JOHNSON WION, et al., Appellants, v. **REPUBLIC OF LIBERIA,** Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE THIRD JUDICIAL CIRCUIT, SINOE COUNTY.

Heard: May 24 & 25, 1982. Decided: July 8, 1982.

1. Where an instrument is relevant and has been testified to, marked, confirmed and re-confirmed, their admissibility into evidence by the court for the jury to decide on their credibility is not an error.

2. Where there is evidence showing its connection to the crime, it is proper to admit articles of the deceased or injured person as found at the scene of the crime or elsewhere.

3. Objections to the qualification of a witness must be interposed at the time the application is made and before the witness is qualified.

4. The right to introduce evidence in rebuttal to that introduced by the adversary is subject to the control of the trial court in the exercise of its discretion.

5. A party must give notice on the cross examination to rebut any particular state-ment of the adverse party while testifying on their own.

6. To warrant the granting of a motion for new trial for newly discovered evidence, the movant must not only show that he with reasonable diligence, could not have discovered such evidence, but he must also state the relevancy and the character of the evidence sought to be introduced; recital of the statutory words or that a new and material evidence has been discovered will not *ipso facto* warrant the granting of the motion.

7. Direct or positive proof is not essential for the establishment of the *corpus delicti.* The elements of *corpus delicti* may be proved by presumptive or circumstantial evidence.

8. The *corpus delicti* of a murder may be established without the production of the weapon alleged to have been used to effect the killing and without evidence of a post mortem examination.

9. The manner and means by which the crime was committed are not elements of the *corpus delicti* and the exact manner of the killing need not be proved.

10. A coroners' report is not necessary to establish the cause of death.

11. The testimony of a prosecuting witness may be sufficient to justify a conviction, although it is not corroborated or contradicted by other witnesses.

12. Conflicts in the testimonies of the prosecuting witness goes to its weight, but not to its sufficiency to sustain a conviction.

13. An accused has the privilege not to be called as a witness and not to testify. However, if he fails to explain away incriminating facts and circumstances in evidence, he takes the chance of any reasonable inference of guilt which the jury might draw from the whole evidence.

13. Where the accused voluntarily testifies, his failure to deny a material fact within his knowledge previously testified to against him, warrants the inference that it is true.

Appellants were indicted by the grand jury of the Third Judicial Circuit, Sinoe County, on the charge of murder. Upon a regular trial held, the empanelled jury returned a verdict finding the defendants guilty of murder. Appellants excepted to this verdict and moved the court for new trial. The motion was resisted by the prosecution, argued and denied by the trial court, and a final judgment was rendered confirming the verdict and sentencing the appellants to death by hanging. From this final judgment, appellants noted their exceptions and appealed to the Supreme Court.

The Supreme Court affirmed the judgment, noting that the prosecution had presented sufficient evidence to convince the jury of the guilt of the appellants. The Court observed that some of the appellants had chosen not to give evidence in the trial, a right which they had under the Constitution. The Court opined, however, that where evidence is presented against an accused and he makes no effort to rebut the evidence, the natural presumption is that the evidence is true and can form the basis for a verdict by the jury. The trial court, it said, did not therefore commit a reversible error when it denied the appellants' motion for a new trial.

The Court further held, as to the evidence presented by the prosecution, that it was not necessary for direct and positive proof to be presented to establish the corpus delicti; rather, it said, the corpus delicti could be proved by presumptive or circumstantial evidence. The

Court also opined that the manner and means by which the crime was committed were not elements of the *corpus delicti* and that it was therefore not necessary that the exact manner of the killing be proved or that a coroner's report be put into evidence to prove the cause of death. It was sufficient if death was established by the circumstantial evidence. The burden, the Court said, was met by the prosecution and was not rebutted by the defense. Any conflict in the testimonies of the witnesses for the prosecution, the Court concluded, went to the weight rather than the sufficiency of the evidence.

With regard to the appellants' contention that the trial judge had permitted the prosecution to bring in rebuttal witnesses when it had not given special notice that it would rebut any particular answers given by two of the appellants who had taken the witness stand, the Court noted that the appellants had waived their right to object since they had failed to raise any objections to the application of the prosecution at the time the application was made. The raising of the objections at the time when the witnesses were being qualified to testify did not cure the waiver. The Court therefore affirmed the judgment of the trial court.

E. B. Minor, John Teewia and *S. Edward Carlor* appeared for appellants. The Minister of Justice and the Acting Solicitor General*, Richard McFarland,* appeared for the appellee.

MR. JUSTICE SMITH, delivered the opinion of the court:

Thirteen (13) defendants, namely: Oldman David Jarboe, Johnson Wion, Joe Waltoe, William Wortor, John Cooper, Klah Bloh, William Jaklay, Browne Jerboe, Tieh-Bar Tieh, John Bougalar, Borkax Bougualer and Cooper James were indicted by the grand jury of the Third Judicial Circuit, Sinoe County, for the murder of Edmond Sayon. The case was called for trial, but because all of the 13 defendants had not been arrested, counsel for the appellants moved the court below to grant severance to the co-appellants, Johnson Wion, William Jaklay, David Jerboe, and John Cooper, who had already been arrested and held pending trial.

