CHRISTOMA M. MATIERZO, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

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

Heard: December 8, 1987. Decided: Ja nuary 25, 1988.

1. Every person charged with the commission of a crime *has* the constitutional right to compulsory process for witnesses, and it is a stupendous error and a flagrant violation of the organic law of the land for the court to deny this right to him.

2. In all criminal cases, the accused shall have the right to be represented by counsel of his choice, to confront witnesses against him, and to have compulsory process to obtain witnesses in his favor.

3. If it appears that a prospective witness may be unable to attend or may be prevented from attending a trial or hearing in which his testimony is material, and that it is necessary to take his deposition in order to prevent the perpetration of injustice, the court, at any time after the filing of the complaint or an indictment, upon motion made and notice to the other parties, may order that his testimony be taken by deposition, and that any designated books, papers, documents, or portable things, not privileged, be produced at the same time and place.

4. An accused person or prisoner should be afforded every opportunity to establish his innocence; and when he is deprived of any right or privilege guaranteed by the Constitution or other law, by the subterfuge of his opponent, or by action of the trial court, he cannot be said to have had a fair and impartial trial.

5. An accused or prisoner in a capital offense cannot be deprived of the testimony of his witness because of some technicality; and every thing calculated to elucidate the transaction should be received.

6. In order to sustain a conviction in a criminal case, not only must there be a preponderance of the evidence, but the evidence must be so conclusive as to exclude every reasonable doubt as to the guilt of the accused.

7. The law rejects all hearsay reports of a transaction, whether verbal or written, given by persons not produced as witnesses.

8. Fairness and impartiality are expected of every judge in the trial of every cause before him in order that transparent justice may be meted out.

9. The holding back of evidence by a party may be used as a presumption of fact in all cases against that party. Thus, any attempt to suppress evidence is a circumstance which must go to the jury to determine whether it forms a basis for which guilt may be inferred.

10. Only a defendant may waive his right to procure witnesses; it is not a matter of discretion for the trial court and the court cannot therefore deprive the defendant of such right.

11. Murder is the killing of a person by another person of sound mind and discretion, with malice aforethought and without legal excuse. Thus, to constitute murder, there must be an element of intent accompanied by malice aforethought.

12. Judges should never allow undue or improper pressure to be made to bear upon them by means of threats emanating from any source.

13. Courts of justice have nothing to do with opinions and sentiments which may surround a case; they should not be influenced by local prejudice or prevailing public opinions; and the courts, as dispensers of law and justice, should close their eyes and ears to everything except what is legally introduced into the case.

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

15. Every defendant in a criminal case is entitled to due process of law.

16. A judgment of conviction of a crime will be reversed and the defendant acquitted *where* the evidence is insufficient as a matter of law to support the inference of guilt beyond a reasonable doubt.

The appellant/defendant, a Filipino national employed on a Liberian registered vessel as a messman, was convicted of the crime of murder by an empanelled jury of the First Judicial Circuit Court, Criminal Assizes, Montserrado County. The appellant/defendant had been charged with having assaulted the captain of the vessel,

stabbing him in the chest and side, resulting into his instant death.

At the trial, the defendant had applied to the court for letters rogatory for the testimony to be taken of one Renato Pascion who lived in the Philippines. The application was denied by the trial court which thereafter entertained evidence by the parties. Following the resting of evidence, the jury returned a verdict of guilty of murder. A motion for a new trial filed by the appellant was denied and judgment was rendered confirming the verdict and sentencing the appellant to death by hanging. From this judgment, an appeal was taken to the Supreme Court.

The Supreme Court reversed the judgment, holding that the trial court had erred in denying the appellant's application for letters rogatory. The Court opined that the denial of the application was a violation of the right of the appellant to compulsory process guaranteed by the Liberian Constitution and statutes, and a deprivation of his right to due process of law, also guaranteed by the Constitution and other laws of Liberia. These denials, the Court observed, deprived the appellant of the opportunity to establish his innocence.

The Court noted also that in order to sustain a conviction of the appellant, the prosecution must have proved the guilt of the appellant beyond a reasonable doubt. The Court questioned whether this had been done. Noting that the errors made by the trial court were sufficient to warrant a *reversal* of the judgment, the Court ordered the case *remanded* for a new trial.

The Carlor, Gordon, Hne and Teewia Law Offices appeared for the appellant. *McDonald J. Krakue,* Solicitor-General of Liberia appealed for the appellee.

