

JOHN KONO TYE SMITH, et al. Appellants, *v.* **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT,
MARYLAND COUNTY.

Heard: October 22, 1979. Decided: December 20, 1979.

1. Where the evidence produced by the prosecution is flimsy and unconvincing, the judgment entered upon the verdict which was not supported by the evidence must be reversed.

A child was kidnaped and murdered in the village, and the appellants, defendants in the trial court were arrested, tried and a verdict of guilty brought against them. However, the trial judge granted a motion for new trial. At the second trial, no evidence was produced to convict any of the defendants of the homicide with which they were charged; yet, the jury returned a verdict of guilty. On appeal, the Supreme Court reversed the judgment entered on the verdict and ruled that a verdict of guilty based on flimsy and unconvincing evidence must be reversed. The appellants were therefore ordered discharged.

Wellington K. Neufville appeared for the appellants. *M. Fulton W. Yancy, Jr.* and *E. Winfred Smallwood* of the Ministry of Justice appeared for the appellee.

MR. JUSTICE TULAY delivered the opinion of the Court.

Count six of the indictment on which appellants herein, defendants in the trial court, were tried reads thus:

"That John Kono Tye Smith, Konde Nimely Smith, Gbleh alias Bassaman, and Puanyene, defendants, and murderers of decedent, Darbeh Blanyonde, the two and a half year old child, then and there feloniously, wilfully and unlawfully with malice aforethought and with premeditation and deliberation, did kill and murder Darbeh Blanyonde, now deceased, and from her human body extracted several parts as stated in this indictment, and she died a fatal and cruel death from the hands of the defendants herein, thereby committing the crime of murder, contrary to the statute laws of the

LIBERIAN LAW REPORTS

Republic of Liberia in such cases made and provided, and against the peace and dignity of the state."

Because Defendant John Kono Tye Smith showed indifference to the disappearance and the searching of the murdered child and also because the C.I.D. found red stains on his trousers; because Kono Nimely Smith put the music of the recorder on, left the children, among them the murdered child, dancing around it and went into the woods to fetch palm nuts and because the C.I.D. found red stains on his trousers; also because Gbleh, alias Bassaman, prior to the disappearance of little Darbeh Blanyonde, had entered the house of Oldman Dio Wodoanye, took the Oldman's cutlass to sharpen his own, had a sip of rum/cane juice and went off to the woods, and because he refused to go back to the town when he was sent for to help in the search for the child, the defendants were indicted for the murder of Darbeh Blanyonde.

On the 5th of December, 1977, the case was called for trial for the second time; the first trial ended in a conviction of the appellants but the court granted their motion for new trial. The appellants once more pleaded not guilty.

A trial jury was empaneled to try the appellants before which witnesses, both for the State and the appellants, testified. Both sides having rested evidence and arguments entertained, the court gave a lengthy charge to the jury. With the charge still ringing in their ears, the jurors, after deliberations, brought out a verdict of guilty against the appellants on the 13th of December, 1977.

We will now review the salient parts of the evidence on which the convicting verdict of guilty was found.

The first witness for the State was Darbeh Juduba, aged ten. Here is what he said:

"My father and mother were going on the farm and left with me Darbeh Blanyonde with the request to bathe Darbeh. I then bathed her and went to Juduba's place here we saw some children dancing radio music. I went behind the house to fix my rubber gun and when I returned and looked among the children, I could not see my sister among them. I asked the other children of the whereabouts of their friend, my sister, who was with them and they told me that they didn't see her and so I began to look around for her. It was then that Kode Nimely, who was playing the radio, left to look for palm nut. I left and went to tell my sister, Wodade, that I could not find my sister. She joined me to look for her but when we could not find her I left and went on the farm to tell my parents. We all came to town and they started to look for her too. Two or three days after, they reported the incident to the chief who came to town. On the day the Chief

LIBERIAN LAW REPORTS

arrived in our town that's the same day the decedent my sister was found in a creek behind Uncle Tye's farm. I did not see her myself after they found her, because they said she had spoiled. This what I know."

