TOM NIMLEY et al., Appellants, *v.* **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT, GRAND GEDEH COUNTY.

Heard: December 7, 1982. Decided: February 4, 1983.

1. The establishment of a *prima facie* case of murder against an accused does not necessarily imply conviction, it simply means that in the opinion of the court, there is sufficient evidence to warrant the trial of the matter and the submission of the case to the jury for rendition of a verdict and judgment.

2. A person is guilty of murder only if he purposely or knowingly causes the death of another human being; and for the charge of murder to be sustained, it must be proved that the accused committed the unlawful killing with malice aforethought.

3. A person charged with murder may be convicted on positive and circumstantial evidence and that confessions to the commission of a crime by an accused are admissible evidence and may be used against him in a prosecution for murder when properly corroborated.

4. A confession made, whether voluntarily or involuntarily, is admissible where it discloses incriminating evidence which subsequently on investigation, is found to be true or where the confession leads to the discovery of facts which in themselves are incriminating.

5. It is not necessary that one actually be seen committing a crime before he could be held guilty, but that it is sufficient for that person to be convicted whenever the logical deductions from the facts and circumstances lead conclusively to the fact that a crime was committed and that the accused is connected with the crime.

6. A judgment of guilt cannot be upheld where it is based solely on the alleged confessions of the accused, and where the alleged confessions were refuted by the accused during the trial.

This was an appeal to the Supreme Court, from a conviction for murder by the People's Seventh Judicial Circuit Court, Grand Gedeh County. The Supreme Court upon review of the records, found that during custodial interrogation, the defendants, now appellants, admitted to the killing of the decedent. However, during the trial, the appellants refuted the admissions and denied killing the decedent. Other than the confessions extorted from the defendants, prosecution failed to produce any evidence linking the appellants to the crime.

In fact, the testimony of some of the prosecution witnesses was conflicting. The Supreme Court held that in the face of the denial of the commission of the crime, and the lack of evidence linking the appellants to the killing, there was insufficient evidence to establish beyond reasonable doubt that the crime was committed by the accused. Accordingly, the Supreme Court *reversed* the judgment.

George G. Kaydea appeared for the appellants. *Richard F. MacFarland,* Acting Solicitor General appeared for the appellee.

MR. CHIEF JUSTICE GBALAZEH delivered the Opinion of the Court.

The appellants in this case were convicted of murder in the People's Seventh Judicial Circuit Court, Grand Gedeh County, sitting in its August 1981 Term, and sentenced to death by hanging from which conviction and sentence, they appealed to this Court. The documentary evidence certified to this Court shows that the appellants: Tom Nimley, Karla Boewine, Nyonklay Breeze and Zarleh Quiah, all of whom are residents of Tarloken Town, Glio Clan in Grand Gedeh County, were arrested in early 1981 for allegedly killing one Barmu Toway, and were subsequently and formally charged with criminal homicide before the Seventh Judicial Circuit Court for Grand Gedeh County where the four appellants were jointly tried and found guilty of murder as charged under chapter 14, section 14.1 of the 1976 Penal Law of the Republic of Liberia.

The facts and circumstances surrounding this case are not simple. From the records, we learn that on or about the 14th day of January, 1981, one Barmu Toway, now deceased, reportedly left her home in Krotee Town for her brother, Tom Nimley's home in Tarloken Town, Glio Clan, to make a complaint against her husband, Toway, as regards her domestic life. Tom Nimley, the brother, is alleged to have advised her to return home the same day and that he would be going to Krotoe Town to see his brother-in-law, Toway, about the complaint. His sister, the deceased, is alleged to have returned to her home the same day on the advice of her brother. It is from this stage that the facts and circumstances of this case become complicated and spurious. On the one hand, we have the husband of the deceased getting concerned over the failure of Barmu, his wife, to return to Krotoe, implying that his wife was expected back the same day. Hence, an unexpected call by the husband on Tom Nimley, his brother-in-law, in Tarloken in search of his (Toway's) wife. On the other hand, we have dead silence on the part of Tom Nimley as to the whereabouts of his sister, until his brother-in-law, Toway, comes to see him about his wife and until the county commissioner comes with his law enforcement officers to arrest him following the discovery near his farm of his sister, Barmu Toway's body.

