

**Otang Okrasi, Robert Addei, James Addy, Joseph Agbo The John A. Mena
Kofi, Mamah Dramai, Gibrill A. Yond Edwon Meniah and Henry Coleman**
APPELLANTS VERSUS **Republic of Liberia** APPELLEE

Heard: March 19, 2009R Decided: July 23, 2009.

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT.

During the August 2008 Term of Criminal Assizes "C", First Judicial Circuit for Montserrado County, the herein nine appellants/criminal defendants were arrested in January, 2008, indicted and regularly tried on the charge: "unauthorized possession of prohibited or trafficking and distribution of narcotic drugs. This follows prosecution's motion which was granted by the trial court to advance this case on the docket.

During the trial, six witnesses testified for the state. On the other hand, defense paraded three witnesses who presented testimonies in support of appellants/defendants' plea of 'not guilty'. Thereafter, both parties rested.

Following the trial judge's charge, the petit jury retired and returned a unanimous verdict. The Verdict found all nine appellants guilty as charged. Thereupon the trial judge entered final judgment in which he convicted the appellants and sentenced them to the maximum jail term of ten years. The judge also fined the appellants in the amount of US\$100,000.00 (one hundred thousand United States dollars). Hence these appeal proceedings.

In the bill of exceptions, appellants not only argue that their conviction is unsubstantiated by the evidence adduced during trial; but appellants also contend that the conduct of the trial judge being prejudicial, compels a reversal of said judge's final judgment as a matter of law.

We note that in the face of these serious charges of prejudice against the conduct of the trial judge, His Honor, Emmanuel M. Kollie, presiding by assignment, approved appellants' bill of exceptions containing twenty nine counts, unreservedly. In approving said bill without noting any reservations whatsoever, Judge Kollie neglected, failed and therefore did not deny the serious charges made against him as required by law in this jurisdiction.

In both *Trowein v. Kpaka*, reported in 34 LLR 130,132(1986), and *Sio v. Sio* also

found in 34 LLR 245,248 (1986), this Court restated by way of emphasis, Civil Procedure Law, L.C.L. Rev., title I, section 51.7 (1973). Said section speaks to such notation by the trial judge on bill of exceptions, providing inter alia as follows: "...The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of the judgment. The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court." [Emphasis supplied].

In the approved bill of exceptions, without the trial judge's note of any reservations, appellants have prayed this Court to set aside the judge's final judgment. But to affirm said final judgment, set it aside, or reverse and remand same, compels the exhaustive review which we have accorded this case.

Examination of the case file reveals that appellants were tried for alleged contravention of 5 L.C.L. Rev., title 33, chapter 41, section 23 (1&2) and section 24 (1). Title 33 is referred to as the new Public Health Law.

The referenced provisions are quoted:

"Chapter 41, section 23: Penalty for unlawful sale or possession for sale.

(1) Unlawful sale. Any person who sells a narcotic drug without the written prescription of a physician, dentist, or veterinarian, except as otherwise provided by the provisions of this chapter, shall be guilty of felony in the first degree.

(2) Possession with intent to sell. Any person who possesses or has in his control a narcotic drug with intent to sell such drug, except on written prescription of a physician, dentist, or veterinarian or otherwise in accordance with the provisions of this chapter, shall be guilty of a felony in the first degree.

"Chapter 41, section 24. Unauthorized possession prohibited.

(1) General Prohibition. It shall be unlawful for any person to possess or have under his control any narcotic drug."

In the indictment under which appellants were tried, the state substantially alleges as follows:

"...On or about January 29, 2008, at 18:30 hours Defendants: Oteng Akrasi, Robert Adej'ei,

James' Addy, Joseph Agbo Tehy, John Ainewa Kofi, Maina Dramanui, Gibrill Ayoub, Henry Coleman and Richard Mensah did possess and have in their control a narcotic drug, to wit: cocaine; with intent to sell such drug; without written prescription of a physician, dentist, or veterinarian, and without any other authority of law; contrary to 5 LCLR, title 33, chapter 41, Section 23 el & 2); and Section 24 (1) respectively.

"Plaintiff complains and says that the defendants hereof: Oteng Akraasi, Robert Adejei, James Addy, Joseph Agbo Tehy, John Amewa Kofi, Mamah Dramanui, Gibrill Ayoub, Henry Coleman and Richard Mensah, all Ghanaian nationals and crew members of (IMO 6806559) Blue Atlantic Vessel, in violation of said Public Health Law of the Republic of Liberia, were arrested on Thursday, January 29, 2008, at 18:30 hours by troops of the French Navy vessel (Touneres) patrolling Liberia territorial waters, in illegal possession of 2.4 tons of cocaine with a street value of (US\$500 Million Dollars), concealed in (92) rubber barrels.

"And that during police criminal investigation, it was determined/established that the Blue Atlantic Vessel is involved in trafficking and distribution of narcotic drugs on the West Coast of Africa; and that the drugs found on board were owned and possessed by said aforesaid crew members, defendants hereof.

Hence the defendants, by their actions, did criminally, purposely and intentionally commit the crime aforesaid, contrary to the statutory laws of the Republic of Liberia, herein above quoted"

Based on the indictment quoted above, appellants were tried and adjudged guilty. Now before us is a twenty nine-count bill of exceptions, in which appellants have prayed for reversal of said final judgment.

Having carefully examined the bill of exceptions, we deem counts 9, 19, 20, and 25 substantial enough to deserve our review and consideration:

"Your Honor erred when you sustained the objection to the defense counsels' question posed to the prosecution's fourth witness in person of J. Robertson Wollo, as found on sheet five, September 30, 2008 minutes of court which reads: "Mr. witness, would I be correct to say that at the Police headquarters Counselor Charles Abdulai requested the investigation and before commencement of same [that] he will appreciate (sometime! having lust been contacted to proceed to the police station to represent the accused now defendants before court and the refusal to grant his request led to a confusion between Abdulai and Zargo, chief of the Police C.I.D. Department (who! asked Counselor Abdulai to leave the Police Departments, am I correct?" [Our Emphasis]

Your Honor also erred in your charge to the jury as found on sheet 4, Thursday, October 23, 2008

when you said "The testimonies that the vessel now, Blue Atlantic was sailing on the water and simultaneously a French Naval Vessel intercepted this vessel on the sea for cause; and the reason was that the Blue Atlantic was found with the drugs (narcotic drugs) in ninety (90) barrels were on the vessel while sailing; however, the movement of the vessel was not satisfactory to the French Navy, so they were signaled to stop, believing that they had problems. When they were approached, they [French officers] entered the Blue Atlantic and these cocaine drugs were found. This is how they [as crew members of Blue Atlantic] were brought at our port and turned over to government for investigation. [Our Emphasis].

"20. That also in your charge to the jury, as found on sheet 3, you stated "further, testimonies of the prosecution's witness state that besides the manner and form and movement of the Blue Atlantic in our territorial waters, [i.e.] the flag of Liberia [under which] the vessel was registered, was not put up, which regulates all ships sailing for such purposes. The flag was wrapped and taken down. The Captain of the vessel was a Nigerian, the eight crew [were] Ghanaians and the flag was not hoisted as (in keeping with] regulations. Further investigation shows that while the Blue Atlantic was claiming to be on sailing mission [and] that their purpose was to supply water, fuel and gas to other ships on high sea, they had no document to show that that was their actual purpose [for] sailing.

Equally so, the testimonies show that the claim that this vessel, the Blue Atlantic, had arrangement with other fishing canoes in West Point and in New Kru Town, where they always left their [vessel out of] territorial sea port and used these fishing canoes under [the] pretext [that] they had a patient to carry to hospital. From [police] investigation, it was indicated that since they claimed to have patient to attend medication, the name of the patient was never shown by the crew of Blue Atlantic] and the doctor to whom they carried the patient was never shown. This gave a mix feeling to the investigators as to the [crew of Blue Atlantic] reasons of being here.

"25. Defendants further submit and say that Your Honor committed another legal blunder and a reversible error when you denied the Defendants' Motion for New Trial; [for] the verdict was clearly against the weight of evidence adduced during the trial; thus a violation of section 26.4 of ILCLR text at Page 209.

We now consider these exceptions:

In count nine (9), appellants have accused judge Kollie of committing reversible error *when* he sustained prosecution's objection to a material question posed to prosecution's fourth witness, J. Robertson Wollo: *"Mr. witness. would I be correct to say that at the Police headquarters, Counselor Charles Abdulai requested the investigation and before commencement [of same], [that] he will appreciate [sometime as he] had just been contacted to proceed to the police station to represent the accused, now defendants before court, and the refusal to*

grant his request led to a confusion between Abdulai and Zargo, chief of the Police C.I.D. Department [who] asked Counselor Abdulai to leave the Police Department; am I correct?" [Emphasis supplied). It was to this question prosecution objected and said objection was sustained by the court. Dealing with this exception as filed, require taking recourse to certified records before this Court.

