TENNIE BEN, Appellant, v. **REPUBLIC OF LIBERIA,** Appellee.

APPEAL FROM EIGHTH JUDICIAL CIRCUIT COURT NIMBA COUNTY.

Heard: May 24. 1983. Decided: July 6, 1983.

1. The attendance of a medical practitioner or a medical doctor upon a coroner inquest to determine the cause of death is not a statutory requirement to the making of such report or the admissibility of such report into evidence.

2. The following deaths must be reported to the coroner: (a) violent deaths by homicide, suicide or accident (b) death arising from abortion or attempted abortion (c) sudden death (d) persons discovered dead.

3. Upon being notified of a death, a coroner shall convene a formal inquest with a jury of fifteen persons, hear testimonies of witnesses and reduce the same into writing.

4. Where he is himself a medical practitioner, a coroner has the authority to compel a medical practitioner to assist him in examining the body of a deceased.

5. A coroner has the authority to perform an autopsy to establish the cause of death if he is a medical doctor, where he is unable to ascertain the cause of death by preliminary examination.

6. Every autopsy performed by a coroner must be witnessed by two credible and discreet residents of the county in which the autopsy is performed, and the coroner has the power to compel their attendance by subpoena.

7. The admissibility of all evidence is within the province of the court but when admitted, its credibility is to be left to the jury.

8. No party shall assign as error all or any portion of the charge to the jury or any commission therefrom unless he excepts thereto before the jut) , retires to consider its verdict.

9. The plead of alibi is an affirmative plead and is controlled by the same principle of law that governs affirmative averments laid in the indictment. Hence, an accused is required to establish his alibi by the same measure of proof as that by which prosecution is required to show his guilt.

10. Alibi means that at the time of the commission of the crime charged in the indictment, defendant was at a different place so remote or distant or under such circumstances that he could not have committed the offense.

11. A plead of alibi derives its entire potency as a defense from the fact that it involves the physical impossibility such as remoteness or distance or such circumstances that the accused could not have committed the offense.

12. An extra judicial confession, to be accepted in evidence against one accused, must be corroborated whereby the independent testimony of some other witnesses, or by such circumstances as would lead the mind to infer that they corroborated same.

13. In a prosecution for murder by shooting, where there was no autopsy performed on the bodies of the decedents and no qualified explanation of the cause of death, there is insufficient evidence to support a conviction.

14. In examining the evidence after a hearing, it is no requisite that the jury should believe a particular witness beyond all reasonable doubt; but it is requisite that, in view of all the testimony, the jury should believe beyond all reasonable doubt that the defendant is guilty.

Appellant Tennie Ben was indicted, tried and convicted for the crime of murder in the Eighth Judicial Circuit Court for Nimba County. On appeal the appellant's four-count bill of exceptions challenged the coroner's report since it was not signed by him on its face and since the coroner was not a medical doctor. The appellant also excepted to the charge to the jury and the jury's verdicts The Supreme Court upheld the judgment of conviction and affirmed the ruling of the lower court.

McDonald J. Krakue appeared for the appellant. A. Wallace Octavius Obey, Acting Solicitor General, and S. M Kiawau appeared for the appellee.

MR. JUSTICE KOROMA delivered the opinion of the Court.

On October 1, 1979, the grand jurors of the Eighth Judicial Circuit Court, Nimba County indicted Tennie Ben for the heinous crime of murder and during the February A. D. 1980 Term of the said court, the appellant joined issue with the Republic of Liberia when, upon arraignment, he made and entered a plea of not guilty. A jury trial was duly held under the direction of the court and on March 21, 1980 the trial jury returned a verdict of guilty against the appellant. On April 1, 1980, a final judgment confirming the verdict was rendered, sentencing the appellant to death by hanging. Exceptions to the judgment having been noted, appeal announced and granted, this case is before this Forum of final adjudication on a four-count bill of exceptions. For the benefit of this opinion, we herein quote each count before traversing the arguments in the briefs.

1. "That defendant objected to the admissibility of the coroner's report on the ground that it was never signed by him on its face court's mark HB6 it appears to be a doubtful one and was drawn contrary to statutes. Your Honour overruled said objection to the admissibility to this document to which defendant excepted. See minutes of court, March 19, 1980, 29 th day's sitting, Page 3.

2. Defendant objected to Your Honour's charge to empanelled jury which stated that there is a reasonable doubt "you use your discretion".

3. Your Honor refused to instruct the jury on the plead of alibi as was requested by the defendant. Your Honour also refused to expound the law to the jury on corpus delicti.

