LOUISE ADJUAH FORLEH et al., Appellants, ***v.*** **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM A JUDGMENT OF THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT, CRIMINAL ASSIZES, MONTSERRADO COUNTY.

Heard: March 22, 2004. Decided: August 13, 2004.

1. No person shall be held to answer for a capital or infamous crime except in cases of impeachment, cases arising in the armed forces and petty offenses, unless upon indictment by the grand jury; and in all such cases, the accused shall have the right to a speedy, public and impartial trial by a jury of the vicinity, unless such person shall, with the appropriate understanding, expressly waive the right to a jury trial.
2. In all criminal cases, the accused shall have the right to be represented by counsel of his choice, to confront witnesses against him and to have compulsory process for obtaining witnesses in his favor.
3. While a defendant in a criminal case has the constitutional right to compulsory process to obtain witnesses, the witness testimony sought to be introduced must be relevant to the matter at bar.
4. Although a judge errs in not granting a defendant's application to produce witnesses, the error is not reversible if the testimony sought to be brought is not relevant and material to the matter.
5. The examination of witnesses in all cases is directly under the control of the trial judge and if it is not shown that he abused his power by showing partiality to one side or the other, his decisions are within the law.
6. A trial court may exclude evidence *sua sponte* if the question is irrelevant or legally untenable.
7. A judge's charge to a jury to bring in a unanimous verdict is not a reversible error, being consistent with the law.
8. A defendant's failure to take exceptions to a part of a judge's charge to the jury calling for the jury to bring in a unanimous verdict is deemed a waiver and it cannot therefore be considered by the Supreme Court.
9. All evidence must be relevant to the issue; that is, it must have a tendency to establish the truth or falsehood of the allegations or denials of the parties or it must relate to the extent of the damages.
10. A motion is an application for an order granting relief incidental to the main relief sought in the action or proceeding in which the motion is brought.
11. A motion made on the record of the court during the trial of a case is not required to be made twenty-four hours before the hearing as provided under the Civil Procedure Law.

12. *Prima facie* evidence is evidence sufficient to establish the facts unless rebutted.
13. The uncorroborated evidence of an accused is insufficient to establish his innocence, especially where the evidence against him is clear and convincing.
14. A defendant may not be set free on the strength of his lone testimony, as against those given by two or more witnesses.
15. The jurors are judges of the facts.
16. An appellant may not assign for hearing before the Supreme Court any issue not raised or excepted to in the trial court.
17. The conflict in the testimonies of prosecution witnesses goes to the weight of the evidence, not to its sufficiency, to sustain a conviction.
18. Where a party contends that the verdict of the jury is contrary to the instructions of the court and the evidence, it is encumbent on him to show to the court the specific aspects of the instruction and evidence the verdict is contrary to.
19. To merely aver that the verdict of the jury is contrary to the weight of the evidence adduced at the trial is not detailed enough to enable the court to reach a conclusion, and therefore the exceptions will not be sustained.

Appellant Louise Adjuah Forleh and others who were alleged to have acted on her instructions were indicted, tried and convicted of the crime of criminal mischief in the Circuit Court for the First Judicial Circuit, Montserrado County. The indictment alleged that Co-appellant Forleh and the other defendants, jointly and severally, with criminal intent, did connive and conspire, and acting by said conspiracy did illegally, wickedly, purposely, unlawfully, criminally, recklessly, wantonly, purposely and knowingly destroyed, damaged and defaced the house of the private prosecutrix, constructed on a parcel of land which Co-defendant/appellant Forleh claimed belonged to her and to which she asserted she held title.

In their bill of exceptions and brief, the appellants charged the trial judge with commission of reversible error when he (a) denied appellants' request for a subpoena to be served on the office of the Assistant Director for CID Affairs to testify to the procedure adopted by the police in criminal investigation; instructed the jury to bring in a unanimous verdict; and granted the motion of the prosecution made on the records of the court to strike the testimony of the appellants' second witness. The bill of exceptions also asserted that the verdict of the trial jury was manifestly against the weight of the evidence adduced at the trial.

