REPUBLIC OF LIBERIA, Appellant *v.* **MOMO GBANDI**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE TENTH JUDICIAL CIRCUIT, LOFA COUNTY

Heard: April 20, 21, 1982. Decided: July 2, 1982.

1. The office of the direct examination is to elicit from the witness facts which he may not have testified to and which, to the mind of the party, is essential to establish his side of the case.

2. It is within the province and duty of the court to charge the jury to retire into their room of deliberation and return a verdict according to the evidence adduced at the trial and in conformity with their oath of office.

3. A motion for new trial will be denied where the evidence to support the verdict is clear, cogent and convincing.

4. Malice aforethought may be either expressed or implied from the circumstances surrounding its commission, and when a human being has been deliberately killed by another, the law will presume malice even though no particular enmity has been proven.

5. A motion in arrest of judgement must be filed within five (5) days after the verdict or finding of guilty by a jury, or after a plea of not guilty.

6. A motion in arrest of judgement may be filed if the indictment does not charge an offense or if the court is without jurisdiction of the offense charged.

7. The court may only *sua sponte* send a defendant for psychiatric examination when his behavior and attitude at a criminal trial are abnormal as to warrant the court to doubt his fitness to stand trial.

8. Flight is an offense against the law and carries with it a great presumption of guilt, and negates any inference of lack of sound mind.

From a final judgement rendered by the Tenth Judicial Circuit Court, Lofa County, confirming and affirming a guilty verdict of the empanelled jury, appellant noted his exceptions and appealed from both the verdict and the final judgement to the Supreme Court. Among the points raised in appellant's bill of exceptions was that the judge committed reversible error when he charged the jury to go into their room of deliberation and bring in a verdict; that the trial judge denied defendant's motion for new trial; and that the trial judge refused to allow appellant the right to file a motion in arrest of judgement.

The Supreme Court, holding (a) that it was not an error for the judge to charge the jury to retire into their room of deliberation and return a verdict, (b) that the trial judge was correct in denying the appellant's attempt to file a motion in arrest of judgment beyond the time allowed by law; and (c) that the evidence adduced at the trial supported the verdict of guilty, *affirmed* the judgment of the lower court.

Robert G. W. Azango appeared for appellant. *Isaac C. Nyeplu,* Minister of Justice, and *Richard McFarland,* Acting Solicitor General, appeared for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court

The appellant was indicted during the 1973 November Term of the Tenth Judicial Circuit Court of Lofa County by the grand jury for the heinous crime of murder said to have been committed on the body of one Hawa Njambu. The case was heard during the February Term, 1974 in the Tenth Judicial Circuit presided over by His Honour Jeremiah Z. Reeves. The defendant was represented by the defense counsel for Lofa County while the County Attorney represented the State. A jury was empanelled, trial had and the jury returned a verdict of guilty against appellant. A motion for a new trial was filed, resisted, argued and denied. Final judgment was

then rendered confirming and affirming the verdict of the empanelled jury. Appellant excepted to and appealed from both the verdict and the final judgment to this Court on a four-count bill of exceptions which we quote hereunder word for word:

"1. Because appellant maintains and says that Your Honour committed a reversible error to have overruled the objection of the defense to a question asked by the prosecution on the direct:

Ques. Madam witness, refresh your memory and tell the court and jury whether you saw defendant Momo in town, that is Kporkulahun, after he chopped your daughter, the decedent, on that day? Objection. Grounds: 1. Cross examining one's own witness 2. Soliciting the opinion and 3. Instructive. To which defendant excepted. See sheet four of the 7th day's session of February Term, A. D. 1974.

2. That Your Honour committed a reversible error to have overruled the objection of the defense to a question asked by the prosecution on the cross examination:

Ques. Mr. Witness, you have spread on the record that you remembered going to the farm of your son who is also the son of decedent. Kindly tell the court and jury how many persons you saw at the farm when you arrived there? Objection. Grounds: 1. Ask for the mere purpose of entrapping the witness. To which defendant excepted. See sheet four of the 8th day's session.

3. That Your Honour committed the most reversible error when you charged the trial jury to go in their room and bring in a verdict. To which charge defendant excepted. See Sheets three and four of 9th day's session.

4. That Your Honour committed the most serious reversible error to have denied defendant's motion for a new trial, and refused to allow him the right to file his motion in arrest of judgment as required by statute but moved on and rendered a final judgment in the said cause, which final judgment defendant excepted and

announced an appeal to the Honourable the Supreme Court of this country. See sheets two, three and four of the 17th day's jury session."