4. The verdict of the empanelled jury was contrary to the weight of evidence adduced at the trial."

Count one of the bills of exceptions embraced two distinct issues which we shall, in the name of cohesion, address separately in passing upon them. The first issue is that the coroner's report was not signed by the coroner and hence the objection to its admissibility. Although this point was never argued by the defendant/appellant in his brief or in his oral argument before this Court, we find ourselves bound by law to pass upon it since it is embodied in the bill of exceptions.

John Y. Paye, coroner for Nimba County while on the cross-examination did testify to the effect that he did not sign the coroner's report on its face, but that when sending the said report to the county attorney of Nimba County he signed the letter covering the said report. He also identified the report and same was marked and confirmed. In our opinion, the purpose of the signature of the coroner on the report was served when the very report was testified to and identified by the maker.

The second issue listed in count one of the bill of exceptions and argued in the brief is that the coroner's report was drawn contrary to statutes, in that the coroner who drew up the report was not a medical practitioner and did not procure the attendance of a doctor to determine the cause of death in case of homicide caused by shooting. Argued further in the brief is the contention that the coroner jury which, along with the coroner, conducted the inquest being laymen and lacked adequate medical qualification, were incompetent to establish the cause of death by a gunshot victim in a murder trial. For reliance, the appellant has cited the court to Dennis and Muhlenberg v. Republic, 20 LLR 47, (1970) and Criminal Procedure Law, Rev. Code 2:7.1. to 7.4.

Countering this argument in her brief, the appellee has contended that it is not mandatory for the coroner to be a medical practitioner in the Liberian jurisdiction. That any layman holding an executive commission as a coroner is qualified. Further, that it is only when the coroner jury is unable to ascertain the cause of death that it may call upon one who is a competent medical practitioner. However, in the instant case, the appellee continued, the established cause of death was readily ascertained and established by the coroner jury during its investigation. The appellee cited in support of this argument on the coroner's report, the case Yancy and Delaney v. Republic, 4 LLR 3 (1933) and Criminal Procedure Law, Rev. Code 2:7.2. & 7.4.

Recourse to the evidence and legal citations upon which the appellant relied to support count one of the bill of exceptions and the argument as contained in count one of the brief, we hold that the said laws and arguments do not support the point of contention. The best evidence rule cannot bar the admissibility of evidence which has been duly identified, marked and confirmed by court. The credibility of evidence being the sole province of the trial jury, it was without the judicial competence of the trial judge to have sustained objections to the admissibility of evidence marked and confirmed by the court. In addition, the argument on the part of the appellant to the effect that the coroner's report was drawn contrary to statute because a medical practitioner or doctor did not attend upon the coroner inquest to determine the cause of death and hence the coroner jury was incompetent to have established the cause of death, could not also bar the admissibility of the coroner's report into evidence. For the attendance of a medical practitioner or a medical doctor upon a coroner inquest to determine the cause of death is not a statutory requirement to the making of such report or the admissibility of such report into evidence. The relevant statutes controlling the formulation of a coroner inquest and report is herein quoted for the benefit of this opinion:

(1) "Report of certain deaths to coroner"

"It shall be the duty of the registrar or assistant registrar of births, deaths, and burials, the medical practitioner attendant at or after death, or any government official or other person who learns of a death to report it to the coroner for the county, territory, or district in which the body is found, if he has reason to believe that the deceased:

(a) Died violently, that is, by homicide, suicide, or accident;

(b)Died as the result of an abortion or attempted abortion;

(c) Was formerly healthy and died suddenly;

(d) Was discovered dead."

(2) "Duties of coroner: formal inquest."

"Upon being notified of a death of the type described in the preceding section, the coroner shall go to the place where the body is, take charge of and examine it, record all material facts and circumstances surrounding the death, and take the names and addresses of all witnesses. He shall convene at that place a formal inquest with a jury of fifteen persons in the course of which inquest the coroner and jury may hear the testimony of witnesses. And such testimony shall be reduced to writing by the coroner or a clerk appointed by him and shall be included in the report required by section 7.5."

(3) "Authority to secure assistance of medical practitioner."

"If the coroner is not himself a medical practitioner, he shall have the authority to compel any medical practitioner resident within his jurisdiction or the medical practitioner most convenient to the place of investigation to assist him in examining the body of the deceased."