The Supreme Court dismissed the appellants' allegations made against the trial judge and the trial jury. The Court opined that while the appellants had the constitutional right to have witnesses testified in their defense and the trial court is obliged to honour the request, the testimony of the witnesses must be shown to be relevant to the issues at bar. Hence, the Court said that while the trial judge had erred in not granting the request of the appellants, the error was not a reversible one since the testimony of the witness was not shown to be

relevant and therefore did not have any impact on the trial, considering the overwhelming evidence produced by the prosecution.

The Court further opined that on the question of the judge instructing the jury to bring a unanimous verdict, the act of the judge was consistent with the statute and therefore not violative of any law or practice of this jurisdiction. The Court said also that as the appellants had not excepted to the comment of the judge to the jury that they should bring in a unanimous verdict, the issue raised in that connection was not a fit subject for consideration by the Court. Additionally, the Court opined that the appellants had further waived the right to assert that the trial judge had erred in not allowing the trial jury to visit the scene of the incident before bringing in a verdict of guilty against them. The appellants had not raised the issue in the lower court so as to enable them to have same placed in the bill of exceptions; and that as such they were without the legal right to assign the failure as an error with regards to which the Supreme Court could pass upon.

Finally, the Supreme Court stated that its examination of the case had revealed that the prosecution had presented a prima facie case and that therefore the verdict of the jury was not against the weight of the evidence. The Court noted that the only testimony of the appellants in denial of the allegations contained in the indictment was that of Co-appellant Forleh. The uncorroborated evidence of an accused, the Court said, was insufficient to establish his or her innocence. Accordingly, the Court *upheld* the verdict of the trial jury and *affirmed* the judgment of the trial court.

Frederick D. Cherue and *Charles K. Williams* of the Dugbor Law Offices appeared for the appellants. *Theophilus C. Gould*, Solicitor General, appeared for the appellee.

MR. JUSTICE GREAVES delivered the opinion of the Court.

On April 11, 2002 the Grand Jurors of the First Judicial Circuit Court, Montserrado County, Republic of Liberia, indicted Louise Adjuah Forleh et al. for the crime of criminal mischief. The said indictment alleged among other things that on the 19th day of January, A. D. 2002, at about 2 0' clock p. m. in the City of Paynesville, ELWA Junction, Montserrado County, Republic of Liberia, the within named defendants, Louise Adjuah Forleh et al., without the fear of God and the statutory laws of the Republic of Liberia, and with criminal intent, connived and conspired severally, jointly, illegally, unlawfully, criminally, recklessly, wickedly, knowingly, wantonly, and purposely destroyed, damaged and defaced private prosecutrix's house, which was at roof level. The house was built at the total cost of One Hundred Forty Eight Thousand Liberian Dollars (LD148,000.00) and Three Thousand Seven Hundred Fourteen United States Dollars and Seventy-Five Cents (US$3,714.75). This act thereby deprived the private prosecutrix of her property (house) that she erected on her land. Moreover, it was alleged that thereby the crime of criminal mischief the said defendants

did do and commit at the above named place, date and time, in violation of chapter 15, section 15.5 (a, b, and c) of the New Penal Law of Liberia, which states:

CRIMINAL MISCHIEF: A person is guilty of criminal mischief if he:

(a) Damages tangible property of another purposely or recklessly;

(b) Damages tangible property of another negligently in the employment of fire, explosives or other danger-ous means listed in section 15.4(1);

(c) Purposely or recklessly tampers with tangible property of another so as to endanger person or property.

On the 21st day of August, A. D. 2002, the said case was called for trial as per a notice of assignment. After notation of representations, prosecution made an application to amend the face of the indictment to include Sam Strather, Abel Strather, Alexander Whornee and Abraham Whornee as co-defendants. The said application was granted by the trial court and the indictment was amended accordingly. Again, upon application of prosecution severance was prayed for in said matter, as only Louise Adjuah Forleh had been brought under the jurisdiction of the court and the other four co-defendants were at large. The court, over the objections of defendant's counsel, granted the application and the trial was proceeded with, with the defendant/ appellant being tried alone.

