Allen Rogers of Monrovia Central Prison APPELLANT Versus **Republic of Liberia** APPELLEE

APPEAL

HEARD: NOVEMBER 20, 2008.DDECIDED: JANUARY 29, 2009.

MR. JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

On September 23, 2006, Allen Rogers, the appellant in this case, was arrested by the Liberia National Police and carried before the Magisterial Court in Paynesville City, Montserrado County, where he was charged with the crime of rape. He was subsequently indicted by the grand jury of Montserrado County during the August term of court, A.D. 2006.

The indictment reads as follows:

"REPUBLIC OF LIBERIA, MONTSERRADO COUNTY, IN THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY CRIMINAL ASSIZES "A" FOR SITTING IN ITS AUGUST TERM, A.D. 2006.

BEFORE HIS HONOUR BENEDICT W. HOLT, SR., RESIDENT CIRCUIT JUDGE

Republic of Liberia by and thru David Korhorn by and thru Mother Korhorn Plaintiff
Versus Allen Rogers, of the City of Monrovia, Liberia Defendant. CRIME: Rape

INDICTMENT
The Grand Jurors for the County of Montserrado, Republic of Liberia, upon their Oath do hereby present: Allen Rogers, defendant of the City of Monrovia, County of Montserrado and Republic aforesaid, heretofore, to wit:

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to amend chapter 14, Section 14.70 and 14.71 of the New Penal Code of Liberia approved December 29, A.D. 2005 which was repealed and replaced.

RAPE is a felony of the first degree where:

(a) The victim was less than 18 years at the time the offense was committed; or

(b) The offense involves gang rape as dealt with in sub-paragraph 2 above; or

(c) He intentionally penetrates the vagina, anus, mouth or any other opening of another (male or female) with his penis, without the victim's consent; or

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

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

Plaintiff complains and says that on the 8th day of August A.D. 2006 and 21st day of September, A.D. 2006, Brewerville, Montserrado County, Republic of Liberia, the within and above named defendant without any color of right and also without the fear of the Statutory Laws of the Republic of Liberia, with Criminal and wicked intent to sexually abuse the Private Prosecutrix, Mother Korhorn (11) years of age, the defendant kidnapped she and one Jacob (to be identified) and kept them for 2 months and as a result the defendant forcibly have sexual intercourse with the Private Prosecutrix, which caused her to bleed profusely; thereby the Crime of Rape, the defendant did do and commit on the above named date and at the above named place and time, contrary to the organic laws of the Republic of Liberia.

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

Republic of Liberia Plaintiff By and thru: Samuel K. Jacob, Esq. County Attorney for Montserrado County, R.L.

WITNESSES:
Mother Korhorn
Documentary Evidence, etc."

The case was tried during the August term, 2007 in the First Judicial Circuit, Criminal

Assizes "B" presided over by Her Honour Evelina Z. Quaqua, assigned Circuit Judge. At the call of the case the appellant informed the court that he did not have a lawyer because he was financially unable to retain legal counsel and that he desired to have a legal counsel assigned to represent him. In keeping with the Criminal Procedure Law, 1 LCL Revised, tit. 2 Section 2.4(4) (1973), the trial court assigned the County Defense Counsel of Montserrado County, Counsellor Elijah T. Cheapoo to represent the appellant.

A motion to dismiss the indictment filed by the defense counsel representing the appellant was heard and denied and the trial judge ordered the matter proceeded with.

Three witnesses testified for the state. The first state witness was Mother Korhorn, the eleven — year old girl who was said to have been raped. She testified that she and her brother went to Barnersville Estate in search of their brother and while asking of their brother's whereabouts, the appellant told them that the man they were talking to was a "bad man". According to the witness, the appellant offered to take them to where their brother was living, but instead, the appellant took them to his house. She further testified that in the night while she and her brother were sleeping the appellant put his hand in her panties and threatened to kill her and throw her body in the swamp if she talked; that he took off her clothes and had sexual intercourse with her and this continued on a daily basis for a period of two months.

She said that one day she did not see her brother, but in the evening he came with the police; that the police arrested the appellant and took him to the Jacob Town Police Depot. She concluded her testimony by saying that she became sick and was taken to the hospital by her father as a result of what the appellant did to her.