MR. JUSTICE AZANGO delivered the opinion of the Court.

Appearing before us is this case involving an appeal from the judgment rendered in the First Judicial Circuit Court, Montserrado County, Criminal Assizes "A", sitting in its May Term, A. D. 1986, against appellant. The indictment and the records in the case reveal the following facts: The indictment stated that:

About 8:40, on the night of July 8, 1985, on the high seas and on board a Liberian registered vessel, the "M/T Proof Trader", which was on a voyage from Portugal to Abidjan, Republic of the Ivory Coast, and reaching approximately 340 nautical miles off the coast of Senegal, West Africa, Crisosotomo N. Matierzo, a Filipino National, defendant, holder of Filipino Passport No. 029064, and an employee of said vessel,

serving in the capacity of catering ordinary seaman (messman), did, with premeditation and deliberation, and with malice aforethought, make an assault upon and against the person of JAN HENRY KAUHEIMER, the Captain of said vessel, with deadly weapons, which he had held, known to the grand jurors as kitchen knives, and made of steel and wooden handle, and description and whereabouts of the others being unknown to the grand jury, did unlawfully, illegally, wickedly, maliciously, feloniously and intentionally stab the said JAN HENRY KAUHEIMER in the chest and on the left side of his body, thereby causing him to sustain fatal internal wounds, and from the said fatal wounds inflicted by the defendant JAN HENRY KAUHEIMER then and there did die, thereby the crime of MURDER the defendant did do and commit, contrary to the form, force and effect of the statute laws of Liberia, in such cases made and provided against the peace and dignity of this Republic.

The defendant/appellant was arraigned and pled NOT GUILTY to the charge. A jury was empanelled to try the issues thus joined. The prosecution produced five (5) witnesses to testify in its behalf in support of the indictment. Both parties having rested evidence and legal argument having ensued, the jurors were charged to return to their room of deliberation and bring in a verdict in keeping with the evidence adduced at the trial. The jurors returned with a verdict of GUILTY. A motion for new a trial was prayed for, heard and denied. Thereafter the court rendered final judgment on the 23rd day of July, A. D. 1986. Exceptions were noted and an appeal announced to this Forum for a review based upon bill of exceptions containing thirty-one (31) counts. We shall however consider only eleven (11) counts which we deem appropriate for the determination of this case. Of these counts, the appellant has contended that the trial judge committed reversible errors in the following respects:

1. When he denied appellant's request for the issuance of the letters rogatory;

2. When he suppressed all evidence favourable to the defendant/appellant;

3. When he stated that because prosecution witness Anto Pastor had testified that he did not know the whereabouts of Renato Pascion;

4. When he refused to have the testimony of Renato Pascion form part of the evidence;

5. When he overlooked the fact in the record that prosecution and the Bureau of

Maritime Affairs had paid the expenses of their witness to come to Liberia and back, but had refused to do the same thing for the one eyewitness to the incident;

6. When he denied the letters rogatory on the ground that any extension of the time would have put the trial judge out of jurisdiction and that the precise address and whereabouts of Renato Pascion is unknown;

7. When he, as trial judge, quoted the appellant as having said "defendant himself testified that he could not swear that Renato Pascion witnessed the incident or act which the defendant himself had said that he did commit;

8. When he, the trial judge, denied the appellant's request for letters rogatory long before the defendant took the stand in his own behalf;

9. When he concluded, without any support from the records that the testimony of the defendant showed he had built up and accumulated a certain amount of resentment in response to the constraint and reprimand of the captain;

10. When he said that it was incumbent upon the defense to ask the jury for manslaughter and not acquittal;

11. When he, on the 23rd day of July A.D. 1986, 1st day's chambers session, proceeded to hand down final judgment sentencing defendant to death by hanging.