The court heard and granted the motion. The appellants were arraigned and they pleaded not guilty to the charge. The prosecution thereupon produced, in all, six witnesses, including two rebutting witnesses and the mother of the decedent, who first took the witness stand. The prosecution having rested evidence, on application of counsel for the appellants, two of the appellants in persons of David Jerboe and John Cooper, were qualified to testify as witnesses in their own behalf. They testified and were examined and cross examined; and without the production of any further evidence, the defense rested evidence and submitted the case for argument. Argument was heard with the state opening and closing, and the court below instructed the jury who retired to their room of deliberation. After deliberation,

the empanelled jury returned a verdict finding the four appellants guilty of murder. Exception was noted to the verdict and a three-count motion for new trial was subsequently filed.

In count one of the motion, the appellants contended that the verdict of the empanelled jury was manifestly against the evidence, in that, the *corpus delicti* was not proven, and that conspiracy as alleged was not established at the trial. In count two, the appellants contended that the jurors did not have the average intelligence to understand the language of the court, and in the third count the defendants alleged that they had discovered new evidence which if produced, would change the verdict. The motion was resisted by the prosecution, argued and denied by the trial court, and final judgment was rendered confirming the verdict and sentencing the appellants to death by hanging. The appellants excepted to the judgment and have perfected their appeal before this Court on a nine-count bill of exceptions.

The nine-count bill of exceptions may be summarized, as follows:

1. That the court sustained the objection of the prosecution to county defense counsel, Attorney Samuel B. Harris, taking part in the defense as member of Snoh Law Firm which announced representation for the defendants, since indeed the defendants did not declare themselves *in forma pauperis*.

2. That the court sustained several objections of the prosecution to the prejudice of the defendants.

3. That the alleged wearing apparels of the decedent were admitted into evidence over the objection of the defendants.

4. That over the objection of the defendants, the court qualified and allowed two witnesses for the prosecution to testify as rebutting witnesses after the State had rested evidence without previous notice.

5. That the essential element of the crime of murder, that is, the *corpus delicti,* was not proven, yet, the court confirmed the verdict and denied defendants' motion for new trial.

6. That the court denied defendants' motion for new trial, the said motion having alleged newly discovered evidence as one of the principal grounds therefor.

7. That the witness for the prosecution contradicted them-selves, which created doubt and which doubt should have operated in favor of the defendants.

8. That conspiracy was not established and the corpus delicti was not proven, yet, the court denied the motion for new trial and confirmed the verdict.

9. That the evidence of the prosecution did not connect the defendants with the crime, yet, the court rendered final judgment confirming the verdict.

We do not attach importance to the objections to questions and the rulings of the court thereto, and, therefore, will not consider count two of the bill of exceptions. In our opinion, none of the objections is pertinent to the determination of the case, especially since the appellants are not contending that the trial was irregular, but are rather stressing a reversal of the judgment and a discharge of the appellants because of the lack of evidence to convict them.

Counts five through nine of the bill of exceptions relate to the non-existence of evidence to convict for which appellants contend the motion for new trial should have been granted, rather than the court below rendering final judgment confirming the verdict and sentencing defendants to death by hanging. This being the case, we shall consider counts five, seven, eight and nine together by going into the evidence to determine whether or not the verdict of guilty was not supported by the evidence, since the apparels alleged to be that of the decedent were not sufficiently identified. In keeping with the records, the wearing apparels include short trousers which the decedent used as shorts, long pants, a long-sleeve shirt and a pair of slippers. These wearing apparels were identified by the prosecution's witnesses, marked by court, confirmed and reconfirmed, according to the records. They were identified as being owned by the decedent, and that they were the apparels he wore when Quatu, one of the defendants, came and carried him away upon the call of the other defendants who were said to be, in a meeting at a place called Nee-Tren; and that in the presence of several persons, Co-defendant David Jerboe came from the meeting with the said wearing apparels and delivered same to the decedent's mother with the information that they had killed and buried her son, Edmond Sayon. It is our holding, therefore, that the wearing apparels were relevant, and they having been testified to as being that which the decedent wore when he was carried away by a bodyguard, Bukreh, alias Quatu, to the call of the defendants, and which were marked, confirmed and reconfirmed, their admissibility into evidence by the trial court for the jury to decide on their credibility was not an error. Articles belonging to the person injured or killed and found in the possession or in the dwelling of the accused or shown to have been in his possession may be received in evidence, provided they are connected to the crime. Likewise, where there is evidence showing its connection to the crime, it is proper to admit articles of the killed or injured person as found at the scene of the crime or elsewhere. 22 C.J.S., *Criminal Law*, § 711. The wearing apparels having been found in the possession of one of the defendants, David

Jerboe, who reported that Edmond Sayon, the decedent, had been killed and buried, count three of the bill of exceptions is not sustained.

