JOSHUA RAYNES, **RICHARD DUNCAN**, **EDWARD JENKLIN**, and **WILLIAM BROWN**, Appellants, v. **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT, BONG COUNTY.

Heard: April 17, 1989. Decided: July 14, 1989.

1. It is an elementary principle of law governing criminal proceedings that the state must prove the defendant's guilt beyond all reasonable doubt.

2. Hearsay evidence is inadmissible in a court of law.

3. The acceptance of hearsay evidence is a miscarriage of the law.

4. Hearsay evidence is uniformly held incompetent to establish any specific fact which, in its nature, is susceptible of being proved by witnesses who can speak from their own knowledge.

5. No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as an outcome of a hearing and judgment consistent with the provisions laid down in the Liberian Constitution and in accordance with the due process of law.

6. Although the courts are never to forget to zealously guard the rights of all party litigants. When human life is at stake such care must be even more vigilant.

7. The uncorroborated evidence of an accomplice is insufficient to convict an accused.

8. No person shall be subject to search or seizure of his person or property, whether on a criminal charge or for any other purpose, unless upon a warrant lawfully issued, specifically identifying the person or place to be searched and stating the object of the search; provided, however, that a search or seizure shall be permissible without a search warrant where the arresting authorities act during the commission of a crime or in hot pursuit of a person who has committed a crime.

9. One accomplice is not competent to testify in corroboration of the testimony of another accomplice.

10. Evidence relied upon for corroboration of the testimony of an accomplice must tend to convict the defendant with the commission of the crime

In June, 1986, Harrison Paye, Joshua Raynes, Richard Duncan, Edward Jenklin and William Brown were indicted in the Ninth Judicial Circuit Court for the crime of murder. A motion for severance on behalf of Harrison Paye was made, interposed and granted. Thereafter, the trial of Harrison Paye commenced but was later suspended. Subsequently, the trial of the

other appellants started while that of Harrison Paye was still suspended. Without entering a *nolle prosequi* in favor of Harrison Paye, he was qualified to testify against the other appellants. Harrison Paye, whose testimony clearly showed his connection with and participation in the commission of the crime of murder from its planning stage to its completion, became the star witness for the State. Every other witness for the prosecution testified to what Harrison Paye had told them as he was the only witness for the prosecution who was an eye witness and participant at the time the crime was committed. Indeed, all of the other witnesses for the prosecution, including the police/CID, testified to what was told them by Harrison Paye.

During the police investigation, the homes and persons of some of the appellants were searched without search warrants being duly issued and served according to law.

At the conclusion of the production of evidence, the trial judge charged the trial jury. In charging the jury, however, the judge failed to charge them on the law of hearsay evidence, the effect of the uncorroborated testimony of an accomplice, and the law controlling the issuance and service of search warrants. The verdict returned by the trial jury, finding the appellants guilty of murder, was confirmed by the trial judge who, in pronouncing judgment sentenced the appellants to death by hanging. From this final judgment of the trial judge, the appellants announced and perfected an appeal to the Supreme Court.

In passing upon the issues raised before it by the appellants, the Supreme Court opined that hearsay evidence was inadmissible in a court of law, that the uncorroborated evidence of an accomplice is insufficient to convict an accused, that a warrant for search and seizure not duly issued and served in accordance with the provisions of the Constitution was violative of the rights of the individual, and that the verdict and judgment based thereon were therefore null and void. Accordingly, the judgment of the trial court was reversed and case remanded for a new trial.

S. Raymond Horace, Sr. appeared for appellants. *The Ministry of Justice* appeared for the appellee.

MR. JUSTICE KPOMAKPOR delivered the opinion of the Court.

This case is before us on appeal from an adverse ruling against the appellants by His Honour Lockett S. Togba, Assigned Circuit Judge presiding over the Ninth Judicial Circuit Court for Bong County, during the August Term, A. D. 1987. Harrison Paye, Joshua Raynes, Richard Duncan, Edward Jenklin and William Brown were indicted on the 30th day of June, A. D. 1986 and charged with the heinous crime of murder. However, motions for severance were interposed by the appellants and granted by the trial court. Harrison Paye was therefore tried separately. Harrison Paye's trial first commenced but later was suspended when the state fled to the Chambers Justice on a petition for a writ of prohibition, the present status of which we do not know. The other accused were tried together and, in their trial and without entering a *nolle prosequi* in favour of Harrison Paye, the prosecution used him as a state

witness against the other accused, appellants herein, who were convicted of the crime of murder. Harrison Paye's trial, therefore, is not before this Court for review.

Appellants having been found guilty upon the unanimous verdict of the empaneled jury, a final judgment was entered against them, affirming and confirming said verdict. Appellants, not being satisfied with the verdict and judgment, excepted thereto and announced an appeal to this Court sitting in its October Term, A. D. 1988.

