

**LIVING COUNSELLOR, WISDOM COUNSELLOR & RIGHTEOUS  
COUNSELLOR APPELLANTS VERSUS REPUBLIC OF LIBERIA**  
APPELLEE

APPEAL. JUDGMENT AFFIRMED

HEARD: November 10, 2008 DECIDED: December 18, 2008

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE  
COURT

The appellants were brought under the jurisdiction of our courts on March 27, 2006, when the Monrovia City Court issued out a writ of arrest for the appellants, Living Counselor, Wisdom Counsellor, and Righteous Counsellor on the charge of rape. Subsequently, an indictment was brought against the appellants during the May Term of the Criminal Court Assizes "A", charging appellants with the crime of rape. The indictment drawn out against the appellants reads, as follows:

**INDICTMENT**

The grand Jury for the County of Montserrado, Republic of Liberia, upon their Oath do hereby present: Living Counsellor, Wisdom Counsellor and Righteous Counsellor, defendants of the City of Monrovia, County and Republic aforesaid, heretofore, to wit:

That in violation of an Act to amend Chapter 14 Section 14.70 and 14.71 of the New Penal Code of Liberia, approved December 29, A.D. 2005 which was repealed and replaced.

RAPE is a felony of the first degree where:

- (a) The victim was less than 18 years at the time the offense was committed.
- (b) The offense involves gang rape as dealt with in sub-paragraph 2 above; or
- (c) He intentionally penetrates the vagina, anus, mouth or any other opening of another (male or female) with his penis, without the victim's consent; or

(d) He/she intentionally penetrates the vagina or anus of another person with a foreign object or with any other part of the body (other than penis), without the victim's consent.

(e) The victim is less than eighteen years old, provided the actor is eighteen years of age or older.

Plaintiff complains and says that in the month of March, A.D. 2006, in the City of Monrovia, Montserrado County, Republic of Liberia, the within and above named defendants, without any color of right and the Statutory Laws of the Republic of Liberia, with criminal and wicked intent to sexually abuse the Private Prosecutrixes, Freedom, twelve years of age, Serious Perfect eleven years of age, Faith ten years, and Glorify, seven years of age. the defendant enticed, seduced and subdued the Private Prosecutrixes and criminally, wickedly, purposely and knowingly did rape and have illicit and devilish sexual intercourse with the Private Prosecutrixes without their will and consent and willfully used their fingers and penis into the vaginas and of the Private Prosecutrixes and as a result they sustained bodily injuries in their vaginas and bled profusely; thereby the Crime of Rape the defendants did do and commit on the above named place and at the above named date and time; contrary to the Laws of the Republic of Liberia.

And the Grand Jurors aforesaid, upon their Oath aforesaid, do present that: Living Counsellor, Wisdom Counsellor & Righteously Counsellor, defendants aforesaid, at the time, place and date aforesaid, in the manner and form aforesaid, do say that the Crime of Rape the defendants did do and commit; contrary to the form, force and effect or the Statutory Laws of Liberia, in such cases made and provided and against the peace and dignity of this Republic.

Republic of Liberia Plaintiff

By & Thru:

Samuel K. Jacobs, Esq.

County Attorney for Montserrado County, R.L.

**WITNESSES:**

1. Freedom Harries
2. Serious Perfect
3. Faith
4. Glorify

**ADDRESSES:**

- Monrovia  
"  
"  
"

- 5. Det. Joseph Sagbe "
- 6. Elizabeth Kennedy, et. Al "
- 7. Documentary Evidence, etc "

Upon being arraigned, hearing into the matter began in the November Term 2006, with the defendant moving for dismissal of the indictment which was denied. Prosecution then set out to prove its allegation of rape against the appellants by putting on the witness stand the private prosecutrices, Freedom Harris, Serious Perfect, Faith and Glorify and two other witnesses, Police Officer, Joseph N. Sagbe, Jr. and a medical doctor of MFS at the Benson Clinic, Dr. Tangar Witvoet. The private prosecutrices ranging from seven to twelve years testified basically as follows:

**Freedom Harris, Prosecution 1st witness:** "I was small, my ma put me in Never Die Church. We were there and they used to send us to buy things. And we come in the night, no water can be in the house. They can tell us to go and draw water. Before we come to bed we should draw water again. When we be sleeping they can be doing bad things to us. So they were used to be doing, and one day I was sick. So my aunty said "You sick you can run to the police station?" so that day they told us to plait rope and when I finished plaiting my rope I went to the waterside to wash my hair. That day I went to wash my hair, I ran away and I went on the road. My aunty saw me on the road in the night and she asked me "What you come to do here?" I told my aunty that I ran away because the things that they were doing to me were not good. So my aunty took me and carried me to her house. One police man was living side us my aunty said she will take me to the police men so we can judge the case. When we went to the police the police said he was a traffic man, then my aunty took me to zone 5 and I met Uncle Joseph. When Uncle Joseph asked me, I explained everything. Then Uncle Joseph said that they should carry me to Benson Clinic and we went to the hospital and I took treatment. They called the big woman to come and take me to Save Home. They took me to Save Home then they took me to the court to judge the case.

**Serious Perfect, Prosecution 2nd Witness:** "My Pa took me from Ma and gave me to these people (referring to appellants/defendants). The time I turn big, then in the night they can be doing bad, bad things to us. The time day break now, then they said we should plait the rope. That how they said everybody should plait five, five yards. I have not finished my own yet, the Freedom plait her own quick, quick. Then they said everybody finish with their own, they should go take bath to the waterside. Then we go look now it was in the evening she cannot come. Then they said we should go look for her, to her friend's place from the place she can go draw their water. Then

we go look there, we never saw her there. Then we go check to her other friend's place again, then we never saw her there again. Then we go home. Day break then those three people say they were going to look for Freedom to the Police Station. Then Freedom friends carried her to the hospital. After they arrived to the hospital, the white people checked her. Then we were to the house, then one Omo said they was going look for Wisdom Man. Then the time Omo go, then the UNMIL started coming. They asked me and I explained everything to the UNMIL people. That how come they took three of us then they put us in the car and carried us to Benson Hospital. Then the White man gave us tablets she said we must be taking it four times by day. Then the tablets finish we go for new ones. Then after the other tablets finished, then they gave us injection, that how they brought to us to this court then they said we should explain, then they say we must go back there again.

On the cross examination of this Witness, the question was asked:

Q.: Madam Witness, you told this Court and Jury that during the entire period under review, UNMIL people came to your compound and you explained to them everything. What is the everything you explained to the UNMIL people?

Ans.: [explained to them how in the night they can be fingering us and how they can put their thing in us.

**Faith, Prosecution 3 rd Witness:** "At the time I was to my mother, they came to my mother and they said that they want me, My ma said no ... then my mother said you can carry the child but you should not do bad things to her because I cannot do bad things to my daughter. My mother asked them how many children your want? Then they said that they needed me and my sister. Then they took me and my sister they carried us. Then we were there for one week. The woman that sitting down there they called Humble. She said so long the people want their house let us leave from there we go Dupot Road. When we went to Dupot-Road they built house behind the water. When they finished building the house the Humble came and told Winston to go in our room and finger us. Then Winston them came. When Winston them came they started fingering us. When we want yell they will close our mouths. They said when we yell they will beat us when day break. When we want yell again they will come and slap us. When day break I went to tell one woman we can called Sister Mamayou she told me to go back. When night come Humble will tell Righteous to come and finger us. That how Righteous came in our room and took the bedsheet from over us and began to finger us. He said again when we yell he will beat us when day breaks. ...When we go and lay down she will send Living to come

and finger us. Then Living will come and finger us. And when Living was fingering us and we were shouting, then Wisdom told Freedom every one of us must plait three, three knots.

**Glorify, Prosecution 4th Witness:** 'When I was to our house, the defendants got the own room, they can come from in their room and come in our room. Then they say we must go and .draw water. We can draw water and full the two top. Then Winston them say we must tie rope. Then Humble say we must go and draw water in the night. Then when it be in the night the same people can be fingering us. Then when the people come now they took us from there and carry us to us to Save Home.