We will take four of the questions put to this witness under cross-examination, for we consider the answers to them to be important.

Q. Did I understand you to say that Defendants John Kono Smith and Konde Nimely Smith are your uncles?

A. John Kono Tye Smith is my only uncle.

Q. Can you remember whether he was in your town when the incident took place?

A. No. He was not in town. He came (went) to Harper.

Q. Did you also notice co-defendant Gbleh in town?

A. I did not take notice of him that day.

Q. When you observed that your sister was missing, did you inform Konde Nimely who was playing the radio while the children were dancing that your little sister was missing while the children were dancing?

A. I did not tell him but he was there when I said that my sister was missing and that we were looking for her but he went to look for palm nuts.

We will also take five of the court's questions to him and the answers:

Q. Was it the same day that your sister got missing that your uncle left for Cape Palmas, or he was in Cape Palmas for few days before the child got missing?

A. I do not know when he left for Cape Palmas, but I do remember that the day the child got missing was the very day he got back home.

Q. Do you know for certainty that your uncle John Tye Smith murdered Darbeh Blanyonde, your sister and removed some parts from her body?

A. Yes, I know it is my uncle who carried my sister but I do not know who took her parts.

Q. Do you also know for certainty that Konde Smith and Gbleh the defendants in the dock murdered your sister and took certain parts from her?

A. I do not know anything about the other two (2) defendants.

Q. Tell us, why you believe that your uncle John Tye Smith was the one who took your sister, Darbeh Blanyonde and murdered her since as you have said, he was in Cape Palmas and got there the very day the child got missing?

A. I said the day he got in town from Harper was the day the child got missing and I know that he took her according to his action.

LIBERIAN LAW REPORTS

Q. Could you tell us the action of your uncle which led you to believe that it was he who murdered your sister?

A. Because C.I.D. found blood on his trousers which shows suspicions for him.

The next witness, Jacob Darbeh, is the father of decedent, Darbeh Blanyonde. He testified to what happened after he and his wife returned from the farm; he testified to the search for his daughter during the five days before her body was found in a creek near his brother John Kono Tye Smith's place where he kept his rubber latex; how his brother, Kono Tye Smith, spent the first night at their house but showed no sign of sorrow for the disappearance of the girl, to how one Seede Kotie told his wife that her husband's brother, John Kono Tye Smith, killed his daughter and how the C. I. D. found blood on the trousers of the defendants, John Kono Tye Smith and Konde Nimely Smith.

The jury put this question to him:

Q. Tell us, at what time was defendant, John Kono Tye Smith, found with blood stains on his trousers and where was it found on him?

A. The child got missing on one Friday and on Tuesday the next following week, C.I.D. went in our town, it was on this day the child was found and it was on the very day the C. I. D. discovered the trousers.

The court asked these questions:

Q. Did you say on the day the child got lost, you met your brother John Tye Smith, on the road coming from Harper?

A. Yes, I met him coming from council that was held at Pleebo.

Q. Was his appearance looking as someone coming from somewhere like Pleebo from council or like someone coming from the bush?

A. Actually he was coming from Pleebo because he had his grip in his hand coming.

Q. Tell us, what led you to believe that your brother John Kono Tye Smith, the defendant in the dock, killed your daughter since it appeared that he had not arrived when your daughter got missing?

A. What makes me to believe that it is the defendant, my brother, who killed the child is that, when I met him on the road and told him about the missing of the child, he was never moved, and I saw no sign of regret. When we got in town, he insisted that he must reach on his farm, although Oldman Gboah told him about the seriousness of the matter but he insisted that he must reach on the farm, which he did. And when he returned that night he was very much unconcerned; furthermore, when the C. I. D. came, they found him with a trousers with blood stains on it and

LIBERIAN LAW REPORTS

finally, when Nasser was praising him at Pleebo gas station that he was a courageous ruler, he only laughed and never denied anything about the allegation. This is what led me to believe that he is the one who murdered my daughter.”