Count four of the bill of exceptions is in relation to the objection by the defense to the qualification of prosecution's re-butting witnesses, Jacob Sayon and Browne Jerboe, on the ground that the prosecution did not give previous notice to rebut any particular statement, but the court overruled that objection and allowed Witness Jacob Sayon to testify.

The trial records show that when the prosecution rested oral testimony, it did so with reservation to produce rebutting wit-nesses should the need arise, but when defendants took the stand and testified in their own behalf, prosecution cross-examined the witnesses without giving notice to rebut any particular statement made by the defense on the cross-examination; yet, when defense rested evidence, prosecution applied to court for the qualification of its rebutting witnesses, relying only on the general notice given at the close of its oral evidence that it would produce rebutting witnesses should there be any need. Defense inter-posed no objection to this application and Witness David Swen was qualified, examined, cross-examined and finally discharged. The court then adjourned for the day. When the court resumed business the following day, the prosecution requested for the qualification of witnesses Jacob Sayon and Browne Jerboe. It was at this time that defense objected to the qualification on the ground of notice. The trial court overruled the objection and ordered the two witnesses qualified for reason that the defense had not interposed objections to the qualification of the two remaining witnesses at that time. Thereupon, the two witnesses, Jacob Sayon and Brown Jerboe, were qualified. However, only Witness Jacob Sayon took the stand and was examined, cross-examined and discharged.

In keeping with our practice and procedure, objection to the qualification of a witness for any legal cause must be interposed at the time the application is made to the court and before the witness is qualified. In this case, however, the defense did not interpose objection to the rebutting witnesses taking the stand when the application was originally made and granted by the court. Consequently, Witness David Swen was qualified, examined and cross-examined. Witness Jacob Sayon was one of the rebutting witnesses whose qualification was requested by the prosecution and granted by the court below without any objection to and exception made by the defense. In our opinion, the application of the prosecution for the qualification of the rebutting witnesses referred to herein not having been objected to at the time the application was originally made and granted by the court below, the court committed no reversible or prejudicial error when it overruled the defense's objection which was made after the granting of the application.

Granting that Witness Sayon was qualified the following day over the objection of the defense, who did not object when the application was originally made, the right to introduce evidence in rebuttal to that introduced by the adversary is subject to the control of the trial

court in the exercise of its discretion. 23 C.J.S., *Criminal Law,* § 1050. Law writers have said as follows:

"The admission or exclusion or rebuttal testimony rests solely within the discretion of the trial court, and this includes the determination of whether certain testimony is proper rebuttal testimony. In the exercise of its discretion in such matters, the court is allowed wider latitude. The allowance of evidence in rebuttal after the accused has finally rested is in the sound discretion of the court; even if on such rebuttal new matter is introduced, there is no legal prejudice done to the accused in such a case if he is given opportunity to cross-examine or to meet the new evidence. The mere repetition on rebuttal of what the witness said in chief or on cross-examination is not prejudicial." *Ibid.,* § 1050(b).

The fact that the prosecution did not give notice on the cross-examination to rebut any particular statement of the defendants, appellants herein, while testifying in their own behalf, was out of logical order; hence, the testimonies of Witnesses David Swen and Jacob Sayon as rebutting witnesses for the State were obtained out of the logical order of trial, but the appellants did not interpose objection at the proper time, thereby waiving the right to do so thereafter. It is therefore our holding that the trial judge committed no reversible error, and hence count four of the bill of exceptions is overruled.

We shall, for a moment, skip count five of the bill of exceptions and discuss count six which relates to count three of defendants' motion for new trial wherein the defense contended that the trial judge should have granted and awarded a new trial. For the benefit of this opinion, we hereunder quote count three of the motion for new trial verbatim. It reads as follows:

"3. Defendants also say further that they have discovered a new and material evidence which, if produced at the trial, would probably change the verdict of the empanelled jury in favor of the defendants as to their not being guilty."