**Prosecution 5 th Witness, Joseph C.N. Sagbe, Jr.** of the Liberia National Police working in Women and Children Protection Unit, testified to the effect that it was on March 21 st at the hour 8:00 a.m. while in his office at Zone 5 base, Paynesville, a little girl by the name of Freedom Harries walked into his office with tears in her eyes, crying and he asked her what really happened, she began to narrate her story by saying: Uncle, I am really tired, my front part is hurting. Then I asked what really she was taking about in the present of my officers assigned there. Freedom began to explain to us, "Our brother name Winston Counsellor, Righteous Counsellor and Living Counsellor in the habit of making us to tie rope, draw water, go in the swamp for wood, the worst of all at night, they climbed over us and do rude, rude things to us one at a time. Besides that, I have some of my sisters there, they climb over us and tell us if we tell anyone they will do bad to us."

The officer testified that they took the children to the station to talk to them one at a time, and they freely narrated their story. Serious Counsellor (one of the little girls) told him, "that our brothers, they are not good. They climb on us at night and if we talk, they beat us." The officer then ask a question, "What do you mean by climbing on you at night?" She clarified, "they can do rude, rude things to us by putting their penis in our tata." He narrated that Faith Counsellor gave the same sad story. This story was given in the absence of Freedom who was in the Hospital. They had them separated when statement was taken from them.

This police stated further that Wisdom Counsellor, one of the appellants, after he was brought to the station and read his rights, waived his right of getting lawyer. He told the Police, "My lawyer is in Heaven. I will explain what I know of. He began to explain that as far as he was concerned, he never had anything to do with the children but it was those who brought the children to the station that rape them. When asked what do you mean of rape, Wisdom said that as far as he was concern, those who

brought the children to the station they raped them and was lying on them. Wisdom stated, "we can only share love with our sisters because we have no earthly mother and no father but wonderful counselor." We share our love with the children because they are our sisters. It is true we do not have women, we do not marry." Righteous Counsellor was said to have given the same story. He told the Police that they knew nothing about raping these children, they can only share love with the girls. He was asked which type of love? The answer was, "the love that God wants us to share with our children, that is the love." All these things were said when they were advised of their constitutional rights. Living Counsellor told the Police they share love to the children because they are their sisters; one man do not own any woman there they share love with each other and do not have a father beside Wonderful Counsellor and New Jerusalem who is their mother.

**Prosecution 6th Witness, Dr. Tangar Witvoet,** of the MSF Hospital/Benson Hospital testified that two of the victims, Freedom Harries and Serious Perfect were examined and treated and issued medical certificates from the Hospital. The medical report for Freedom Harries reports that there were laceration on hymen and white discharge from vagina. On Serious Perfect's report, there were listed multiple scars on abdomen, on abrasion labia minora, red at urethral meatus ( urine canal ), and slight discharge from vagina.

The prosecution rested evidence after this 6 th witness.

The defendants after its motion for judgment of acquittal was denied, brought to testify four witnesses. They all testified essentially that some boys and some girls often visited their church asking for one Elijah and they often threatened the church, but they did not know them except one of them called Jacob. They stated that if these girls were raped, they were raped by Jacob and the other boys who took the girls to the police station. However, none of them linked the rape to Jacob or either of the persons they alleged often visited their compound.

Having heard the testimonies of the witnesses of both parties, the jury went to its room of deliberation and came back with a unanimous verdict of guilty of the crime of rape. The counsel for defendants announced an appeal and filed an 8-count Bill of Exceptions.

## **BILL OF EXCEPTIONS**

1. That Your Honour erred and you committed a reversible error when you denied the defendants' Motion to Dismiss the Indictment.

2. Your Honour erred when you also denied the defendants' Motion for Judgment of Acquittal when in fact the prosecution's evidence was insufficient to warrant conviction of the defendants.

3. That Your Honour erred when you made an inflammatory charge to the jury.

4. Your Honour also erred when you denied the defendants' Motion for a New Trial.

5. Your Honour further erred when you sentenced the defendants to life imprisonment when in fact the jury's verdict did not say that the defendants were guilty of first degree rape, therefore making yourself the trier of fact in place of the jury.

6. Your Honour further erred that prior to your passing sentence on the defendants, you did not personally ask the defendants if each of them was willing to make a statement in their behalf in mitigation of punishment.

7. And also because Your Honour erred and committed a reversible error when you failed to charge the jury on the contradiction of the prosecution's oral documentary evidence.

