

**KOLIBOI MONIE and OLDMAN GARZU, Appellants, v. REPUBLIC OF
LIBERIA, Appellee.**

APPEAL FROM THE CIRCUIT COURT FOR THE TENTH JUDICIAL
CIRCUIT, LOFA COUNTY.

Heard: November 18, 1987. Decided: February 24, 1988.

1. The disappearance of a human being and the failure to find such person, dead or alive, do not by themselves provide a basis for drawing the conclusion that the person has been murdered or that the person was kidnaped and murdered by the defendant.
2. The law presumes that a defendant is presumed innocent until the contrary is proven. The presumption is held to legally give the benefit of the doubt to the accused and it cannot be repelled by any evidence which is insufficient to establish the fact of criminality.
3. To affix on any person the stigma of the crime of murder requires that the evidence must be convincing and must exclude from the mind all doubts as to the guilt of the accused.
4. Every party charging another with an offense is bound to prove it. Proof is the perfection of evidence without which there can be no proof.
5. The corpus delicti or body of the crime, the material substance of which the crime is alleged to have been committed, must be proved.
6. The term corpus delicti, as it applies to homicide cases has at least two component elements: (1) The fact of death, and (2) the criminal agency of another person as the cause thereof.
7. An accomplice is one who knowingly, voluntarily and with the principal offender unites in the commission of a crime.
8. The testimony of an accomplice to a crime should be taken with caution. Thus, as far as criminal liability is concerned, the question of whether a person participated as a principal or as an accessory, aider or abetter, in the commission of a crime, the term accomplice has no legal significance if the person is called as a witness and testifies upon the trial of another person. What is of concern is the credibility of his testimony.

9. The uncorroborated testimony of an accomplice is insufficient per se to sustain a verdict of conviction of murder. Thus, as to such testimony and the fact of the commission of a crime, there must be corroboration by evidence from some independent source.

10. Every person suspected or accused of committing a crime shall immediately upon arrest be informed in detail of the charges, of the right to remain silent, and of the fact that any statement made could be used against him in a court of law. Such person shall be entitled to counsel at every stage of the investigation and shall have the right not to be interrogated except in the presence of counsel. Any admission or other statements made by the accused in the absence of such counsel shall be deemed inadmissible as evidence in a court of law. Lib. Const., art. 20(c)(1986).

11. Evidence extracted from an accused, in violation of the rights granted by the Constitution, cannot be used against him, and it is error for the trial judge to permit such evidence to be used against a defendant in a trial, especially where the defendant informs the court that he cannot read or write and that his finger print was forced on the statement.

The appellants, Koliboi Monie and Oldman Garzu, appealed to the Supreme Court from a conviction of murder and the entry of a final judgment thereon by the trial court sentencing them to death by hanging. The indictment upon which the defendants/ appellants were charged alleged that the co-defendant Koliboi Monie and Butu Ackoi, who had been used as a state witness, had kidnaped and killed a two and one-half year old child and that the other co-defendant, Oldman Gartu, the accomplice to the aforesaid criminal act; knew of the plan and has seen the accused taking the little girl in a bag to be murdered but that he had failed to notify the authorities or any other person of the plan or the act. The body of the decedent and the instrument used to commit the alleged crime were never found. Notwithstanding, after a trial by the Circuit Court for the Tenth Judicial Circuit, Lofa County, the defendants were convicted.

On appeal, the Supreme Court reversed the judgment noting that the records certified to it raised doubts regarding the guilt of the defendants. The Court observed firstly that the records lacked any mention of the body of the child or the instrument allegedly used to kill her ever being found. The mere disappearance of the child, it said, was insufficient to conclude that she was dead or that she had been murdered. The Court noted that aside from the evidence of accomplice Butu Ackoi, no other

witness testified that the child was killed by the defendants. The Court noted also that although a panty had been produced at the trial, there was no further evidence produced to establish that the said panty belonged to the child or that she was wearing it at the time of her disappearance. A defendant, it said, is presumed innocent until the contrary is proved, and that in meeting the standard of proof, the prosecution in the instant case had to show beyond a reasonable doubt that the defendants committed the act. This prosecution had failed to do at the trial, especially in respect of the requirement that the corpus delicti be proved, the Court concluded.