While it is true that under the Civil Procedure Law, Rev. Code 1: 22.1, a motion for new trial may be granted on the ground of newly discovered evidence, the mere recital of the statutory words or the statement that new and material evidence has been discovered will not *ipso facto* warrant the granting of the motion for new trial. The defendant must not only show that he, with reasonable diligence, could not have discovered such evidence, but must state with certainty for the information and determination of the court, the relevancy and the character of the evidence sought to be introduced. Count three of the motion referred to herein above fails to state any such fact which would have enabled the court below to determine whether or not such evidence could be produced at such a stage. A new trial will not be granted for

newly discovered evidence in the absence of a showing of due diligence by the accused to ascertain such evidence at his trial or unless a sufficient excuse for the lack of diligence is shown. 23 C.J.S., *Criminal Law,* § 1455. The question of diligence is solely for the determination of the trial court and in the exercise of its discretion; the conclusion which it may properly reach depends on the circumstances of the case. Denials of motions for new trial on the ground of newly discovered evidence are generally based upon the lack of diligence to procure and produce evidence known to the accused prior to the trial, or on neglect to ascertain what testimony witnesses could have given, or failure to make proper effort to procure the attendance and testimony of person who probably could have been used as witness, or failure to procure or discover document or exhibit. *Ibid.*, pp. 1236-1239. The defendants not having stated in their motion the nature of the evidence they intended to introduce and why it was not procured to be introduced at the trial, the trial judge committed no reversible error when, he denied the motion for new trial. Count six of the bill of exceptions is, therefore, not sustained.

The principal issues that counsel for appellants have advanced in their brief and argued before us for our determination are: (1) that the *corpus delicti* of the crime was not established, and (2) that there was no coroner's report, in the absence of which the judgment of the lower court should be reversed and appellants discharged. They have also argued that the witnesses of the prosecution contradicted each other and that malice afore-thought was not established at the trial, and also that the evidence of the prosecution did not connect the defendants to the crime charged. These averments are contained in counts five, seven, eight and nine of the bill of exceptions, and they cannot be fairly decided without examining the evidence; hence, we decided to further open the records and decide the issues one after the other.

According to the records in this case, the first witness who took the stand on September 22, 1981, was Frances Kon, mother of the decedent. This witness testified, substantially, that in September, 1978, the month and year her son was murdered, one of the defendants, Blamo Glee, alias Browne Jerboe, accused her son, Edmond Sayon, the decedent, of having committed adultery with his wife, and reported the matter to the clan chief of the clan, John Wattah. The matter was heard and the chief found her son not liable, thereby ending the matter. That thereafter the said Blamo Glee again accused her son of stealing the shirt of his (Blamo Glee's) son; he again complained to the clan chief, and after the allegation could not be proven at the investigation the chief again acquitted her son of the charge of stealing. She further testified that each time they went to the clan chief's office, Blamo Glee was always accompanied by Co-defendant Johnson Wion. After the chief decided the last case in favor of her son, the witness further testified that while the said Blamo Glee was leaving for home he told Edmond Sayon in her presence that:

"I brought you before the clan chief and the case was decided in your favor, but I want you to remember that I am a man with a two-edge saw; one of the edges is dull and the other is sharp; the dull one you have overcome, but the sharp edge you will not overcome."

The witness also testified that she then asked Blamo Glee to explain to her what he meant by this statement, but Blamo Glee, according to her, refused to make any further comment and left. She then went to the same Chief and complained; when the Chief sent to call Blamo Glee, he refused to attend the call.

It was in the same month, September, 1978, the witness said that Blamo Glee called a meeting in the bush with some members of the Town, and when the meeting was convened, he, Blamo Glee, was asked to state the object of the meeting which he said he could not do except Edmond Sayon, the decedent, was present. It was then that Quatu was deputized to go for the said Edmond Sayon. She testified that when Quatu arrived and told them about the meeting and also how her son's presence was needed in the meeting, her son told Quatu that he was not in the position to go because he was about to bath his mother, she been sick; that Quatu insisted and forcibly carried Edmond Sayon away. This was during the morning hours, she testified. Later on, she decided to go and see where her son was carried even though she was sick; that while she was heading to the direction, she saw Co-defendant David Jerboe, who brought her the wearing apparels of her son, Edmond Sayon, with the information that they had killed and buried him. The witness testified further that upon hearing this, the first thing she did was to slap Co-defendant David Jerboe, and that because of her illness she was unable to reach the place of the meeting, and that up to the time she took the witness stand, that is from September 1978 up to that time, she had not seen her son nor his grave.

Whilst on the stand, she was cross-examined, as follows:

"Ques. I suggest that you are acquainted with the defendants in the dock, and if so please point them out each for the benefit of the court and jury.

"Ans. Yes, I know them; they are the same people that carried my son in the bush. They are: Wisseh, Buk-rah, Kpawee, Teah, alias Johnson Wion, William Jaklay, David Jerboe, John Cooper, respectively.

"Ques. Miss Witness, you, in your statement in chief, have pointed out two of the defendants, one taking your son away from the home and the other returning his clothes to you. Do you give us this to understand that these are the only facts you have in your knowledge tending to prove this case of murder against these two named by you and not the

others?

"Ans. All those that killed my son were named by me when I came here to report the matter of the killing of my son. Some of those men are still at large and they have not been arrested. The two persons you referred to as named are among the persons I reported to the government. They include, also the others who have not been arrested yet."
The following questions were put to the witness by the empanelled jury and she answered, as follows:

"Ques. Please inform us whether or not you followed the man who carried your son that same day when he was led from the house.