The judge rightly overruled the defense objection as related in count one of the bill of exceptions because the office of the direct examination is to elicit from the witness facts which he may not have testified to, and which, to the mind of the party, is essential to establish his side of the case. In the case at bar, the defendant having fled from the crime scene on the farm, in the mind of the Court, the prosecution intended to establish the fact that the said defendant was not seen in the town after he committed the act.

The defendant admitted going to the farm where the deceased and her mother were on the day of the incident. Since he re-membered going to the farm, the question as to how many persons he saw on the farm on that day was rightly put to him on the cross because one of the witnesses for the prosecution, Madam Korpor Njambu testified that only she, her daughter, (decedent) and the little baby, her grand child were at the farm on the day of the incident. It was therefore not an error for the judge to overrule the objection of the defense counsel. Count two of the bill of exceptions is not sustained.

In count three of the bill of exceptions, defendant contended that the judge committed a reversible error in charging the jury to go to their room of deliberation and bring a verdict. We quote the last two sentences of the judge's charge to the jury relative to the bringing of a verdict:

"Now Mr. Foreman, ladies and gentlemen of the empanelled jury, you are the sole judges of the facts, that is to say the evidence adduced at the trial of the case. You will now retire into your room of deliberation and bring in a verdict in keeping with your oath of office as to your function. To which defendant excepts."

It is within the province and a duty of the court to charge the jury to retire into their room of deliberation and return a verdict according to the evidence adduced at the

trial and in conformity with their oath of office and therefore not an error. Civil Procedure Law, Rev. Code 1: 22; 9: 22.10 and 22.11. Count three of the bill of exceptions is not sustained.

The defendant charged the judge with committing the most serious reversible error in denying his motion for new trial and refusing to allow him the right to file his motion in arrest of judgement. This is the motion for new trial filed by the defend-ant and resisted on the minutes of court by the prosecuting attorney:

"MOTION

1. Because defendant contends, submits and says that the verdict of the empanelled trial jury is against the weight of the evidence adduced at the trial of this cause, in that, the witnesses for the prosecution and their testimonies were insufficient to sustain the guilt of defendant Momo Gbandi of the crime of murder. To prove murder, the State must prove the allegations as laid in the indictment beyond all reasonable doubts; the prosecution having failed to prove murder as laid in the indictment, defendant prays the court to grant unto him motion for new trial. ALL OF WHICH DEFENDANT IS READY TO PROVE.

2. And also because defendant maintains that the verdict is against the charge and/or the instruction of the Honourable Court, and according to our law when the verdict is against the instruction of the court, said verdict should be set aside. See sheets 5 of the 9th day's session. Defendant therefore requests the court to set aside the verdict and award him a new trial. ALL OF WHICH DEFENDANT IS READY TO PROVE.

3. And also because defendant seriously contends, submits and says that there is and there still exists material variance between the evidence and the indictment which brings the defendant under the jurisdiction of this Honourable Court, and according to our criminal law such material variance should operate in favor of the defendant as in the instant cause."

RESISTANCE:

"1. Plaintiff in the above entitled cause of action most respectfully prays this Honourable Court to deny and dismiss defendant's baseless motion for a new trial and proceed to give final judgment in said cause for the following legal and factual reasons, to wit: 1. That count one of defendant's motion is false and misleading, because, the verdict of the empanelled jury is not against the weight of the evidence adduced at the trial and that the testimonies of the prosecution's witnesses proved the case beyond all reasonable doubts. More than this, the defendant having admitted chopping and cutting decedent, Hawa, and thereafter fled from the scene, is a convincing proof that he did commit murder with malice aforethought. Count one should therefore be overruled and, with it, the entire motion. ALL OF WHICH PLAINTIFF IS READY TO PROVE.

2. As to count two, plaintiff says that the verdict is not against the instruction of the court, but instead the verdict supports the evidence adduced at the trial and the instruction of the court. Count two should therefore be overruled, and with it the entire motion.

3. As to count three of defendant's motion, plaintiff says that there is no material variance in the evidence adduced at the trial for the crime charged. Defendant, in admitting that he became confused and could not remember what happened, was a defense that he was compelled to prove at the trial. Plaintiff maintains that the defendant's allegation that he was confused is false for the mere fact that he still remembers going to the farm where he recognized his wife and his mother-in-law including the infant. The crime of murder has been proven beyond reasonable doubt. ALL OF WHICH PLAINTIFF IS READY TO PROVE."