The second witness who testified for the state was Lindsay J. Gould, a police detective of the Women and Children Protection Section assigned at the Jacob Town Police Depot. He testified that the appellant was arrested, investigated and charged with rape based on information given by the victim's father, David Korhorn; that the victim was taken to the Benson Clinic for examination and treatment and that the Benson Clinic prepared a medical report which indicated laceration, redness, and bruises in the victim's vagina.

The third and last witness produced by the state was Doctor Tayo Witvoet. She said that the victim was examined at the Benson Clinic and that she had laceration, bruises, and redness in her vagina. She testified to and confirmed the medical report prepared

by the Benson Clinic.

When the State rested with the production of evidence, the defense counsel filed a motion for judgment of acquittal in favour of the defendant. The motion was resisted, argued and denied. Thereafter, the appellant took the witness stand as the only witness on his side and testified in his own defense.

The summary of the appellant's testimony is that in the first week in August 2007, he and the principal in the school he worked were carrying on registration of students; that when the principal left and he was alone at the school, he began to read the bible and knelt down to pray. According to appellant, he heard a voice calling him; the voice was that of someone the appellant referred to as "Evee". The appellant narrated that when he ended his prayer, he went to "Evee" who told him "your two children have come", but he thought they were Victoria's children, so he went there and questioned the children and they called their mother's name, a lady called Marie from Kakata. The appellant said that when he was at the teachers' college he knew a lady called Marie. The appellant informed court that when he further questioned the children what they were doing there, they said that they had gone to him to spend time since it was during holiday time. He testified that he told the children that he knew the lady that sent them long time ago, but that he and the lady no longer have "business"; that he then took the children to the town adviser in Karbar Town who, also after questioning the children, said to the appellant "no need to take them to the police station, since they said they are your family and they know you so they came to spend time". The appellant said he then asked the children whether they had any letter from their mother to him and they said no. He said that the town adviser said to him: "I do not have sleeping place here, but you are alone at your house, you can help them there and when I get transportation, you can send them to their mother who you said is in Kakata"; that the town adviser subsequently gave the children L$100 and he, appellant gave them L$10.00, making a total of L$110.00; that he and one Alice walked them to the road and the children got in a red car; that after few days one evening at about 7:00 p.m., while coming from school, he heard Evee calling and saying to him: "your two children are coming back oh." Appellant said that when he saw the children, he asked them why they had gone back to him and whether they had letter from their mother and they said that they did not have any letter from their mother, but told the appellant not to worry because their mother knew that they were with the appellant. The appellant said that he took the children back to the "old man," (the town adviser) who also asked them whether they brought letter from their mother and they said no, but that their mother was aware that they were with the appellant. With this testimony of the lone witness, the appellant himself, the defense

rested evidence.

At the conclusion of evidence on both sides, the empanelled jury deliberated and brought a unanimous verdict of guilty against the appellant. On September 24, 2007, the trial judge entered final ruling based on the jury's verdict, adjudging the appellant guilty of the crime of rape. This appeal is before us from the final ruling entered by the trial judge.

The appellant, through his defense counsel, filed an eight-count bill of exceptions for our review. We will consider only counts 6 & 7 of the appellant's bill of exceptions.

In count 6 of the bill of exceptions, the appellant stated: "And also Your Honor erred when you confirmed the jurors' verdict when in fact said verdict said nothing about the charge of gang rape for which the appellant faced trial." We can not comprehend the legal or factual point this count in the bill of exception is intended to convey. Clearly, the indictment brought against the appellant did not charge him with gang rape; the indictment charged that the appellant committed rape against a girl, 11 years of age, and under the new rape law it is felony of the first degree "if the victim was less than 18 years at the time the offense was committed", provided the doer of the act is eighteen (18) years or older. Assuming without admitting that the state did not provide evidence of gang rape, but the state proved, beyond reasonable doubt, that the girl, eleven years old, was raped by the appellant who is eighteen (18) years, or above, the trial judge would not be in error to confirm the jury's verdict. We cannot, therefore, sustain count 6 of the bill of exceptions.

In count 7 of the bill of exceptions, the appellant stated: "That Your Honor committed a reversible error when you sentenced the appellant to life imprisonment." Again, we must say that that we are at a total loss with the contention of the appellant in this count in the bill of exceptions. The new rape law under which the appellant was indicted and found guilty provides that rape against a female less than 18 years of age is a felony of the first degree with the maximum sentence of life imprisonment. We hold that once the appellant was found guilty of rape against a female, less than 18 years, the sentence of life imprisonment was proper in keeping with the new rape law. Therefore, the trial judge committed no error when she sentenced the appellant to life imprisonment. Count 7 of the bill of exceptions is therefore overruled.