The four-count indictment upon which the accused were tried reads as follows, to wit:

"INDICTMENT

THE GRAND JURORS, good and lawful men and women of the County of Bong, Republic of Liberia, duly selected, chosen, sworn and empaneled to inquire within the said County, in the name and by the authority of the Republic of Liberia, do upon their Oaths present defendants Harrison Paye, Joshua Raynes, Richard Duncan, Edward Jenklin and William Brown, all of Sanoyea Town, Sanoyea County District, Bong County, to be identified, for felony to wit: MURDER.

That defendants herein above named and specified have violated Chapter 14, Section 14.1 of the New Penal Code of Liberia, which relevant portion states thus:

MURDER: A person is guilty of murder if he: a) purposely or knowingly causes the death of another human being, orb) causes the death of another human being under circumstances manifesting extreme indifference to the value of human life. Murder is a felony of the first degree. A person convicted of murder may be sentenced to death by hanging or to life imprisonment as provided in Section 50.5 or 51.3.

(1) That prior to the finding of this indictment, the aforesaid defendant Harrison Paye was contacted by one of the defendants, Edward Jenklin, on the 17th day of April, 1986, or thereabout as to whether Madam Kebbeh Peewee was coming to Sanoyea Headquarters for market. Defendant Harrison Paye answered in the affirmative. Harrison Paye, one of the above named defendants, seeing Kebbeh Peewee, and based upon defendants' wicked and murderous plan to apprehend her, tie her, and while she was still alive to extract her numerous parts of her body to their felonious desire, told Kebbeh Peewee that Co-defendant Edward Jenklin had four bags of seed rice for sale and that the rice was in a village called Mulbah.

(2) That the aforesaid Harrison Paye, one of the defendants, contacted Kebbeh Peewee and wantonly, wickedly, criminally and with a depraved mind, premeditation and malice aforethought to shed and kill a human being, took Kebbeh Peewee to Mulbah village where, to her amazement and despair, she found the other defendants, Richard Duncan, Joshua Raynes, Edward Jenklin and William Brown, who wickedly maliciously, feloniously, and with premeditation and depraved minds to shed and kill a human being with carnivorous lips,

grabbed Kebbeh Peewee, knocked her down, tied both feet, hands and mouth and left her in an abandoned but until during the middle of the night, about 12:00 midnight or thereabout, when the above-named defendants jointly and severally came with weapons unknown to the grand jurors, to the place where Kebbeh Peewee was tied waiting to be killed.

(3) And the grand jurors aforesaid, upon their oaths aforesaid, do further present the above named defendants, Richard Duncan, Joshua Raynes, Edward Jenklin, Harrison Paye and William Brown that reaching Mulbah Village at 12:00 midnight or thereabout, where Kebbeh Peewee had been tied awaiting to be killed by defendants, her feet were untied and she was piloted at the side of a water (creek), name unknown to the grand jurors, where she was finally knocked down and many wounds inflicted on her body by Joshua Raynes while Co-defendants Harrison Paye, William Brown and Edward Jenklin held her feet and hands; and at the same time during the stabbing, Codefendant Richard Duncan took from Co-defendant Brown's coat pocket an empty mayonnaise bottle and filled it with the blood of Kebbeh Peewee. The knife which was used in stabbing Kebbeh Peewee, the mayonnaise bottle used to collect the blood and a big flashlight that was used during the killing of Kebbeh Peewee were all brought by Co-defendant Richard Duncan, and as a result of the many stabs inflicted on the sacred body of Kebbeh Peewee, she profusely bled because of the mortal and murderous wounds. She died in the name and peace of God, thereby the defendants above named without legal justification or excuse, wickedly, unlawfully, willfully, deliberately, feloniously, with premeditation and with malice aforethought committed the heinous crime of MURDER, which is 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.

(4) And the grand jurors aforesaid, do upon their oaths aforesaid, further present that the aforesaid Harrison Paye and Edward Jenklin, after the implementation of their murderous and wicked acts, did take a huge and heavy iron rock and tie it on the body of decedent. Kebbeh Pewee and dump it in the creek to hide their wicked and heinous crime of murder, thereby committing the crime of murder.

"And so the grand jurors aforesaid, upon their oaths aforesaid, do present Defendants Harrison Paye, Joshua Raynes, Richard Duncan, Edward Jenklin and William Brown for the crime of murder, then and there, at the time, place and manner aforesaid, which they wickedly, unlawfully, willfully, deliberately, feloniously, with premeditation and with malice aforethought 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.

ALL OF WHICH THE REPUBLIC OF LIBERIA, PLAINTIFF, IS READY TO PROVE."

The Republic which has the burden of proof in all criminal trials proceeded to present her case. Since most, if not all, of the Government witnesses merely repeated more or less the testimony of Harrison Paye, one of the principle defendants who confessed during custodial interrogation, it will suffice to repeat here the testimony of Col. Gallery and that of Harrison Paye.

Col. Gallery, like the other CID investigators, testified to the confession made to them by Harrison Paye.