Addressing directly the testimony of witness Butu Ackoi, who was alleged to have been a participant in the alleged killing of the decedent, the Court held that that uncorroborated testimony was insufficient to sustain a guilty verdict. Such testimony, it said, must be corroborated by an independent source; that independent source was lacking in the instant case since the testimonies of the investigating officers were mere recitals or what witness Butu Ackoi had told them. In the absence of that independent source, the verdict could not be upheld, it said.

Equally important, the Court said, was the fact that the confession of Butu Ackoi was taken without him being informed of his constitutional right to remain silent and not to give evidence against himself.

With regard to the statement made by co-defendant Koliboi Mollie, the Court opined that same had be extracted from the codefendant under duress and in violation of the his constitutional right. The statement taken under the foregoing circumstances was inadmissible, especially since the defendant had informed the court that he could not read or write, and that his finger print was forced on the statement.

In light of the foregoing, the Court concluded that the prosecution had failed to prove its case. This, it said, warranted a reversal of the judgment of conviction.

David A. B. Jallah of the Cooper & Togba Law Firm appeared for appellants. McDonald" Krakue, Solicitor General of Liberia, appeared for appellee.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

Koliboi Monie, as principal, and Oldman Garzu, as an accessory before and after the fact, were indicted for murder by the grand jury of the Tenth Judicial Circuit, Lofa County, during the August, A. D. 1973 Term of Court. During its December, A. D. 1973 Term of the court, the defendants were tried and a unanimous verdict of guilty

returned against them in open court by the empanelled jury. The jury having been polled and their verdict recorded, the defendants/appellants excepted thereto and filed two motions, one for a new trial and the other in arrest of judgment. Both motions were heard and denied. Thereupon, the court entered final judgment sentencing the defendants to be hanged. To this final judgment the defendants/appellants excepted and announced an appeal to this Court for review. As required by law, the defendants filed a bill of exceptions, the same containing thirty-four counts.

The Indictment upon which the defendants were tried and convicted read as follows:

"INDICTMENT

Grand jurors, good and lawful men and women of the County of Lofa, Republic of Liberia duly selected, sworn and empanelled to inquire within the said county in the name and by the authority of the Government of the Republic of Liberia, do upon their oaths present Koliboi Monie, defendant and Oldman Garzu, accessory before and after the fact to murder aforesaid, of Zinalormai Town, Lower Worker Clan, Voinjama District, Lofa County, Republic of Liberia for felony, to wit; the grand jurors aforesaid, do present that on the 10th day of March, in the year of our Lord Nineteen Hundred and Seventy-Three (A. D. 1973), Koliboi Monie, defendant aforesaid of Zinalormai Town, Lower Worker Clan, Voinjama District, Lofa County, Republic of Liberia aforesaid, then and there being not having the fear of God before his (defendant's) eyes but moved and seduced by the instigation of the devil, without any legal justification, right or excuse, unlawfully, wickedly, feloniously, maliciously, intentionally, illegally, wrongfully, deliberately, wilfully and with malice aforethought, did grab and take away decedent Mama Dukuly, who is the namesake of Honourable Mama Dukuly, and daughter of Mr. Forkpa Kalapelle of Zinalormai Town, Lower Worker Clan, Voinjama District, Lofa County, Republic of Liberia, into the bush, took off her (decedent's) pantie, tied her mouth with a stripy cloth, put her into a bag and beat her (the decedent) with a deadly and dangerous weapon described to the jurors as a stick made of wood which the defendant had and held in his hand, and from which beating Mama Dukuly, decedent, who was the daughter of Mr. Forkpa Kalapelle of Zinalormai Town, Lower Worker Clan, Voinjama District, Lofa County, Republic of Liberia, did languish and in the peace with God did die; then and there by the crime of "MURDER", Koliboi Mollie, defendant aforesaid, of Zinalormai Town, Lower Worker Clan, Voinjama District, Lofa County, Republic of Liberia, did do and commit; contrary to the form, force and effect of the statute laws of Liberia, as provided in Title 27, section 232, subsections (1) and (2) of volume III of the Liberian Code of Laws of 1956; in which subsections (1) and (2), the penalty of said

crime, murder, is punishable with "DEATH" by hanging, which act the defendant did do, contrary to the form, force and effect of the statute laws of Liberia in such cases made and provided.