14.3 of our criminal procedure law states the requirements of writing, contents and sufficiency of an indictment. Section 14.3 (b) and (c) state that:

(b) "Contain in each count a statement that the defendant has committed a crime therein specified by the number of the title and section of the statute alleged to have been violated, and described by name or by stating so much of the definition of the crime in terms of the statutory definition as is sufficient to give the defendant and the court notice of the violation charged;

(c) Contain in each count a plain, concise and definition statement of the facts essential to give the defendant fair notice of the offense charged in that count, including a statement, if possible, of the time and place of the commission of the offense, and of the person, if any, against whom, and the thing, if any, in respect to which, the offense was committed."

In the Indictment stated above, the prosecution did not charge the defendants for gang rape but the crime of rape in violation of Section 14.70 of our amended criminal

law which states that: "a person who has sexual intercourse with another person (male or female) has committed rape if;

(a) (i) He intentionally penetrates the vaginal, anus, month or any other opening of another person (male or female) with his penis, without the victim's consent; or

(ii) He/she intentionally penetrates the vagina or anus of another person with a foreign object or with any other part of the body (other than the penis), without the victim's consent.

(b) The victim is less than eighteen years old, provided the actor is eighteen years of age or older.

The counts in the indictment specified that the offense of rape had been committed, naming the appellants and the persons against whom the offense was committed. We believe that the Indictment was sufficient in giving the defendants a fair notice of the offense charge. Besides, our statute states, "*An indictment shall not be held insufficient because it contains any defect or imperfection of form which does not prejudice a substantial right of the defendant upon the merits.*" 1LCL Revised 14.3; This Court has also held that "*only the absence of jurisdiction of the trial court over the crime stated in the indictment and/or the failure of the indictment to specifically charge the defendant with the commission of the crime is ground for the dismissal of the indictment.*" 28 LLR76, 79, (1979).

With respect to the appellants exception to the judge's denial for judgment of acquittal, the law is the granting or denial for a judgment of acquittal is left to the sound discretion of the court, Republic vs. Chakpadeh; 35 LLR 715, 720. The granting of a motion for judgment of acquittal in itself will not be justified merely because the statute so provides, when indeed the alleged insufficiency of evidence is to the contrary Republic of Liberia vs Eid et. al. 37 LLR 761, 776, (1995). Evidence adduced at the trial convinces us that the trial judge was legally correct in denying the motion for judgment of acquittal.

The appellants' counsel in his brief argued before this Court, stated that only two of the alleged victims, Freedom Harries and Serious Perfect were reported to the Benson Clinic, treated and discharged; that there is no medical report on the other two victims, Faith and Glorify; therefore, the evidence of the prosecution was not conclusive and convincing to warrant the guilt of the appellants.



This Court has stated that it is not for the parties to determine the sufficiency of evidence, that prerogative being solely with the jury in a jury trial. Only the jury can review the evidence produced by the parties, determine the weight and credibility to be given to such evidence and determine the verdict to be given therefrom. The prosecution witnesses put on the stand to testify corroborated that rape did take place by the appellants who fingered the victims in most instances and would also put their penis in them. The police officer testified that the appellants had stated at the police station that the members of the church share love and the members had no ma and pa. The appellants did not denied this statement of the prosecution and or clarify in what way members of the church share love. Even if we were to assume that the prosecution produced medical certificate for only two of the victims, and to prove the crime of rape medical certificates is mandatory, where certificates are produced during evidence substantiating that rape was committed against two of the alleged victims, would that warrant acquittal of the defendants? Proof establishing guilt to part of the crime alleged in the indictment does not exonerate the defendant from conviction. Proof against any one of the victim named in the indictment is sufficient for conviction. This principle was expounded in the case. **Wilbert Stubblefield vs. Republic of Liberia**, 35 LLR 275, 286, (1988); **Passawe vs. Republic of Liberia**, 24 LLR 516, 529, (1976) where the court held that it is mandatory that the value stated in an indictment for theft be proved, but where any portion thereof is proved during trial the defendant will be held for that portion. We therefore say that in proving the crime of rape, establishment of rape of even one of these victims by the appellant constitute proof of the crime alleged in the indictment.