Witness Korpor Njambu for the prosecution testified that the defendant went to their farm where she, the decedent and decedent's baby were, and told decedent that she was responsible for his sickness and, from his attitude, she advised them to go in

town, but before they could leave the farm, the defendant suddenly took his cutlass and inflicted several mortal wounds on the body of decedent by chopping her with the cutlass. She further testified that she yelled for help and one Mollay Kamara and others came but the defendant had fled.

Witness Mollay Kamara corroborated Madam Korpor's testimony, to the effect that he heard someone yelling for help and when he got to the scene he met Madam Korpor Njambu and the decedent was lying on the ground with several wounds inflicted on her body. While there, other people came and they took the deceased into town. Witness Mollay Kamara also testified that Madam Korpor Njambu told him that it was the defendant Momo Gbandi who chopped her daughter, the decedent, and that he had jumped into the bush. He testified further that defendant was caught in the neighboring country of Sierra Leone.

Dr. W. V. Guluma, Medical Director at the Tellewoyan Hospital, where the deceased was carried before her death, gave the below testimony:

"On the 19th day of the sixth month in the year 1973, in the night while I was at home, the nurse from the Tellewoyan Hospital ran to my house and said they brought one woman who was fatally wounded by her husband. We therefore want you to come to the hospital. When I arrived at the hospital, this woman in question was identified as Hawa Kamara and, according to the case history obtained from relatives who brought her, it was alleged that she was wounded by her husband with a cutlass. On examination, these were the findings: (1) the BP, and the P.R. were all recallable, in other words, the patient was already going to become unconscious; (2) She had a very deep cut on the left side of her neck in which the jugular vein, the left carotid artery, the left bronchial plexus were all cut down to the cervical spine; (3) The left thumb was completely mutilated, that is, completely cut off; (4). A deep cut was also observed in the left supra orbital region. These were the findings in the examination. Treatment: five percent of dextrose saline was immediately instituted with five cc of levophed, the lacerations were sutured with different sizes of cat and silk. The patient was put on antibiotic and placed under

intensive medical care but very unfortunately, she died. In my opinion, the cause of death was the result of the wounds inflicted upon Madam Hawa Kamara

Patrolman Isaac M. Kesselle of the National Police Force and one of prosecution witnesses also deposed that he was ordered to go to Kailahun District, Republic of Sierra Leone, to being defendant who had fled to that country after killing his wife, the decedent. According to him, the defendant was turned over to him in the Republic of Sierra Leone by Chief Mahamed Dal of Tuandu upon orders of the C. C. of Kailahun District to bring him to Liberia assisted by a Sierra Leone police officer, S. D. Kromah. He and S. D. Kromah brought the defendant to Liberia. He intimated that during their return trip to Liberia and the period of their preliminary investigation the defendant acted normally.

The evidence adduced at the trial above mentioned, in our opinion, supports the verdict of guilty as returned by the trial jury because decedent died as a result of the several severe wounds inflicted upon her body by the defendant nine and half (91/2) days after the incidence. A motion for a new trial will be denied where the evidence to support the verdict is clear, cogent and convincing. *Kasimu v. Republic*, 25 LLR 80 (1976).

The indictment charged the defendant that he unlawfully, illegally, wrongful, deliberately, willfully, feloniously, maliciously and with premeditation, did take a deadly and dangerous weapon known to the grand jury as a long knife into his hand and cut Madam Hawa Njahbou on her head, left hand and shoulder thereby inflicting several lacerations which resulted into serious bleeding and decedent did languish and die. The witnesses for the prosecution testified that defendant inflicted several wounds on decedent by chopping her with his cutlass and that she died from said wounds and lacerations. Witness Korpor Njambu also testified that defendant told them on the farm that he went to a soothsayer who told him that someone had practiced witchcraft upon him. She also deposed that prior to the incident the defendant accused decedent of being responsible for the sickness from which he was suffering. Witness Korpor Njambu further testifies that defendant inflicted the several wounds on decedent in her presence on the farm and when she yelled for help

defendant escaped from the crime scene. Dr. W. V. Guluma, Medical Director at the Tellewoyan Hospital, where decedent was rushed for treatment, concluded his testimony by saying that the decedent died as a result of the wounds inflicted upon her body.