Appellants were arrested, placed under custody, and being investigated by state security officers for a very serious crime of first degree felony. Certified records in this case are replete with accusations made by defense counsel of failing by state security investigators in their duty to protect appellants' basic constitutional right: the right of every suspect/accused to legal counsel at every and all stages in criminal inquiry. This is mandatory.

Article 21 (c) of the Liberian Constitution (1986) is clearly mandatory in its pronouncement:

"Every person suspected or accused of committing a crime shall immediately upon arrest be informed in detail of the charges, of the right to remain silent and of the fact that any statement made could be used against him in a court of law. Such person shall be entitled to counsel at every stage of the investigation and shall have the right not to be interrogated except in the presence of counsel. Any admission or other statements made by the accused in the absence of such counsel shall be deemed inadmissible in a court of law." [Emphasis ours].

In the face of those allegations of disregard of appellants' fundamental right, the question posed to the state witness, sought to elicit answers as to police conduct in an important criminal inquiry. Under the circumstance, Court is unable to agree with the judge in sustaining prosecution's objection to such relevant and important question.

We therefore will not let go the opportunity afforded this Court by this case to sound loudly on constitutional right of an accused to a lawyer at all times during criminal investigation. Not only state investigators shall facilitate access of the accused to an attorney, crime investigator and security investigators are under an equal and compelling obligation to inform the accused person that he has a constitutional right not to make any statement to police investigators.

As a matter of law, the right of the accused to legal counsel at every stage in a criminal *investigation* is a practice *universally accepted in comparable jurisdictions*. Modern application of this principle seems to be largely informed by opinions rendered by the United States Supreme Court, particularly, its holding in: *Miranda v. Arizona*, 384 U.

S. 436 (1966).

In summary, Ernesto Miranda was accused in 1963 of kidnapping and raping an 18-year old, mildly retarded woman. When state police investigators took him in for questioning, Miranda, the accused confessed to the crime. However, when he was investigated as a suspect, Miranda was not told that he did not have to say a word; nor was he informed of his right guaranteed under U.S. law to have a lawyer present during police investigation. When Miranda was formally charged and put on trial, motion filed *by* his defense counsel to suppress his confession was denied.

Reviewing the Miranda case three years thereafter in 1966, the United States Supreme Court granted the appellant's appeal. The U. S. Supreme Court held that statements made by the appellant to the police were inadmissible evidence as the accused had not been advised of his rights. Today, that holding enjoys virtual universal application.

Informed by sundry of land mark decisions, one of them clearly being the Miranda holding, safeguarding the right of the accused person to an attorney at every stage in a criminal investigation is a duty under the Liberian Constitution. It is not a matter of police discretion. Persons charged by the state to carry out such police and security functions are obligated to discharge these duties faithfully and honorably. Acts tending to manifest treatment of an accused as if already a convict are clear contravention of the fundamental rights Chapter III of the Liberian Constitution guarantees to all.

This Court says very loudly that ghastly as the crime a person is suspect of, or may be charged with, may be, no one is a convict unless as the outcome of a hearing judgment consistent with the principles of due process of law, as enshrined in our organic law. So compelling is the constitutional language of Chapter III that it does not merely provide for these rights. The Liberian Constitution also contemplates and therefore places present duty on our lawmakers to legislate penalties for any violator of Chapter III fundamental rights. These include the right to counsel.

Concurrently, the Liberian Constitution has specifically and therefore unconditionally *reserved* a civil suit to anyone injured by a state security personnel or public official in breach of any of these fundamental rights.

Prescribing an obligation on the National Legislature to specifically legislate in this regard while at the *same* reserving the right to an injured party to seek damages in a civil action, Article 21 (e), of the Liberian Constitution (1986) commands:

"The Legislature shall make it a criminal offense and provide for appropriate penalties against any police or security officer, prosecutor, administrator or any other public official acting in contravention of this provision; and any person so damaged by the conduct of any such public official shall have a civil remedy therefor, exclusive of any criminal penalties imposed." [Emphasis supplied].

Within this context, answers to similar question provided by prosecution's second witness, Augustine B. Doe of the Drugs Enforcement Agency was also unresponsive to say the least:

"Ques: Mr. Witness, you told this court and the jury that I Mr. Charles Abdullai, was present during the investigation conducted by Liberian Government Security Agencies of the suspects/now defendants in the dock. Is it not the fact that when I went to the police headquarters, confusion erupted between the Chief of CID, Stephen Zago and myself and you ordered me to leave and I left?"

Ans: Not to my knowledge.

This was rather an evasive answer to what is, in the opinion of this Court, a question on right of constitutional significance. Clearly, the witness under cross examination fully participated as a team member probing into this matter from beginning to end. It was therefore a reasonable line of questioning that the witness should convince the court with his insider's knowledge as to the conduct of their investigation. A responsive answer to the question posed to the witness and not such answer as "Not to my knowledge" could shed some light on how the investigators might have safeguarded the rights of the accused especially his right to an attorney. Unfortunately, the witness failed to do so.

Witness Stephen Dargbor Amadu Zargo, Assistant Director of Police for CID, by estimaton, prosecution's' SLCILC slat witness was also quizzed on the issue of legal representation:

"Que: Mr. Witness, you informed this honorable court and jury that after the arrest of the suspects now defendants, captain [of the Blue Atlantic] was taken to the Freeport the next day to collect their belongings (and) it was at that very time the testing of the drugs was carried out. Was the captain accompanied to the Freeport of Monrovia by his legal counsel?"

"Ans: The issue of legal [representation] comes about during investigation. When we as

investigators are conducting our investigations within fortyeight [hours] time frame, we encourage suspects to come along with their legal counsels. Like I said earlier, up to the time the captain and his crew members were taken back for their luggages at the Freeport, we held] not commenced interrogation with them; so I can[’t] say for certain [whether] their lawyers were there or not because [the place] was too packed."

"Que: Mr. Witness, you stated in your testimonies in chief that an investigation was carried out at the police headquarters of the suspects now defendants before court. Do you confirm and affirm that statements were taken from the defendants/suspects at the time?"

"Ans: Yes, however, I did not limit it to the police headquarters; I said national security actors/institutions/agencies."

"Que: Mr. Witness, during the investigation conducted by the national security actors, were the defendants/suspects at the time represented by counsel as provided for by the statute under chapter two (2) section 2.2 pgs. 308,309 and 310 1 LCLR and the Liberian Constitution article 21 sub. Section (c)

"Ans: Not only were they represented by lawyers but they were given the best treatment consistent with not only [the] Liberian Constitution but international instruments to which Liberia is a signatory as it relates to the treatment of suspects or detainees. (This was] to the extent (that] all of their properties and lugages were protected and they enjoyed the ambience and comfort of the Justice Ministry conference room. You were always there Counselor Charles Abdullai, 24 hours, to the extent that (you] were making calls on the phone both national and international so as to stall our investigation."

"Que: Mr. Witness, is it not a fact that during the investigation at the headquarters of the Liberia National Police where Counselor Charles Abdullai had gone to represent his clients and prior to the start of the investigation, an argument erupted and you, as Director of CID of the Liberia National Police, asked and directed Counselor Charles Abdullai [to] leave your office and the premises of the Liberia National Police, and the suspects were left unattended; that is, no counsel representations?"

"Ans: At no time did I ask Counselor Abdullai to leave my office because the investigation was not conducted in my office. Like / said earlier, the investigation was joint investigation where we took them [the suspects] to the Justice Ministry under air conditioner. Like I said earlier, the investigation was fat various] stages. And at one point, I was informed by other national security actors who were part of the investigation that Counselor Abdullai's behavior and action during investigation ran contrary to the judicial canon and morale conduct of lawyer practicing in Liberia. And moreover, the

investigation was becoming inclined to believe that he [Counselor Charles Abdullai] was hindering law enforcement. Against this background, and I being in charge as Assistant Director of Police for CID, I approached Counselor Abdullai at the time he was in the Deputy Chief Investigator's office and asked him: "Big Brother what is happening? He had the phone in his ear and another, making several calls from the prime suspect's phone. He did not answer the question and was trying to sabotage the 48 hours we had. It was against that background I told him to give the investigators the opportunity to continue their investigation."

This Court is therefore neither persuaded nor impressed by these answers. Nevertheless, answers provided by state witnesses appear to a large extent to give ample support to one conclusion: the rights of the accused guaranteed under the Liberian Constitution, could not have been fully respected. Therefore, and under these circumstances, the trial court, in disallowing the question referenced in the bill of exceptions, took away that *window* of opportunity which could have enabled the petit jury to know precisely what transpired during the criminal investigation. Unintended as it might have been, clearly the tribunal of justice sort of aided the prosecution in evading this important question from the very beginning of this case. The right to counsel being inviolable, count nine in the bill of exceptions is therefore sustained.

