

**FATU SELAH, VICTORIA FREEMAN and MR. SELAH, Appellants, v.
REPUBLIC OF LIBERIA, Appellee.**

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

Heard: May 28, 1994. Decided: September 22, 1994.

1. A person has committed armed robbery, a felony of the first degree if in the course of committing a theft he threatens to kill or inflict bodily injury upon a person or group of persons or place such person in eminent danger of life under gun point, explosive, knives or other dangerous instruments likely to cause death or bodily injury, whether or not the property is forcibly taken or carried away.
2. A person is guilty of robbery if, in the course of committing a theft, he inflicts or attempts to inflict bodily injury upon another, or threatens another with eminent bodily injury.
3. An act shall be deemed 'in the course of committing a theft' if it occurs in an attempt to commit theft, whether or not the theft is successfully completed, or in immediate flight from the commission of, or an unsuccessful effort to commit the theft.
4. Where, from the circumstances of the case, no intention to commit a theft can be inferred, the judgment of conviction cannot be upheld.

Appellants were indicted, tried and convicted of armed robbery by the Circuit Court, First Judicial Circuit, Criminal Assizes "D". From a judgment affirming and confirming the verdict of the jury, appellants appealed to the Supreme Court. The Supreme Court, upon review of the records, opined that it had difficulty in drawing an inference from the appellants conduct that would constitute theft of property, judging from the circumstances and the records before them. Holding that it could not uphold a verdict where the circumstances of the action of the accused do not infer that their purpose was connected to the crime for which they were charged, the Supreme Court *reversed* the judgment.

Thompson Jargba appeared for appellants. *John L. Greaves*, Acting Solicitor General of the Ministry of Justice, in association with *Roger K Martin* appeared for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The private prosecutrix in this case, Kebbeh Garwu, maintained that one of the defendants in person of Fatu Selah was her tenant and she, Fatu Selah, sold a set of living room chairs to her for Three Hundred Fifty (\$350.00) Dollars. This amount was said to have been paid to the co-defendant, Fatu Selah, in the presence of her daughter, Saybah Govego and Richard Kollie.

Co-defendant Fatu Selah, on the other hand, maintained that she only asked oldlady Kebbah Garwu to have her set of living room chairs placed in her house for safe-keeping and not for sale. Co-defendant Fatu Selah together with Victoria Freeman and one Mr. Selah to be identified, were then indicted, arrested and tried for armed robbery, but the jury having listened to the evidence *pro et con* brought the defendants guilty of robbery.

The case before us is armed robbery and, according to our law as cited in the indictment, armed robbery is defined as follows:

"ARMED ROBBERY: A person has committed armed robbery, a felony of the first degree if in the course of committing a theft, he threatens to kill or inflict bodily injury upon a person or group of persons or place such person in eminent danger of life under gun point, explosives, knives or other dangerous instruments likely to cause death or bodily injury whether or not property is forcibly taken or carried away. Upon conviction, he shall be sentenced to death by hanging." Penal Law, Rev. Code 26:15.32.

According to the indictment, the defendants carried with them a knife which was in the hand of Mr. Selah, the brother of Fatu Selah, who threatened to kill anyone who tried to prevent them from taking away the set of living room chairs.

During the trial, the private prosecutrix testified that one of the defendants, Fatu Selah, was her tenant and that it was she, Fatu Selah, who sold her a set of living room chairs in the presence of her daughter and one Mr. Richard Kollie, for Three Hundred Fifty (\$350.00) Dollars, but that there was no receipt. Later, after she has asked Fatu Selah to leave her house, Fatu Selah demanded her chairs but she refused to turn them over to her because she had bought them.

According to Richard Kollie, one of the witnesses for the prosecution, he was told by an elderly man named John Manley that Fatu Selah went with Three Hundred Fifty

(\$350.00) Dollars to the old lady and demanded the return of her chairs, but the old lady refused because she said that she bought them.

It would appear that the statement that the co-defendant Mr. Selah allegedly made that if anybody stops them from carrying the chairs, they will shed blood, prompted them to permit the defendants to carry the chairs, as gathered from the following questions put to the private prosecutrix:

"Q. According to you Madam Witness, co-defendant Fatu Selah said she had to take her chairs and if anyone tried to stop her, it will be a blood shed; for fear of that, you and the rest of the people that were there allowed her to carry away the chairs. She took the first one out and gave it to her brother, is that correct?"

A. Yes, I do not want for her to kill me."

Q. Did Mr. Selah attempt to strike you with the knife or any of your family members or those present?

A. When the defendants arrive, Co-defendant Selah made a statement that if anyone tries to stop us from taking the chairs, we will shed blood here today. He then slapped one lady who came to greet them and pushed the private prosecutrix's son and he fell in the dirty water. We therefore became afraid and got away from the scene and went to the police station and reported the matter."

Madam Janet Siryon, the third prosecution's witness testified that when she was called by private prosecutrix, she went on the scene and saw defendant Fatu Selah with Three Hundred Fifty (\$350.00) Dollars and asking the old lady to take back her money and let her (Fatu) carry the chairs.

The fourth witness of the prosecution, in person of Saybah Govego, also testified that she was present when the Three Hundred Fifty (\$350.00) Dollars was given for the set of living room chairs but, because Fatu Selah was her friend, she did not bother her mother to get a receipt from her for the chairs.

The records reveal that the private prosecutrix with two of her witnesses in persons of Richard Kollie and Saybah Govego, testified that they were present when the old lady paid the Three Hundred Fifty (\$350.00) Dollars for the set of living room chairs to co-defendant Fatu Selah; while the other witness testified that they were present

when Fatu Selah was returning the Three Hundred Fifty (\$350.00) Dollars to get her chairs back.

The question that now confronts us is, in view of the definition of the crime armed robbery and robbery, did the defendants commit either armed robbery or robbery in keeping with the guilty verdict.? The key words in the definition of armed robbery or robbery are:

"A person has committed armed robbery, a felony of the first degree if in the course of committing a theft he threatens to kill or inflict bodily injury upon a person or group of persons or place such person in eminent danger of life under gun point, explosive, knives or other dangerous instruments likely to cause death or bodily injury, whether or not the property is forcibly taken or carried away. Upon conviction, he shall be sentenced to death by hanging."

Robbery is also defined as follows:

"A person is guilty of robbery if, in the course of committing a theft, he inflicts or attempts to inflict bodily injury upon another, or threatens another with eminent bodily injury. An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft, whether or not the theft is successfully completed, or in immediate flight from the commission of, or an unsuccessful effort to commit, the theft."

Penal Law, Rev. Code 26:15.30

The question now is, did the defendants actually go to commit theft when one of them said 'if anybody should try to stop us, we will shed blood'? Or, from what circumstances of their actions should a court of justice infer that their purpose must have been connected to theft of property; especially so, when prosecution's own witnesses said that co-defendant Fatu Selah carried the Three Hundred Fifty (\$350.00) Dollars back to the private prosecutrix, asking her to return the set of living room chairs in exchange therefor. It has been very difficult to infer that an act of theft of property was committed, judging from the circumstances and the records before us. And if the intention was not to commit a theft, how are we then able to gather this from their activities? We are unable to uphold such a verdict as the law contemplates.

In view of the foregoing, and being in accord with the records in this case, the judgment of the lower court is hereby reversed. The Clerk of this Court is ordered to send a mandate to the court below informing it of this judgment. And it is hereby so ordered.

Judgment reversed.