Upon her arraignment, the said defendant/appellant entered a plea of not guilty, which joined issue with the Republic of Liberia. A jury trial was duly held under the direction of the court and on the 30th day of October, A. D. 2002 the trial jury returned a verdict of guilty against the defendant/appellant. On the 4th day of November, A. D. 2002 defendant/appellant filed an eight (8) count motion for new trial which was heard and denied by the court. On the 22nd day of November, A. D. 2002 a final judgment confirming the verdict of the trial jury was rendered by the court, sentencing the defendant/appellant to three (3) years imprisonment. Exceptions to the verdict having been noted, and an appeal announced and granted, this case is before this forum of final adjudication on an eleven (11) count bill of exceptions.

Although there are other issues raised in the bill of exceptions of the defendant/appellant, however for the purpose of the disposition of this matter, we have singled out the following four (4) issues as being meritorious or worthy of our notice. They are:

(1) Whether or not the trial judge committed a reversible error when he denied defendant/appellant's request for a subpoena to be served on the office of the Assistant Director of Police for C.I.D. Affairs to testify as to the procedure adopted by police in criminal investigations.

(2) Whether or not the trial judge committed a reversible error when he instructed the trial jury to return a unanimous verdict.

(3) Whether or not the trial judge committed a reversible error when he granted on the record of court the motion of the prosecution to strike the testimony of defendant/

appellant's second witness in the person of Emmanuel Beer, based upon its irrelevancy and immateriality to the said trial.

(4) Whether or not the verdict of the trial jury in this case was manifestly against the weight of the evidence adduced at the trial and also contrary to the law, and therefore the trial judge committed a reversible error by confirming and affirming the verdict and adjudging the defendant/appellant guilty.

We shall begin the discussion of the issues in a chronological order. The first issue which centers around count ten (10) of the defendant's bill of exceptions which states: "Your Honour also committed a reversible error when you denied the defendant of her constitutional right to obtain a witness by compulsory process. That is, Your Honour denied the request for a subpoena to be served on the office of the Assistant Director of Police for C.I.D. to testify as to the procedure adopted by police in criminal investigations". In other words, the defendant/ appellant's counsel is invoking Article 21 (h) of the 1986 Constitution of the Republic of Liberia which states: "No person shall be held to answer for a capital or infamous crime except in cases of impeachment, cases arising in the armed forces and petty offenses, unless upon indictment by the grand jury; and in all such cases, the accused shall have the right to a speedy, public and impartial trial by a jury of the vicinity, unless such person shall, with the appropriate understanding, expressly waive the right to a jury trial. In all criminal cases, the accused shall have the right to be represented by counsel of his choice, to confront witnesses against him and to have *compulsory process* for obtaining witnesses in his favor. He shall not be compelled to furnish evidence against himself and he shall be presumed innocent until the contrary is proved beyond a reasonable doubt. No person shall be subject to double jeopardy". The question is did the trial judge violate this provision of the constitution; if so, how? We can only find out by reverting to the courts record from below in the instant case.

The records show that on the 49th day special jury sitting, Monday, October 21, A. D. 2002, August, A. D. 2002 Term of court, sheet eleven (11), defendant/appellants counsel made an application to the court below to have a *subpoena deces tecum* issued and served on the Assistant Director of Police for C.I.D. Affairs for the purpose of coming before said court to testify as to the procedure usually adopted by the Police of the Republic of Liberia with respect to criminal investigations and the conduct and nature of such investigation respecting all statements taken at same. Over the objection of the prosecution the trial judge ordered said writ issued. (See sheet seventeen (17), 49th day special jury sitting, October 21, 2002). On the 23rd day of August, A. D. 2002, sheet two (2), and at the call of the said case, the trial judge ordered the sheriff to read in open court the returns on the back of the writ of *subpoena duces tecum* that was ordered served on the Assistant Director of Police for C.I.D Affairs. The returns as read by the sheriff showed that the Assistant C.I.D Director was out of the country. The records also show that at that stage the defendant/appellant's counsel requested the trial judge to order the qualification of two of his witnesses, Mr. Emmanuel

Beer, who had also been subpoenaed to appear before the said court upon defendant's counsel request, and Roseline Goodrich. They were so qualified and proceeded to testify in the matter.