As both counts nineteen and twenty raise issues relating to the judge's charge, it is well to consider these two counts together.

Appellants have complained in the two counts that the judge charged the jury prejudicially to their interest. *in* support thereof, appellants have produced verbatim the relevant portion of said ruling. Judge Kollie, charging the jury, said:

"According to the summary of the evidence and testimonies of the aforesaid witnesses, the case before us started from the territorial waters of Liberia. The testimonies that the vessel now, Blue Atlantic was sailing on the waters and simultaneously a French Naval Vessel intercepted this vessel on the sea for cause; and the reason was that the Blue Atlantic was found with the drugs (narcotic drugs) in ninety barrels...[which] were on the vessel while sailing; however, the movement of the vessel was not satisfactory to the French Navy. So they were signaled to stop (with the French officers] believing that they have problem; so the French vessel went to make (sure]. When they were approached, they [French Naval officers] entered the Blue Atlantic and these cocaine drugs were found. This is how they were brought at our port and turned over to government for investigation. Completing the investigation, they were found accountable for the commission of the crime and hence they were charged." See sheet four (4), 62 Day's sitting, Thursday, October 23, 2008, August Term, A.D. 2008, Criminal Court "C".

Appellants have also drawn this Court's attention to another portion of Judge Kollie's charge:

"further, testimonies of the prosecution's witnesses state that besides the manner and form and movement of the Blue Atlantic on our territorial waters, the flag of Liberia, which the vessel was registered under, was not put up, which is the regulation for all ships sailing for such purpose. The flag was wrapped and taken down. The Captain of the vessel was a Nigerian, the eight crews (were) Ghanaians and the flag was not hoisted as fin keeping with] regulations. Further investigation shows that while the Blue Atlantic was claiming to be on sailing mission (and] their purpose was to supply water, fuel and gas to other ships on high sea, they hald] no document to show that (this] was their actual purpose in sailing. Equally, [and] so the testimonies show that the claim that this vessel, the Blue Atlantic hajd] arrangement with other fishing canoes in West Point and in New Kru Town where they always left the territorial sea port and used these fishing canoes under the pretext that they have a patient to carry to hospital. From their [security] investigation it was indicated that since they claimed to have [had] patient to attend medication, the name of the patient was never shown and the doctor to whom they carried the patient was not shown.

This gave a misfeeling to the investigators as to their reasons of being here." Also see sheets four (4) and five (5), 62 Day's sitting, Thursday, October 23, 2008, August Term, A.D. 2008, Criminal Court "C".

Defense further accused the trial judge of being biased, allegedly demonstrated by not only his blatant refusal to charge the jury in keeping with the legal citations filed by the defense team, but also, in stating in his charge, that:

"(a)...that in the testimony of the witnesses for the defense, they did not deny the allegations levied against them, that is, the cocaine was found in the Blue Atlantic by the French Naval vessel officers. For this error a motion for new trial will lie."

In dealing with this important complaint, this Court is guided by, and will apply the principle and standard enunciated both in *Fahnbulleh v Republic* 19 LLR 99, 134 (1969) and *Sackor v. Republic*. 21 LLR 394 (1973). It is equally appropriate to review the evidence adduced at the trial and the judge's charge in light of that evidence. This Court can then determine whether the judge's charge, although contested by the defense, is legally justified. Along this line, we need also to consider count twenty five, the last in the bill of exceptions. In said count twenty five, appellants have described as reversible error Judge Kollie's denial of their motion for new trial. Appellants relied on section 26.4 of 1 LCLR, contending that the verdict, being clearly against

the weight of the evidence, the judge failed in his duty to set aside said verdict and award a new trial.

We must here indicate that in the case, *Fahnbulleh v. Republic*, 19 LLR 99, 134 (1969), the judge charged the jury as follows: *"Finally, I charge you that the allegations laid in the indictment have been testified to by witnesses for the prosecution, as well as the essential elements of the crime of treason. The defense of the defendants as contained in his testimony has not been corroborated by the testimony of other witnesses to entitle him under the law quoted herein to an acquittal, but conviction."*

As one can see, defense complaints against the judge's charge in the *Fahnbulleh* case were akin to those before us. In the referenced case, those complaints were supported by the records and in said case, Mr. Justice Simpson, speaking for a unanimous Supreme Court, declared the said charge as "patently erroneous."

In fact the facts in *Sackor v. Republic*, 21 LLR 394 (1973), being even more analogous to the case at bar, is most instructive on jury charging.

Summarizing, the facts indicate that Appellant *Sackor* was convicted on murder charge. He appealed to the Supreme Court essentially complaining the conduct of the trial judge, subjecting the judge's charge to critical appellate examination.

This Court following said review, determined that although the trial records were void of any evidence to support his conduct, the judge in his charge to the jury elected to comment on Appellant *Sackor's* testimony prejudicially in the following manner:

"...in testifying in his own behalf on the stand, defendant [Sackor] told you that he did shoot decedent, because when he first saw the object, he recognized same to be "a meat" and because of 'the turning of his eyes,' he shot decedent" Ibid. 398.

Commenting on the judge's prejudicial charge, Mr. Chief Justice Pierre, speaking for this Court without dissent, said:

"Appellant's counsel contended, and we are in perfect agreement with him, that this part of the judge's charge was not justified by the record and was, therefore, prejudicial error, since it influenced the jury's verdict against defendant."

The Supreme therefore held:

"This Court will reverse the judgment in, and remand for a new trial, any case in which the trial judge's acts and rulings are shown to be patently prejudicial to a party's rights and interests." Ibid.399.

Further speaking for this Court on the standards of impartial trial as well as the rights constitutionally preserved for the accused, Mr. Chief Justice Pierre said:

"...There are three important rights guaranteed to every accused under this requirement of the Constitution: (1) a public trial; (2) an impartial trial; and (3) a trial by a jury of the vicinity.

"Upon each of these three constitutional provisions rests certain vital rights of the accused. This requirement forbids that a criminal trial be held in secret, lest the rights of the accused be trampled upon behind closed doors. It [further] commands that every criminal trial shall be impartial." p.399.

Also highlighting what the constitution contemplates as standard requirements for impartial trial in light of the prejudicial charge, Mr. Chief Justice Pierre declared as quoted in this opinion:

"...In order that it might be said that a trial has been impartial, there are certain requirements which must have been met. An impartial trial contemplates that the burden imposed upon the State to convict the accused of the crime charged by the testimony of the witnesses is never removed or diminished. And it makes no difference whether or not the accused confesses to the crime. It is all the more the prosecution's responsibility to only convict by evidence which is cogent and convincing when the accused enters a plea of "not guilty" as in this case."

Chief Justice Pierre proceeded to comment directly on the judge's charge in the following words:

"...With the foregoing in mind, how can it be said the trial was impartial, when the judge told the jury in his charge to it that the defendant had admitted the killing, when there is no evidence of such admission in the record of the trial? In other words, the judge seems to have manufactured a fact to the prejudice of the defendant, and then instructed the jury to consider it in its deliberation.

"Measuring such conduct by the judge by the yardstick of this provision of the Constitution, the defendant cannot be said to have had an impartial trial according to the spirit and intent of the organic law. The acts of officers of court should not prejudice the rights of parties' and when they do, the appellate court will reverse the adverse judgment."

We are in agreement with the defense that Judge Emmanuel M. Kollie's charge was

prejudicial as said charge also lacks any legal or factual foundation as his charge is substantially unsupported by the certified records before us. An example is this portion of Judge Kollie's charge: "... *When they (Blue Atlantic and crew] were approached, they (French Naval officers] entered the Blue Atlantic and these cocaine drugs were found. This is how they were brought at our port and turned over to government for investigation. Completing the investigation, they were found accountable for the commission of the crime and hence they were charged.*" [Emphasis ours]. See sheet four (4), 62 Day's sitting, Thursday, October 23, 2008, August Term, A.D. 2008, Criminal Court "C".

Not a single testimony is in the certified records offered by any of the many state witnesses saying that the drugs in question were found on board the vessel, Blue Atlantic. So from where did Judge Kollie get this information?

Another blatant prejudice to defense was this statement in the charge to the petit jury: ""(a) that that in the testimony of the witnesses for the defense, they did not deny the allegations levied against them, that is, the cocaine was found in the Blue Atlantic by the French Naval vessel officers..."

Clearly, the records show quite to the contrary. All the witnesses testifying on behalf of the appellants/criminal defendants denied any such finding of drugs on their ship, the Blue Atlantic. Their testimonies are later touched on in this opinion.