(4) "Authority to perform autopsy: witnesses"

"The coroner may, if he is unable to ascertain the cause of death by preliminary examination, perform, if he is a competent medical practitioner, or authorize to be performed by a competent medical practitioner, an autopsy on the body of the deceased for the purpose of determining the cause and circumstances of death. Every such autopsy must be witnessed by two credible and discreet residents of the county, territory or district in which it is performed, and the coroner shall have the power to compel their attendance by subpoena:" and

(5) "Report to prosecuting attorney and magistrate or justice of the peace."

"The coroner shall file with the prosecuting attorney and with the magistrate or justice of the peace in whose jurisdiction the body was found a report stating the time and circumstances of the death as nearly as these have been ascertained, the conclusion of the coroner and the jury as to its cause, and any other pertinent information, including the name of any person who in the opinion of the coroner and the jury may have caused the death. The report of the coroner shall be accompanied by a copy of the report of the medical practitioner, if any, and a certified copy of all the testimony taken under section 7.2." Criminal Procedure Law, Rev. Code 2:7.1. thru 7.2

It is crystal clear from the above quoted citations that the participation of a medical practitioner or doctor in the examination of a dead body under the inquest of a coroner jury is not a statutory requirement in order to warrant the establishment of the cause of death, nor can the absence of a medical report bar the admissibility into evidence of a coroner jury's report.

The trial court therefore committed no error in admitting into evidence court's mark HB-6 being the coroner report which had been duly testified to, identified, marked and confirmed thereby meeting all the statutory requirements for admission into evidence. "The admissibility of all evidence is within the province of the court, but when admitted, its credibility is to be left to the jury" 4 LLR, supra. Hence, "All documentary evidence which is material to issues of fact raised in the pleadings, and which is received and marked by the court, should be presented to the jury." Walker v. Morris, 15 LLR 424 (1963). Count one of the bill of exceptions is therefore overruled.

We are left at sea by the contention of the appellant as raised in count two of the bill of exceptions and the argument supporting said count in the brief. For the appellant has well

said that, and we quote him: "It is the right of the judge to expatiate on the law to a jury and that right the law confers, but it does not include the right for him to direct the jury as to the manner in which they are to pass upon the facts placed before them." By this yardstick clearly laid down by the appellant himself, we shall proceed to measure the statement of the trial judge and decide whether or not it is diametrically opposed to the measurement set by the appellant.

Discretion, as defined by various authorities, means: (1) "The capacity to distinguish between what is right and wrong, lawful or unlawful, wise or foolish, sufficiently to render one amenable and responsible for his acts." BLACK'S LAW DICTIONARY, (4th ed. 1951). (2) "Cautious and correct judgment, prudence, sagacity. The act or the liberty of deciding according to justice and propriety, and one's idea of what is right and proper under the circumstances without wilfulness or favour." FUNK & WAGNALLS STANDARD DICTIONARY OF THE ENGLISH LANGUAGE 365 (Intl. ed. 1965), vol. 1. (3) "The act of determining by law what is just." (DISCRETIO EST DISCERNERE PER LEGEM QUID SIT JUSTUM) RADIN LAW DICTIONARY 399 (1955).

In consonance with the authorities herein above quoted, a judge who leaves a trial jury to distinguish between what is right or wrong, to decide according to their own idea of what is right or proper considering the surrounding circumstances without wilfulness to the extent that such jury will be amenable and responsible for its own acts, is indeed, in our opinion and as contemplated by law, the judge who has acted purely within the scope of his office and without the slightest invasion of the province of the jury. No matter what is the quantum or quality of evidence presented to the jury, it is only in the wise, cautious and prudent exercise of their discretion that they can arrive at a sound verdict. Therefore, it is our holding that by his own yardstick, the appellant has appropriately measured the offices of the trial judge and jury and we have failed to discern any collision therein. Count two of the bill of exceptions therefore crumbles against count two of the appellee's brief.

In count three of the appellants' bill of exceptions, he accused the trial judge of refusing to charge the jury on the appellant's pleads of alibi and the law on corpus delicti, as requested by the defendant in the trial court. Recourse to the charge, we observed that indeed the trial judge did not expound or instruct the jury on the alleged plead of alibi. This point we shall lengthily discuss later in this opinion. However, it is clearly shown in the charge that the judge did instruct or expound the law of corpus delicti to the jury as laid in the fifth request of the appellant. Therefore it is not a fact that the trial judge refused to expound to the jury the law on corpus delicti. For reliance, see court's charge to the jury, 31' day's session, March 21, 1980.