A cutlass, according to Webster's Third International New Dictionary, is a knife and usually a short heavy curving cutting sword used formerly by sailors on war vessels. A knife is a simple instrument used for cutting consisting of a sharp-edged usually steel blade. WEBSTER'S THIRD INTERNATIONAL NEW DICTIONARY 561 and 1248 (1966). Therefore, the words "knife" and "cutlass" as used interchangeably in the indictment and by the prosecuting witnesses cannot amount to variance. The question which comes in mind is, is a knife a deadly weapon? We shall take recourse to authorities for the answer:

"In prosecutions for homicide or for assault with intent to kill, the law infers from the use of a deadly weapon, the existence of a mental element on the part of the user, such as malice or an intent to kill, which, in the absence of proof to the contrary, is significant in determining the existence and grade of the offense. A generally accepted definition of the term "deadly weapon" is an instrument or weapon which is likely to, or which will, cause or produce death or great bodily harm when used in the manner contemplated by its design and construction. If it is capable of producing great bodily harm, there is no necessity that it be capable of producing death. A weapon may be deadly although not especially designated for offensive and defensive purposes, or the destruction of life, or the infliction of injury; but it would seem that to be deadly *per se*, it must be one which is designed, when used in the usually manner, to take the life either of man or of the lower animals. A loaded pistol or gun, a knife, a club, and an axe have been held to be deadly weapons." 40 AM. JUR 2d., *Homicide,* § 5.

A variance is a disagreement between the allegation and the proof in some matter which, in point of law, is essential to the charge or claim. BLACKS LAW DICTIONARY 1723 (4th ed).

There being no contention or disagreement that decedent was known and called by the name Hawa Njambu or Hawa Kamara, we hold that there is no variance between the allegations in the indictment and the proof. This Court has held that malice aforethought may be either expressed or implied from the circumstances surrounding its commission, and when a human being has been deliberately killed by another, the law will presume malice even though no particular enmity has been proven. *Darnenoh v. Republic,* 4 LLR 308 (1935); and *Obi v. Republic,* 20 LLR 116 (1971).

With reference to the judge's rendering of final judgment, immediately after his ruling on the motion for new trial, we observed from the records that the jury brought their verdict on February 22, 1974. The defendant excepted to the verdict and gave notice that he would take advantage of the statute made and provided in such cases. He then filed motion for a new trial on February 25, 1974, which was resisted, argued and the judge ruled denying said motion for a new trial on March 4, 1974. The defendant excepted to this ruling but gave no notice of filing a motion in arrest of judgement. The court then proceeded to give final judgement. The relevant statute provides that:

"The court on motion of a defendant shall arrest judgement if the indictment does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within five days after verdict or finding of guilty, or after plea of not guilty. The motion shall be heard before judgment is rendered. If judgment is arrested, the court shall discharge the defendant from custody, and if he has been released on bail, he and his sureties are exonerated and if money has been deposited as bail, it shall be refunded." Criminal Procedure Law, Rev. Code 2: 22.2.

It is clear that a motion in arrest of judgment must be filed five (5) days after verdict or finding of guilt when the case is tried to the court without a jury, or after a plea of not guilty. In the case at bar, the court gave a ruling on the motion for a new trial on March 4, 1974 which was on the tenth day after verdict, and there was no motion

filed nor did counsel for defendant give any notice of filing a motion in arrest of judgment when he excepted to the ruling on the motion for a new trial. We note from the said statute that a motion in arrest of judgement may be filed if the indictment does not charge an offense or if the court is without jurisdiction of the offense charged. The indictment charged the defendant with the crime of murder and the Tenth Judicial Circuit Court which tried the case has jurisdiction to try murder cases. Hence, the judge did not err when he proceeded to give final judgment after his ruling on the motion for a new trial. Count 4 of the bill of exceptions is therefore not sustained.

Our distinguished colleagues are not in agreement with our conclusion because they are of the opinion that the court should have *sua sponte* sent the defendant for a psychiatric examination and they rely on Criminal Procedure Law, Rev. Code 2: 6.2, which we quote hereunder for the benefit of this Opinion:

"If during a criminal prosecution there is reason to doubt the defendant's fitness o proceed, the court shall appoint at least one qualified physician to examine and report upon the mental condition of the defendant. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding five days and may direct that a qualified physician retained by the defendant be permitted to witness and participate in the examination. The report of the examination shall include an opinion as to the defendant's capacity to understand the proceedings against him and, unless the examination is to determine whether the execution shall proceed, a statement whether the defendant is capable of assisting in his own defense. The report shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant."