The grand jurors aforesaid, upon their oaths, do present that on the 10th of March, in the year of our Lord Nineteen Hundred and Seventy--Three (A. D. 1973), the aforesaid "ACCESSORY BEFORE AND AFTER THE FACT TO MURDER", Oldman Garzu, of Zinalormai Town, Lower Worker Clan, Voinjama District, Lofa County, Republic of Liberia aforesaid, not having the fear of God before his (accessory before and after the fact to murder) eyes but moved and seduced by the instigation of the devil, did without any legal justification or excuse, unlawfully, wickedly maliciously , intentionally, illegally, deliberately, wilfully, wrongfully, and with malice aforethought, stand by the defendant, Koliboi Monie, and saw him when he took decedent Mama Dukuly into the bush with the intent to murder her, after defendant aforesaid had planned to commit this act in the presence of the said ACCESSORY BEFORE AND AFTER THE FACT TO MURDER" aforesaid, did not disclose this wicked plan and act of the defendant to the public nor did he make an alarm to make known to the public that the defendant was about to commit a crime then and thereby the crime of ACCESSORY BEFORE AND AFTER THE FACT TO COMMIT MURDER, Oldman Garzu did do and commit; contrary to the form, force and effect of the statute laws of Liberia as provided in Title 27, section 8, subsection (1) of volume III of the Liberia Code of Laws of 1956.

The grand jurors aforesaid, upon their oaths, do also present that the aforesaid "ACCESSORY BEFORE AND AFTER THE FACT TO MURDER", Oldman Garzu of Zanalormai Town, Lower Worker, Voinjama District, Lofa County, Republic of Liberia aforesaid, did, without any legal justification or excuse, unlawfully, wickedly, maliciously, intentionally, illegally, deliberately, willfully, wrongfully and with malice aforethought keep quiet and did not make known to the public that the defendant had taken decedent Mama Dukuly into the bush and had murdered her, and that because he did not reveal this information to the public and the government officials that went there, the citizens in general that went there kept searching for decedent Mama Dukuly until it was finally disclosed that the said ACCESSORY BEFORE AND AFTER THE FACT TO MURDER Oldman Garzu, was in knowledge of the commission of the crime but that he had kept it secret to himself simply because he did not want the defendant to be known because if he was known, he (the defendant), would be arrested and charged for the crime of MURDER; then and thereby the crime of ACCESSORY BEFORE AND AFTER TIE FACT TO MURDER, Oldman Garzu did do and commit, contrary to the form, force and effect

of the statute laws of Liberia as defined in Title 27, section 8, subsection (2) of volume III of the Liberian Code of Laws of 1956, and against the peace and dignity of the Republic of Liberia, of which the Republic of Liberia is ready to prove.

Dated this 12th day of September A.D. 1973.

Republic of Liberia ...PLAINTIFF

/S/ C. Benedict Kennedy

/T/C. Benedict Kennedy

COUNTY ATTORNEY - LOFA COUNTY

WITNESSES:

William K. Akoi

Janyan T. C., Zinalormai

Lawrence Monibah

Actg. Clan Chief, Dorbor, Lower Worker

Forkpa Kalapelee - Father of decedent Butu Ackoi"

The defendants/appellants have filed a brief in which they have asked this Honourable Court to answer four questions covering the 34 count bill of exceptions. They are:

- "1. Whether or not the verdict of a jury in criminal trial should be sustained where there is the slightest doubt as to the guilt of the defendant?
2. Is the uncorroborated testimony of an alleged accomplice sufficient per se to sustain a verdict of conviction of murder?
3. Whether evidence extracted from a person accused of murder while he is under duress is admissible against said accused in the determination of his guilt?
4. In the prosecution for murder, is it necessary that proof of the corpus delicti be substantially established before the guilt of the accused can be made out with the legal certainty which excludes every hypothesis of his innocence?"

Let us now turn to the evidence in order to determine whether or not the contentions in the bill of exceptions summed up in the four enumerated questions can be sustained.