"Ans. I was sick and therefore I did not follow them.

"Ques. Since you said you did not follow Quatu and your son, please tell us how you know that your son was killed by the defendants in the dock.

"Ans. It was David Jerboe, who brought my son's clothes to me and informed me that he was killed. As I said, it was at that time I slapped him, David Jerboe."

David Wiah, the clan chief referred to herein, was the second witness who took the stand. This is what he said:

"In September 1978, one Quatu approached me and said that he was in town to call Edmond Sayon. So we asked him why he needed Edmond Sayon; he replied that they had convened a meeting and they needed Edmond Sayon to attend. He then informed us that Johnson Wion, Browne Jerboe, he, Quatu, Tar-Que-Tom, John Cooper were the people who convened the meeting and asked him to call Edmond Sayon. I followed after him, but nearing the place he mentioned about, I saw and observed David Jerboe when he produced the clothes of the decedent and dropped them before decedent's mother, declaring that Edmond Sayon was killed and buried by them and these were his clothes which he had decided to return to the mother. While on my way coming to Greenville, these same people, who I have already named in my statement, followed me and grabbed me, and while tussling they cut me on my right little finger which I now exhibit to Your Honor and jury in open court. This is what I know about the case".

On the cross-examination, the following questions were put to the witness and he answered to each one of them, as follows:

Ques. Mr. Witness, did I understand you to say that David Jerboe declared to decedent's mother that Edmond Sayon was killed by them and these were his clothes which he decided to return to the mother?

"Ans. Yes.

Ques. To the best of your knowledge, please tell us who was there together with yourself when this declaration was made by David Jerboe as you have said.

Ans. The people that were present when David Jerboe carried the clothes to the mother of decedent: David Wieh, Samuel Swen, Daniel Wiah, David Swen, Jacob Sayon, this is all.

"Ques. When David Jerboe allegedly said to you they had killed Edmond Sayon and had buried him, you, as an authority, tell us what position was taken, if any?

"Ans. I was on my way to report it to Government when the defendants caught me on the road.

"Ques. Mr. witness, you, as an authority in that area, tell us is it not a fact that decedent drank sassy wood and died and his body was never found?

"Ans. I know nothing about that.

"Ques. Mr. Witness, upon your oath, do you give this court and jury to understand that your knowledge of the murder of decedent by the defendants in the dock is based on what was told to you by David Jerboe and not from your personal knowledge not so?

"Ans. My knowledge of his death is based on the fact that Quatu went to the decedent's house and led him away to the alleged place of meeting and also the return of David Jerboe from that place of meeting with the decedent's wearing apparels, also Jerboe declaration that the decedent was killed and buried and his clothes returned to his mother. I should add further that my knowledge of Sayon's death is based also on the fact that I was on my way down when the defendants in the dock including all other individuals who I believe are not yet arrested, grabbed me and in a tussle I was cut on my right little finger by them."

Witness Samuel Swen was the third witness for the prosecution who took the stand. Here is what he said:

"In the year 1978, September, I was in my house when I heard a noise at Woto's Town and I

went there. While on my way coming, the mother of Edmond Sayon was crying, I then asked her what are you crying for? She then explained to me that this morning one Bodyguard Bukrah, alias Quatu, came for my son Edmond Sayon, that one Mr. Blamo Glee or Browne Jerboe, Johnson, John Cooper, William Jaklay, David Jerboe, John Cooper, Joe Wetteh, John Bukrah and others having a meeting at Nee-Tren, and since Mr. Bodyguard carried him he has not returned. I then said to the Oldlady that O.K. I am going there. While talking this, Edmond Sayon's older brother by name of Jacob Sayon was present. This is all what I know about the case.

This question was put on the cross, and the witness answered:

"Ques. Tell us further how you came by your knowledge that the said Edmond Sayon is dead?

"Ans. I know because one David Jerboe who is one of the defendants in the dock brought Edmond Sayon's clothes, delivered them to his mother and said to her that those were his clothes and said that we killed your child and buried him."

Daniel Wieh, the husband of decedent's mother, Frances Kon, was the fourth witness for the prosecution to testify. This witness testified in substance that he was not in town when he came and carried Edmond Sayon away, but when he returned he was told that Browne Jerboe, Johnson Wion, William Jaklay, David Jerboe and John Cooper had sent Quatu to call Edmond Sayon in their meeting, and since they left, Sayon had not returned. He left to chase the said Quatu in an effort to recover Sayon, but to no avail and so he returned to town. Upon arriving in town, he said he met his wife crying and saying that since Quatu carried Sayon away he had not returned. While his wife was explaining this to him, Co-defendant David Jerboe arrived with the decedent's clothes and slippers and dropped them before his mother saying, that they had killed and buried Sayon. Upon hearing this all of them began to cry. Jacob Sayon, the brother of the decedent collected the clothes and went to Greenville to report the incident to the Government. This witness, as was done by the other three witnesses, testified and identified the wearing apparels of the decedent and they were marked by court, confirmed, reconfirmed and admitted into evidence for the jury to decide on their credibility.