The third witness for the prosecution was Gabo Weade, the mother of the murdered girl. Her testimony varies very little from that of her husband as she was on the farm when her daughter disappeared. Witnesses Sennoh and Gboa, who were in the town when the child disappeared, testified, placing the responsibility for the murder of Darbeh Blanyonde on the three defendants for no other reasons than those given by the other witnesses who testified before them.

The C.I.D. officers and the medical doctor got on the murder scene Tuesday, the fifth day after the child disappeared and after the paramount chief had had council with the clansmen who, because Defendant John Kono Tye Smith, had surrendered the clan chieftaincy, had spewed water and subsequently found the body, already well advanced in putrefaction. They all testified and their respective testimonies named the appellants as the murderers of little Darbeh Blanyonde because of blood (red) stains found on the trousers of John Kono Tye Smith and Konde Nimely Smith which, according to them, the appellants said were stains from a certain vine (rope) in the bush and blood of a tabado (opossum) but at the trial testified as red paint and blood poured out of Konde Nimely Smith when he was dragged on the rough ground by the C.I.D. Of course, the appellants and their witnesses testified to exonerate themselves.

In his charge to the jury and final judgment entered on the verdict of guilty against the appellants, the judge unequivocally showed that the trial failed to prove the appellants' guilt for murder but because the defense refused to move for new trial he could not have done otherwise.

The learned judge found himself in a quandary. He could not, *sua sponte*, redocket the case for new trial; defense having thought it not necessary to move for it. Indeed, this was the second embarrassment given him by the defense. He therefore, entered judgment on the verdict reluctantly sentencing the appellants to death by hanging. Both the prosecution and the defense registered exceptions each, to a certain and particular portion of the judgment.

The evidence showed that none of the three appellants took part in the kidnaping of the murdered girl. John Kono Tye Smith being either in Pleebo or Harper at the time she disappeared, Konde Nimely Smith left the town to fetch palm nuts after she had disappeared; and Gbleh did not visit the vicinity on that day.

Surely, whetting or sharpening his cutlass on that of Oldman Sennoh, sipping a jilt of

cane rum and going to the woods before the girl, Darbeh Blanyonde, disappeared and refusing to come back to town and help search for her—which is all the evidence against co-appellant Gbleh—cannot legally convict him for murder. The law is that a judgment of conviction of a crime is sustainable only where the evidence in the jury trial was sufficient as a matter of law to support the inference of guilt beyond a reasonable death. *Blamo v. Republic*, 17 LLR 232 (1966). The prosecution, of course, conceded this while arguing before this Bench.

Konde Nimely Smith was around when little Blanyonde disappeared and while the search for her was on, he left to fetch palm nuts and never returned to town until that night. He is said to have showed little enthusiasm in the search for Blandyonde. For five days after the mysterious disappearance of Blandyonde, Konde Nimely Smith went in and out among the crowd of people who sought for the girl yet no one saw blood stains on his trousers until the C.I.D. officers entered the scene on the fifth day when the victims almost putrefied body was discovered. The C.I.D. testified he told them the red stains on his trousers came from the blood of a tabado he had killed, but he himself testified it was his own blood poured out when he was dragged on the rough ground by the C.I.D. His statement that he was dragged on the rough ground had not been gainsaid so it was as good as the testimony given by the C.I.D. It is, therefore, legally impossible to convict him on this evidence. *Sanyer v. Republic*, 8 LLR 311 (1944); *Attob v. Republic*, 9 LLR 3 (1945).

