the doing of the overt act necessarily involves truth that the accused themselves committed the overt act with the knowledge or understanding of their treasonable characters.

The requirement of an overt act is to make certain that a treasonable project has not moved from the realm of thought into the realm of actions. That requirement has undeniably been met in the present case.

We hold that crimes so atrocious as those which have for their object the subversion by violence of those laws and those institutions which have been ordained in order to secure the peace and happiness of society are not to escape punishment because they have not ripened into treason. The wisdom of the Legislature is competent to provide for the case and the framers of our constitution must have conceived it more safe, that punishment in such cases should be ordained by general laws formed upon deliberation.

Authorities of the law have emphasized that the general rule governing the admissibility of evidence in criminal prosecution apply in the case of prosecutions for treason, and the constitutional provision does not make other common law rules in-applicable. Such provision of law is not a limitation on the evidence with which the jury may be persuaded that it should convict; and it does not exclude or set up standards to test evidence which will show relevant acts of persons other than the accused or their identity or surrounding circumstances; nor does it preclude any proper evidence of non-incriminating facts about the accused. When the government's case is established according to the requirement of the constitutional provision, the Constitution does not prevent presentation of admissible corroborative evidence to strengthen a direct case or to rebuild testimony or inference on behalf of the accused.

In a prosecution for treason, the prosecution is entitled to have the jury consider all the evidence admissible under the ordinary sanctions of variety that has a rational bearing on accused's mind, in order to show the intent with which the act laid in the indictment was committed, and this includes what he did, and also what he said. Consequently, the statements of an accused accompanying the overt act may be given in evidence to show the intent with which the act was done.

In the prosecution of treason one of the basic elements is allegiance and the appellants not having shown that they did not owe allegiance to the Republic of Liberia as citizens during the period when the crime was committed as aforesaid; and, since by competent evidence from testimonies of witnesses overt act have shown and it has been proven by confessions in open court of Sarah Lawrence, John Cooper Quah, and others; and since the overt acts have been satisfied by testimonies of witnesses that they were not separate acts from which it could be inferred that the charged acts took place out of the realm of the Republic of Liberia, that the overt acts were established by vague testimony of witnesses plus circumstantial evidence, and that it did remove the fantastic hypothesis in the case; and that prosecution did rely on evidence which did not meet the constitutional test for overt acts and since it appeared that the acts of appellants consisted of chain of events, continuous and composite made up of and proved by other circumstances, there is reason to believe that the jury was satisfied beyond a reasonable doubt that the appellants committed the overt act alleged in the indictment. The prosecution need not prove all of the overt acts charged in the indictment, instead, proof by witnesses beyond a reasonable doubt of the commission of the acts was sufficient. Further, it having been held that no more need be laid for an event concerning treason, than for an overt act of conspiracy which it has been said has never been thought of as itself establishing the unlawful scheme. There is reason to believe that the evidence was sufficient to sustain the verdict of the jury that the appellants intended to betray their loyalty to the Republic of Liberia.

Intent to betray must be inferred from conduct; it may be inferred from the overt act itself, although the act in and of itself may be innocent. Consequently, in a prosecution for treason, it is permissible to draw usual reasonable inferences as to intent from the cogent act, since the law of treason like the law of lesser crimes assumes every man to intend the natural consequences and possessing his knowledge would reasonably expect to result from his acts. It has been held that an intent to betray may be inferred from an accused's own statement, his attitude from his own profession of loyalty to the enemies of the State. 87 C.J.S. *Treason,* page 921-922.

The value of testimony is estimated by the degree of persuasion that it produces in the minds of those who are called upon to determine its effect, and to render a verdict accordingly and since such persons must be persuaded of the truth of the charge made against the accused beyond a reasonable doubt, the evidence in the present case, seem to have persuaded the minds of the jury beyond a reasonable doubt that the appellants were guilty of the charge of treason and that the proof was not inconsistent with any other reasonable hypothesis and conclusions. Since by law a witness is entitled to explain whatever tends to show bias on his part and may explain away an act brought out by the opposing party which tends to show bias or prejudice, and appellants having contended that the Republic of Liberia through its witnesses lied on them, thus indicating that the prosecution had ill will and feelings towards them, we think it was but proper on part of the appellants to show by a preponderance of evidence bearing upon the extent to which their credibility is affected and to explain away the bias and the cause of the difficulty without going into the details. This was important for the purpose of lessening the discrediting effect of evidence of prejudice on the part of the witnesses toward the accused that they were actuated by righteous, rather than reprehensible motives. This not having been done by appellants, the same was a patent and blatant blunder.

With the following backgrounds, and in the law punctuated at the trial of a case of this magnitude, it is incredible and baffles the minds of reason that professionals would be so grossly negligent, incautious, thoughtless, unconcerned about the handling of their client's case for which they should not escape punishment, especially men who are not regarded as amateurs in the law. There is too much reason to apprehend that the custom of pleading for any client without discrimination of right or wrong must lessen the regard due to those important distinctions and deaden the moral sensibility of the heart. In the habit of legal men, accuracy and diligence are much more necessary to a lawyer than great comprehension of mind or brilliancy of talent.

Many years ago this Court laid down certain rules governing all criminal trials, as follows:

1. In criminal cases, especially capital cases, the prisoner should be afforded every opportunity to establish his innocence and when he is deprived of any right or privilege guaranteed to him by the constitution or law, by a subterfuge of his opponents or action of the court, he cannot be said to have had a fair and impartial trial. *Ledlow et al. v. Republic,* 2 LLR 528 (1925).

2. In a criminal trial, everything calculated to elucidate the transaction should be reviewed, since the conclusion depends on a number of links which alone are weak but taken together are strong and able to lead the mind to a conclusion. *Ledlow et al. v. Republic,* 2 LLR 529 (1925).

3. An essential element of a fair and impartial trial of a criminal case is that the defendants be represented by competent counsels. *Quai v. Republic,* 12 LLR 402 (1957).

4. Any sentence pronounced against an accused which can be shown to have grown out of a trial not in harmony with procedure of our criminal court and which infringes the legal or constitutional rights of a defendant cannot be taken as being the result of a fair and impartial trial. *Harge v. Republic,* 14 LLR 217 (1960).

5. An appellate court has the power to examine upon merits every decision both as to law and facts in the proceedings of an inferior tribunal.

6. To convict in a criminal case not only should there be a preponderance of evidence but also the evidence must be so conclusive as to exclude every reasonable doubt as to the guilt of the accused.

7. Courts as dispensers of law and justice have nothing to do with opinions and sentiments that may surround a case, nor should they be influenced by local prejudice or public opinion, but with their eyes and ears closed to every extraneous influence, decide only upon the facts legally introduced into the case.

8. The Supreme Court of Liberia takes cognizance of matters of record only upon the facts or certified copies of the proceedings in the lower court transmitted through the proper channel. *Matierzo v.* Republic, 34 LLR 791 (1987).

Having carefully and meticulously read and reviewed the records in this case and considered the applicable laws therein, and having observed the incalculable blunders, errors, and omissions as well as the numerous irregularities committed by the parties and their counsels in the court below, we have found it extremely difficult to deviate from our consciences and our sacred constitutional obligations and affirm the judgment of the court below. It is our considered opinion that the entire case should be remanded for a new trial. And it is hereby so ordered.

Judgment reversed; case remanded for new trial.