From the testimonies of these witnesses, the following facts have been revealed for our consideration:

1. That Edmond Sayon, the decedent, was in perfect health in his town on the morning of the day of his reported death, when Co-defendant Quatu reportedly carried him to attend

the meeting to which his presence was said to be needed, and he never returned therefrom.

2. That one of the defendants, David Jerboe, came from that meeting with the decedent's wearing apparels and reported that the said Edmond Sayon had been killed and buried.

3. That no one knows or could possibly know by what means and with what the decedent was killed and where and how he was buried.

4. That the possibility of inspecting the decedent' s body or a post mortem for the purpose of establishing the cause of death did not exist, since the decedent's body was never recovered.

5. That the possible killers of the decedent, Edmond Sayon, were named and the place they reportedly conspired to commit the crime was also named and identified.

6. That the four defendants, Johnson Wion, David Jerboe, William Jaklay and John Cooper, appellants before this Court, are among those named according to prosecution's evidence.

The circumstances surrounding the death of decedent as shown by the facts herein above summarized render it impossible for anyone to state positively the part which each of the defendants played in effecting the death of the decedent, since the crime was committed undercover. It is therefore proper that we resort to circumstantial evidence in order to determine the guilt or innocence of the accused, taking into account the evidence of the defendants in rebuttal of these facts as disclosed by the record. Before proceeding any further, let us first examine the evidence of the defense.

When the prosecution rested evidence, two of the four defendants on trial were qualified and they took the stand and testified as witnesses in their own behalf. Here is what Co-defendant David Jerboe had to say in defense of the charge levied against him:

"Ques. Mr. Witness, what is your name and where do you live?

Ans. My name is David Jerboe; I live in Kpanyon Area, Tartwah, Sinoe County, Republic of Liberia.

Ques. Mr. Witness, are you one of the defendants who have been charged with the killing and murdering of one Edmond Sayon?

Ans. Yes, I am one of the defendants who were arrested.

Ques. The Republic of Liberia has charged you and your comrades in the dock with having murdered and killed one Edmond Sayon. You having elected to take the stand to disprove the purported alleged murder, will you please give all facts within your knowledge tending to disprove the said allegation for the benefit of this court and jury?

Ans. I did not know anything about the killing and murdering of Edmond Sayon."
This was all the testimony given by the defendant as a witness in his own behalf to disprove the crime charged against him. Cross-examination was waived, but the court asked the following questions and the witness answered

"Ques.The State charged you with the commission of the crime of murder and in giving evidence you were named as the David Jerboe who returned the clothes of the late Edmond Sayon to his mother in the presence of several persons. Now that you are on the stand to testify in your own behalf, do you still contend that you know nothing to tell this court in defense of that charge laid against you?

"Ans. I know nothing about what they have said against me.

"Ques. Were you acquainted with Edmond Sayon?

"Ans. Yes, I knew him because we are from the same Clan called Tartwah.

"Ques. Do you know whether he is still in Tartwah?

"Ans. No, they said that he is dead.

"Ques. Did you hear about his death from any particular person's mouth, and if so please tell the court whom you heard it from?

"Ans. I do not visit but I heard it from my friend that came on a visit.

"Ques. Since you said you are well acquainted with the late Edmond Sayon who in fact was a young man as you are, did it concern you to inquire about his death, in other words what was the cause of his death?

"Ans. No, I did not do it, we the Tartwah people are plenty, why should I inquire about his death.
These are just a few of the questions put to this defendant as witness in his own behalf, to

test his inclination, his motive, and his credibility, and to raise doubts concerning his answers given in an effort to disprove the charge of murder and to rebut the facts brought out by the evidence of the prosecution in support of his plea of not guilty.

Co-defendant, John Cooper, also took the witness stand and here are the questions propounded to him on the direct and his answers thereto.

"Ques. Mr. Witness, the Government of Liberia has charged you together with others with conspiring, agreeing and deciding to kill and murder one Edmond Sayon, if you are one of the defendants, having any know-ledge or facts within your knowledge tending to disprove this charge of murder, please say all you know for the benefit of this court and jury.

Ans. I did not kill Edmond Sayon nor know anything about the death of said Edmond Sayon.

Ques. Mr. Witness, the indictment also charges you and your colleagues for holding meetings between the 1st of September A. D. 1978 and the 30th day of said month purposely and designedly to conspire, agree and decide to kill and murder one Edmond Sayon. If you have any knowledge tending to disprove this fact, please state same for the benefit of the court and jury?

Ans. No one and I have no meeting."

This is the testimony of the co-defendant who took the witness stand to disprove the allegations levied against him in support of his plea of not guilty.