Opposing these arguments, the Solicitor General of Liberia in his brief and argument before us, maintained that the trial judge did not commit a reversible error when he denied appellant's application for the issuance of letters rogatory because it was not made in good faith. He argued that the defendant/ appellant was appraised of the crime and of his rights prior to the commencement of his trial on the 26th day of May, A.D. 1986 when he was formally charged upon a complaint from the State issued by the magisterial court of the City of Monrovia; that the granting of letters rogatory, in keeping with our statutes and the law extant, requires that such letters be granted "if and when convenient"; that it was not certain, according to the evidence, that Renato Pascion, an eye witness, was present when the defendant killed the Swedish captain on the night of July 8, 1985 on the high seas 341 nautical miles off the coast of Dakar, Senegal; and that appellant's counsel did not specify what material facts this particular eye witness, Renato Pascion, was to testify to, or that such evidence was relevant and material to the issues involved in the case. The Solicitor General further maintained:

1. That the trial judge committed no reversible error when he denied defendant's motion for a new trial. A motion for new trial, he said, is principally based on the fact that the verdict of the empanelled jury was against the weight of the evidence adduced at the trial. The evidence adduced at the trial in the instant case, he contended, convincingly supported the verdict of the empanelled jury, especially as the prosecution's witnesses in persons of Anto Pastor and Erik Simanesen, corroborated each other with respect to the defendant's admission to the killing of the deceased Captain. The defendant himself, he said, whilst on the stand, did not deny that he did stab and kill the captain. The facts from all logical deduction, he argued, conclusively connected the malicious and wilful killing of the decedent to the defendant.

2. The Solicitor General also maintained that the trial judge committed no reversible error when, in charging the jury, he alluded to the statement allegedly made by Pascion to the effect that "defendant went inside the kitchen shortly before the incident and took two knives". He argued that the prosecution's second witness, Erik Simanesen, did testify to this fact, which the judge correctly mentioned and summarized in the charge to the jury. He pointed out that no exception was taken to the charge with respect to this averment.

3. The Solicitor General further maintained that the entire bill of exceptions, being evasive, was intended to shift responsibility to this Honourable Court on issues not distinctly brought before it for final adjudication. He contended that the Supreme Court may decline to review such issues since, although the bill of exceptions is the framework of an appeal, the Supreme Court can only review the case on the records brought forward.

4. The Solicitor General further maintained that in further attestation to the loose and vague manner in which the entire bill of exceptions was framed and presented for appellant's review, he asked how did the appellant expect to benefit from an alleged error committed by the trial judge upon a matter of law, when he had failed miserably to appraise this Honourable Court of any erroneous ruling made by the trial judge, in order that an opportunity may be given to the appellate court to correct the said error.

As we proceed with the analysis of the points presented by the contending parties, the below additional questions hover over our minds. We deem them to be important in order to untangle the cobweb in this case and to serve as guides toward r the

determination of the case. They are as follows:

1. Has the wilful murder been proves as laid in the indictment? In other words, does the homicide constitute murder?

2. Has the defendant been denied any of his fundamental rights and privileges by the subterfuge of the court or the parties?

3. Has the trial been regular or fair?

4. Were the laws of our land, regarding proving or disproving the crime of murder, fully exhausted during the trial in the court below?

5. Were all the surrounding facts and circumstances in the case put before the empanelled jury?

6. Was the denial of letters rogatory to the defendant an infringement upon the basic fundamental right of due process of law guaranteed to the accused?

7. Where the killing was done in the heat of temper or provocation, malice prepense not appearing from the circumstance, could it be considered as murder?

8. What is the effect of the suppression of evidence in a criminal trial?

Forever and again, this Court has held that it is a constitutional right of every person charged with the commission of a crime to have compulsory process for witness, and that where this right is denied, it is a stupendous error of the court and a flagrant violation of the organic law. *Cooper v. Republic,* 1 LLR 256 (1894). The Constitution of this country, at Article 20(h), expressly declares that in all criminal cases, the accused shall have the right to be represented by counsel of his choice, to confront witness against him and to have compulsory process for obtaining witnesses in his favour. LIB. CONST., art. 20, cl. (h). There is no qualification whatever expressed in this connection.

The language is unequivocal and imperative, clearly indicating the intention of the framers of that instrument, to protect the citizen and resident, or to ensure every conceivable safeguard against the exercise of arbitrary power by those who might be vested with authority. That this right was denied the appellant is apparent on the face of the records of this case. The action of the court below was not only a stupendous

error, but also a flagrant violation of the organic law of the land. Here is the ruling of the learned judge in denying the application for the letters rogatory:

THE COURTS RULING ON THE APPLICATION OF THE DEFENSE FOR LETTERS ROGATORY:

"Counsels for the defendant in the murder case now on trial have applied for letters rogatory, following the sheriffs returns to a previous application made on July 8, 1986 for a writ of subpoena to be issued and served upon Renato Pascion, for him to appear and give testimony as a material witness on behalf of the defendant. The said returns show that the witness, Renato Pascion, is without the confines of the Republic of Liberia. The defense contends that the testimony of this witness, Renato Pascion, is materially, relevant, and the best evidence, since he was the only eye witness to the incident as to what actually happened; and that to deny the application for these letters rogatory will be. prejudicial to defendant's right as guaranteed by the laws of this land to a fair trial, and result in a failure of justice.