The evidence we have in favor of the State indicates that after Tom Nimley had been arrested on suspicion of killing his sister, he reportedly admitted having killed his sister at the instigation of other three old men, namely: Nyonklay, Zarleh Quiah and Karleh Boewine. Co-appellants in this case, whom, he claimed, had called him to a meeting in the latter part of 1980 allegedly organized to sacrifice a human being for development purposes. The State's evidence also indicates that these four old men not only did they admit killing the deceased but were also reputed to be habitual ritualistic murderers. On the other hand, the evidence we have in favor of the defendants/appellants, indicates that the deceased took her own life in a suicide because of a long frustration. The evidence reveals further that the deceased was a long time victim of leprosy and that as a result of this unhallowed disease, her husband had refrained from having sexual dealings with her; hence, the temptation to take her own life. In support of this contention the defense explains why a rope was found around the deceased's neck and the pills found on her:

At this stage, it is necessary for us to ask the following questions as pointers to a fair and just disposition of this appeal:

1. Whether or not the *prima facie* evidence of murder which was allegedly made out against the appellants remains unrebutted?

2. Whether or not the circumstantial evidence and the purported admissions legally and reasonably connected the appellants with the commission of the crime charged to sustain the judgment of conviction for murder?

In answering the first question, we must mention at the outset, that the establishment of a *prima facie* case of murder against an accused does not necessarily imply conviction of murder by the court against the accused. The establishment of a *prima facie* case against an accused in a murder case, or any other case, simply means that, in the opinion of the court, there is sufficient evidence to warrant the trial of the matter and the submission to the jury of the case for the rendition of a verdict and judgment, provided, however, the other party does not rebut such evidence. BLACKS LAW DICTIONARY 1071 5th ed.); *Paye v. Republic,* 10 LLR 55 (1948). The doctrine of "a *prima facie* case" is based on the assumption that an inferior court, such as a magistrate's court in our jurisdiction, will have conducted a preliminary investigation into the charge of murder and transferred the case to a higher court, a circuit court in our jurisdiction, for a full trial before a jury. Civil Procedure Law, Rev. Code 1: 12.1. *Prima facie* evidence may be circumstantial or direct. It simply means that at first sight, as it appears on the evidence, without more, there is a probable cause for proceeding against the party accused. In such cases, there is no guarantee that the trier of facts, the jury, will necessarily find the party guilty as preferred or alleged.

Now, carrying this answer a step further, it would appear that a *prima facie* case was made out by the prosecution against the four persons accused in this case, judging from the circumstances surrounding the disappearance and the subsequent death of the deceased. The prosecution's evidence clearly indicates that the four accused persons made voluntary confessions of their felonious act and the manner in which the homicide was carried out. One would find it difficult to believe the story that the deceased took away her own life by suicidal acts. We admit suicidal deaths are not rare in our society but how would one explain why a victim of suicide would manage to cut off his or her tongue and also extract one or two teeth from his or her dental formula, as it was in this case, before hanging herself. If the victim wanted to take away her own life, by extracting such vital organs of her body as the tongue, teeth and sexual parts, as it was in this case, then it would serve no useful purpose for such victim to hang herself because the victim would certainly die instantly in the process of mutilating her body. That would be a total impossibility. Certainly, we find it safer to say that a *prima facie* case was clearly made out by the prosecution against the four appellants for the charge of murder. But did the *prima facie* circumstantial evidence remain unrebutted? This question is the backbone of this appeal. To answer this question correctly, we will have necessarily to answer the second question concomitantly.

Throughout the trial of this case in the court below, as judged from the records certified to us, there is no showing that there was an eyewitness to the alleged killing of Madam Barmu Toway; nor do we find any person coming forward to give an eyewitness account of the death. These facts were also admitted by the prosecution in its brief and argument.

In the face of this dilemma, it becomes necessary for us to have recourse to the circumstantial evidence available as put forward by the prosecution, and the testimonial confessions allegedly made by the four accused, especially Tom Nimley, the first accused and brother to the deceased .