Also in *Munnah et al. v. Republic*, 35 LLR 40, 46 (1988), this Court commented on Article 20 (h) of the Liberian Constitution (1986), thereby setting the legal standard for the validity of a verdict. This Court therein pronounced:

"...a speedy trial, public and impartial trial by a jury means that the minds of the jury should not be influenced by the court and that whatever verdict it brings against or in favor of any party should be based upon the evidence adduced at the trial, the jury being the sole judges of facts in whose province it is to accord whatever credibility it deems fit to the evidence brought before in any given case..." [Our emphasis].

Counts nineteen and twenty as contained in the bill of exceptions in relation to demonstrated prejudice by the trial judge to the interest of the appellants are sustained.

As to the most substantive issue of the state making a prima facie case and proving the appellants guilty as charged, the records before us show that Inspector Sumo C. Kutu Akoi, Deputy Chief of Narcotic, Criminal Investigation Division of the Liberia

National Police, led an array of six witnesses who testified for the state.

Testifying as to his certain knowledge, Inspector Sumo told the court and the jury that they [meaning police officers] were called on January 31, 2008 to the Justice Ministry. He explained that officers including him, were briefed that a vessel along with its crew had been arrested by the French naval troops and instructed to proceed to the Freeport of Monrovia to take delivery of the suspects. At the Freeport, they boarded a Togolese vessel and went on high sea. There they met the French naval officers along with Blue Atlantic, the arrested vessel. In the words of the witness,

"the French officers told us [them that] this was the ship that was arrested by them so we should then proceed back to the port."

The witness further told the court that when they arrived at the Freeport,

"the nine Ghanaians were turned over to the joint team for investigation, at which time all the officers along with the suspects proceeded to the Liberia National Police headquarters and immediately began their investigation."

The witness also explained in open court that during police criminal investigation,

"we established that the ninety-two (92) barrels that were destroyed or burned were found in their [defendant's] possession [hence, defendants were] charged to court for violation of section 41.23 of the Revised Penal Code and Public Health Law of the Republic of Liberia. The investigation also established that the narcotic substance was in the net hanging on the vessel; that the moment they [suspects] saw the French vessel [approaching], the net was cut leaving the substance to flow over the sea [which] the French navy troops picked up and subsequently] turned over to the Liberian Government "

But during cross examination, the following questions were put to this witness:-

"Ques: Mr. Witness, were you on the high sea and saw the net attached to the vessel or that was [what you were] told by the French navy crew?"

"Ans: Whether or not I was on the scene, the French troops provided us a video clip that can show you what transpired on the high sea."

"Ques: Mr. Witness, will I be correct to say that the statement in your testimonies in chief in which you said the narcotic substance was in net hanging on the vessel was told to you by French troops since

you were not on the high sea when the vessel was arrested? Am I correct?

"Ans: I was not there but there was documentary evidence produced to us.

(See sheets 8 & 9, 36TH Day's Jury Sitting, Monday, September 22, 2008, August Term, A.D. 20(8).

"Ques: Mr. Witness, after interpreting French written report into English which / am sure you read, did the report that you read made mention of narcotic being found on board the Blue Atlantic on which defendants were on board?

"Ans: I said earlier the narcotic substances seized were picked up from the water. The documents that were presented to us were interpreted by a French national and [they] say that the last suspects on board including their items, money, cell phone, and passport were those items written in those documents.

"Ques: Mr. Witness, you said that you were not on the high sea at the time the Blue Atlantic ship was arrested. But then you stated that the French troops gave you a (video) clip. What was this clip all about?

"Ans: It was about (events) leading to the arrest of the vessel. (Emphasis supplied). Col. Augustine B. Toe from the Drugs Enforcement Agency was the second State witness. In his testimony in chief, witness Toe narrated that on February 2, 2008, the director of Drug Enforcement Agency instructed and he proceeded to the headquarters of the Liberia National Police to join an investigative team set up by the Minister of Justice and Attorney General, Philip Al. Banks III; the team was instructed to cover the arrest of the nine Ghanaian crew members of the Blue Atlantic Ship, brought in at the Freeport of Monrovia and turned over to the Liberian Government for investigation. He said that he met the nine Ghanaian crew members in the office of the Deputy Chief Investigator, Patrick Massallay. According to the witness, it was established during investigation that the nine Ghanaian crew members of Blue Atlantic vessel were arrested on the 29th of January, 2008 with ninety-two barrels of cocaine [for] tracking and patrolling in Liberia territorial water with their vessel. The witness said also that: "Based on the surrounding circumstances, the Investigative team [has] a probable cause to link the nine Ghanaian crew members to the crime and have them charged with unlawful possession, distribution of narcotic drugs [cocaine] as defined by section 43. 21 of Public Health Law of the Republic of Liberia...."

On re-direct, and over the objection of defense for not being the best evidence, prosecution asked and the witness answered the following question:

"Ques: Mr. Witness, please say for the benefit of this court and jury during your investigation, what were these barrels found in?"

"Ans: The barrels were found in fishing net around the ship floating and the rope leaving from the ship into the water with the ninety-two barrels surrounding it; and we had to substantiate that."

During cross-examination also, the witness was asked:

"Que: Mr. Witness, please [say] if you know, or if you were informed by officers or crew members of the French navy vessel as to the distance from Liberian shore in the high sea where the Blue Atlantic was intercepted by the French navy vessel and taken in Liberia territorial water?"

"Ans: The Blue Atlantic was sailing the Liberian flag and was arrested in territorial waters of Liberia [from a distance of] about 540 nautical miles."

A juror posed the following question the witness:-

"Que: Mr. Witness, you said in your testimonies that the nine Ghanaians were linked with crime and charged of distribution of drugs. For the benefit of the court and jury, I want to know by what means were they linked and charged with such crime?"

"Ans: Mr. Juror, I recite and say [that] during our investigation [we found] [that] the nine Ghanaians were arrested within the territorial waters of Liberia with their vessel surrounded with the nine-two barrels placed in nets with their ship; and besides, there was no other ship or canoe that was found in that territorial water. Based on that, the investigators had probable cause to have them linked to the crime."

Witness Stephen Dargbor Amadu. Zago, Assistant Director of Police for CID (Criminal Investigation Division) was the star witness testifying for the state. He narrated how the attention of national security actors, was drawn to the vessel about 540 nautical distances from Liberia's international waters, that they were briefed by one Ashford Peal about what a shipping lines had shared with them; that is, intelligence to the effect that the vessel in question had on board dangerous narcotic/cocaine. Witness Zago is quoted as saying: ".....the Minister of Justice constituted a small team headed by the then Minister of National Security, Hon. Anthony Kromah and himself Assistant Director Zago. Management of the National Port Authority provided the team a tug boat and they were escorted to the big French vessel. In the words of witness Zargo:

"We met two groups of people; the French people and our brothers from Ghana. We did an initial inquiry since we could [not] do in dept on the sea. The head of delegation Anthony Kromah appealed that we go on land at the Freeport.

At the Freeport, we had problem with language because the French [were speaking French] and we were speaking English. The French ambassador had to come in; even the United Nation's Police Commissioner, Mohammed Al Hassan came in and they were able to solve the language barrier. It was revealed by the French captain of the Tonnerres that for the past week [they] have been on expedition on our international waters, Liberia, Guinea, Ivory Coast and Senegal. Their attention was drawn to the suspicious way in which this particular vessel conducted herself on international waters; that is, the way they were moving and acting on the waters [tended to show] something was wrong somewhere; they told us that they have devise on the military Touneres that would track any movement on sea at hundred nautical distance [away]. It was against this background the French captain threw a signal to the vessel captain to stop, to reduce their speed " Because the French have gigantic vessels, Blue Atlantic was constrained to stop. While the French were approaching them, they [crew of Blue Atlantic] knowing their own conduct] had some nets and wire within Blue Atlantic vessel. They started to throw their barrels containing the cocaine on the sea.

They threw the barrels into the sea. Some of them floated on the sea, few of them went under the sea However, there was a special net that the French discovered on the vessel and this same net was discovered on the barrels [in which] the ninety-two barrels were thrown out. Because it was late hour, the French had wanted to keep the cocaine that was discovered and we [keep] the documents.

We told them we wanted all together with the documents, nine Ghanaians on the vessels and the cocaine.

The witness at this stage told the court and jury:

"And what is puzzling is, [the vessel] is owned by a Nigerian, operated by Ghanaians, and registered in Liberia and [is] supposed to be carrying the Liberian flag under the doctrine of flag of convenience..."

Witness Zargo was intensely cross examined as detailed herein below:

"Que: Mr. Witness, we take it that all you have stated here from your testimonies in chief is hearsay evidence since from your answer just given above you stated that same was revealed to you. Do you confirm and affirm same?"