Jorgbor Ackoi took the stand and testified for the prosecution. He said that on the day of the incident, while going to their farms, they left Oldman Garzu as Town

Keeper of Zinalormai. They also left Mama Dukuly, the decedent, a child of about two and a half years old, in the town. While at work on their farms, a man by the name of Zumo came there and informed them that the decedent was missing. They left their engagements and rushed to the town to find out what had actually happened. Upon their arrival in the town, a town man called Butu Ackoi was requested to call the town chief, but he refused. Within that time, Jorgbor Ackoi said, he saw a lady in whose care the decedent was left. He inquired of her as to the whereabouts of the decedent, Mama Dukuly (Jr.). The lady informed him (Jorgbor Ackoi) that the decedent had joined some people who had gone to pay their respects to their dead ancestors, and that while she was between the houses, she (Mama Dukuly) disappeared. Witness Jorgbor Ackoi stated that he then inquired further as to whether or not the decedent did not accompany anyone from the town to the farm. The reply, he said, was in the negative. He then sent a messenger to the nearby farms in order to find out whether or not the decedent was around but she could not be found. He then began searching in the pits and latrines to find out whether or not the decedent had fallen into any of them. After his search proved futile, he decided to ascertain from the town keeper whether or not any strangers had been seen about. One Korgbor Lormai was identified as a stranger. All of the town's people were gathered together for the purpose of finding the missing girl. Men were sent to the neighboring towns to inform the people therein about the missing child. And that he, Jorgbor Ackoi, advised the chief that no one should leave the town. While the search was going on, two men were sent to inform the county commissioner. The witness stated further that in spite of the advice that no one should leave the town, the next morning the chief reported to him, witness Jorgbor Ackoi, that he had seen Koliboi Monie coming from his palm wine tree. When Koliboi Mollie was asked why he had disobeyed the chief's order, he said that he had gone to get some palm wine because strangers were coming to town. Jorgbor Ackoi stated that he also saw Butu Ackoi who had refused to join the search party and asked him why he, Butu Ackoi, had refused to join the search party, noting to Butu Ackoi the consequences of his refusal to join in the search. During this interim, a team of police officers and members of the NBI arrived in town, took charge of the search and commenced an investigation. Witness Jorgbor Ackoi said that he was requested by the officers to show them the person who was the town keeper on the day of the incident. The co-defendant/appellant, Oldman Garzu was pointed out as the town keeper. The officers then took the co-defendant/ appellant Garzu, the town chief, and the clan chief along the road. After a little while, the town chief ran back to town and called for co-defendant Butu Ackoi. Moments thereafter co-defendant Butu Ackoi was also called along the road. Upon their return to the town, the officers asked for a house where they then detained the defendants/appellants Butu Ackoi, Oldman Garzu, and

Koliboi Mollie. Upon interrogation by the officers (which was on a Sunday), the defendants/appellants, except for Koliboi Mollie, confessed to having caught and killed the decedent, Mama Dukuly (Jr.), but they refused to disclose the burial place. The defendants/appellants were then taken to Voinjama. They were thereafter returned on several occasions to locate the burial place of the decedent, but these were to no avail. This ended the testimony of Jorgbor Ackoi.

Butu Ackoi then took the witness stand. He testified that Oldman Garzu was the town keeper on the day of the incident when Mama Dukuly got missing and was allegedly murdered. He also stated that he and defendant Oldman Garzu were bed mates. While in their room, he said, co-defendant/appellant Koliboi Monie came in and said that he wanted to catch Mama Dukuly. The plan was that when this is accomplished, Jorgbor Ackoi and Mama Dukuly (Sr.) will naturally be blamed because they were the knowledgeable leaders of their community. Koliboi Monie, whose house was at the edge of the town, caught the decedent and placed her in a bag in which she was carried away by Butu Ackoi. The witness further testified that while they were going, the co-defendant/appellant Oldman Garzu saw Butu Ackoi and Koliboi Monie carrying the decedent in a bag. Oldman Garzu then asked them whether this was the plan defendant Monie had talked about.