Under our Penal Law, a person is guilty of murder only if he purposely or knowingly caused the death of another human being. Penal Law, Rev. Code 26: 14.1, and for the charge of murder to be sustained, it must be proved that the accused committed the unlawful killing with malice aforethought. *Gray v. Republic,* 23 LLR 49 (1974); and *Yancy et al v. Republic,* 27 LLR 365 (1978). Malice is a necessary element of the crime of murder as intent to kill. At common law, and in our jurisdiction, the guilt of an accused in a criminal offence, and more especially in a murder case, must be proved beyond reasonable doubt. Consequently, whenever there is doubt as to the guilt of the accused, the benefit of such doubt will operate in favor of the accused. Criminal Procedure Law, Rev. Code 2:2.1 *and Banjoe v. Republic,* 26 LLR 255 (1977).

In their bill of exceptions, the appellants contend essentially that the trial court erred in finding them guilty of murder in that there was no *direct* evidence to connect them to the death of the decedent. They also contend that the evidence was merely circumstantial and that the alleged confessions were made out of physical duress. On the other hand, the prosecution argues that while it is true that there was no direct evidence to connect the appellants with the criminal homicide, there was sufficient and adequate *circumstantial* evidence to link the defendants with the death of Madam Barmu Toway; hence the subsequent conviction and sentence. This Court has generally held that a person charged with murder may be convicted on *positive and circumstantial evidence* and that confessions of a crime by an accused are admissible evidence and may be used against him in a prosecution of murder *when properly corroborated* (emphasis our own). *Ledlow, Maloney & Garkpah v. Republic,* 2 LLR 529 (1925); *Kamarah v. Republic,* 3 LLR 204 (1930)*; Jones v. Republic,* 13 LLR 623 (1960); *Taylor v. Republic,* 14 LLR 524 (1961), and *Glay v. Republic,* 15 LLR 181 (1963). These decisions are also in harmony with the common law of England and America.

However, there is one common string that runs through the holes of these legal authorities; that is, crystal clear circumstantial evidence. With this in mind, let us now have a look at the circumstantial evidence said to have linked the appellants with the murder of the deceased in this case.

The deceased was a sister of Tom Nimley, one of the appellants; she regularly came to see him about her differences with her husband; the day she died she is said to have visited the brother on a similar mission. There is nothing anywhere to show that she and her brother, Tom Nimley, ever had differences leading to a fight or animosity. This fact is also true of her husband. As it would appear from the records, the relationship of the deceased with her brother was generally cordial and peaceful; besides, Tom Nimley was a quarter chief, thus, of good-social repute and status in his community. Under such circumstances, it is, therefore, difficult to understand why and how the brother would wish to sacrifice his sister's life for rural developments as claimed. In cases of murder, malice afore-thought must be expressly proved or by necessary implication. On what ground would one imply malice on the part of Tom Nimley on the facts and circumstances given? One would have thought that if there was a person who wanted the deceased out of his way, that person would be Toway, the husband of the deceased, since he, together with his second wife, had more or less ostracized the deceased from their domestic circles owing to her unhallowed infection of leprosy.

There is no doubt the manner in which the deceased lost her life is suspiciously strange. Nobody committing suicide would cut his or her tongue and teeth out before hanging himself or herself. Therefore, the suggestion by the defense that the deceased committed

suicide is totally ruled out. One thing is certain: There was foul play in the deceased's death; but the question is: who killed her in this way? The defense would want us to believe that the deceased took her own life by hanging and by taking poisonous drugs. The defense is tempting us to accept this story by virtue of the rope found tied around the decedent's neck and arms and the drugs found on her person. As we have already observed, this story is totally unbelievable. On the other hand, the prosecution urges us to believe the story that the deceased was killed by her brother, Tom Nimley, and his co-conspirators. To support this story, the prosecution draws our attention to the fact that the deceased died, or for that matter got missing, on the very day she came to visit her brother and the discovery of her body near the brother's farm. The prosecution draws our attention also to the confessions of Tom Nimley and his fellow conspirators allegedly voluntarily made before the county commissioner and other law enforcement agents. We would like to believe this story but why would Tom Nimley want to take away the life of his sister? Even granted he made a confession, there is no proof to show that in the 1980 meeting with his reported collaborators the name of the deceased was mentioned as a possible victim. Hence, we still have the question: is it really Tom Nimley and his co-appellants who killed Barmu Toway as alleged? A careful scrutiny and examination of the evidence have failed to answer these questions positively.