According to Col. Gallery, on July 4, 1986, a team of investigators, headed by him, was dispatched to the City of Gbarnga by directive of the Ministry of Justice to probe into the mysterious death of the late Madam Kebbeh Peewee, who had come to Sanoyea, Bong County to buy some goods. He said that the investigators met Harrison Paye, the prime suspect in the instant case, through introduction made by local police who had been investigating the case. It was at this time that Harrison Paye made his alleged voluntary statement in the presence of his legal counsel G. Bona Sagbeh of the City of Gbarnga on the 8' of August, A. D. 1986, signed by him and attested to by his counsel. He further testified that Defendant Harrison Paye told him that he came to Sanoyea in 1985 where he lived with his father-in-law on a farm. Harrison Paye told this witness that not too long thereafter, in November 1985, Co-defendant Edward Jenklin approached him and told him that his boss man wanted blood. Edward Jenklin then persuaded Harrison Paye to contact "a customer", the late Madam Kebbeh Peewee, a market women, who came regularly to Bong County every other Thursday and Friday for shopping. A ransom of $500.00 was promised to Harrison Paye if he would mastermind the seizure of Madam Kebbeh Peewee.

According to Col. Gallery, Harrison Paye told him that he accepted this contract and finally the victim came on Thursday, which was the 17th day of April, 1986; and on the 18th of April, 1986, he co-defendant Harrison Paye contacted her. He told her that he had made arrangement with a rice dealer, Edward Jenklin, and that he has some seed rice for sale. This witness further testified that according to Co-defendant Paye, the late Madam Kebbeh Peewee consented to buy the rice and so she boarded a bus with Co-defendant Harrison Paye leaving Sanoyea for Brown Town where Co-defendants Edward Jenklin and William Brown tied her hands and feet with a rope and used her head tie to seal her mouth so that she could not make an alarm. Col. Gallery further testified that Harrison Paye confessed that he and the other men left the decedent tied in a deserted house with the intention of returning later at night to carry out their real mission.

According to Col. Gallary, Co-defendant Harrison Paye also told him that they (Harrison Paye, Richard Duncan, William Brown, Edward Jenklin and Joshua Raynes) met later at 12:00 midnight to 1:00 a.m. and that they took Madam Kebbeh to a nearby creek where she was killed. The witness also testified, based upon the confession of Harrison Paye that

Brown and Jenklin held the hands of the victim, while he, Harrison Paye, sat on her feet and held them and Joshua Haynes was in the position of squatting or bending over the victim. The witness stated that it was at this point that Richard Duncan took a knife from his coat pocket and used same in stabbing the victim and that thereafter an empty bottle was used by Richard Duncan to collect the victim's blood which was taken by Duncan to some unknown place to the unknown boss man.

Col. Gallery further testified that Harrison Paye told him and his team of investigators that the murder weapon was a two edged instrument with a wooden handle like that of a rubber tapper's knife, and that the weapon was taken by Richard Duncan and was never retrieved by the investigators. Finally, Col. Gallery testified that the decedent's body was discovered in a creek call Wala on the 20th of April, 1986.

The other state witnesses testified to the same story as Col. Gallary had done. Like Col. Gallary, all of them testified to what Harrison Paye told them. Even the pathologist, Dr. Isaac Moses, said that his conclusions were based in part on the police report which was based upon Harrison Paye's confession. He testified that they did not Weigh the rock which was allegedly tied to the deceased's body to sink it to the bottom of the creek in an attempt to bury evidence.

Without entering a *nolle prosequi,* the prosecution put on the stand as its star witness, Harrison Paye, one of the accused who was charged in the indictment with the murder of madam Kebbeh. Since Harrison Paye was the only "eye witness" to the alleged crime, we shall quote the relevant portion of his testimony verbatim:

"In the year 1985, October 4t h, I went to Sanoyea. On December 9th, I met Brown and Jenklin in Sanoyea. In the year 1986, April 9t h, I went to Gbelemue in Sanoyea, there where my wife was. On the first of January, I went and set a trap. The trap caught a deer and the deer cut the trap. On the 1 8th of December, I went to Jenklin's village and I asked him for his gun to go hunt for this meat, and he borrowed me the gun. When I went, I did not get the meat. I brought back his gun and he told me, Mate, how you carry my gun and you never brought anything? And I went and bought one schnapps of cane juice. I brought it to him. He told me to drink with him and I told him no because I can't drink and he opened the liquor and started drinking. He said to me, 'You came in Sanoyea here you have fallen in our family because you are loving to my niece. I have a problem that has touched me and I want you to help me.' I said, 'What is the problem?' And he said, 'That problem is that I am owing some people something they want me to pay and I do not have and I want you to help me.'