With reference to what the appellant regards as the judge's refusal to charge or instruct the trial jury on the appellant's plead of alibi, we shall first take recourse to the statute which

constitutes the basis of appellant's right in this respect and then resort to common law to decide whether or not the appellant did really raise the plead of alibi as required by law and therefore did not deserve the treatment measured unto him by the trial judge. Thereafter, we shall decide whether or not the judge committed a reversible error.

The Criminal Procedure Law provides that:

"At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court shall instruct the jury on the law as set forth in the requests. At the same time, copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. The court shall instruct the jury on every issue of law arising out of the facts even though no requests to charge thereon have been submitted by counsel. The court shall instruct the jury in writing if requested and may give its instructions in writing on its own motion. No party may assign as error all or any portion of the charge or any omission therefrom unless he excepts thereto before the jury retires to consider its verdict." Criminal Procedure Law, Rev. Code 2:20.8

Predicated upon this statute, the appellant in the trial court averred in his bill of exceptions that the trial judge refused to charge the jury on his plead of alibi. Although the manner and time at which the defendant in the trial court made or filed his requests are not in consonance with the above statute, yet, since it is stated therein that "The court shall instruct the jury on every issue of law arising out of the acts even though no requests to charge thereon have been submitted by counsel," we shall overlook the statutory violation in the filing of the requests and proceed to decide whether or not the trial judge neglected to charge the jury on any law arising out of the facts during the trial and especially the plead of alibi.

The plead of alibi is an affirmative plead and is controlled by the same principle of law that governs affirmative averments laid in an indictment. It has been frequently held that the accused should be required to establish his alibi by the same measure of proof as that by which the prosecution is required to show his guilt. In this respect, we shall proceed to examine the evidence produced by the appellant in the trial court to decide whether there is any issue of law arising out of the facts particularly as regarding the plead of alibi which the court should have instructed the jury on in its charge, but refused or failed to do so. To aid us in this undertaking, we shall firstly find out what is considered an alibi. "As used in the criminal law, it (alibi) indicates that line of proof by which a defendant undertakes to show that he did not commit and could not have committed the crime charged, because he was not at the scene of the crime at the time of its commission." 8 R.C.L. 124, §98. Alibi "means that at time of commission of the crime charged in the indictment defendant was at a

different place so remote or distant or under such circumstances that he could not have committed the offense. It is a physical circumstance and derives its entire potency as a defense from the fact that it involves the physical impossibility of guilt of the accused." BLACK'S LAW DICTIONARY 95 (4th ed.). Against these definitions and explanations of alibi, we shall proceed to quote and weigh the evidence produced on the side of the appellant in the trial court and determine whether any issue of law arose out of any facts from this evidence to have warranted an instruction of the jury thereon.

In his testimony in chief, the defendant stated thus:

"Luogon destroyed some coffee and trees of mine. I left from Saclapea and went to Bahn and slept there four days. While in Bahn, a club meeting was held and some documents were disputed and later on I got to know that the decedent was killed by a gun. The informant, that is the person who told me that Luogon has been killed by a gun was arrested and put in jail by the paramount chief; we then started going to the scene of the incident but before I could reach there one Gaye Weh told me to stop because the decedent was the person with whom I have some palaver in respect to my crops; in the night while sitting before my kitchen some soldiers came and arrested me and they said that I should be arrested because of the fact that I and Luogon has some palaver before and Luogon got killed I am the suspect; I was then handcuffed and jailed, while in jail the next morning after my arrest my gun was brought to me as an evidence that I had used same to kill decedent Luogon. When the gun was brought before me and I was told that I killed the decedent with said gun, I then replied that I did not kill Luogon the decedent and that I had been in Bahn only four days and I have not even gone to the farm. It was then that I was handcuffed on number one also my wife and daughters, so that I may confess to the killing of Luogon; later I was brought down to Ganta and was handcuffed and survive to confess that I killed decedent Luogon; I was then taken to Bahn still in handcuffed and pressurized to confess the killing of the decedent, which I refused to do. William Kei then came to me and said you better confess that you did the killing because your whole family is now under arrest and may die; a confession was written and I was forced to sign the same and then before then we went to the scene where the incident had allegedly occurred, and when we got on the scene, I did not see any dead body; I recalled that when we got on the scene where it is alleged that I killed decedent Luogon, the officers threw one big man on the ground and took his picture, that is the picture they brought in court; the situation being that of life and death I have no other alternative than to sign the written statement which is now in court as my confession; therefore I was forwarded down to Sanniquellie and after interrogation I was indicted for the crime of murder."