With reference to the alleged confessions, alias, admissions of guilt, alleged to have been made by the accused, this Court has generally held that a confession voluntary or involuntary made is admissible where it discloses incriminating evidence which subsequently, on investigation, is found to be true, or where the confession leads to the discovery of facts which in themselves are incriminating so much of the confession disclosing the incriminating evidence and relating directly thereto, but not the whole confession. *Williams v. Republic,* 10 LLR 78 (1949). This decision and many other similar decisions of this Court take care of Section 21.4 of the Criminal Procedure Law which mandates that confessions must be voluntary to be admissible. Criminal Procedure Law, Rev. Code 2: 21.4. The decisions are also in harmony with Civil Procedure Law, which clearly empowers the courts to receive into evidence admissions as against the parties making them. Civil Procedure Law, Rev. Code 1: 25.8.

Thus, even granting that the appellants made voluntary confessions, a fact bitterly refuted by the appellants, and there appears to be evidence to this effect, there is still nothing concrete to show that there was a direct link between the death of the deceased and the confessions. This Court on several occasions has held that it is not necessary that one actually be seen committing a crime before he could be held guilty, but that it is sufficient for that person to be convicted whenever the logical deduction from the facts and circumstances placed on record leads conclusively to the logical deduction that the crime was committed and that the

accused is connected with the crime. *Gardiner v. Republic*, 13 LLR 406 (1944). The evidence available on record has failed to prove conclusively that this crime was committed by the accused.

A casual look at the records shows that a number of witnesses were called by the prosecution including a CID officer, Moses T. Payne; the county commissioner, Alfred D. Keetain; a medical dresser, Isaac Gweh, and Marie Thomas, wife of Tom Nimley, one of the appellants and brother to the de-ceased. Without going into a detail analysis of their testimonies, none of them admitted having seen Tom Nimley or any of the other appellants, committing the crime. Most of their evidence was hearsay and in some respects contradictory, such as that of the dresser who claimed he never heard the confessions. Probably the only useful witness was the medical personnel, Isaac Gweh, the dresser, whose testimony confirms our belief that the victim did not die from voluntary suicide as alleged by the defense. The pills found on the person of the deceased were confirmed by the dresser as being the usual type of pills she used to receive from the dresser's clinic where she had undergone a long course of treatment for her leprosy infection. He, like the others, could not tell the exact cause of death; not because of his lack of professional competency as alleged by the defense but simply because there was no visible proof. Even granted he could, he could never have discovered the person who had caused the death. Incidentally, the fact that the prosecution failed to produce, in court, the rope allegedly used by the deceased for suicidal acts, or that the ropes brought into evidence were not the same length, does not in any way destroy the fact that the deceased had been a victim of a violent death and that human agents were involved in this barbaric and primitive method of terminating a human life. Naturally, the accused in their separate testimonies violently refuted any allegation of complicity, trying to import the idea of voluntary suicide as the cause of death.

From all these facts, circumstances, and points of law, we can but only register our greatest regrets for the failure on the part of the prosecution to stitch the evidence threads in such a way that there was no loop hole left. We are fully aware of the alarming increase in homicide cases in our society and that many of these cases savor of ritualistic motives; but this being a court of law, concerned only with the administration of legal justice, we cannot bend the law just to cater to situations such as this. Doing so would open wide the gates of legal speculations, the consequences of which would bring untold repercussions in our legal system. We are appealing once again to the State to pay more attention to the manner of handling criminal cases, especially homicidal cases in the trial court so that while we are ready to free ninety nine (99) guilty men rather than convict one innocent person, we would also not allow ninety nine (99) innocent men to risk their lives by freeing one guilty man who may end up killing ninety-nine (99) innocent men in his life time. As the situation now stands, you take away the alleged confessions, then you have nothing left to sustain the

State's case.

The confessions alone cannot stand in view of the fact that they have been bitterly refuted by the accused and by some of the prosecution's witnesses such as the medical dresser and the wife of Tom Nimley. We are now left between two evils and naturally we will take the lesser. That is, believing that the confessions were neither voluntary nor genuine and that the prosecution has failed to prove the accused's guilt beyond reasonable doubt as demanded by our laws.

In view of the above, we have no alternative but to give the appellants the benefit of doubt and thereby allow the appeal, quash and reverse the judgment of conviction for murder rendered against the appellants by the trial court. The Clerk of this Court is, therefore, hereby ordered to send a mandate to the lower court instructing it to resume jurisdiction over this matter and discharge the appellants without delay as directed. And it is so ordered.

Judgment reversed.