The appellants in their Bill of Exceptions have also stated that the judge made an inflammatory charge to the jury because she had failed to charge the jury on gang rape since the appellants were charged also with gang rape and this omission of the trial judge was inflammatory and one sided. And that the way she did her charge to the jury it appears to the jury that the appellants were only charged and tried for rape, behold they were charged and tried for gang rape. We failed to comprehend this argument of the appellants since the Indictment as we seen and as written above, make no mention of gang rape. In fact the crime rape is made bold in the indictment and nowhere in the indictment is gang rape mentioned. We therefore feel that the charge by the judge to the jury specifically dealing with rape was in consonant with the charge of the indictment and we failed to see appellants' argument insisting that there was no evidence of gang rape when in fact their was no charge of gang rape or effort by the prosecution to establish that gang rape was committed. The appellants argument that the new trial should have been awarded since the verdict of the jury was ambiguous as it did not state guilty for rape and guilty for gang rape or otherwise

so as to make the said verdict explicit and clear to the appellants who have the right to know the kind of verdict the jury brought against them. We reiterate our opinion above that the indictment for which the defendants were arraigned specified the crime of rape and the jury's verdict specifically noted "Guilty of the crime of rape". To the mind of this court the court was under no obligation to address itself to gang rape where it was not charged in the indictment or brought up in the evidence brought before the court.

Appellant say that the judge erred when she sentenced the defendants to life imprisonment when in fact the jury verdict did not say that the defendants were guilty of first degree rape therefore making herself a trier of fact in place of the juror. Sentencing in our statute is imposed by the judge in harmony with the statute under which the defendant is brought down guilty. An act to amend the new penal code Chapter 14 Sections 14.70 and 14.71 and to provide for gang rape states that rape is a felony of the first degree where the victim was less than eighteen years of age and the maximum sentence for first degree rape shall be life imprisonment and for the purposes of bail it shall be treated as per capital offenses under Section 13.1.1; Capital offenses of the Criminal Procedure Law. The Defense having not challenged the ages of the victims to prove that they were eighteen years or above, the Judge was not wrong to sentence the appellants to life imprisonment.

The evidence adduced during the trial show that rape is institutionalized in the Never Die Church. The testimonies given by the prosecution witnesses also points to a situation where the victims were living in a condition of servitude almost identical to slavery. The victims testify to being forcibly sent to the river at night to draw water even when water was available and there were talks of alligators living in the water. One of the victims, Faith, testified as follows:

*It came one night the place where Mamayou living, where Humble said alligator can come out of the water in the night so that we must go and draw the water in the night. Then Serious said," Ah Humble, you said that alligator can come out of the water in the night. Humble said, I say you must go and draw the water from the river. Then when we go we asked Sister Mamayou for her flashlight. Then when Sister Mamayou gave us the flashlight, we went and full the big iron tub. When day break, she (Humble) was cooking the Pod, she said Serious must go for water. Serious said water is in the iron tub. She said that last night water, I cannot cook with the water. Serious said that she was not going nowhere. Then she took the cook spoon and knocked it on Serious. Then Serious went behind the house and said that she want to go to her ma. Then Righteous came and said that your ma in heaven and your father in heaven.*

In his testimony, Police Officer Joseph C.N. Sagbe, Jr. stated in his testimony that Wisdom Counsellor stated that they were lying on them that they did not rape the girls but that they only share love with their sisters because they have no earthly mother or father but only Wonderful Counsellor; that they share love with all children because they are their sisters, and that they do not have women; Righteous Counsellor and Living Counsellor gave almost the same answer that they know nothing about raping, they only share love with their sisters. The officer asked them which type of love, and they answered that it is the type of love that God wants them to share with their sisters; that they do not have father beside Wonderful Counsellor and New Jerusalem who is their mother. The type of love shown by the appellants to their sisters of their church was not made clear in their testimony as they evaded explaining what this love is.

This Court has said, the sufficiency of evidence to prove the main fact of guilt, or any evidentiary fact looking thereto, is a matter within the province of the jury. They are the triers of fact, the sole judges of the weight and worth of the evidence and the credibility of witnesses. *REPUBLIC OF LIBERIA VS. EZZAT N. EID ET AL*, 37 LLR 761, 763, (1995).

Having found no reason to disturb the verdict of the jury and the judgment below, this Court hereby affirms the judgment of the court below. IT IS HEREBY SO ORDER.