The question we ask is - whether or not the appellant, an indigent person, who was financially unable to retain a legal counsel and was therefore assigned the

Montserrado County Defense Counsel to represent him, received adequate representation during the trial of this case? We hold he was not adequately represented.

The records show that on Monday, September 10, 2007 at the 20th day jury session, page 72, the appellant, through his defense counsel, applied to court for the writ of subpoena *ad testificandum* to be issued and served on four witnesses: Samuel Boima, Mrs. Gaye to be identified, Evee to be identified, and Siemeon to be identified, to appear and testify for the appellant. The application was granted and the clerk of the trial court was ordered to issue the writ of subpoena *ad testificandum* to have the named persons appear and testify for the appellant. But there is no showing that any of the subpoenaed witnesses appeared and testified. It was the appellant alone, who testified for himself. The testimonies of other witnesses were necessary to corroborate the appellant, since the controlling law in our jurisdiction is that the uncorroborated testimony of the accused person is not sufficient to rebut proof of guilt. Jackson v. Republic, 13 LLR, 143 (1958); Davies v. Republic, 40 LLR, 659 (2001).

The defense counsel for the appellant knew, or ought to have known that the lone testimony of the appellant was not sufficient to establish his innocence. Thus, his failure to have ensured that other witness appear to testify for the appellant was a serious dereliction of duty.

The testimony of Evee in this case would have been very essential. The appellant had testified that it was Evee who saw the two children coming and called his attention by saying: "your two children have come". And according to the appellant, when he sent the children to their mother in Kakata, it was the same Evee who saw them returning and informed the appellant: "your two children are coming oh." Perhaps the testimony of Evee would have lay to rest some of the questions which linger on our minds — did the children twice go to the appellant to spend time with him as he stated in his testimony? Why did Evee refer to the children as the appellant's children? Did Evee know the children before? If indeed the appellant sexually abused Mother Kohorn, was it during their first visit or their second visit to the appellant? These questions remain unanswered.

We hold that the testimony of the Adviser of Kabar Town, to whom the appellant said he took the children whenever they went to spend time with him, was also essential. Did he see the children? Did he give them money to transport them back to their mother in Kakata as the appellant said in his testimony? Did the Adviser know

of the rape or alleged rape of Mother Kohorn?

Why did the defense counsel representing the appellant not see it necessary to have the father of the victim testify? Why was the mother of the victim not made to testify? Her testimony would have cleared the doubt whether or not she sent her children to the appellant and whether or not she visited the home of the appellant while the children were there.

The testimony of Mother Kohorn's brother who is said to have been in the room when she was allegedly raped by the appellant was also essential, but both the state, representing the appellee, and the defense counsel, representing the appellant, did not see it necessary to have him testify. Mother Kohorn, while answering question on the cross examination, said that she did not tell her brother that the appellant had raped her because she said the appellant threatened to kill her and throw her body in the swamp if she talked. How then did her brother know that his sister was raped to have reported the matter to the police who arrested the appellant?

In fact, it is not clear as to who reported the rape matter to the police. Was it David Kohorn, the father of Mother Kohorn, according to the testimony of Lindsay J. Gould, the Police Dectective, or was it Jacob, the brother of Mother Kohorn? These questions and many more could have been answered had Mother Kohorn's brother, who from all indications could prove to be a material witness in this case, been put on the witness stand to testify.

The prime objective of all criminal prosecution is to ensure that justice is done. This Court has held that when neither the defense nor the prosecution in a criminal case exercise due care, diligence, and legal astuteness in protecting its client's or the state's interests, the Court will reverse a conviction and remand the case for new trial. Gauhoe & Goyzoe v. Republic, 10 LLR 204 (1949).

Wherefore, the judgment of the lower court which found the appellant guilty of rape is ordered set aside and reversed, and the case remanded for new trial.

The Clerk of this Court is ordered to inform the Court below to resume jurisdiction over this case and conduct a new trial. It is so ordered.

OFFICES OF THE DEFENSE COUNSEL FOR MONTSERRADO COUNTY APPEARED FOR THE APPELLANT. COUNSELLOR TIAWON S. GONGLOE, SOLICITOR GENERAL OF THE REPUBLIC OF LIBERIA IN ASSOCIATION

WITH COUNSELLOR JOSEPH H. CONSTANCE APPEARED FOR THE APPELLEE.