He said, 'If you help me, I will help you too.' And I told him, 'the problem has no name and you are just telling me problem.' He said he joined the Poro Society and I am not a saint. 'I will tell you, but you should keep it to yourself.' And he, Jenklin, said 'I have my boss man that I have been owing human blood, so I want you to try and bring me somebody.' And I

told him, 'I don't have no body:' And he said: 'Don't you have lot of customers women that can be with you in the market?' I said: 'But they came to me. If I bring any of them and anything happens, I will be held responsible.' And he said, 'The people, they are not small people and they have people behind them too.' So I said: 'No, I am afraid.' In the year 1986, April 17t h, I put a fire on a honey tree and the stick fell down on the road and during that time, I wanted the honey. So Jenklin came to me and told me, I have four bags of seed rice to sell. Your people will want to buy rice?' I said, 'Yes, they can buy rice but not seed rice.' And he said, 'if I sell the seed rice to her, it wouldn't be dear. I am going to sell it for $10.50 each bag. I said: 'Okay, I will inform any of them that will come.' On the 18th, which was Friday, at the hour of 8:30, I put on my clothes. While going to the market in Gbomokollie's Town, Jenklin came to me and he asked me whether any of them came, and I told him 'yes, they are about three who came.' He said, 'okay, you go tell her about the rice. If she agrees then you bring her. I will be waiting at Brown Town junction.' I said okay and I went.

When I got in Gbomokollie's Town, Howard and Garman were gone to St. Paul. While contacting for liquor, I saw Kebbeh Peewee the late, and I told her about the rice. I said to her 'My uncle-in-law said that he has four bags of seed rice. You want to buy it?' She said: 'Yes, I want to buy'. She said: 'How far is the place?' I said: 'It is right near my village.'She and myself got in the bus.

We came and got down to Jenklin village. Jenklin was not there, and we passed and came to Sanoyea Town. When I went to the rice mill, I did not find Jenklin. I told her the man was not there and she left her other items that were brought to Sanoyea, which were one bag of rice, one tin of palm oil and one bag of snail. She and myself got back on the bus and went to Brown Town junction where he directed me. When we got there, six feet from the road in the curve, I met Jenklin and said this the man that got the rice and he said yes. The woman put her hands in her bag and gave me 50 (fifty cents) and she asked Jenklin "Where is this rice?" He said: 'The rice is in Mulbah.' Then the woman told me, 'Go in Sanoyea and contact Garman for my other things to give it to you, because if I get the rice, I will carry it to Gbomokollie's Town to beat it.' I left.

She and Jenklin and I got on a bus and went in Sanoyea. I took those things and brought it to my house. When I came back, I went to Gbomokollie's Town, I did not see the woman and I did not see Jenklin. Late in the evening at about 7:30, the stick that I put the fire on dropped down and crossed the road. I went and got my power saw. While cutting the stick, I saw Jenklin, he came to me and he said 'What I told you about, this is the time.' I said, 'What is that?' He said: 'Okay finish.' And the stick that fell, it was on Brown's land. Brown got up and carried my complaint to Commissioner Wennah. Wennah sent for me and charged me $100.00. And he Jenklin took $20.00 and gave it to me. I went and paid it to the commissioner. After I paid, he said, 'Go cut the stick.' I said: 'Finished cutting the stick.' And he said it was an advice to me; it should not happen again. I went to my house. Jenklin came

there. He said to me 'Come escort me to Sanoyea Quelleh (water). And I took my towel and my soap and put it in my pocket. My wife told me not to go and I told her, 'Your uncle said I must carry him, must you stop me?' During that time, it was going to 11:00 in the night and my wife said to me, 'What type of liquor you are going to drink this time of the night?' Then Jenklin said 'Palm wine.' We began to walk.

When we got to Brown Town junction, it was dark and I saw a flashlight, a big type of light. They flashed it and I spoke and said 'Hello'. They said, 'Who you?' I said, 'I am Mr. No Name. Who are those in darkness asking me for my name?' Right away, then Mr. Duncan asked: 'This is the man that brought the woman for the rice?' And I said 'Oh Jenklin, what type of rice this man is asking about?' They said, 'This is the time to measure the rice.' I said 'Oh, ever since this morning about 9:00 the market was in session the woman came for the rice. This is the time to measure it? In fact didn't you Jenklin tell me that the woman got the rice and she gone?' And Duncan said 'You look like a big counsellor. Any question from you again the same thing that is going to happen, some will happen to you.' And teacher (Jenklin) said, Don't talk, let us just go. Once I am here, nothing will happen to you.' At that time, Me, Duncan, Raynes, Brown and Jenklin began to walk.

When we reached Mulbah, Jenklin (teacher) said: 'As I told you that I have bosses, these are my boss men, which are Raynes and Duncan. They have people behind them. In case of any trouble, they will free you. You won't know how you will come from in the trouble. So then, the woman you brought for the rice this morning, the woman is here.' Then I said, 'Where is she?' we went in the old house and I saw the woman. She was tied, feet and hands with her lappa and black head tie tied to her mouth. Then Jenklin and Brown loosened the woman, her feet and lifted her up, her hands still tied. Duncan, said to me, 'My son, I think you been knowing me, but not in connection with anything. But now this is a society we are in. As a power saw operator, you can travel at all times. At this stage, Jenklin promised you $500.00 when this woman is presented. So look up to me in case of trouble. I will assist you.'