These two defendants were examined, cross-examined, and finally discharged. Without the production of further evidence, the defense rested evidence and submitted the case to argument. The other two defendants, Johnson Wion and William Jaklay, did not give any evidence at all. The case was therefore argued and terminated by the trial court with the finding of the verdict of guilty for murder.

The first issue advanced by counsel for appellants in their argument was that the *corpus delicti* of the murder charge was not established at the trial. We do not agree with this argument of appellants' counsel; in that, Edmond Sayon, the decedent, according to the records, was carried away by Co-defendant Quatu to attend a meeting where decedent's presence was needed and from where he did not return up to and including the trial in September, 1981 and by Co-defendant Daniel Jerboe coming from the meeting with decedent's wearing apparels which he delivered to his mother in presence of other persons and informed her that they (meaning the defendants) had killed and buried her son, Edmond Sayon, in our

mind, the death of the decedent and the criminal agency were clearly established at the trial under the circumstances.

Direct or positive evidence is not necessary to establish *corpus delicti.* The rule laid down by the early English authorities that the *corpus delicti* must be proven by direct or positive testimony has been modified by later decisions. The controlling authority now is that direct or positive proof is not essential; all the elements of the *corpus delicti* may be proved by presumptive or circumstantial evidence. It would be unreason-able to always require direct and positive evidence, for crimes are naturally committed at chosen times, in darkness and secrecy. 20 AM. JUR. 2d., *Criminal Law,* § 1231. The *corpus delicti* of a murder may be established without the production of the weapon alleged to have been used to effect the killing, and without evidence of a post mortem examination. Proof of guilt of a crime will be deemed sufficient when the evidence thereof, even if circumstantial, is of such nature as to convince any rational mind of the criminal responsibility of the accused. *Taylor* v. *Republic,* 14 LLR 524 (1961).

There are numerous acts which can cause the death of a person; there are as many ways to commit murder as there are to destroy a man. Therefore, no particular kind of act is necessary to constitute the element of the crime of murder. It is sufficient if the act done or omitted results in death.

On the cross-examination of prosecution's Witness David Wiah, the defense revealed, but did not prove the revelation any further, that Edmond Sayon died as a result of sassywood which he drank. The gathering of such a large number of persons in the bush in the daytime where the late Edmond Sayon was carried by one of the accused and never returned and the fact that his grave was never found would lead any rational person to presume that the question put to the witness, as already stated in this opinion, was intended to bring to light that the bark sassywood, the drinking of which is forbidden by law, was administered to decedent by the defendants in their meeting, which resulted in the instant death and immediate burial of the decedent in the bush. This act can in no way excuse any of the persons who at-tended the meeting from the commission of the crime of murder.

Trials by native ordeal in which the bark sassywood is ad-ministered internally is forbidden. Any person who administers, authorizes, permits, orders, aids, promotes or otherwise participates in the administration of such an ordeal shall be deemed guilty of a misdemeanor and shall be fined an amount not exceeding $200.00, and if death occurs as a result of the ordeal, all such persons shall be prosecuted under the appropriate provisions of the Penal Law, 1956 Code, § 422. The doing of an act forbidden by law is in itself criminal and so if death ensues by the doing of such act, even though there was no intent to kill, the doer of such act will be guilty of murder. And so in this case, if decedent met his death by the

administration of the bark sassywood to him by the appellants in their meeting which resulted in his instant death and immediate burial, they cannot be excused from the commission of the crime of murder.

The second issue argued by counsel for appellants is the absence of a coroner's jury report establishing the cause of death of the decedent. This contention of the appellants is unmeritorious because, as earlier indicated, the facts in evidence show that Edmond Sayon was killed and buried in an unknown place; how then can his body be inspected by a coroner jury to determine the cause of death? The facts in evidence also showed that only decedent's wearing apparels were returned; no trace of his grave could be made nor is there any evidence that his body was ever found. There was evidence, however, that Edmond Sayon was carried away to a meeting place by Co-defendant Quatu, who informed decedent's mother in the presence of several persons that he, Edmond Sayon, was needed at the meeting called by Blamo Glee and also attended by the defendants where he was killed and buried, according to Co-defendant David Jerboe who was in possession of his wearing apparels and brought the same to decedent's mother. There was also evidence in records, which remained unrebutted, that while Chief David Wiah was en route to Greenville to report the incident, the defendants grabbed him on the way and while tussling, the chief was wounded on his right little finger. The cause of death and criminal agency may be established by circumstantial evidence, especially when the question of the cause of death is raised at the trial. It is not necessary that the evidence that death was caused by criminal means should be established from the body of decedent; so an autopsy is not essential. The manner and means in and by which the crime was committed is not an element of the c*orpus delicti*, and the exact manner of the killing need not be proved. 30 C.J.S., *Evidence,* pp 287-288. The absence of a coroner jury report as we have already pointed out was in fact not only unnecessary to establish the cause of decedent's death, but the circumstances surrounding decedent's death made the setting up or coroner inquest impossible.