Counsels for the prosecution have resisted the application of defense for letters rogatory on the grounds that at the commencement or this case before the magisterial court on May 26, 1986, the application should have been made, and that not having done so at that time constitutes waiver; that timely and adequate notice should have been given, upon application filed before this court, as soon as the defendant had notice of the charge brought against him in the indictment; that to grant the application of the defense at this tardy interval would amount to granting of a continuance and paralyze the trial of this case; and finally that the granting or denying of the application for letters rogatory is within the sound discretion of the court.

Although our statute provides for the taking of deposition from absent witnesses during the trial of the case at any time after the filing of the complaint and indictment, upon motion made upon notice to the other parties, Criminal Procedure Law, Rev. Code 2: 17.1, yet when the said witness is outside the confines of the Republic of Liberia the exercise becomes complicated and time consuming. We agree with the contention that the defense should have made application for these letters rogatory much earlier in time, but they contended they were only retained to defend the interest of the defendant on June 30, 1986. At the time when the preliminary examination was held before the magisterial court even if the application had been made and the defendant was represented at that stage, the magisterial court could not

have granted the request for letters rogatory since only our circuit courts are empowered to do so. Because of the complication and time consuming activities involved in appointing a commission, or the issuance of letters rogatory, our statute further provides that letters rogatory shall be issued only when necessary or convenient on application and notice. Criminal Procedure Law, Rev. Code 2 :13.1.

While we concede the necessity for defendant's application, we certainly do not agree that it is convenient, especially so that the defendant has made his application tardily, that is to say eleven (11) days after commencement of the trial of this case, when much further extension of time would put us completely out of jurisdiction. Moreover, the precise address and whereabout of witness Renato Pascion is unknown (See testimony of State Witness Anto Pastor as found on sheet six (6), Wednesday, July 9, 1986). The said witness, being a seaman subject to assignment on any vessel owned by the same company, Winter Port Tankers of Holland, would be difficult to locate. This uncertainty regarding the length of time which would be taken in establishing contact with witness Renato Pascion, would cause an indefinite continuance of this case even beyond the term of court. The Defense not having stated what part the said witness is being sought to prove, we, in the exercise of our sound discretion, and in keeping with the opinion of the Supreme Court of Liberia, as delivered by Justice Henries in the case *Saleeby Brothers, Inc. v. Barclay Export Finance Company Limited,* found in 22 LLR 204, 206 - 207 (1973), do hereby deny the application. AND IT IS HEREBY SO ORDERED.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT, THIS 19TH DAY OF JULY, A.D.1986.

Sgd: Jesse Banks, Jr.
RESIDENT CIRCUIT JUDGE PRESIDING

Moreover, according to our statutes, "if it appears that a prospective witness may be unable to attend or may be prevented from attending a trial or hearing, that his testimony is material, and that it is necessary to take his deposition in order to prevent a failure of justice, the court, at any time after the filing of the complaint or an indictment, upon motion made upon notice to the other parties, may order that his testimony be taken by deposition and that any designated books, papers, documents, or portable things, not privileged, be produced at the same time and place". It has been held that "the dearest of man's inalienable right is life. We may deprive him of liberty with only temporary effect; we may deny him the pursuit of happiness, but such denial is not necessarily permanent; but if we take his life, it is the

end of all. Courts of justice therefore, while never forgetting the duties to guide with jealous care the rights of litigants in general, should watch with special care every incident of a trial where human life is at stake". *Lawrence v. Republic,* 2 LLR 65 (1912), text at bottom paragraph.