The conclusion arrived at on the evidence of blood stains found on Konde Nimely Smith holds good on that of John Kono Tye Smith who for himself, testified that the stains were from a red paint while the C.I.D. testified he told them the stains were from the sap of certain vine (rope) in the bush. His testimony was not rebutted. It was recorded that he did not show his red painted house to the C.I.D. but the C.I.D. too never cleared the doubt by looking for and inspecting the alleged red paint house. *Collins v. Republic*, 22 LLR, 365 (1974). He was charged with murder for not having shown interest and regret in the mysterious disappearance of his niece, Darbeh Blanyonde. He was at Pleebo or Harper when she disappeared; he was met on the road by his brother and informed of it; he went to his house and later on returned to the home of the murder girl's parents where he spent the night. Upon the request of the paramount chief, John Kono Tye Smith gave up the clan chieftaincy which he had legally won by popular votes for the lone purpose of appeasing the opposing faction of the tribesmen to the end that his niece be found and as soon as he surrendered the chieftaincy the clansmen discovered the body of his niece. What more than this could he have done? We ask his brother, in his testimony, attached much importance to the

LIBERIAN LAW REPORTS

congratulatory remarks "thank you very much, you are a courageous ruler" made to him by one Nasser at the Pleebo gas station for he took this to mean that his brother was being congratulated for having killed little Darbeh Blanyonde. But it must be remembered that John Kono Tye Smith had just recently won the clan chieftaincy election. We asked, could he not be congratulated for that?

Another issue the prosecution stressed on in its argument before this Court is the remarks, "when an old lady burns her walking omen (stick) she must have strong reason back of it", made by one of the influential opponents of John Kono Tye Smith. They interpreted this remark to mean that because John Kono Tye Smith wanted the clan chieftaincy, he had to kill his niece.

A plausible argument and good conclusion, indeed. But let us look at the converse. John Kono Tye Smith contested for and had legally won the election for the clan chieftaincy before his niece disappeared. There were, however, some people and among them a few influential persons, who did not want him as their ruler for the following reasons: (1) that his father had ruled them for over thirty one years; and (2) that both he and his father had refused to pass through the customary ceremonies prior rulers had performed. Under such prevailing conditions, can it not also be logically concluded that the opposing party kidnaped and murdered John Kono Tye Smith's niece, secreted the body somewhere for four days and finally deposited it in a creek near his house, right at the place where he stored his rubber latex and coincidentally discovered by the clansmen soon after he had surrendered the chieftaincy? For pinning the murder crime on his neck John Kono Tye Smith would automatically be removed from office, arrested as was done and finally executed, if convicted. Which of the two reasons set above weighs heavier? We, are for the third time, constrained to ask.

“Spewing cold water” is a practice recognized by the tribesmen all over Liberia. It embraces two persons or groups of people. The wrongdoer, naturally the person on whose behalf the cold water is spewed is in trouble - or is sick or his business fails and the person wronged or the aggrieved agrees to forgive the offender. The spewing of cold water indicates that the penitent wrongdoer is pardoned and the aggrieved carries no grudge in his heart against the offender. Soon after the ceremony, the offender usually begins to recuperate; his business begins to boom or he goes out of his entanglement.

The disappearance of a human being in the clan and the people’s failure to find her - dead or alive - had placed John Kono Tye Smith in extreme difficult position, he being the clan chief of the area and brother of the missing girl’s father. After offering a token in this case - the surrender of the chieftaincy by him - the considered offender, and the spewing of cold water by some of the clansmen, then the aggrieved, the body of the missing girl was found. Such being the circumstances under which the statement was made, we hold that the interpretation given it by the prosecution is far-fetched; and we have refused to cast suspicion on this co-appellant for kidnaping and murdering little Darbeh Blandyonde.

As it is our considered conviction that the evidence given for the prosecution in this case is flimsy and unconvincing; the judgment entered upon the verdict which was not supported by it must, and it is hereby reversed. *Appleton v. Republic*, 23 LLR 109 (1974). It is apparent from the evidence that the State could not make out any better case if a new trial should be awarded, the appellants, Konde Nimely Smith and Gbleh, must be acquitted. Co-appellant John Kono Tye Smith had already gone the way of all flesh. Peace be to his ashes.

The Clerk of this Court is to send a mandate after rendition of judgment in this case to the trial court to resume jurisdiction over the cause and dispose of it in accordance with this opinion. And it is so ordered.

Judgment reversed.