He said that if I do not get the money, I should go down to him at Salala. 'My son, this is not the first time. It has happened before. In Madam Korlu's case in Kakata, and I was freed. Just your mouth will put you into trouble.' And I told him, 'Any time they asked for this woman, I will be held responsible because she usually go to me in Sanoyea.' And he said: 'The woman is a marketing woman. You and her signed paper that all markets she goes, you can be behind her? If police come to you, all you know, say I don't know the woman came to buy her markets this morning and she was gone. You are traveling with her in car. Or you do not sign paper. I do not know can't put you in trouble. I do not know means, I don't know. It can't carry you to court. 'If I say when I went we went to the village, the woman was dead, then I lie. 'When I went I met the woman alive. Then we walked to the little creek. That was the time I was fully promised by Mr. Duncan, Edward Jenklin and Mr. Raynes that if they get this which is the blood, my reward will be $500.00 and I told Jenklin' you are the

one that said you have four bags of rice. The place we are now, you hear what we are now, you hear what they say?' He said: 'What I will say, that we all talking to you. Just as Duncan said you must mind your mouth, in case of anything, you will be released.' That was the time Mr. Duncan opened his coat and he said it is time for operation. 'In case of anything, my American dollar will save me.' That was the time he said 'This is a society where we are now; you are not different from us. You are part of us; you bring the woman down.' I did not deny because from the beginning he told me I am a counsellor-at-law, any resistance, the same thing was going to happen to me.

So we knocked the woman down. Jenklin had her hands and Brown her right hand. Duncan had the flashlight in his hand and he took a two edged sharp knife as this type with a silver in the center, to the butt, the same silver and he handed it over to Raynes and said: 'Doctor, this is your time.' Mr. Raynes jumped and sat on the waist and he said to me 'pass and hold the feet now.' And I held the feet. He stabbed the knife in the chest. When he hauled it out, the blood started shooting and Mr. Duncan took the Mayonnaise bottle and started putting the blood in it. After that Mr. Duncan pointed the light at the bottle. It was not enough and he took it out. Mr. Haynes again stabbed the woman on the other side and collected more blood.

Later on we were ordered by Mr. Duncan to turn the woman around. The little creek where the woman was lying down was a sandy area. We began to waste water on her back because of the sand. After that, he asked: 'Who owns this land?' Brown said: ''That's me.' And he said: 'There is any secret area here that people can't go?' Then he said: ''No. In my place here, the people I have here; they cut palm nuts everyday and they hunt everyday. So we have to look for different place.' Then Jenklin said: 'We have a river here. I think that will be better in the river.' Mr. Raynes said: 'You think that place not far?' And he said: 'It is not late yet, day never break.' He looked at his time piece and said it was ten minutes past twelve. That was the time Mr. Duncan got up and he made his Lord's Prayer, like a muslim man, and talking in Vai. So he said: 'Let us go where you are talking about, if there is any deep area.' That was the time teacher (Jenklin) put the two hands together and Mr. Duncan gave the white twine (rope) from his pocket and she was tied. And he said: 'How we will carry her now?' Then Mr. Raynes said: 'I think it will be better to carry her by stick.' That was the time Mr. Duncan said 'But who has cutlass?' Nobody was having cutlass and Brown said: 'Let us reach to my palm oil factory, I will get some sticks.' And he went and brought the sticks. He put it between the feet and hands. He, Jenklin, and Brown were the first to hold her on their shoulders and we were on our way now to the river. After we walked and reached to the middle of the road, Jenklin said his back was hurting and they laid the body down. Then Mr. Raynes said 'time is going.' Then Jenklin told me, 'Young man, you are going to get a reward so go and join.' So I went, me and Brown took the last trip to the water. When we reached, we laid the body down. Duncan and Raynes were standing on the bank. Then Brown and

Jenklin left running water and went to another area where they split the water by the company and a new pipe so the water can shoot down there. Then Brown said that the place was deep. That was the time they sent me for this rock. When I went, the rock was heavy. I said, 'The rock is heavy oh.' Then brown came and Mr. Duncan flashed the light. Me and Brown took the rock and brought it. We bent the woman down and put the rock on her back. Then Mr. Duncan said: 'No, put the rock down first. Tie the rock to it to know if whether the rock will not slip from the rope.' So we put the rock in the rope like a hammer or net. Then put the rock on her, tied her hands on the rock, tie her feet on the rock and tied the balance rope in her center. And we dumped her in the water. And we stood up there for over five minutes. She did not come up. So Mr. Duncan said: 'She will not come up again. You all let us go. I have far way to go.'