"Ans: Yesterday, I endeavored by trying my best to transport the crime scene to the court. It appears that the counselor did not grasp what I said yesterday. There were certain parts of the investigation/continuation of the crime/conspiracy that were revealed to us because we were not [at] five hundred forty nautical distance on the sea, because I am not a seaman.

Before the witness rested, a jury posed this question to him:-

"Que: Mr. Witness, you said the Government of Liberia linked [the crime] to the ship Blue Atlantic [based on what you were told] by the French navy. For our benefit, please briefly say what they [French navy] said transpired on the high seas that actually created such suspicion that linked the defendants to the crime."

"Ans: Under Maritime arrangement when a vessel is leaving a port to another port, they signal [the port they are headed], that we are coming and find place for us to dock. The kind of business the ship is doing, the kind of flag it has and where they [are] registered to do business, is [information] also communicated to the Port they are going to. (Also) and at all times, the flag is hosted [But in the instance of Blue Atlantic], the way and manner in which the ship was going from point to another [as if no port of call], the French said something [must have] happened; maybe we need to go help those people; it looks like they have problem. When the French [naval vessel] was coming closer, they [Blue Atlantic] started to speed or run; and [there is a] theory in criminal justice system which says flight from the scene suggests guilt. [For example] If I am walking with my daughter, [then] you saw the police car passing, you leave the girl and [started to] run away. The French called the Captain and he did not answer. The French said we are the French navy the Touneres. We want to know who you are; slow down small and tell us your name, the Port you come from The [French] Captain said stop, we have a concern and we think you have contraband/cocaine; so [the French captain] pulled over and [Blue Atlantic] became sandwiched. So [Blue Atlantic was forced] to stop. When they sandwiched [the Blue Atlantic], the French got down and [boarded] the [Blue Atlantic]. Only the Captain was sitting and they discovered all of those things."

A followed up question was posed by the jury:

"Que: Mr. Witness, during your investigation at the Ministry of Justice, please say briefly again what explanation the defendants gave that actually proved them to be linked to the aforesaid charges as indicated In the indictment.

"Ans: Thank you very much for that question. Under Liberian laws and [those] of many other countries land] by practice, the legal procedure [in prosecution] is [that] the burden of proof lies with the person who accuses. When [he was called] for investigation, all [the captain of Blue Atlantic] told us was that the vessel was supplying fuel, water and gas. But he could not show documents to

support the [claim] that he was supplying fuel ; water, and gas to Liberia, Guinea and Ivory Coast. But we only [saw] cocaine. Moreover, based on the efforts of our international friends, the Americans, Germans, French, we were able to arrive [and charge] them with illegal possession and distribution of narcotic drugs and cocaine."

Prosecution's fourth witness was Chief of operations, Drug Enforcement Agency (DEA), Lt. Col. J. Robertson Wolo who testified in substance as follows:-

"...Upon arrival at the Freeport of Monrovia, we were then briefed by our joint security counterpart at the Freeport that the arrested vessel is still within our territorial waters. A team of joint security was put together of which I was a part. We boarded a Togolese Oil Merian vessel used by the Freeport of Monrovia as tug boat with (mark) MXIMO 7208625 (and]. Upon our arrival at the crime scene, / saw a very huge naval vessel in a distance with the inscription written on it Touneres and with a number L9014. We came very closer to another vessel with a name written on it, Blue Atlantic. Closed to the Blue Atlantic was a small boat believed to be the French naval boat or speed boat. We were then introduced and the French Naval Captain whose name, if I am not forgotten, is Adoward, then told us, "this is the vessel that was caught in your territorial water with narcotic substance". The French naval later escorted (us) to the Freeport of Monrovia with the Blue Atlantic. Upon our arrival at the Freeport, there was an understanding between the governments of Liberia and France. It states, and I quote: "... That all nine Ghanaians on the Blue Atlantic will be turned over to the Government of Liberia; but with the ninety-two barrels, ninety of which contained narcotic substance, (and] two containing water content, will be turned over) to the Government of Liberia the next day. All nine Ghanaians were subsequently turned over to the Government of Liberia and were detained at the Police withholding cell. "The next morning Friday, February 1, 2008, we surfaced at the Freeport of Monrovia as Der our understanding with the French navy and their ambassador. We came along with the captain of the Blue Atlantic, Captain Osei. Upon our arrival at the Freeport of Monrovia where we waited for a while within an hour time, Freeport of Monrovia was full with officials of the government of Liberia. To name few, the Minister of Justice, Counselor Philip A.Z. Banks, Ill, UNMIL, (UNPOU Commissioner of police I. Isam, Deputy Police Director for Police, Gabriel Y. Tarpeh, the Drug Enforcement Agency, James B. Jaddah, accompanied by his two deputies including the Bureau of Immigration for Operation C. Momo Johnson, NSA boss, the Environmental Protection agency bosses, including journalists from various media centers, were all present. At 11:45 my own official time, I saw on the Atlantic Ocean a boat speeding and sailing into the Freeport of Monrovia. There it was the French Speed boat with all ninety-two barrels sealed up in a net. The ninety-two barrels were offloaded from the navy speed boat on the ground of the Freeport of Monrovia and subsequently turned over to the Government of Liberia by the French ambassador before the watchful eyes of all parties mentioned in this testimony. Mr. Osei, the Captain of the Blue Atlantic, was then called forward and I was called forward to conduct a scientific test on the narcotic substance before the

presence of Mr. Osei Captain of the Blue Atlantic. One barrel of the narcotic substance was ordered opened by the Justice Minister and in the barrel there was a flat substance in the box of this American Express appointment book with the inscription and marked KANGAROO. I then brought forward the United Nations office on drugs and crime (UNODC) scientific drug testing kit and introduced it to Mr. Osei by presenting a Question to him in this way: "have you ever seen such a kit like this? He said "no" and I said this is the United Nations office on drugs and crimes scientific drugs testing kit; and this kit is used by drugs agent to identify the kind of narcotic in an arrest I then took out the test label and show it to Mr. Osei and said: "you see, this testing label contains a list of narcotic test and, say you are testing for marijuana, you add one drop reagent E1 and shake for second and add another reagent E2 one drop and shake for ten seconds, if the color gray appears, it indicates that indeed the substance is marijuana. I proceeded in testing the narcotic substance found in the barrel. I opened the substance and saw white powder. I mean crystalline. I then took a little bit of that substance with the size of a match stick butt and placed it in spot plate found in the test kit and added one drop of reagent E1 and I then added another one drop of reagent E2 and shake for ten seconds. Ladies and gentlemen of the jury and all listening audience, the color blue appears which indicates that the substance found in the hand of Captain Osei was indeed a dangerous narcotic substance to be known as cocaine, and when used, will cause dangerous crime/heinous crimes After my testing, a search warrant was also served on Captain Osei of the Blue Atlantic. I was also part of that search warrant and Mr. Osei accompanied us into his vessel Blue Atlantic and every compartment at the back of his vessel, Blue Atlantic was searched. We saw the identical net used by Mr. Osei, Captain of the Blue Atlantic to tie the ninety-two barrels, ninety of which contained the dangerous substance known as cocaine and two barrels which contained water substance. And the net was also submitted to the Ministry of Justice. There was a memory stick given by the French navy Captain and on that memory stick you will see the Blue Atlantic in which Captain Osei was the honorable Captain of the Blue Atlantic. You will see the Blue Atlantic in the middle of the narcotic drugs moving on the side of the vessel tied in the net which indicates that Mr. Osei was the very person that threw the cocaine into the Atlantic Ocean upon seeing the French navy vessel "

The following question was posed:

"Que: Mr. Witness, you earlier told this court and jury that based upon the search warrant the Blue Atlantic was searched. As a drug investigator, did you or members of the Liberian Security Apparatus present, ever discover particles of cocaine on the Blue Atlantic?"

"Ans: Before proceeding in (answering] that question, I will first of all appeal to this honorable court to grant me the permission to demonstrate for (purpose of] illustration before the distinguished jury and honorable judge. We as law enforcement officers look at the issue of probable cause like us,

put it this way, so you will see the clear picture and reality of this matter to enable you (to) diagnose this issue, if you were in my position as a law enforcement officer. You were on a normal patrol and you came across a house situated in an open field with no other house around that particular house, only that [one] house. You walked closer to that house and you identify five double bags in a kinjar with a blue rope in the yard of that particular green building. You saw a forty years old man sitting in that house. You walked to him and said hello Sir, I saw before your house a bag of marijuana and the officer said you are charged with illegal possession of marijuana content. The forty years old man (replied), no; it is not mine, [the officer says] but the marijuana is within your yard and the officer served him a search warrant and identified the same rope they used to tie the five bags of marijuana. Is that not the probable cause to have the man arrested and charged with illegal possession of narcotic substance? In the case of the Blue Atlantic, the French naval officers arrested the Blue Atlantic with the narcotic substance placed around the vessel. When we searched the vessel, we identified the same net that they used to tie the same narcotic substance. Is there not a probable cause to charge them with possession of narcotic substance? Yes, indeed the Blue Atlantic was in possession of the narcotic substance known as cocaine.