Recourse to the 29th day's sitting, March 19, 1980, sheets 23 & 24 of the certified records.

Amos Tennie, the son of the appellant whose testimony is said to be the corroborating evidence in establishing the plead of alibi, testified thus:

"Yes in the month of May 5th, A.D. 1979, we were in the credit meeting in Balm and a young man came to Yamaplay by the name of Younla he said that unknown person shot Luogon and he is dead; in this meeting the appellant was also in the meeting, then the paramount chief, Henry Y. Tuazama also being present at the meeting where the news was brought caught the informant and jailed him. The meeting scattered. It was then that the appellant said he wanted to go to his village to find out what had happen since his children were there and the message brought was funny; and then Gaye Weh said to the appellant that it was not advisable for him to go to his village because he the appellant now and the decedent had misunderstanding. The appellant went to his quarters in Balm and others went on the scene or where the said appellant is alleged to have killed the decedent; during the night two soldiers came and arrested the defendant after jailing the appellant he was handcuffed by the C.I.D. During the next day, I was handcuffed together with the whole family of the appellant. During this interval William came to me and suggested that the appellant should confess and I then told him no because am like I can tell this appellant so since the appellant is in prison and is handcuffed; it was then that William Kei said it would be better that the appellant make a confession; if not, they will kill you all, including the appellant. They took the defendant to the bush. I being also in handcuff, I did not go to the bush. From there the appellant was forwarded to the Circuit Court."

From the above quoted portions of the records of the trial court which are the testimonies in chief of the appellant and his son in support of the appellant's plead of alibi, let us see where lies the physical impossibility of the guilt of the appellant. For a plead of alibi derives its entire potency as a defense from the fact that it involves the physical impossibility as to remoteness or distance or under such circumstances that the accused could not have committed the offense.

Commencing his testimony with the poisonous hemlock that "Luogon destroyed some coffee and trees of mine" the appellant went on to say that he left from Saclapea and went to Balm and slept there for four days and while there, he attended a club meeting. That it was at this club meeting when some person brought the information that Luogon had been killed with a gun by some unknown person. That the person who brought the news was arrested and jailed by the paramount chief. The appellant testified further that they all started going to the scene of the incident but before arriving there, one Gaye Weh told him not to go there because the appellant had some altercation or palaver with the decedent in respect to appellant crops. When the gun alleged to be the one used by the appellant to kill Luogon was brought before the appellant, he stated that he did not kill Luogon and that he had been in Balm for only four days and had not even gone to the farm. This is the entire portion of the evidence produced by the appellant which he strenuously argues constitutes and supports his

plead of alibi. Amos Tennie, the son of the appellant, brought as a corroborating witness, testified to the effect that he along with appellant were in a credit meeting in Balm when the news of the murder of Luogon got to them on May 5, 1979. That the informant, who was jailed by the paramount chief, stated that some unknown person shot and killed Luogon. That upon hearing this news which the appellant called "funny message" he, the defendant decided to go to his village where his children were to find out what had happened. However, one Gaye Weh told the appellant that it was not advisable for him to go to his village because he (appellant) had had a misunderstanding with the decedent. While others were going on the scene of the incident, the appellant went to his quarters in Bahn. At this juncture, the testimony of witness Amos Tennie as it relates to the plead of alibi was concluded.

From this point we shall proceed to find out if in fact there was any plea of alibi set up by virtue of the evidence produced by the appellant and his witness, Amos Tennie, to have created a judicial obligation upon the trial judge to charge the jury on the issue of law arising out of such facts as produced by them.

Alibi, as already defined and explained in this opinion, being an affirmative plead, derives its entire potency as a defense from the fact that it involves the physical impossibility as to remoteness or distance or under such circumstances that the accused could not have committed the offense. In addition to the fact that the evidence given by the appellant lacks every ingredient that could even liberally classify it as a plead of alibi, it stands as an isolated island in a wide ocean completely uncorroborated. It is most inadequate and insufficient under the law to claim loosely made statements that are not buttressed and/or corroborated by any fact as to time, place, distance activities and circumstances of the claimer as a plead of alibi. For the distance or the remoteness of the place where an accused person was at the time the crime of which he stands accused was committed, the activities in which he was engaged at this particular time and place, those who were present with him before, at, and immediately away from the place and time the crime was committed and can genuinely testify to these facts, add up to constitute what is christened "alibi." The uncorroborated testimony of the appellant, which is completely void of the above requirements, could not have placed a legal claim upon the trial judge to instruct the jury on a plead of alibi. Therefore, the trial judge committed no error when he ignored the appellant's request to charge the jury on what he termed his pleads of alibi as he was under no legal obligation to do so under the reasons hereinabove shown. Count three of the bill of exceptions is therefore overruled.