This Court has also held in the past that 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 other laws of Liberia, by the subterfuge of his opponent or the action of the court, he cannot be said to have had a fair and impartial trial. *Ledlow et al. v. Republic,* 2 LLR 529 (1925). We held in the same case that it is a wicked and mischievous thing to deprive a prisoner in a capital case, such as the instant case, of the testimony of his witness because of some technicality, and that in a criminal trial everything calculated to elucidate the transactions should be received, since the conclusion depends on a number of links which alone is weak but taken together are strong and able to lead the mind to a conclusion". *Id,* We have, in like manner, held that 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. *Logan v. Republic,* 2 LLR 472 (1924). Further, in a number of other cases, we have acknowledged that the Constitution of Liberia guarantees to every person accused "compulsory process for obtaining witnesses in his favour and it is error for the trial court to conclude a case without allowing the accused the exercise of such constitutional right. *Ware v. Republic,* 5 LLR 50 (1935); Logan v. Republic, 2 LLR 472 (1924); *See* also *Wolo* v. *Wolo,* 5 LLR 423 (1947). We now hold, as we have held before, that it is the duty of the court, on the application of a prisoner, to send for his witnesses where ever they may be had, and if necessary, to issue compulsory process in order to obtain them; that the general rule of law rejects all hearsay reports of transaction, whether verbal or written given by persons not produced as witnesses; and that fairness or impartiality is expected of every judge in the trial of every cause brought before him, in order that untainted and transparent justice may be meted out to both parties that are before him and under the sound of his gavel within sacred walls of justice. *Witherspoon v. Republic,* 6 LLR 211 (1938).

We find in Wharton's Criminal Evidence an expose of an established principle of law that as follows:

"The holding back of evidence may be used as a presumption of fact against a party in all cases ... Accordingly, if a party on trial refuses to produce papers which have been called for, and if the opposing party introduces parol evidence of the contents

of the papers, then if there be doubt, the probable interpretation less favourable to the suppressing party will be adopted provided the matter be not one which is part of the proper case of the prosecution". WHARTON'S CRIMINAL EVIDENCE, Vol. 1, § 112, at 126.

Further, the treatise states:

"Any attempt to suppress evidence is a circumstance to go to the jury as a basis from which guilt may be inferred. The suppression or destruction of pertinent evidence, is always a prejudicial circumstance of great weight; for as no act of a rational being is performed without a motive, it mutually leads to the inference that such evidence, if it were adduced, would operate unfavorably to the party in whose power it is". WHARTON'S CRIMINAL EVIDENCE, Vol. 1, § 115, at 133.

Again, Wharton states:

"Modern decisions established the rule that any effort directly or indirectly to destroy, fabricate, or suppress evidence, may be shown as a circumstance indicating fact that the party's cause is an unrighteous one." WHARTON'S CRIMINAL EVIDENCE, Vol. 1, § 306, at 410.
Additionally, it is also an accepted rule of law that:

"Although the right may be waived, the accused is entitled to a reasonable opportunity to procure witnesses for his defense. This right is usually guaranteed by the Constitution. Indeed, the constitutional guaranty of a fair and impartial trial contemplates and includes the right of the accused to the compulsory attendance of witnesses. It is not a matter of discretion for the trial court, and, therefore, the court cannot deprive the accused of his right to have compulsory process. In fact, the constitutional right obtains at all times to the end of the trial and gives the accused the right, at all times during the trial, to procure compulsory process for the attendance of witnesses when he learns that it is important to his defense. The accused is guaranteed the right to have attendance of a witness, if it can be obtained, and cannot be forced to use testimony given by such witness at a former trial where such attendance may be held."

In the face of these various holdings of renowned legal authorities, we wonder why the trial judge allowed himself to be influenced by the eloquence of the prosecution in the court below or anything other than the law and the Constitution, of which we are guardians, and pursuant to which we are the protectors of the life, liberty and

happiness of the citizens of Liberia and foreigners within our gates. We especially take note of the fact that the judge, on the 30th, day of June, A. D. 1986, was mandated by His Honour James N. Nagbe, Chief Justice of the Supreme Court to remain in jurisdiction in the court until the said case *Republic v. Matierzo,* was finally heard and determined. We wonder very seriously also why the trial judge elected to deny the defendant's request for letters rogatory to be sent to a competent tribunal at 32000 AN SPISKENISS, NOUSWAP, NAJUHELD STREET 9, PHILIPPINE to have Renato Pascion appear before the said court or tribunal to answer under oath to the interrogatories annexed to and/or couched in the application, and to have said deposition submitted in writing and returned to the court below with the letters rogatory? Surely, the trial judge must have been fully aware that without the requested testimony justice could not have been done between the parties in this case. Moreover, to facilitate a speedy trial, Renato Pascion could have been contacted through WATERPORT SHIP MANAGEMENT, P.O. BOX 214 NAJUHELD STREET 9, PHILIPPINE, TELEPHONE 31 (e) 1880-13077, Telex 29624, or WATER PORT TANKERS OF HOLLAND.