We disagree with our colleagues because the defendant had not acted abnormally during the trial which would have created a doubt about his fitness to stand trial. Any abnormal behaviour of the defendant during the trial would have necessitated sending him for psychiatric examination. We hold that it is only when a defendant's

behavior and attitude at a criminal trial are abnormal that the court will doubt his fitness to stand trial and thereby comply with the above quoted statute. In the instant case, the defendant took the stand and testified in his own behalf and he was cross examined without showing any act of mental derangement or abnormality.

According to the records before us, the defendant had placed the cause of his illness against his late wife as a result of some advice from a soothsayer or fortune teller. Besides, if defendant were not of a sound mind so as to know the gravity of his criminal act, he could not have fled to the Republic of Sierra Leone where he was apprehended; for, flight is an indication of consciousness of guilt in a criminal case, because the urge to flee is a natural consequence of fear; and where a crime has been committed, fear proceeds from a mind clothed with responsibility or guilty knowledge. *Glay v. Republic,* 15 LLR 181 (1963). This Court has repeatedly and consistently held that flight is in itself an offense against the law and carries with it great presumption of guilt; it will subject a party to forfeiture even where the accusation which produced it is not proven and the party not condemned. *Freeman v. Republic,* 1 LLR 306 (1897); *Paye v. Republic,* 10 LLR 55 (1948); and *Jappa v. Republic,* 21 LLR 339, 344 (1972).

In view of the prevailing circumstances enumerated, it is our considered opinion that the evidence adduced at the trial supports the verdict and therefore said verdict should not be disturbed. The judgement of the lower court is hereby affirmed. And it is so ordered. *Judgment affirmed.*

MR. JUSTICE MABANDE *dissents.*

When we approach the consideration of a controversy, as a Court of last resort, our duty is to uphold and defend the law relating to the points in issue. In the appellate determination of a criminal case, especially murder, this Court is obligated to review the entire trial records with due diligence. The trial records in this case reveal that appellant suffered from severe illness and left home for a length of time; that he was a habitual consoler of native doctors who played sassywood for his health; that when

he felt better, he returned home and appeared on his farm in an unusual condition during which time he cut the decedent resulting in her death; that he fled to Sierra Leone from where he was brought back under police custody; and that he narrated the circumstances of the crime to the police. At the trial, he pleaded not guilty but when he took the stand, he testified thus:

"When I arrived at the farm..... I became confused and I cannot recall what took place. It was never my intention to have committed such a crime on my late wife, a woman who born so many children for me, but I just do not know what happened that day at the farm that caused me to have chopped my late wife and as a result she died."

As administrators of criminal justice, when we undertake the review of a criminal trial, we should meticulously scan every page of the trial records in order to fairly and justly determine whether the procedures adopted at the trial as well as the evidence conscientiously support the judgment.

A fair and just trial constitutes all of the trial tactics and trial procedures as well as the evidence adduced at the trial. All of these must be in strict compliance with the law, failing which a party is definitely deprived of his right to a fair and an impartial trial as is required by the due process of law.

The other pertinent issues which were overlooked by the majority but glaringly presented by the records for a fair determination of this controversy are: (1) whether a court is under a duty in the administration of criminal justice to recognize all procedural safeguards even when they are overlooked by the litigants? (2) whether a charge to the jury which misconstrues the law on a single issue may constitute reversible error? and (3) whether evidence of an admission of a crime by an accused to a police in whose custody he is held but who had no intention of investigating the accused is legal?

Counsel for appellant argued that a court as well as the lawyers for the State and the

defense counsel are under a duty to defend and protect the rights of anyone criminally charged. When the rights of a prisoner before the court are suppressed by the neglect or inaction of either counsel for the State or the court, Counsellor Azango argued, it constitutes a judicial oppression and suppression of fairness and justice. The counsel further argued that the judiciary, as the only independent department of government for the maintenance of fairness and justice, is hopefully deemed to be cognizant of all of the laws at all times,
particularly in murder cases. Its failure to correctly pronounce and apply the law to the jury constitutes an unfair and an irregular trial, he concluded.

Counsel for the prosecution argued, however, that when the court appoints any member of the legal profession to defend an accused, he is exclusively empowered to adequately defend that accused as far as his skill and ability may permit; therefore, the exercise of his professional ability includes whatsoever defenses he may make. The prosecution therefore argued that the procedures adopted at the trial by the defense counsel and the trial judge invaded no law and, hence, no duty imposed by law on the counsel and the court was left unattended. I am of the opinion, however, that there was an equal duty imposed by the law and judicial ethics on the trial judge and the opposing counsel to have accorded the accused the fullest protection of the law. During a criminal trial, a judge is responsible to prevent any deprivation of the fundamental rights of the accused. The evidence of the mother-in-law, the prosecution's only eye witness revealed that:

"The defendant came to the farm but from his attitude, it was indicated that something was wrong."