The next witness, one Jallayan, testified that Oldman Garzu admitted in his (Jallayan's) presence to the NBI officers that he, Oldman Garzu, saw Butu Ackoi and Koliboi Mollie kidnaping the decedent and taking her into the bush, and that Oldman Garzu had led them, the NBI officers, to the place where the decedent had first been hidden. The witness stated that Butu Ackoi was then confronted but hesitated to speak. Later, Butu Ackoi promised to make some confessions the next morning, which he did by saying that he, Butu Ackoi, and Koliboi Monie caught the decedent, Mama Dukuly (Jr.), stuffed her mouth with a piece of cloth, and carried her into the bush. He said that Butu Ackoi further pointed to the same place where Oldman Garzu had shown as the spot where they had hidden the decedent but Koliboi Monie denied this. Oldman Garzu was thereupon called to confront Koliboi Monie. Still defendant Koliboi Monie denied the allegation. The three defendants/appellants, Oldman Garzu, Butu Ackoi and Koliboi Monie were then arrested and taken to Voinjama.

Lawrence K. Monibah, the next witness, testified that the kidnaping and murder of Mama Dukuly (Jr.) was committed because of the popularity of Mama Dukuly (Sr.) and her husband. He also said that the decedent was put inside a bag and carried into the bush where she was divested and remained in the bag and beaten to death. The

three defendants then decided to leave the body in order to remove it during the night for burial. Before they could accomplish the removal, the town's men were ordered not to leave town. However, in spite of this explicit order, Koliboi Monie went hunting in the night and removed the body from where they had hidden it to an unknown place. This ended the prosecution's evidence.

Having given you the synopsis of prosecution's evidence, we will now look at the testimonies of defendants/appellants.

Witness Koliboi Monie deposed for himself. He testified as follow:

"I was at Zinalormai and just saw a group of people came and arrested me from my house. I asked as to the crime I had committed or what had I done. I was told that I had caught somebody, I asked that I did not know anything about it. They however told me that I know something about it and they handcuffed me. We went to the palaver kitchen. I was asked again and I answered that I do not know anything about the issue. One Dorbor got up and slapped me. Dorbor, who was acting for Sirmorly, slapped me. They said that they will carry me somewhere where I will talk. I was carried into the bush and given the beating, all they were able to give me, but I told them that I do not know anything about the matter. One Ackoi told me that lie will make me responsible for this crime. I told him that I do not know that I will say what I have not done. Then he told me that as soon as we get to Voinjama, he will do something to make me confess to the crime. I told him that there is no way in which I will be made to confess to this crime. When we got to Voinjama, he turned me over to Major Galama who was their boss. Major Galama asked me and I told him that I know nothing about the matter. Then Major Galama said that everything that was said there should be recorded by the tape recorder. I told him that I know nothing about the matter. That was all we had when Major Galama left here. They have one cell at the police station and it was in this cell that William Ackoi placed me. He put handcuff on both of my hands and on my feet. In the night William used to visit me and in his attempt to extract confession from me, he used to take my testicle and squeeze them. Any time I attempt to yell out, he left it. I then saw him with a piece of paper in the night, all what we had done at Zinalormai and you said you know nothing about this matter is what has been written on this paper and that I should sign it. I told him that as I do not know how to read and write and therefore do not know what is written on the paper, how can I sign it. He said he would tighten the handcuff more and that will lead me to sign the paper. After he had tightened the handcuff, he asked me to sign the document. He put the document before me and asked me to put my thumb prints on it, I told him that he was seeking to kill me and

he said yes, that would be the final end of the whole thing. So he forced me to put my thumb print on the document and I did it. This is how William Ackoi treated me. I rest."

Witness Oldman Garzu also deposed for himself. He said:

"I was assigned as town keeper for the day and as such I had to go around the town for fear of outbreak of fire and in case messages from Voinjama to the town to see after them. On that day when I came to my house, Butu Ackoi was there with another man whom I did not see and Butu Ackoi said he would create trouble for Mr. Jorgbor and Honourable Mama Bakuly. I continued my round until I came near one Monie's house. Then I heard footsteps in the coffee garden. On looking in that direction, I saw Butu Ackoi with something in his arm running inside the coffee garden. When he looked behind and saw me, he told me not to follow him and if I followed him, he would do something harmful to me. As an oldman, and not able to walk fast, I did not follow him. Besides, only old women were in the town at the time. When Butu Ackoi returned to the town, he was caught by the police. He told the police to take away the handcuff for he had something to tell them. When the handcuffs were taken away, he told the police that he and Koliboi Monie killed the little girl but that I knew something about it. The police took Butu Ackoi into the bush and when they returned to the town, they arrested me as one of the criminals. We slept together in custody and on the following morning, I was carried into the bush for interview. The handcuff were taken away from my hands and I was asked to tell them all I know about the matter, for William Ackoi told me that he had given one dollar to Butu Ackoi to make him show them all those connected with the disappearance of the girl. I told them that I saw Butu Ackoi with a little kid running inside the coffee and he told me not to follow him. This is all I saw. We left the bush and came to the main town hall and there Butu Ackoi was given some drinks by Mr. Jorgbor and the police asked him to give the names of all those connected with the case. Butu Ackoi named one Yessiah, one Ackoiwalla, one Flomo, an attendant to one Mr. Jorgbor, one Kpatey, one John, and one Morlu. These are the men he named together with Monie and myself, in association with him. I did not see defendant Koliboi Monie with him. Butu Ackoi said he sent Monie to get an empty bag but I did not see the empty bag; neither did I see Koliboi Monie. Even though I have said that I know nothing about the whole thing, I have to tell you exactly what I know about it. The police took all of us back to the bush for Butu Ackoi to show them where he had left the little girl. Defendant Monie and I were handcuffed together and Butu Ackoi was with one Zoeboiku who was also charged by Butu Ackoi. Butu Ackoi showed them the place where he said they had kept the little girl but as she was

not there. He told the police that it was Monie who had stolen the body of the little girl from that place and we went on into the bush until we came to the swamp, when he was not able to show the body of the little girl. The police started beating them. As for me, no hand was laid on me. By the time we returned to town, another barge of police officers had just reached in the town. Even though I did not see Koliboi Mollie with Butu Ackoi at the time Butu Ackoi was carrying the little girl into the bush, but because of the pains I was suffering at the hands of the police, when the handcuffs were on my feet. I told them that I saw Koliboi Monie also with Butu Ackoi. When Monie was asked, he said he did not do it. I rest."

We would like to state that this is a case involving the lives of human beings and that therefore we feel it our solemn duty as the Court of last resort, to thoroughly investigate the whole case so far as it has been brought within the grasp and arena of this Court, in order that we may justly and impartially ascertain whether or not justice has been done in the premises by the court below. And in doing this, we have not only confined ourselves to the four questions or points submitted by the appellants with respect to the judgment of the lower court. We have thoroughly examined the facts to ascertain whether the judgment, which is now sought to be reversed, is founded upon a verdict substantially supported by the testimony of witnesses in the case.

The first question is "whether or not a verdict of the jury in a criminal trial should be sustained where there is the slightest doubt as to the guilt of the defendant?" From a careful scrutiny of the records certified to us, we have seen no where therein where it is mentioned that the body of the little girl was ever found. This, of course, raises a doubt as to whether she is dead or alive. The disappearance of a human being and the people's failure to find her - dead or alive - do not mean that she is dead or that she had been murdered. Such being the circumstances under which the statement of Butu Ackoi was made, we hold that the interpretation given by the prosecution is far fetched and we refuse to cast suspicion on the defendants/appellants for kidnaping and murdering little Mama Dukuly. Further, we are not convinced that the pantie which prosecution tried to prove was the pantie of little Mama Dukuly, or that the prosecution established that she was wearing it when she was allegedly murdered.

One of the cardinal principles of law is that a defendant is presumed innocent until the contrary is proven. This presumption is legally held to give the benefit of the doubt to the accused, and it cannot be repelled by any evidence which is short of sufficiently establishing the fact of criminality with moral certainty. To affix on any person the stigma of a crime of such a degree as murder requires that the evidence

must be convincing and excludes from the mind all doubts. *Burphy v. The Bureau of Traffic*, 25 LLR 12, 20 (1976). "It is a fundamental rule of law that every party charging another with an offense is bound to prove it. Proof is the perfection of evidence, for without evidence there is no proof." *Coleman v. Republic*, 2LLR 1 (1908) and *Jappa v. Republic*, 21 LLR 339, 342 (1972).