We got to the road and started walking. We came to Brown Town junction where we met for the first time before going and I saw the lady sack bag that she took the 50 cents from and gave it to me. I saw Jenklin. He told me the reward which was promised, this is the part payment of the money. And I asked how much. He said $302.00. I held it. I said: 'The two dollars is not there, this is only $300.00.' Then he, Jenklin, told me about the two dollars. I said: 'It can't be part of the money because I worked.' And we started walking from the place. We went to our various homes. That is about all."

Notwithstanding this graphic scenario of events which led to the alleged murder, the records failed to reveal the whereabouts of the murder weapon and the bottle of blood allegedly collected. Certain items constituting the possible fruit of crime (FOC) and which had been placed in the custody of the sheriff also disappeared. These items were foodstuff, a rope and clothing. Moreover, the premises of the appellants were searched without a warrant and hearsay evidence was introduced by the prosecution and admitted by the court.

It is an elementary principle of law governing criminal proceedings that the State must prove the defendant's guilt beyond all reasonable doubt. *See Johnson v. Republic, 15* LLR 66 (1962).

Against this background we shall discuss the following issues which we consider pertinent among those presented by appellants' twenty-eight count bill of exceptions and brief.

The first issue is whether or not the trial court committed reversible error when it admitted into evidence over the objection of appellants' counsel articles of clothing allegedly belonging to the appellants which were not properly identified?

The second issue is whether the trial judge's charge was in keeping with law?

The third issue is whether the trial court in admitting into evidence the testimonies of witnesses of the State, which were based solely on the confession of Harrison Paye, exercised the caution required of a trial judge in such cases?

Let us take these issues in the reverse order. The prosecution first witness was Lt. Nimely Wayee who, like all of the other witnesses, testified to what they heard from Harrison Paye, one of the accused under indictment during custodial investigation. He was asked: "Mr. witness, you have given this Court and jury a rather exhaustive account surrounding the killing of the late Madam Kebbeh Peewee. Will you please tell us whether the account you have given was the result of the investigating of Codefendant Harrison Paye who you said was the lone defendant in custody at the time the investigating team from Monrovia arrived in Gbarnga?" Ans. "Sir, my entire testimony is an account of the confession made by Co-defendant Harrison Paye."

This is a clear cut admission by the witness himself that he was not speaking from his own certain knowledge. Yet, the trial judge confirmed the verdict of the jury based upon this hearsay evidence of the witness. Col. Trocon Gallery and Captain Naway gave similar testimonies when they also conceded that their testimonies were based upon the confession of Harrison Paye.

The general rule is that hearsay evidence is inadmissible in a court of law. *Smith v. Republic,* 7 LLR 205 (1941). The *Smith* case was on appeal to the Supreme Court from a conviction of assault and battery with intent to kill. In that case the testimony of one Dillan was accepted as the testimony of one Weeks, who was the only one present and awake during the incident. This purported evidence of Weeks, as repeated by Dillan, although hearsay evidence was accepted by the trial court. In holding that the acceptance of the testimony by the trial court was error, the Supreme Court said: "This, in our opinion, is a miscarriage of the law of evidence which ought not to have been allowed by the court ...." (text at page 208). The term "hearsay evidence" was well defined in the case *Witherspoon v. Republic,* 6 LLR 211 (1938) in which the appellant was convicted of the crime of embezzlement. In that case, the Court said: "The term 'hearsay' is used with reference to that which is written as well as that which is spoken; and in this legal sense, it denotes that kind of evidence which does not derive its value solely from the credit to be given to the witness himself, but rests also in part on the veracity and competency of some other person. Hearsay evidence, as thus described, is uniformly held incompetent to establish any specific fact which in its nature is susceptible of being proved by witnesses who can speak from their own knowledge. That species of testimony supposes something better, which might be adduced in the particular case, is not the sole grant of its exclusion. Its extrinsic weakness, its incompetency to satisfy the mind as to the existence of the fact, and the frauds which may be practiced under its cover, combine to support the rule that hearsay evidence is totally inadmissible." (text at page 216).

The admission of hearsay evidence in a murder trial does grave prejudice to the rights of the defendants to due process of law which is guaranteed by the Constitution of January 6, 1986. The Constitution states: "No person shall be deprived of life, liberty, security of the person, property, privilege or any other except as the outcome of a hearing judgment consistent with

the provisions laid down in this Constitution and in accordance with due process of law ...." LIB. CONST., Art. 20(a).

This court has also stated that: "Although the courts are never to forget to zealously guard the rights of all the party litigants, when human life is at stake such care must be even more vigilant." *Nimely et. al. v. Republic,* 21 LLR 348 (1972).

Courts should be reluctant to admit into evidence such testimonies, even under the exception to the hearsay rule, which are "statements made out of court and offered in evidence through a witness or a writing not to establish the truth of the matter stated but to establish the fact that the statement was made. . . ." Civil Procedure Law, Rev. Code 1: 25.7(4).