When this testimony is considered along with the appellant's testimony that when he arrived at the farm, he became confused and could not recall what took place, they impute sufficient facts for the court to have become apprehensive of some unusual circumstances. The protection of the rights of an accused as well as the desire of the State to maintain criminal justice are all implicit duties of judges and counsel. The Court should have recognized that appellant was laboring under a degree of mental

delirium.

Under our law, at any time during a criminal trial, and if there is any reason for the court, the State or defendant's counsel to doubt the mental fitness of the defendant to proceed with the trial, the trial court may either *sua sponte* or at the request of either counsel, stop the trial and appoint a psychiatrist to examine and report upon the condition of the accused. Criminal Procedure Law, Rev. Code 2: 6.2

Counsel for appellant argued that the portion of the instruction to the jury in which the court stated that under our law, flight is the indication of guilt is a reversible error.

Counsel for the State argued that under our law, the judge's instruction on flight was no error and therefore, the instruction was proper. Both parties relied upon the cases *Paye v Republic,* l0 LLR 55 (1948) and *George v Republic*, 14 LLR 339 (1961).

In the *George* case, *supra,* it was held that a judge is per-mitted to summarize the evidence to the jury and the application of the law. In criminal proceedings, whether defendant requests it or not, it is nevertheless the obligation of the court to duly charge the jury and fairly present the evidence and the law involved. In discharging that duty, the court must fairly and correctly present the law that the jury applies to the facts, but a wrong interpretation of the law and facts to the jury may contaminate the verdict, rendering it a reversible error. I am of the opinion that the law as presented by the trial judge to the jury, was evidently wrong and that the charge inflamed the minds of the jury in arriving at the verdict against appellant. I hold the view that the charge in this case constituted a reversible error. Criminal Procedure Law, Rev. Code 2: 20.1 (2).

In the *Paye* case, *supra,* the defendant fled, as in this case, immediately after the commission of the crime and evaded apprehension for a long time. The Court held, however, that flight was an offense which carried the strong presumption of guilt; it did not, however, hold that flight is evidence of guilt as the trial court in this case advised and instructed the jury. Flight being an offense, as held by this Court, it

should have been the subject of an independent charge and a legal hearing; and it should be that only after a fair determination against the party should he be held guilty. The judge's instruction to the jury expressly imputed guilt to the accused whose flight had not been a subject of a judicial hearing and final determination. It was a misstatement of the law which may have inflamed the minds of the jury as conclusive evidence of guilt.

As soon as a defendant is arrested and placed in the custody of the police, his immunity from investigation on any subject matter touching the crime without due warning commences. The evidence adduced at the trial being chiefly the admission of the appellant of the commission of the crime to the police, it was obtained in gross violation of the appellant's right to a fair and just trial. It was illegally obtained evidence; and such evidence cannot be the basis for sustaining a judgment of conviction. *Sheriff v. Republic,* 29 LLR 103 (1981), decided July 30, 1981.

In the case *Massiah v. United States,* 307 US 201, 84 S. Ct. 1199 (1964), the United States Supreme Court held that where a person has been accused of a crime by the United States, arrested but released on bail, he is immune from secret police interrogation directly or through a third party as long as he is unaware that the statement he offers may still be admissible against him. In the case before us, the police from whose custody the appellant was brought back to our jurisdiction received the admission of guilt from the accused without due warning. This was illegally obtained evidence and therefore inadmissible into evidence against him.

At this age and level of civilization in this democratic land of ours, the rights and liberty of every person should be respected and genuinely assured with certainty by our courts.

I am of the firm opinion that the trial tactics and procedures adopted by the prosecution, to which the court appointed defense counsel and the trial judge yielded, were tainted with grossly illegal encroachments on the rights of the accused; hence, the laws of this land had been violated. If the State produces no legally protected

evidence of the crime, it is a useless exercise and it is suppressive of the prisoner's liberty to have him subjected to the rudiments of a new trial.

In the case *Attoh v. Republic*, 9 LLR 3 (1945), this Supreme Court held that where the State fails to prove beyond a reasonable doubt the material facts essential to constitute the crime charged, the accused is entitled to a discharge.

In view of all of these prior decisions and laws, the gross trial irregularities, and the lack of legally protected evidence to support the judgment of conviction, I voted that Appellant Momo Gbandi's conviction be reversed and that he be discharged without day. I therefore dissent.