On the 24th day of August, A. D. 2002, sheet two (2), 51st day's special jury sitting, the defendant/appellant's counsel again requested the trial court to have a *subpoena duces tecum* issued and have same served on the office of the Assistant Director of Police for C.I.D/C.I.U and Interpol to have a representative or any authority or person thereof appear before the court for the purpose of testifying to the normal procedure adopted in criminal investigations, the manner of obtaining statements from suspects, and the procedure adopted in preparing a charge sheet and transmitting same to courts of competent jurisdiction for trial. The court denied the application of the defendant/appellant, stating that the director was out of the bailiwick of the Republic which could be seen by the returns to the *subpoena* issued by the said court, and that there was still a witness of defendant who had yet to testify, and must proceed to testify. This Court says that while it is the constitutional right of the defendant/appellant in the instant case to compulsory process to obtain witnesses (Article 21(h), Liberian Constitution), the witness testimony sought to be introduced in court must be relevant to the matter at bar. *Original African Hebrew Israelite Foundation of Liberia v. Lewis,* 32 LLR 184 (1984), Syl 2. In our opinion even though the trial judge erred in not granting the said defendant/ appellant counsel's application for the writ to be issued for the second time in order to have his witness appear and testify on his behalf, which is a violation of his constitutional right to compulsory process to obtain witness (Article 21(h), Liberian Constitution), the testimony of said witness sought to be brought before the court would not have been relevant. In other words, the testimony would have no impact on the on-going trial considering the overwhelming evidence adduced by prosecution at the trial in its favor. Moreover, defendant/ appellant's counsel sought to have the C.I.D Assistant Director appear in court to explain the procedure relative to criminal investigations before the police. There was no charge sheet introduced by the prosecution at the trial below in which it was stated that the defendant/appellant confessed to the commission of the said crime. The prosecution was not rely-ing on the lone testimony of Sgt. Appleton, the investigator of said matter at the Police Station in Paynesville, to establish or prove its case. The prosecution had produced four (4) other witnesses beside Sgt. Appleton who testified before court, among other things, that they were present when said structure was demolished; they had heard defendant/appellant making remarks like: "they are always building on people's land, I will make sure and destroy this building"; that the defendant/appellant carried armed men on the site who, with the assistance of the defendant/appellant, destroyed the private prosecutrix's house with diggers, pin bar, shovel, hammer, etc. These items were produced in court. (*See sheet 2, 42nd day, jury sitting, Tuesday, October 8, 2002 through Wednesday, October 16, 2002; sheet 12, 48th day Special Jury Session.)* We are therefore of the opinion that even though the trial judge erred in not granting the

defendant/appellant's counsel application to produce said witness, we will not reverse the matter on this issue as the testimony which the counsel sought to bring before the court was not relevant and material to the matter, as stated earlier. In *Anderson v. Republic*, 27 LLR 67, syl. 6 (1978), this Court opined that "the examination of witnesses in all cases is directly under the control of the trial judge." Hence, if it is not shown that he abused his power by showing partiality to one side or the other, his decisions are within the law. Also, at syllabus 7 of the same case, this Court said: "A trial court may exclude evidence *sua sponte* if the question is irrelevant or legally untenable…."