Our law requires that the *corpus delicti* or body of the crime, the material substance upon which the crime is alleged to have been committed must be proved. The term *corpus delicti* as it applies to homicide cases has at least two component elements: (1) The fact of death, and (2) the criminal agency of another person as the cause thereof. *Kelleng v. Republic*, 4 LLR 33 (1934).

The defendants/appellants have also contended and asked this question: "Is the uncorroborated testimony of an alleged accomplice sufficient per se to sustain a verdict of murder?" It should be remembered, as the records have shown, that only three persons were accused of taking part in the alleged killing of little Mama Dukuly. The testimonies of the three, one Butu Ackoi and the two defendants/appellants, have already been narrated above. Butu Ackoi was used as a State witness. The testimony of this witness reveals that he was an alleged accomplice to the crime of murder. The testimony of such a witness should be taken with caution. An accomplice is "one who knowingly, voluntarily and with the principal offender unites in the commission of a crime." BLACK'S LAW DICTIONARY 33 (4th ed.). So far as criminal liability is concerned the question of whether he participated as a principal or as an accessory, aider or an abettor, the term 'accomplice' has no legal significance if he is called as a witness and testifies upon the trial of another person. What is of concern is the credit-ability of his testimony. 21 AM. JUR. 2d., Criminal Law, § 1189, at 196-197.

From our careful scrutiny of Butu Ackoi's testimony, we have found that to be questionable and contradictory in that in his statement in chief, he said that he was handcuffed while the statement to the police was made, yet while on the cross-examination, he denied that he was ever handcuffed. (See sheet 8, minutes of court, November 15, 1973).

Butu Ackoi was the only witness who admitted to having witnessed the alleged killing; yet, neither the body nor bag and the instrument used to mob the child to death were ever found. No other witness testified that the child was killed by the defendants/appellants. What the Police CID and others testified to was what they were told by Butu Ackoi. The uncorroborated testimony of an accomplice is

insufficient per se to sustain a verdict of conviction of murder. *Capps v. Republic*, 2 LLR 313, 314-315 (1919); *Sawyer v. Republic*, 8 LLR 311 (1944); *Soa et. al. v. Republic et. al.*, 15 LLR 242 (1963); *Gio et. al. v. Republic*, 17 LLR 681 (1966); and *Jappa v. Republic*, 21 LLR 339, 342 (1972). In *Jappa v. Republic*, it was stated that "but as to such facts, however, as well as to the fact of the commission of a crime, there must be corroboration by evidence from some independent source." *Ibid* , at 342. This independent source was lacking in the prosecution's evidence adduced at the trial.

The confession of Butu Ackoi, so heavily relied upon by the prosecution was taken without informing Butu Ackoi of his rights as required by law. *Eldine and Saab v. Republic*, 27 LLR 133 (1978).

This Court has carefully and properly answered questions 1, 2 and 4. The appellants have asked this Court to answer this question: "Whether evidence extracted from one accused of murder, while he is under duress, is admissible against said accused in the determination of his guilt?"

Our Constitution 1986 clearly states in Article 20 (c) that:

"Every person suspected or accused of committing a crime shall immediately upon arrest be informed in detail of the charges, of the right to remain silent, and of the fact that any statement made could be used against him in a court of law. Such person shall be entitled to counsel at every stage of the investigation and shall have the right not to be interrogated except in the presence of counsel. Any admission or other statements made by the accused in the absence of such counsel shall be deemed inadmissible as evidence in a court of law."

Having quoted the Constitution, we hold that in conformity with its provision, the evidence extracted from the defendants should not have been used against them. It was an error on the part of the trial judge to permit such evidence to be used against the co-defendant/appellant, Koliboi Monie, especially when he had informed the court that he could not read or write and that his finger print was forced on the statement. The prosecution failed to rebut this statement of defendant/appellant, confirming that Koliboi Monie was tortured in many ways by the police officers to get him to confess; yet, their torture was to no avail.

It is therefore our considered conviction that the evidence produced by the prosecution in this case was flimsy and unconvincing, and that the judgment entered

upon the verdict was not supported by the evidence. Accordingly, the Supreme Court herewith reverses the judgment of conviction and orders the appellants discharged. Oldman Garzu has already gone the way of all flesh. Peace be to his ashes. And it is so ordered.

Judgment reversed