Although the proper redress for count four of the bill of exceptions should have been the filing of a motion for new trial as argued by the appellee in her brief, yet it being the obligation of this Court to review the entire records on appeal, we shall now proceed to

weigh the entire evidence upon which a verdict was brought against the appellant in the trial court.

Among the several witnesses that were produced by the appellee in the trial court, we shall commence with the testimony of William Kei which stood unrebutted by the appellant. He testified to the effect that on the 5 th of May 1970, at Balm Headquarters, Tennie Ben called him and said to him that sometimes ago, Mr. Luogon destroyed 193 trees of rubber and 800 trees of cocoa belonging to him, Tennie Ben. That the administrative court investigated his complaint and ruled against Luogon, awarding him, Tennie Ben, the amount of $4,965.00. That in addition to Luogon's failure to pay this amount despite several appeals, he continued to destroy his (Tennie Ben's) crops. So to satisfy himself, he, Tennie Ben, had shot and killed Luogon and was coming to the administrator to report himself but was afraid to do so. That William being his (Tennie Ben's) brother, he had called him to go and tell the police that he (Tennie Ben) had shot and killed Luogon. William Kei testified further that he not being a police officer but rather a relative of Tennie Ben, he told Tennie Ben that he should go and make the confession before a policeman. The policeman came and in the presence of both him and William Kei, Tennie Ben explained how he killed Luogon. That his statement was taken word for word and read to him. He then signed his statement and put his finger prints on it. That being present when Tennie Ben made this confession, he, William Kei, was asked by the police to witness it, which he did. William Kei identified this document on the witness stand as being the confession of Tennie Ben, made in his presence and witnessed by him.

The next testimony of prime importance is that of Witness Nuah, who happens to be in the vicinity when Luogon was shot. He testified before the jury that he was on the farm that day when he heard the report or sound of gun followed by the sound of people crying. He went on the scene and upon arrival, he saw a body lying on the ground. A police man who was sent for arrived on the scene and conducted an investigation of the incident. That the police investigator along with those on the scene followed the path of someone who had seemingly committed the crime and traveled to the appellant's village. On arrival in the village, they met the mother of Tennie Ben, the appellant who, upon inquiry told the police investigator that Tennie Ben was not in the village but that it was he who had traveled on the path from the direction of the dead body carrying a gun in his hand. The search for Tennie Ben began and subsequently ended with his arrest. Seemingly, prior to his arrest, he had confessed to one Guankanue of killing Luogon. Therefore at the interrogation, he demanded to see Guankanue before making any statement. Upon the arrival of Guankanue at the investigation, he told the investigator that Tennie Ben had confessed to him about killing Luogon, but being alone with the appellant when making the confession, Guankanue decided to call a policeman before whom Tennie Ben could make his confession. This having been done, the appellant was taken to the scene where the body of Luogon was still

lying and he demonstrated how he killed the decedent. He also showed the police where he had thrown the gun shell, which was collected and they proceeded back to town.

The testimonies of these two witnesses are well corroborated by the testimonies of Police Detective Jeffery Gban who is said to have gone on the scene on the very day of the murder and conducted the investigation. The confession made and signed by the appellant was obtained in the presence of Jeffery Gban as investigator. James Gbakoyah, Chief Criminal Investigator for the area who received the confession that had already been made by Tennie Ben from police officer Jeffery Gban but according to him, to satisfy himself, he decided to counter check this information given him by Gban. He called for Tennie Ben to come and tell him the story anew. Tennie Ben came along with the statement of confession he had made and signed. Chief Investigator Gbakoyah read it over and asked Tennie Ben if these were his exact words that he had said and he answered yes. Gbakoyah did not stop here. He asked if he could carry him on the scene of the killing and his answer being positive, they proceeded. They followed him to the farm of Lougon and as they went, Tennie Ben demonstrated all that he did along the way up to the point that he shot and killed Luogon. He showed Gbakoyah and his team where he stood and loaded his gun, where he stood behind a little bush and took aim at Luogon, who was cutting palm brush, and shot him on his back, and where he ran after the shootings, took out the empty shell and reloaded his gun. During these demonstrations, especially at the time he was aiming at Luogon, a picture of him was taken and admitted into evidence at the trial. When Gbakoyah returned to town with Tennie Ben, he asked him to say what the motive was for killing Luogon. Tennie Ben told the investigator that Luogon was always trespassing on his property and several times he had made complaint to the government that is President Tolbert who referred him each time to the Superintendent and County Attorney of Nimba County, but to no avail.