The facts show also that defendant/appellant counsel applied to the court below for the wrong writ (*subpoena duces tecum*), instead of *subpeona ad testificandum*. "A *subpoena duces tecum* is different from a *subpoena ad testificandum*, the latter being to have a witness testify in general and the former being to have the witness produce the requested documents". *Insurance Company of Africa/Intrusco Corporation v. Fantas-tic Store,* 32 LLR 366 (1984), syl. 6. Defendant's counsel therefore should have applied for a *subpoena ad testificandum* instead of a *subpoena duces tecum* since he wished to have said witness testify instead of producing documents in court.

Coming to issue number two (2), i.e., whether or not the trial judge committed a reversible error when he instructed the trial jury to return a *unanimous verdict;* centers around count six (6) of defendants/appellants' bill of exceptions. Count six (6) of the said bill of exceptions says that "Your Honour committed a reversible error when Your Honour charged the jury to return a unanimous verdict. That is to say, Your Honour's insistence upon what verdict to be returned by the jury or as to the unanimity of the jury's verdict did prejudice the minds and independence of the jury in exercising their impartial or best judgment. Under our law, remarks by the trial judge which prejudice or tend to prejudice the minds of the jury against the unsuccessful party affords a ground for a reversal of the judgment. Your Honor did commit a reversible error by an irregular charge to the jury".

We shall now revert to that portion of the trial judge's charge to the trial jury which is found on sheet nine (9), 55th day's special jury sitting, Wednesday, October 30, A. D. 2002, which the defendant/appellant's counsel is contending is contrary to the law. We quote the first paragraph of the judge's charge, beginning at the sixth (6th) line from the bottom of said paragraph, which reads: "where there is no doubt that the private prosecutrix house was broken down and that said house was broken down by the defendant in the dock, along with others, you will return a verdict of guilty against her; but where you people find that there is doubt as to the breaking down of the private prosecutrix's house and as to the defendant being the one who had broken down said house with others, then you will return a verdict of not guilty in favor of the defendant". In the next paragraph on the same sheet, the trial judge continued his charge to the jury by stating: "You will now go into your room of deliberation to consider your verdict. But before doing so, this court would like to discharge alternate jurors Hawa Cuffy and Mary Tarpeh, with thanks and after inspection of the Criminal

Verdict Form by lawyers on both sides you will proceed to your room of deliberation and return a "*unanimous verdict".*

Before discussing the issue raised by defendants/ appellants' counsel, we shall first revert to the law governing verdict which is found in chapter 20, section 20.11, paragraphs 1 and 2, pages 378-379, 1 LCL Revised, Criminal Procedure Law.

1. *Procedure on Retirement of Jury*. "After hearing the instructions of the court, the jurors shall retire from the courtroom to consider their verdict. The Court shall appoint one of the jurors foreman or instruct the jurors to select one of their number as foreman".
2. *Form of Verdict*. The verdict shall be unanimous and shall be *guilty or not guilty".* [Emphasis supplied]

Black's Law Dictionary, 5th edition, page 1398 (VER-DICT), states: "In criminal cases, the verdict shall be unanimous and shall be returned by the jury to the judge in open court".

From the laws quoted and the wordings of the trial judge's charge to the trial jury to bring a unanimous verdict, he did not commit a reversible error. Furthermore, there is no showing as per the records from the court below that the said defendant/ appellant's counsel excepted to that portion of the trial judge's instruction/charge to the trial jury. Defendant/appellant's failure to take exception to the trial judge's charge/instructions to the trial jury is deemed as a waiver and it shall not be considered on appeal by the Supreme Court. *Ezzedine v. Sambola*, 35 LLR 239, syl. 6 & 8 (1988); *Kpolleh v. Republic*, 36 LLR 623, syl 5. (1990); *Lay et al. v. Belleh et al.*, 32 LLR 264, syls. 3 and 4 (1984).