Two other witnesses testified for the State recounting substantially what was narrated by previous witnesses as already detailed herein. Thereafter, prosecution rested with production of evidence in toto.

In support of their plea of not guilty, three witnesses testified on behalf of the defense. Taking the stand on October 14, 2008, the first defense witness was Captain Akraasi Oteng Osei of Blue Atlantic. In his testimony in chief, the witness told the court that he was sleeping when his Chief Officer on duty called him and said the French naval vessel wanted their vessel- Blue Atlantic- to stop.

The captain said that he realized the French Captain was calling their vessel on the VAS, and wanted to know the name of the vessel, port of registry and their destination. The witness said he told the French Naval their name, as Blue Atlantic registered in Liberia. At that stage, the French Captain said he went to board the ship Blue Atlantic. The French explained, according to the witness, that under a UN Act, ship of war can come cross any vessel in the

International waters, board and check said ship's documents and the cargoes it is carrying. When the French boarded the Blue Atlantic, not only were they fully armed according to the witness; the French put all the crew of Blue Atlantic under gun point. In his own words, the witness said:

"... some of the French crew went (into) the engine roomand took over the ship completely; they

asked me to take them around the ship. They took the ship papers and sent [them] back to their vessel. All our passports and every piece of paper that they laid hands on (were taken away). Then later, they brought in more people and subjected the ship to a thorough search from the breach to the engine room. I asked them what they [were] looking for and they said arms. They also said that they found some things on the water which they suspected we threw over board. I told them that it was not like that, because it was over sea and we didn't see [them]. And when I came to the breach, I did not see anything floating around the ship or within the area... but they (the French officers) subjected the ship to a thorough search... while the crews were parked at the mess room. When you wanted to go to the toilet, they will follow you with gun. Anything you wanted to do, they will follow you until 31st of January [when] we arrived here in Monrovia and the vessel was brought here because

The witness also told the court that on the 31st of January, when they arrived at the Freeport of Monrovia, the Minister of National Security, ECOWAS Commander, and some personnel came to see the French Executive Officer in charge of the French Naval. At that stage, it became clear that the criminal defendants would be handed over to the Liberian Government. The Minister of National Security asked the French Chief Executive about the exhibit the French earlier talked about. When the French told the Minister that the items were on board their mother vessel, the Minister of National Security told him that without the exhibit, he couldn't take us. The French Ambassador reportedly came in and an agreement was reached that the Liberian Government security would take us in and the French will bring the exhibits on the following day.

Crew members of Blue Atlantic were then taken to Central Police Station where we were locked up. Around 12:0'clock the following day, first of February, the criminal suspects were taken to Freeport of Monrovia.

On their representation by counsel, this is what the defense witness said:

"When we arrived here [in Monrovia], we did not know anybody so our friends in Ghana contacted Mathias Omega. On Monday, on the fourth (of February), another Master came who introduced himself as Charles Abdullai [who] said a colleague lawyer had asked him to come and see us. When he came, he took me in a room where about nine people were seated making investigation. Counselor Abdullai asked them to give him some time for us; but they refused and arguments ensued. Director of CID, Zargo asked him to leave and he left. Going into the interrogations, our rights were trampled upon; they never gave us our rights. Col Zargo said a Liberian was beaten in Ghana and had a broken rib; so he was going to give me the same treatment if I don't cooperate. I was forced to make a statement under protest. During the investigation, one officer came in and told me that air. Abdullai has taken the police to court, [to] produce us in court; that [this] did not augur well to

them. They made a lot of abrogations about Cllr. Abdullai. On the 1st of February, I was taken to the Ministry of Justice round about 4 o'clock. When they took me there, I saw three Interpol men there. The CID Director, Stephen Zargo, Clarence and one other police officer [whose name I don't know] asked me to make a statement; I told them that without my lawyer, I am not going to utter a word. This created Stephen Zargo, the CID boss to take me from the room and make me to stand in another room with two guys from 5:0'clock to 9:0'clock p.m. I was taken to the bus with some security personnel and sent to Congo Town Police Station where I slept in the cell with handcuff on my hands.

Fortunately, [on] the following morning about 9:0'clock, I was taken to Temple of Justice where I met my crew members. Then we were taken to another room where the lawyers made argument and [we] were taken down to one room where we were served with a single writ and taken to South Beach. And coming back, when they brought [us] to Temple of Justice. That was the second time I saw Cllr. Charles Abdullai and [for the] first [time] the other two lawyers. When we were taken to South Beach, in two days time, our lawyers came with a bond and we were free.

On the issue of finding and seizure of the cocaine, the defense witness denied same in the following words:

"...Most of prosecution's witnesses said the drums were surrounding our ship; [that] no navigator will see an object on the sea and run their ship [to that direction]; and two, the seas are not standing, but they move and there is current under the sea that moves. At the same time, if you tie drums around the ship as they say we put [those] drums in the net around the ship, the ship has propellers which propel the ship to move; but the mechanism works like fan; and when you put something behind [fan], it stands. But when you put it in front, it will move; and therefore, when you put the net behind propeller, it will suck it. We call it folded propellers; and it folds, it cannot move; so it is impossible to put a net around the ship.

Howbeit, by a final ruling entered October 29, 2008, Judge Emmanuel L Kollie convicted and sentenced the appellants to the maximum jail term of ten year, allowed under Liberian law for such crime. The judge also fined appellants in the amount of one hundred thousand United States dollars, and directed that said fine be paid before the vessel, Blue Atlantic, is removed from the Freeport of Monrovia.

Summarizing the contentions and arguments of the parties, and in view of the facts and circumstances of this case as well as the evidence adduced by prosecution, the one issue dispositive of this case is: *whether the state made a prima facie case to warrant upholding the trial court's judgment of conviction.*

In this regard, it is appellants' major contention that His Honor, Emmanuel M. Kollie committed a reversible error when he denied appellants/defendants' motion for new trial in light of the evidence. According to the appellants, the verdict having been clearly against the weight of the evidence adduced during the trial, denial by the judge of appellants' motion for new trial violated Civil Procedure Law, 1 L.C.L. Rev., title I, section 26.4. Appellants have further contended that the sum total of testimonies by state witnesses was hearsay; that hearsay evidence is rejected in this jurisdiction thereby rendering any verdict or judgment entered thereon qualified and fit for reversal.

But prosecution insists that the guilty verdict against appellants was certainly based on cogent evidence adduced during the trial, and not hearsay; that the state proved its case against appellants beyond reasonable doubts by corroborative oral and documentary species of evidence.

This Court has most carefully reviewed the voluminous records certified to us in these proceedings but found ourselves not persuaded by prosecution's material argument that the state made a prima facie case.

From the early opinions of this Court in the 1860's to date, it has been constantly held in this jurisdiction that only upon proof admitted in evidence a court of law will dwell. *Brown v. Brown*, 1 LLR 2 (1861).

In accordance with a long line of opinions of this Court which are consistent with the above principle, any proceedings concluded where "..... the verdict is not founded upon legal evidence, it cannot be upheld; and if the verdict is not supported by evidence, the judgment is therefore also not founded on a legal verdict; and if the judgment is founded on illegal verdict, the entire proceedings then must naturally tumble...." *Thompson v. Republic*, 14 LLR 133, 144 (1960), *Teh and Wahhab v. Republic* 234,240 (1949), *Collins v. Republic*, 21 LLR 366, 378-379 (1972), *Faber v. Republic*, 3LLR 69, 72(1929).

In order to warrant an appellate court to sustain conviction, the best evidence rule strictly applies in this jurisdiction. And according to this Court in *Blamo v. Republic*, 17 LLR 232, 235 (1966): "The best evidence of a fact is the testimony of a person who knows."

But as clearly indicated in the certified records, all the six witnesses testifying for the state, sought to impress upon the trial court and jury what each witness was allegedly

told by those the witnesses claimed arrested the appellants in the alleged commission of the crime as charged. According to the evidence adduced at the trial, these arresting officers were crew of a French Naval vessel, called Touneres, who were reportedly patrolling Liberian territorial waters at the time of the arrest. In summary, the state witnesses related to the court what they claimed the French Naval officers told them, as in their own words:

"The French officers told us this was the ship arrested by them; we established that the ninety two (92) barrels that were destroyed or burned were found in their (suspects') possession...; I was not there but there was documentary evidence produced to us; I said earlier, the narcotic substance was seized by the French Naval officers; it was revealed by the French Captain..."