These testimonies along with that of Alfred Yeadeah and the coroner report, the gun and other instruments that were admitted constituted the evidence on the side of the prosecution. Tennie Ben's allegation that he was handcuffed while making his confession was rebutted by witness Diah.

The weight of the prosecution's evidence against the appellant in the trial court, no doubt, placed a sense of urgency upon the appellant to take the stand and vindicate himself. His testimony in chief, which has been quoted word for word supra has not only failed to set up a plead of alibi, as already traversed in this opinion, but has gone a long way in helping the prosecution to establish the crime of murder.

Facts, says Mr. Justice David, are stubborn things. Whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and the evidence. Jones et. al, v. Dennis, 8 LLR 342, text at 347 (1944). And so it is with the status of the facts in this case regarding the murder of Luogon by Tennie Ben, to the point that the

appellant, Tennie Ben himself, testified to his reason for killing Luogon. This reason is clearly set in the opening sentence of his testimony when he said "Luogon destroyed some coffee and trees of mine." Further in his testimony, he stated the reason why he did not go on the scene of the murder, when according to him, the information of Luogon's death got to them in Balm while in a club meeting. Says he, "we then started going to the scene of the incident but before I could reach there, one Gaye Weh told me to stop because the decedent was the person with whom I had some palaver in respect to my crops." Indeed that Gaye Weh was none other person than the conscience of Tennie Ben himself that was now directing him not to go on the scene of his own act but rather to go and confess.

While it is true that the confession which the appellant made and signed was testified to principally by those to whom the said confession was made, it was not mandatory under the law to introduce independent testimony for corroboration as a condition for acceptance of such confession into evidence. This issue has long been settled by this Court when Mr. Chief Justice Dossen speaking for this Court said: "An extrajudicial confession, to be accepted into evidence against one accused, must be corroborated either by the independent testimony of some other witnesses, or by such circumstances as would lead the mind to infer that they corroborated same. "Logan v. Republic, 2 LLR472 (1924). In the instant case, the circumstances that must lead a prudent mind to infer that the confession of Tennie Ben was corroborated are not difficult to discern. Realizing that most crimes are committed out of public gaze, defendant Tennie Ben seized the opportunity to shoot and kill Luogon when the decedent was alone in the bush working on his farm. But, as providence had properly designed for this heinous act to be exposed, Tennie Ben first appeared to his own mother while making his escape from the scene and vicinity of his own ugly act. This fact was brought out during the trial.

Secondly, although Tennie Ben averred that he was handcuffed on number one and somebody urged him to make the confession otherwise he and his entire family would be killed, yet in his own testimony, he stated that when they went on the scene of the incident, it was one big man that the police grabbed and threw down. While he seemed to be averring duress in order to confess, yet he produced no evidence to prove such averment. At the trial, he demonstrated no mark on any part of his body as indication of any act of brutality by the police or any other person to compel him to confess especially in the face of his allegation that he was handcuffed on number one.

Thirdly, the opening sentence of Tennie Ben's own testimony in support of his plead of not guilty, voluntarily made under no duress, which statement we have properly christened "A emlock poison," substantially confirms the reason laid in the confession as to why Tennie Ben killed Luogon. That reason being that Luogon destroyed his rubber and coffee crops and that he had received no redress and proper compensation for such wrong against his

property from the President of Liberia, the Superintendent and County Attorney of Nimba County. Hence he took the law into his hands and satisfied himself.

Fourthly, the testimony of William Kai which was not challenged by Tennie Ben, particularly spoke of the voluntary nature of the confession which was firstly made to him, William Kei. This confession was made when Tennie Ben had not come in contact with any police after the commission of the crime. The confession made to the police subsequently was a confirmation of that which had been made to William Kei. Under these circumstances, it is our holding that the confession was properly corroborated and therefore its acceptance into evidence was legal.