Furthermore, we observe that although the learned trial judge, in his ruling on the application of the defense for letters rogatory, conceded the contention of the defendant's counsel relating to the petition, yet he opined that because "the said witness is outside the confines of the Republic of Liberia, the exercise becomes complicated and time consuming; added to the fact that the defendant has made his application tardily, that is to say eleven (11) days extension of time would put the court completely out of its jurisdiction; and because of the complication and time consuming activities involved in appointing a commission or the issuance of letters rogatory, our statutes provides that letters rogatory shall be issued only when necessary or convenient on application".

Could these factors have prevented the learned judge from performing legal duty, especially so when he had been mandated by His Honour James N. Nagbe, former Chief Justice of Liberia, to remain in jurisdiction in his court until the *case Republic v. Matierzo* was finally heard and determined? Certainly not.

Moreover, was it not necessary and convenient for the court, whilst in the trial of a capital offense, to afford the defendant every opportunity to establish his innocence in keeping with several holdings of this Court on that point?

According to authorities and this Court in the *case Lawrence v. Republic,* 2 LLR 65 (1912), murder is the killing of any person whatever by any person of sound mind

and discretion, with malice aforethought and without legal excuse. The authorities hold further that an element of every criminal offense is intent, and that to constitute the crime of murder, intent must be accompanied by malice aforethought.

In the records we find the defendant's testimony, the relevant portion of which we quote hereinbelow:

"I took the fruits and threw them away and replaced them with fresh ones immediately, and then I gave the fruits to the Captain. After that, I continued with my work. After I was through with the kitchen, I returned to my cabin. I was called by the chief steward into the crew messroom. The chief steward then asked me what was happening between me and the captain that caused him to hold my ear. So while I was explaining to the chief steward my side of the story, the captain arrived. He then said that all the things I had said to the chief steward was not true and were lies and while he was saying that my stories were not true, he was pushing me around. He then pushed me hard against the wall in the mess hall, and at the time he sprayed me with the insecticide spray. At that point, my mind was unclear. I remember running into the kitchen and I think I grabbed two knives; after which, I returned into the mess hall and in my CONFUSION, I stabbed the captain, after which, because my MEMORY was UNCLEAR at the time. I remembered looking for the second mate to report myself and then that was when I met the FIRST ENGINEER and I embraced him and asked him for forgiveness. That is all"

The testimony of the defendant was never refuted and remained unrebutted, even though the prosecution, at the time of resting evidence, gave notice that it rested evidence with the right to produce rebuttal evidence, if necessary. Moreover, after the defendant had given answers to many questions on the direct and cross-examinations, the empaneled jurors and the trial judge propounded the following questions:

JURORS' QUESTIONS:

Ques: Mr. Witness, please say if you know what kind of spray the captain used on you?

Ans: The captain sprayed insecticide on my body.

Ques: After the incident, Mr. Witness you said you went to the bridge to report yourself. Did you go there with empty hands?

Ans: When I went to the bridge house my mind was unclear; but they said I had one knife in my hands.

Ques: Mr. Witness, maybe in your confusion you didn't remember; but do you recall the second mate taking anything from you or from on the floor and flinging (swinging and throwing) it over board the ship?

Ans: I do not remember.

COURT'S OUESTION:

Ques: Did the act of the captain in spraying insecticide on your body cause you to be confused or to be offended?

Ans: Upon the captain spraying me, it was when gay thinking became very depressed.

Ques: Say, if you know what the reaction of your chief steward Pascion was, when the captain sprayed your body with the insecticide, if you remember.

Ans: I do not know how the chief steward reacted, because upon being sprayed my thinking was not clear.

Ques: Mr. Witness, do you want this court and jury to believe that the happening on the night of July 8, 1985 between you and the late captain was an act of coincidence and an accidental?

Ans: I had no intention to kill. I hope that all those who judge me will see it as a very unfortunate accident."

From the records before us, there is no positive showing of sufficient convincing clarity as to the existence of intent or malice on part of the defendant/appellant. Though a killing was done, the records do not show the circumstances manifesting extreme indifference to the value of human life, as is contemplated by our criminal statute, Penal Law, Rev. Code 26:41.