The third issue, that is, whether or not the trial judge com-mitted a reversible error when he granted the motion of the prosecution to strike the testimony of defendant/appellant's second witness in the person of Emmanuel Beer, based upon its irrelevancy and immateriality to the said trial, centers around count eleven (11) of defendant/appellant's bill of exceptions which states: "Your Honour also committed a reversible error when you granted the request of prosecution to strike the testimony of defendant's second witness, in person of Emmanuel Beer". A recourse to the testimony of defendant/appellant's second witness, in person of Mr. Emmanuel Beer which is found on sheets three (3) and four (4), 50th day special jury sitting, Wednesday, October 23, A. D. 2002, shows thus on the direct examination:

Ques: "Mr. Witness according to the application made to this court you were requested to appear to testify on a complaint filed by Adjuah Forleh at the Ministry of Justice sometime ago respecting the interference with her land, the investigation conducted and the attendant conclusion if you know. Now that you are before this court, please say all that you know within your certain knowledge touching the said matter, the subject of the subpoena".

Ans: "I vividly recollect sometime in 2000 one Amos Goll brought Mrs. Adjuah Forleh in my office at the Ministry of Justice. He introduced her to me that she has some problems there from. I tried to ascertain from her what the nature of her problem

was. She then explained to me that one Snorton had encroached on her premises behind LBS in Paynesville. I asked Mrs. Forleh if she had a genuine deed to authenticate her claim. Predicated upon that she did present to me copy of a deed….. at the Ministry of Justice in person of Cllr. Theophilus C. Gould. I then took her upstairs, introduced her to Cllr. Gould and then she explained to him the nature of her problems, after which I took leave of them and went downstairs to my office".

The prosecution then motioned the trial judge to strike the testimony of Witness Emmanuel Beer from the record/minutes of the case as same did not touch on the facts and circum-stances of said case. Prosecution relied on section 25.4 of the Civil Procedure Law which states that "All evidence must be relevant to the issue; that it must have a tendency to establish the truth or falsehood of the allegations or denials of the parties or it must relate to the extent of the damages". The court sustained the said motion over the objection of defendant/appellant's counsel on the ground that the testimony of said witness was irrelevant to said trial as the allegations that formed the basis of said trial was one laid out in the indictment found against the defendant that she, along with other persons, demolished the private prosecutrix's house sometime in 2002. The court went on to say that said testimony did not have the tendency whatsoever to establish the truth that Adjuah Forleh did demolish the private prosecutrix's house or the tendency to support the denial of Defendant Adjuah Forler that she did not demolish the private prosecutrix's house, the subject of these proceedings. Defendant/appellant also contended that a motion is to be in writing and made at least twenty-four (24) hours before hearing. Prosecution countered said argument by invoking section 10.1 of the Civil Procedure Law, which states, at paragraph 1, DEFINITION AND GENERAL PROCEDURE. *1 Motion Defined; When and How Made:* "A motion is an application for an order granting relief incidental to the main relief sought in the action or proceeding in which the motion is brought. A written motion is made when a notice of the motion is served. *Unless made during a hearing or trial*, a motion shall be in writing and shall state with particularity the grounds there for and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion". [Emphasis ours]. We are of the opinion that the motion made on record by prosecution is supported by law.

We therefore hold and concur with the trial judge that the testimony of defendant/appellant's witness Emmanuel Beer is irrelevant to the trial as it does not have a tendency to establish the truth or falsehood of the allegation or denials of the charges. Civil Procedure Law, Rev. Code 1:25.4; *the Original African Hebrew Israelite Foundation of Liberia v. Lewis et at.,* 32 LLR 184, syl. 2 (1984). The trial judge therefore did not commit a reversible error.