The final argument on the part of the defendant/appellant in this case is that of variance and discrepancy between the indictment and proof. In that, it is laid in the indictment that the instrument used by Tennie Ben to commit the crime of murder is that of a single barrel No. 410 gauge gun but that Jeffery Gban testified to a 22 gauge single barrel gun, and James Gbakoyah testified to a 410 gauge single barrel gun. Relying on the case, Banjoe v. Republic, 26 LLR255 (1977), the appellant argued that the variance between the testimonies of these witnesses and the discrepancy between the allegation or information in the indictment and the evidence offered at the trial should operate in favour of the defendant. Recourse to that case, 26 LLR 255 (1977), we find the glaring difference between the position of Zoe Banjoe, who was also under trial for murder and that of Tennie Ben in the instant case. While Zoe Banjoe admitted shooting three times with his Remington shotgun after one Edwin Sando, a former police officer, whom he claimed had tormented and harassed him, he argued that it was not his shot that killed the decedents but rather the shots that came from the weapons being fired by soldiers and policemen who were shooting at him in the crowded market place on that occasion.

The fact that soldiers and policemen did shoot after Zoe Banjoe in the crowded market place at the Water Side was established at the trial. Realizing the differences between the shots from weapons that were used by the soldiers, policemen and Zoe Banjoe, in the face of which no autopsy was performed on the bodies of the decedents nor a coroner inquest held to submit a report establishing the cause of death, Mr. Chief Justice Pierre speaking for this Court held that "In a prosecution for murder by shooting where there was no autopsy performed on the bodies of the decedents and no qualified explanation of the cause of death, there is insufficient evidence to support a conviction. "Banjoe v. Republic, 26 LLR 255 (1977). In the instant case, there is a qualified explanation, being the coroner's report establishing the cause of death as required by statute. The defendant/appellant in this case has not argued that shots from someone else's gun and not the shots from his gun are the ones that killed Luogon in order to rely upon the Zoe Banjoe case as cited by him. By the same token, we are at a loss by the argument of the defendant/ appellant as to the alleged variance between the testimonies of Jeffery Gban, who testified to a 22 gauge single barrel

gun and the 410 gauge single barrel gun as laid in the indictment and to which James Gbakoyah testified. In that, by relying on this variance between the testimony of one of the prosecution's witnesses and the indictment and demanding that same should operate in his favour, is he admitting owning and using one of these guns but that the shots from the other gun which he does not own nor did he use are the ones that killed Luogon? Or is he saying that none of the two guns is a deadly weapon if even he owned and used one or both of them to shoot Luogon and hence Luogon's death could not have been caused by the shots from any of them? Leaving all of these important legal and factual questions unanswered, Tennie Ben cannot effectively raise the issue of variance and demand that it operates in his favour. The sequence of events that led to the indictment of Zoe Banjoe for the crime of murder, the evidence produced against him and in support of his plea of not guilty are not analogous to the instant case. Therefore, the argument in the Zoe Banjoe case cannot be advanced to vindicate Tennie Ben in this case.

Further to count four of the brief and bill of exceptions, the humanity of the law requires that the weight of evidence should not only point to the guilt of the accused, but that the trial jury must be satisfied beyond a reasonable doubt of his guilt or else he is entitled to acquittal. There is no principle of law however which requires, authorizes sanctions or approves the proposition that the greater the crime, the stronger is the proof for conviction. The reasonable doubt the jury is permitted to entertain must be as to the whole evidence, and not as to a particular fact in the case. In examining the testimonies, it is not requisite that the jury should believe a particular witness beyond all reasonable doubt; but it is requisite that, in view of all the testimony, the jury should believe beyond all reasonable doubt that the defendant is guilty. 8 RCL 219, §216. Therefore, the argument of the defendant/appellant in his bill of exceptions to the effect that the verdict of the jury was contrary to the weight of evidence adduced at the trial, wherein he has made mention in his brief of only the evidence of Jeffery Gban as to the 22 gauge single barrel gun which he claims varies from the allegation in the indictment, is a misinterpretation and misapplication as to what constitutes the weight of evidence since this is only a particular fact in the case. In the consideration of its verdict, the jury must place on their trial scale the whole evidence, pro and con, in order to arrive at a verdict that will balance on such evidence. We share no doubt that in arriving at their verdict after due consideration of the entire evidence, the trial jury had an abiding conviction to a moral certainty of the appellant's guilt. Hence, the need does not arise, in our thinking, to disturb the verdict and the judgment confirming it. Count four of the bill of exceptions and the argument supporting the same in the brief are therefore overruled.

Wherefore and in view of all the circumstances, facts and legal reasons herein given, it is our opinion that the judgment of conviction of Tennie Ben for the crime of murder be and the same is hereby confirmed and affirmed. And it is hereby so ordered..

Judgment affirmed.