Judges should never allow undue and improper pressure to be put upon them by means of threats emanating from any source. We are aware that the determination of this case is regarded in certain quarters as being of vast importance to the power and prestige of counsel for appellee which fact was borne out by the counsel's strenuous

argument and marked ability before this bench. We hesitate, however, to give credence to any suggestion that a judge of any court of Liberia, in this enlightened and progressive age of this Republic, when it is recognized by statesmen and politicians alike, and when the security and safety in democracy rests in an independent fearless and competent judiciary, could be so weak, so recreant to duty, as to permit himself to be deterred from the plain path of duty in the determination of a matter brought before him.

This Court held in the case *Logan v. Republic,* 2 LLR 472, 476 (1924), that courts of justice have nothing to do with opinions and sentiments which may surround a case; that they should not be influenced by local prejudice nor prevailing public opinions; and that as the dispensers of law and justice, they should close their eyes and ears to everything except what is legally introduced into the case.

This Court has also held that any sentence pronounced against an accused which can be shown to have grown out of a trial not in harmony with procedure in our criminal courts, and which infringes the legal and/or constitutional rights of a defendant, could not be taken as being the result of a fair and impartial trial. *Hage v. Republic,* 14 LLR 217, 222 (1916).

The legal pronouncement that a defendant shall not be deprived of due process of law is as ancient as chapter 3 of 28 EDW.- III (1335), which provided that no man, regardless of what state or condition he be, shall be put out of his lands or tenements, nor taken, nor disinherited, nor put to death, without him being brought to answer by due process of law. Backed by the Magna Carta, promulgated in 1225, it states that "no free man (nullus Liber Homo) shall be taken or imprisoned or deprived of his freehold or his liberties or free customs, or outlawed, or exiled, or in any manner destroyed nor shall we cone upon his or send against him, except by a legal judgment of his peers or by the law of the land (per legem terrae). This is the safeguard of an accused person. The due process of law was intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principle of private rights and distributive justice. To have denied appellant his constitutional right or due process of law was to debar him from challenging the substantive content of what may appear as reasonableness in the judgment of the court. We hold the view that any other construction given to the concept of due process of law would raise grave constitutional doubts and unreasonable judgments.

It is an established principle of our law, found in the opinions of this Court that "A

judgment of conviction of a crime will be reversed where the evidence of the jury trial was insufficient as a matter of law to support the inference of guilt beyond a reasonable doubt. *Blamo v. Republic,* 17 LLR 232 (1966). Thus, notwithstanding the authority conferred upon a judge to exercise discretion in the consideration of a motion for a new trial, which discretion is not subject to review unless abused, also the law that the rights of a defendant in a criminal prosecution must not be prejudiced. While murder is universally considered one of the greatest crimes against society because human life is involved and a human being has died, and it is acknowledged that society must be protected by the law of the land a defendant should be held answerable for the criminal act committed by him, the guilt must be proved beyond a reasonable doubt. Where the evidence fails to meet this test, the law will acquit the accused or reverse the judgment.

In view of the fact that the trial judge failed to observe the basic principles of law as that:

1. In criminal cases the defendant should be afforded every opportunity to establish his innocence and when deprived of any right to do so by the subterfuge of the prosecution or court, .he cannot be said to have had fair trial. *Talib v. Republic,* 20 LLR 254 (1971)

2. A trial court must grant an application for issuance of compulsory process when the accused in a criminal case seeks to obtain a witness, and the denial of such application constitutes a violation of the defendant's constitutional guarantee. *Doe v. Republic,* 21 LLR 279 (1972); and

3. The Supreme Court will reverse the judgment in, and remand for a new trial, any case that comes before it in which the judge's acts and rulings were patently prejudicial to defendant's rights and interests. *Anderson v. Republic,* 27 LLR 67 (1978). It is therefore our considered opinion that the denial by the trial judge of defendant/appellant's application for letters rogatory to have witness Renato Pascion, who was considered a material and an eye witness to the scene of the crime, and the motion for a new trial, in which appellant's whereabouts were clearly designated to be in the Philippine, such ruling of the trial judge was therefore wrapped in a NOVELTY OF PREJUDICE and the judgment founded on the verdict of the empanelled jury cannot be upheld by this court.

In view of the foregoing facts, the law and circumstance which we have clearly reviewed, not inadvertently overlooking any point of the law or fact in determining

this case, the judgment of the trial court should be, and the same is hereby reversed and the case remanded for a new trial.

The Clerk of this Court is hereby ordered to send a mandate to the trial court informing it of this judgment. And it is hereby so ordered.

Judgment reversed; case remanded.