The witnesses in the instant case testified with the intention of establishing the truth of the matter asserted in the indictment, notwithstanding the fact that they were not eye-witnesses to the alleged murder of Madam Kebbeh Peewee. In our opinion the trial judge committed a reversible error in failing to charge the jury on the law and the weight to be accorded hearsay evidence. Hearsay evidence has been defined as ". . . an oral or written assertion, or verbal or non verbal conduct that carried with it a conscious or unconscious assertion, made or carried on by someone other than a witness while testifying at a trial or hearing, which is offered in evidence to establish the truth of the matter asserted." Louisell, Kaplan, Waltz, *Principles of Evidence and Proof,* p. 56.

The next issue is whether or not the trial judge's charge to the jury was in keeping with law, there being so many missing links in said charge?

Recourse to the relevant portion of the judge's charge shows the following:

"The defendants, by and through their counsel, request us to charge you on the legal principles of law: (1) That one accused of a crime is presumed innocent until his guilt is proved and where there is doubt regarding the crime the doubt is to operate in, favor of the accused and he is to be acquitted. This simply means that during the trial of an accused if there exists any doubt regarding the commission of the crime, then the accused or defendant is to be set free; (2) that before there is any conviction of a crime, there must be an indisputable corroboration of evidence. That is, to convict any accused or defendant, the corroboration of evidence adduced should not be disputed; (3) that the burden of proof is on the prosecution and it does not shift throughout the trial. That is, the prosecution as a complainant, has the burden of proof and the burden is not to change or shift to the defendant or defense; and (4) that the testimony of accomplices, that is, in considering the evidence given by an accused, caution should be given; that is, one should be careful in considering such evidence.

In this drama the court asks you to weigh the evidence on the prosecution's side, that is, the evidence given or adduced by the security officers: Harrison Paye, an eye witness, Dr. Isaac Moses, and the lady or witness Garmain Massa who saw and heard Harrison Paye and decedent conversing for four bags of rice he allegedly had available and for which rice the both of them, Paye and decedent, boarded one vehicle and went away and later Paye came back and collected decedent's load, which was left with Garmain Massa. Also we ask you to weigh the evidence on the side of the defendants which evidence was adduced by Richard Duncan, Edward Jenklin, prison officials and Assistant Superintendent. As judges of the facts, remember the facts in the case: (1) The two-edged sharp knife, (2) decedent's body stabbed several times on diverse parts of her body; (3) decedent's feet and hands tied to facilitate transportation; (4) the four bags of rice; (4) $502.00; (6) the road junction; (7) rock tied to decedent's body to make it sink and remain under water; (8) letter written by Harrison Paye and reasons attached to it; (9) prosecution's species of evidence, P/1 through P/6; (10) defendants' species of evidence marked by court P/1 and the possibility or impossibility of one individual tying the rock before you to a body and carried the load, rock and body alone to a dumping site. Ladies and gentlemen, as judges of the facts, we trust that you will find a verdict of your choice based upon the facts and/or evidence adduced before you in this case. Base your verdict on the evidence and the oath which you took before taking your respective seats. We are sure that you are rational beings and mature persons who know right from wrong. If you are convinced that the defendants committed the crime charged then you will bring a verdict of guilty against them; but on the other hand, if you are convinced that the defendants are not guilty, you will bring a verdict of not guilty in favor of the defendants. . . ."

From the foregoing charge, one can see that same was weighed in favor of the prosecution to the extent that the trial judge failed to strike a proper balance between the conflicting interests of the parties, as is generally the rule. The trial judge failed to point out in his charge the flaws that would have raised reasonable doubt in the minds of the jury. For example, he failed to clearly distinguish between the testimony of an "eye witness", like Harrison Paye, from that of the CID officers who were never at the scene of the crime. He said nothing about "secondary evidence", "hearsay evidence", high grade evidence" or "lowgrade evidence" as distinguishing factors. He mentioned nothing about the absence of the alleged blood stains on the clothing of the appellants nor the fact that their premises were illegally searched nor that the knife mentioned was ever recovered; nor the blood that was never analyzed for lack of laboratory equipment. The trial court failed to mention that where the testimony of an accomplice is uncorroborated such evidence is insufficient to convict the accused. In *Capps v. Republic,* 2 LLR 313 (1919), this Court held that the better practice is to charge the jury not to convict upon the uncorroborated testimony of an accomplice. We therefore agree that the trial court in its charge to the jury, "perfunctorily glossed over" salient facts in this case.

The next issue is whether or not the trial court committed a reversible error when it admitted into evidence, over the objection of appellants, articles of clothing allegedly worn by the appellants during the alleged commission of the crime but which were not properly identified?