Under these circumstances, this Court cannot accept prosecution's argument that the testimonies presented by the state conclusively established a prima facie case. All the prosecution's witnesses testifying during the trial narrated what they believed they heard from the French Naval officers. Clearly, by even the prosecution's accounts, the persons unarguably with direct or insiders' knowledge were and could not be the witnesses presented by the state. The total testimonies of the state witnesses, being secondhand relation of what allegedly transpired, fall in the category of exclusionary evidence in this jurisdiction. Exclusion of such evidence is a respected standard of general application in many if not all common law jurisdictions.

In *Yancy v. Republic* 4 LLR 268, 279 (1935), Mr. Justice Russell speaking in the name of a unanimous Court on exclusionary principle of evidence, said:

"..... No evidence is to be admitted, in a criminal issue, which does not bear on the question whether the defendant did a particular act specifically charged against him.

And no evidence is to be received which is secondhand rendering of testimony not produced, though producible, by which a higher degree of certainty could be secured."

Commenting earlier in the Yancy case, referenced above, on juridical evidence as the only basis for criminal conviction, this Court said:

"For the purposes of public justice, it is essential to maintain with rigor the distinction between juridical (veritas juridical, forensic) and moral truth. I may have, for instance, as a juror, a moral conviction of the guilt of a defendant on trial. He may have confessed his guilt to me; or may have learned, from persons not called as witnesses, facts inconsistent with his innocence. This, however, is not to be permitted to have the slightest effect on my juridical reasoning; for, to punish even a guilty

man without juridical certainty of his guilt would be recognizing a principal fatal to public justice.

The defendant is a bad man, it may be argued, and it is better for the community that he should be put in prison; or he belongs to a political or religious party which it is important to suppress; or we have private information convincing us of his guilt; or he has acted so fraudulently or oppressively in cases not in proof that it may be inferred that he acted fraudulently or oppressively in those under investigation; and hence he should be convicted. If such considerations are to be received to affect the judgment of court or jury, there would be no case tried in which some prejudice, popular or personal, on the part of the adjudicating tribunal, would not be made the basis of a verdict. If so, not only would innocent men be convicted in consequence of prejudices extra judicially invoked against them, but guilty men would escape in consequence of prejudices extra judicially invoked in their favor.

*The only safe course, therefore, is to found the verdict exclusively on evidence duly received, and on inferences logically to be drawn from such evidence. The issue in this way is made dependent upon the best proof that can be obtained, and the defendant is able to meet the evidence adduced against him, to overcome it, if he can, by counter testimony, and to have notice of, and refute if he can, the inferences drawn from the case of the prosecution. The distinction before us is illustrated in criminal prosecutions by the exclusion from the jury box of all persons who have formed such an opinion on the case as will interfere with their coming to an unbiased conclusion on the proofs admitted on trial, and by the direction of the court to the jurors to be influenced by no considerations not sustained by such proofs " *ibid.* 277-278.*

In this jurisdiction, the best evidence upon which an accused is convicted is that which does not presuppose that better evidence exists. It is that cogent and conclusive evidence which excludes every rational doubt of the guilt of the accused.

This Court was also influenced by the prosecution's acceptance or concession that the French officers, as insiders, were truly positioned to provide the best evidence, the insider's account, from the very inception of these proceedings. The records before us indicate that when the state's fourth witness rested on October 3, 2008, prosecution made the following application to the court:-

"At this stage, prosecution begs leave of court to inform Your Honor that predicated upon the commencement of these proceedings on September 17, 2008, prosecution filed with the Clerk of this honorable court a list of its additional witnesses in line with the statute and served a copy of said list of additional witnesses on the defense counsels on the 18th of September, A.D. 2008. The list aforesaid includes the Captain of French Navel Vessel (Touneres), which chased the Blue Atlantic and arrested its crew members who are defendants in these proceedings along with narcotic drugs (cocaine) worth Five Hundred Million United States Dollars. Prosecution says and submits that the

Captain of the aforesaid French Navy vessel who happens to be one of the key prosecution's witnesses, and in fact an insider witness for that matter, whose testimony is very germane and relevant to those proceedings is without the bailiwick of the Republic of Liberia. Against this background the French Embassy accredited near this capital has been officially communicated to by the Honorable Minister of Justice and Attorney General of the Republic of Liberia, Counselor Philip A.Z. Banks, III, to get in touch with the French vessel so that the Captain of said vessel can appear before this Honorable Court to give his testimony.

"Prosecution has been reliably informed that the Captain of said vessel will in his testimony live by way of modern technology which facilities has been provided by authorities of the United Nations Mission in Liberia in the presence of the jury, the Judge, Defense and Prosecuting Attorneys in these proceedings and that upon giving his testimony, he will be directed and crossed respectively by those prosecuting attorneys, defense lawyers, the jurors and the judge.

"Prosecution further says and submits that all has been set by the French Embassy as well as the United States Mission in Liberia to have the testimony of the aforesaid Captain taken on next week Monday, same being the 6th day of October, A.D. 2008, at the precise hour of 10: O'clock a.m. at the UNMIL/Old German Embassy compound, located at Congo town.

Prosecution says further and prays this honorable court and Your Honor to have this application granted so as to enable the State, which in all criminal proceedings has only one way; to enable prosecution to prove its case beyond all reasonable doubts.

"Wherefore, in view of the foregoing facts and circumstances, prosecution begs leave of court and prays Your Honor to have this application that has been made in good faith so as to enable all of us who are parties to these proceedings transparent justice, since indeed the testimony of the Captain is relevant, he being the insider witness so that the jurors, your honor, the defense counsel and prosecuting attorneys to have a clearer picture as to how the Blue Atlantic was chased and apprehended and its nine crew members and the narcotic substance (cocaine) contained therein was seized and retrieved. And respectfully submits." [Emphasis supplied].

The trial court granted, and we are in full agreement, prosecution's application against the defense resistance that, if granted, said application would amount to change of venue. By a ruling made on October 6, 2008, the said:-

"...The argument [being] propounded by the defense [is] that if the court, the jury, prosecution and defense are all allowed to travel out of the bailiwick of this court to gain production of evidence that [this will amount to change of venue. Change of venue means to take the court out of the circuit to another circuit for trial. This is not the case. Accordingly, the request is intended only to take the

court and jury and all concerned parties elsewhere but within the same circuit to acquire the necessary evidence relied upon by prosecution. The court does not see this to be change of venue. And by granting request of prosecution does not in any way create biasness or injustice against the defense; rather it only helps to promote transparent justice and fair play.

"Wherefore and in view of the foregoing, the request of the prosecution is granted and the jury along with the court will proceed to the place and see.... the production of evidence requested by prosecution..."

As herein indicated, the trial court granted prosecution's application for its insider witness, the arresting French Naval Captain, to testify to provide an opportunity for said witness' testimony to be properly admitted into evidence. This could be done while concurrently preserving appellants' right to confront and cross examine the witness, as provided in the Liberian Constitution.

It therefore strikes this Court that prosecution rested with production of evidence, documentary as well as testimonial, on October 9, 2008, neglecting and failing to have the French Captain, the reported arresting officer, providing any such testimony in favor of the state.

To the mind of this Court, testimony from the French Naval crew was extremely relevant, these crew members being the insider witnesses as they were said to be by the prosecution. From their testimonies, the French officers, the jurors and the court as well as the defense counsel and certainly the prosecution would have had a legal foundation for a conclusive opinion. The jurors and the court would have been told, by those with certain knowledge, how the Blue Atlantic was "chased and arrested along with its nine crew members. The arresting French officers' testimonies would have also shed light on the circumstances attending the throwing over board by crew of Blue Atlantic of the narcotic substances (cocaine) which were said to be contained in the barrels to avoid being caught with the substance. With the French testimonies, the court would have been better placed to consider the entire circumstances surrounding the retrieval and seizure of the narcotic substance on high seas.

Prosecution failed to produce these material witnesses. Prosecution also woefully neglected to provide cogent reasons, legal or factual, why these insider witnesses did not testify. To the mind of this Court of last resort, to confirm a conviction under this circumstance would clearly deprive these criminal defendants of a fundamental constitutional right.