As to the fourth and last issue whether or not the verdict of the trial jury in the instant case was manifestly against the weight of the evidence adduced at the trial and also contrary to the law and therefore that the trial judge committed a reversible error by confirming and

affirming said verdict and adjudging the defendant/appellant guilty, we hold that same is to the contrary. We shall proceed to review the evidence as were adduced at the trial of this matter in the court below. The testimonies of prosecution's five (5) witnesses are found on sheet two (2), 42nd day jury sitting, Tuesday, October 8, 2002 through Wednesday, October 16, 2002, sheet 12, 48th day special jury session. The prosecution's witnesses testimonies:

1.Janet Williams (Private Prosecutrix)

In January, 2002, defendant carried a group of armed men on the site behind LBS where she was building her house which had reached roof-level. They placed everyone in the neighborhood at gun-point and proceeded to break down the house. She (private prosecutrix) proceeded to the Police Headquarters (Zone 5) to make a complaint, but when the police arrived, the defendant had left, but they arrested the armed men.

2.Masayan Sorsor

One Friday morning while in her garden (she lives in the same area which the incident took place) she saw a group of people dressed in military uniform with arms and rushed to tell the private prosecutrix. She saw the defendant/ appellant damage a window of the private prosecutrix's house in the process of breaking the house down.

3.C. D. Quidue

Defendant carried soldiers to damage private prosecutrix house and he heard her remark on the scene that day that "they always building on people's land. I will make sure and destroy this building. I am not going to no authority, they will carry me to authority". He saw defendant enter the building and with a pin bar hit a window thus bursting the window glasses. He then advised one officer that was with the defendant to take the matter to the depot, but he refused saying he was on an operation. They broke down the said house.

4.Sergeant Anthony Appleton

On January 18, 2002 Private Prosecutrix Janet Williams reported to police depot in Paynesville that some men were breaking down her house. They proceeded there, but the defendant had left. They arrested three (3) men who told the police it was the defendant that had ordered them to do so. The defendant was subsequently arrested and admitted to the police she had ordered the men to destroy private prosecutrix's house because she was building on her land. He testified that the house was demolished with hammers, diggers, shovels, etc.

5.Joseph Barchue

The carpenter who worked on the destroyed building and lived in said area, saw people breaking down the house, including an armed man. The private prosecutrix brought police officers and arrested the men including the armed man. The entire building that had reached the roof level was broken down.

The prosecution introduced into evidence the instrument used to destroy the said house, including pin bars, hammers, diggers, shovel, etc. The prosecution also introduced receipts of materials purchased for the building of said house; photographs showing the house as it

was before it was broken down and after it was broken down; a letter from Counsellor Molley N. Gray, Sr., dated January 26, 2000, inviting the private prosecutrix to a conference relative to a piece of property located in the City of Paynesville on which the private prosecutrix was constructing, which he alleged belong to appellant/defendant. These were all marked by court and subsequently admitted into evidence.

DEFENDANT/APPELLANT'S EVIDENCE

1.Louise Adjuah Forleh (defendant/appellant)

Denied destroying private prosecutrix's house. Explained about an incident which occurred in 2000 involving the land in question and the grantor which was taken to the Ministry of Justice and not the matter in question which is before this court by way of an indictment.

2.Emmanuel Beer

Testimony was ordered stricken by the trial judge upon application of the prosecution because same was irrelevant and immaterial. Testified to the 2000 incident carried to the Ministry of Justice and not the 2002 matter, the subject of the indictment.

3.Rose Goodrich

Testified also that she does not know of the January 18, 2002 incident (destruction of house) but only the 2000 incident (Ministry of Justice investigation). She in fact left the scene after the 2000 incident at Paynesville.

Prosecution produced one rebuttal witness in person of George Chea, who testified that he had built private prosecutrix's house from the foundation to the roof level. He also testified that he was not present when the said house was being destroyed, but when he last went on the scene of the crime said house had been destroyed down to the foundation.

One can see from the evidence adduced by the prosecution that it established a *prima facie* case in the trial court. *Prima facie* evidence is evidence sufficient to establish the facts unless rebutted. *Republic v. Chakpadeh*, 35 LLR 715 (1998), syl. 4. Prosecution's five witnesses, plus the rebuttal witness George Chea, all testified in conformity with the allegations laid down in the indictment. It was therefore incumbent on the said defendant to rebut the evidence adduced by the prosecution.