One version of the story is that search warrants were issued predicated upon which the premises of the appellants were searched and certain clothing and articles which were mentioned in Harrison Paye's confession to have been worn by the appellants during the night of murder were seized. However, appellants denied that their premises were searched legally as prescribed by the 1986 Constitution which states: "No person shall be subject to search or seizure of his person or property, whether on a criminal charge or for any other purpose, unless upon warrant lawfully issued upon probable cause supported by a solemn oath or affirmation, specifically identifying the person or place to be searched and stating the object of the search; provided, however, that a search or seizure shall be permissible without a search warrant where the arresting authorities act during the commission of a crime or in hot pursuit of a person who has committed a crime." LIB. CONST., art. 21(b).

Since the prosecution claimed to have obtained a search warrant prior to searching the appellants' premises, it had the burden of proof to show that such a warrant was in fact obtained in the face of appellants' denial. Civil Procedure Law, Rev. Code 1: 25.5(1). However, the prosecution never proffered a copy of the alleged search warrant to sustain this burden. On the other hand, appellants put on the witness stand a magistrate and an associate magistrate who testified under oath that to the best of their knowledge they could not recall ordering the issuance of a search warrant. Magistrate R. Nathaniel Holder in particular testified thus: ". . . I cannot recall neither can I remember ordering the issuance of a search warrant neither can I remember endorsing any search warrant in connection with the instant case. In brief, I say if there had been any search warrant issued by the magisterial court, I cannot remember, issuing same." Hence, this Court must conclude that the appellants' premises were searched contrary to law.

Moreover, appellants' main contention is that due to the absence of any blood stains on any of their clothes, these species of evidence were not properly identified. We agree with the connection. The Court held in *Jappa v. Republic,* 21 LLR 339 (1972), a murder case similar to the instant case, that there is no fair evidence which tends to connect the accused with the commission of crime other than the uncorroborated testimony of his accomplice. It was therefore necessary to establish by an independent witness or evidence the connection between the clothes, the appellants and the decedent, Madam Kebbeh Peewee. In the absence of this independent evidence, we hold that the clothes, besides being collected illegally, were not properly identified in the sense that there was no showing of any peculiar mark or marks of identification connecting them to the crime allegedly committed by the appellants.

In 1963 this Court reversed a conviction and remanded the case for a new trial primarily because the uncorroborated testimony of Momo Soa, an accomplice, was insufficient to convict the defendants. See *Soa et al. v. Republic,* 15 LLR 242 (1963). Likewise, in the instant case, the uncorroborated testimony of Harrison Paye is insufficient to convict the appellants.

Nine years after the decision in the *Soa* case, 1972, this Court again reversed another murder conviction, the facts and circumstances of which are similar to the instant case. *Jappa v. Republic,* 21 LLR 339 (1972). In the *Jappa*case, the appellant and Co-defendant Kofa Nagbe were indicted on February 18, 1971, by the grand jurors of Nimba County for murder. According to the indictment at a time unknown to the grand jurors, appellant informed Kofa Nagbe that appellant's medicine man advised him to make a sacrifice to secure his job since certain individuals with whom he was working were troubling him. At a later date Jonathan Jappa offered to pay Kofa Nagbe the sum of $200.00 if he would provide a human being for the sacrifice. So during the early hours of Saturday evening, February 6, 1971, Kofa Nagbe went to the house of Yar Gono, his girlfriend, and persuaded her to follow him to an unknown destination where appellant and Kofa Nagbe induced her to consume a quantity of liquor. During the early hours of Sunday morning, February 7, 1971, and between the stores of Mr. Eennaway and S. Ajami in the City of Sanniquellie, Nimba County, Jonathan Jappa using a certain dangerous and deadly weapon, unknown to the grand jurors, struck Madam Yar Gono in various parts of her body such as her chest and around her leg, thereby inflicting mortal wounds. Defendant was arraigned and pleaded not guilty. Jury was empaneled and the trial held. The jurors returned a guilty verdict. Final judgment was rendered, sentencing defendant to death by hanging.

In remanding that case for a new trial, this Court held that it could not affirm the judgment without corroboration of the testimony of Kofa Nagbe who, at the genesis of the case, was also charged and indicted along with appellant, and whose testimony alone connected appellant with the commission of the crime. That case is in point to the instant case. The Court cited the general rule: ". . . that one accomplice is not competent to testify in corroboration of the testimony of another accomplice. Moreover, the evidence relied upon for corroboration of the testimony of an accomplice must tend to connect the defendant with the commission of the crime independently and without the aid of the testimony of the accomplice. Testimony which tends to make the connection only where supplemented by certain testimony of the accomplice does not satisfy the law, no matter how thorough the corroboration of the of the accomplice may be in regard to facts related by him.

Although all matters of probative force in the case to which the accomplice can testify may be considered for the purpose of strengthening his testimony, the accomplice cannot corroborate himself by relying on his own words. *Jappa v: Republic, supra,* at 343.

Wherefore, in view of the foregoing reasons, the judgment appealed from is hereby reversed and the case remanded for a trial *de novo.* And it is hereby so ordered.

Judgment reversed.