Article 21 (h) of the Liberian Constitution (1986) is mandatory in its pronouncement when it says in part:

"...In all criminal cases, the accused shall have the right to confront witnesses against him and to have compulsory process for obtaining witnesses in his favor..." [Our emphasis]

Commenting on a similar provision in the Liberian Constitution of 1847 amended through 1972, this Court stated:-

Under these terms of the Constitution, (these criminal defendants), have a right to be confronted with the witnesses who will testify for the State against them. They are also entitled to compulsory process to be issued by the State, when and if necessary to bring witnesses to testify on their behalf. And most important of all, the Constitution guarantees them a speedy, public and impartial trial by a jury of the vicinity. All of these safeguards are guaranteed by the basic law to insure protection of the rights and privileges of citizens: and when any of the several of these enumerated rights is infringed, the victim of such infringement suffers as grievous a wrong as the founders of this Nation suffered in the land wherein they were denied these basic human rights." Kaifa v. Republic 14 LLR 17, 21-22 [Emphasis supplied].

Also during argument of this case before this Court, the bench was curious to know why the French Captain did not testify. Answers provided by prosecution were unsatisfactory. Notwithstanding the lack of this vital element in prosecution's evidence, three witnesses testified for the appellants/criminal defendants denying the material allegations contained in the indictment.

Can one say taking all the facts, circumstances and evidence together that the state *made* a prima facie case? This is the pivotal question before us.

There is a rule hoary with time that has guided criminal jurisprudence in the Republic of Liberia. *This* rule directs that there be no conviction where there is reasonable doubt of guilt. Payne v. Republic 2 LLR 539, 541.

This Court speaking through Mr. Justice Wardsworth in Dennis et al. v. Republic 20 LLR 47, 65, (1970), said:-

"....A juridical conviction connotes (1) that the offense must be correctly charged in a valid indictment; (2) that only legal evidence should be placed before the jury which is asked to convict; and (3) that the evidence thus sifted should satisfactorily establish the guilt of the accused beyond a reasonable doubt."

In *Collins v. Republic* 22 LLR 365, 371 (1974), Mr. Justice Lewis (sitting ad hoc) spoke for this Court on what constitutes proof beyond reasonable doubts. He said:-

"...the evidence must establish the truth of the facts to reasonable and moral certainty-a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This is proof beyond reasonable doubt..."

Prosecution has strenuously put forward one other point which it views as a strong argument. It has argued repeatedly and alluded to the apparent inability or failure of appellants/criminal defendants to provide documents to "substantiate" their claims of being in the business of providing fuel and water to ships in distress on the high seas. This argument is want of any legal foundation. This Court has said in *Kamara v. Republic* 23 LLR 331, 332 (1974), on such question in an opinion delivered by Mr. Chief Justice Pierre, that:-

In a criminal case, the burden is on the prosecution to prove beyond a reasonable doubt the essential elements of the offense with which the accused is charged; and if this proof fails to establish any of the essential elements necessary to constitute a crime, the defendant is entitled to an acquittal.

The burden of proof is never on the accused to establish the crime charged. Although the accused is required to assume the burden of proving the affirmative defense upon which he relies, the burden of establishing his guilt rests on the prosecution from the beginning to the end of the trial, even in a case which the defendant offers an affirmative defense." [Emphasis provided]

In *Teh and Wahhab V. Republic* 10 LLR 234, 236 (1949), this Court held:

*"It is settled in criminal law that every person is presumed to be innocent until the contrary is proven and that the burden of this proof rests with the prosecution throughout the trial except where the accused seeks to excuse or justify; which is not present in this case. This proof must also be beyond a rational doubt which would exclude any hypothesis of the innocence of the accused. *Dunn v. Republic*, 1 L.R.R. 401 (1903).*

Mr. Justice Shannon stated:

"...the rule is that, the law does not cast on accused the burden of satisfying the jury of his innocence. The burden of proof does not shift on the establishing of a prima facie case by the State, but continues on the state throughout the trial and until the verdict is rendered and the defendant's guilt is established beyond a reasonable doubt..."

We have also noted a repeated observation made by prosecution which influenced the judge's charge and invariably the jury's erroneous conclusion. Prosecution repeatedly said that the vessel Blue Atlantic was owned by a Nigerian, operated by Ghanaians, and registered in Liberia, and that this was a puzzling phenomenon. Because of this, prosecution appeared to believe that such conduct makes the ship and its crew qualified candidates for criminal suspicion.

We cannot subscribe to such view. It is common knowledge in the maritime industry that tens of German ships, registered under Liberian flag are possibly piloted by other European nationals. The economics makes such an undertaking is a normal maritime practice around the world. Unless there is evidence of a criminal conduct, the mere fact that a vessel is operated under multiple interests or operated by various nationalities, is, *ipso facto*, no legal ground for imputation of criminal conduct to the operations of a vessel.

In support of our conclusion in these proceedings, it is well to comment on one of the instruments admitted into evidence in favor of prosecution, marked in bulk as p/3, dated February 19, 2008, titled: "*Status report into the arrest of nine (9) Ghanaian nationals for their involvement into illegal possession of, distribution and trafficking of narcotic drug (cocaine)*", and submitted by: "The Special Investigation Team".

Of the recommendations contained in the said instruments are the following:-

"That the Liberian Government request a technical report on the technical equipment of the Blue Atlantic, especially the GPS seized to get the inside recorder router from the French government (French Navy Crew) to enable the team appreciate the technical details and bring the investigation to a logical and judicial conclusion."

"It is also recommended that the necessary inquiry be made as it relates to ports mentioned by the Captain of Blue Atlantic of various transactions (purchase of petroleum products, food, water, etc)."

The final conclusion of the investigative report reads:

"The team has not been able to finalize this investigation and conduct a comprehensive background check due to time constraints and the voluminous nature of work. However, this report is a status report and not final as we crave your indulgence of the recommendation made and the creation of an enabling work condition that would facilitate the conclusion of this very important investigation."

We have not been able to find any records in the file to suggest that these recommendations were ever carried out to form the basis for a successful prosecution of the case at bar. It is clear to the mind of this Court, and so it must also be to the minds of all parties that much more could have been done by the prosecution in these proceedings. The attendant circumstances to the trial proceedings tend to substantiate the conclusion this Court has reached that this case was not handled with the due diligence the case deserves. When a such a situation has obtained, this Court must *be* guided by the principle enunciated in the cases hereafter cited and briefly reviewed.

In *Binq versus Republic* 18LLR 378, 382 (968), as in the case at bar, prosecution neglected to produce its material witness. This was the person who allegedly arrested the defendant on murder charge and needed to testify as to the circumstances attending to said arrest. Mr. Chief Justice Wilson, in addressing said issue principally occasioned by prosecution's failure and neglect, said:

"While we feel that prosecution has failed to establish the guilt of the defendant by the witnesses produced at the trial, we must confess *that* there is nothing in the record to prove that the testimony of the soldier could not have been obtained. For this reason, it is our opinion that this case should be remanded so that all the facts and circumstances available can now be produced at the time of the trial, and that substantial justice may be done..."*Ibid.* 18 LLR, 377, 382 (1968).

Additionally, in the case *Gauboe and Gavzoe Versus Republic of Liberia* 10 LLR, 204 (1949): this Court held that "when neither the defense nor the prosecution in a murder trial exercised due care, diligence, and legal astuteness in protecting its client's or the State's interest, the Court will reverse the conviction and remand the case for new trial." [Emphasis supplied]

Consistent with the principle laid down in *Kpolleb versus Republic*, 36 LLR 623, 640-1 (1990), we hold that a court of law should not simply function as mere umpire or referee in a contest between opposing parties or counsel; but a court or judge is charged by law and conscience with "fundamental duty of seeing that truth is established and justice is done under the statutes and rules of law designed to bring about such truth, and his control of the situation...and without violence to rules of practice and procedure, that cases are heard and disposed of on their merits and, if consistent with the orderly administration of justice, the procedure should be favored which will result in a determination of the merits of the case." [Emphasis supplied] *lbd.* 623, 640-1 (1990)

HAVING carefully inspected and reviewed the records as a whole as brought before us, and observed all of the irregularities ushering from the trial in the court below, we are of the considered opinion that the circumstances of this case do not entitle the defendant to acquittal. With diligence, it appears that missing evidence of all the facts and circumstances could be adduced at a subsequent trial.

WHEREFORE, and in view of all we have observed from the facts, law, and circumstances in the instant case, it is hereby decreed that the ruling entered by the trial judge adjudging the herein appellants guilty, be and same is hereby reversed and the case ordered remanded to be tried regularly.

The Clerk of this Court is hereby ordered to send a mandate to the court below to give effect to this judgment. IT IS SO ORDERED.

Reversed and Remanded.

Theophilus C. Gould, Mathies Omejia, Jr., Charles Abdullai and Momodu T.B. Jawandoh for appellants. Solicitor General Tiawan S. Gongloe, Joseph Jallah, Emmanuel B. James and Yarmie Q. Gbeisay, Sr., in association with Emmanuel B. James of the International Group of Legal Advocates and Consultants, for appellee.