In the defendant's effort to rebut the prosecution's evidence, she took the stand in person and denied that she had broken down or destroyed the private prosecutrix house. She dwelled on the 2000 incident that went to the Justice Ministry for an investigation. Defendant, in our mind, tried to insert the issue of title to the land in this matter, which was not the issue at bar. The two (2) witnesses brought by the defendant, in person of Emmanuel Beer and Rose Goodrich, testified that they knew nothing about the 2002 incident for which this case was being tried, but only the incident that occurred in 2000. This has left only the lone testimony of defendant to rebut the prosecution *prima facie* case established. The uncorroborated evidence of an accused is insufficient to establish his innocence, especially where the evidence against him is clear and convincing. *Toe v. Republic*,

30 LLR 491 (1983), syl. 7. Also a defendant may not be set free on the strength of his lone testimony, as against those given by two or more witnesses. *Jusu v. Republic,* 34 LLR 291 (1983), Syl. 5.

Defendant contended in her bill of exceptions that it was error on the trial judge's part to allow the jury to bring in a verdict without visiting the crime scene, and that prosecution witnesses contradicted each other as to the defendant being on the crime scene. Another contradiction alleged by defendant is that the private prosecutrix and witness (rebuttal witness George Chea) contradicted each other as to the number of houses broken down. She also stated that Sgt. Appleton's testimony was the basis upon which the trial jury relied to bring a verdict of guilty against the defendant/appellant which was based upon second-hand information.

Coming to the contention of the defendant/appellant's counsel that it was error on the trial judge's part to allow the jury to bring a verdict of guilty without visiting the scene of the crime, this court says the trial jurors are the judges of the facts and that their verdict was not contrary to the evidence adduced at the trial and the instructions of the trial judge. Furthermore, the defendants/appellants' counsel at no time in the court below raised said issue or excepted to same on the record in order to have same placed in his bill of exceptions. He therefore may not now assign same as an error before this Court. *Ezzedine v. Sambola*, 35 LLR 239 (1988), syls. 6 and 8.

As to the contention that prosecution witnesses contradicted each other relative to defendant being on the crime scene, the evidence is to the contrary as the private prosecutrix, Masayn Soroor, and C. D. Quidue all testified to defendant being on the crime scene and assisting in demolishing private prosecutrix's house. Even if there was some conflict in prosecution's witnesses testimonies, said conflict goes to its weight, but not to its sufficiency to sustain a conviction. *Republic v. Eid*, 37 LLR 761 (1995), syl 7. There was no contradiction between private prosecutrix and rebuttal witness George Chea. There was no "two (2) houses" involved in this matter as the indictment in this matter clearly states one. The explanation centers around the first house that was being built in 2000, which was allegedly broken down by the defendant in that year, and which is clearly not an issue in this matter. The trial jury properly brought a verdict which was in conformity with the evidence, and the trial judge did not commit a reversible error in confirming and affirming same.

Also, this Court has held that "Where a party contends that the verdict of the jury is contrary to the instruction of the court and the evidence, it is incumbent on him to show to the court the specific aspect of instructions and evidence the verdict was contrary to." *Korkoya v. Korkoya*, 37 LLR 553 (1994), syl 1. This Court also held in the case *Sheriff v. Carew*, 34 LLR 3 (1986), syl. 3, that "issues or allegations in the written pleadings should be detailed in such a manner that a judge would be able to comprehend and arrive at a logical conclusion." To merely aver that the verdict is contrary to the weight of evidence adduced at the trial is not detailed enough to enable the court to reach a conclusion. The defendants/

appellants' counsel did not follow this procedure or law laid down by this Court, and therefore his exceptions will not be sustained by this Court.

In view of the foregoing and the legal citations *supra*, it is the holding of this Court that the judgment of the court below be, and the same is hereby confirmed. The Clerk of this Court is hereby ordered to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction over said case and to enforce its judgment. And it is hereby so ordered.

Judgment affirmed.