The next argument of counsel for appellants is that the prosecution's witnesses contradicted themselves, as to the place where Co-defendant David Jerboe delivered the decedent's clothes to the mother.

The evidence of the prosecution that decedent's wearing apparels were brought and delivered to his mother was corroborated, according to the records before us; they were identified to be a pair of short trousers used by decedent for underwear, a pair of long trousers, a long sleeves shirt and a pair of slippers. Nothing, besides what had been testified to was delivered by someone other than Codefendant David Jerboe. Therefore, whether the delivery of the wearing apparels was made on the road or in the town, is immaterial. The fact that the wearing apparels of the decedent were brought and delivered to his mother by

Co-defendant David Jerboe, the place of delivery is immaterial. We have the following law citation in support of our view which reads:

"The credibility of a witness and the weight and value to be given to his testimony, in a criminal prosecution, is a matter to be determined by the jury . . . the court or jury, in making such determination, may take into consideration any attendant facts or circumstances which tend to throw light on the accuracy, truthfulness, and sincerity of the witness".

The mere fact that a witness' testimony is self-contradictory to some extent, or is inconsistent with statements made by him at other times, does not prevent its constituting substantial evidence on which to base a conviction, especially where there are facts explanatory of the contradiction.

The testimony of a prosecuting witness may be sufficient to justify a conviction, although it is not corroborated, or contradicted by other witnesses. The jury, however, need not accept the prosecuting witness' version of the crime but may consider all the surrounding facts and circumstances. Conflicts in the testimony of the prosecuting witness goes to its weight, but not to its sufficiency, to sustain a conviction." 23 C.J.S., *Criminal Law,* § 905.

The alleged contradiction is, therefore, immaterial to disturb the unanimous verdict of the jury.

The other contentions as raised in the bill of exceptions are that, malice aforethought was not established and that the evidence of the prosecution did not connect the appellants to the crime of murder.

We have earlier stated in this opinion that a conviction may be sustained by circumstantial evidence. The facts in evidence in this case show that one of the defendants, Browne Jerboe, alias Blamo Glee, who unsuccessfully instituted two different proceedings against Edmond Sayon, the decedent, in the Clan Chief's court told his victor, Edmond Sayon, that he, Brown Jerboe was a man with a two-edged saw, one of which was dull and the other sharp; that Edmond Sayon was successful to overcome the dull side, but the sharp side he will never overcome. This same Brown Jerboe, alias Blamo Glee later convened a meeting attended by appellants and in which meeting the presence of Edmond Sayon was demanded and was forcibly carried away to the meeting by Co-defendant Quatu. At this meeting, Edmond Sayon was killed and buried as later reported by Co-defendant David Jerboe who was in possession of his wearing apparels and reported the same to decedent's mother with the information that they had killed and buried Edmond Sayon. These facts in the records remained unchallenged and unrebutted to dispel the presumption of guilt of the appellants. Under the circumstances, it is our holding that malice afore-thought was established at the trial and that appellants were all connected, by the evidence, adduced to the charge of

murder of the decedent at their meeting, and therefore the verdict of guilty cannot be disturbed.

Two of the four defendants, David Jerboe and John Cooper, took the witness stand as witnesses in their own behalf, and all they testified to was that they knew nothing about the killing of Edmond Sayon, which is the same as their plea of "not guilty" and without the production of further evidence in support of their said plea they rested evidence. The other two defendants, William Jaklay and Johnson Wion, elected not to testify in support of their said plea of not guilty and in denial of the facts testified to against them. As did the other two defendants who testified, they also neglected and failed to testify in rebuttal of the incriminating facts in evidence against them in order to dispel the presumption of guilt.

While it is true that an accused, under our statute, has a privilege not to be called as a witness and not to testify and that the enjoyment of such privilege may not draw any adverse inference therefrom, nevertheless, it is to be noted that when the accused in a criminal prosecution fails to explain away incriminating facts and circumstances in evidence in the trial that lay peculiarly within his knowledge, he takes the chance of reasonable inference of guilt which the jury might properly draw from the whole evidence. Once the prosecution establishes its case, the accused remains quiet at his peril. Furthermore, although the protection afforded an accused against any un-favorable presumption or inference being drawn because of his failure to testify remains with him until he takes the stand as a witness, is sworn to tell the truth, and thereafter testifies in his own behalf, when he voluntarily testifies (as in the case of Co-defendants David Jerboe and John Cooper), he is subject to the rules as other witnesses, and his failure to deny a material fact within his knowledge previously testified to against him warrants the inference that it was true. 29 AM. JUR. 2d., *Evidence*, § 189.

In view of the foregoing facts, circumstances, and the sup-porting legal citations hereinabove made, it is our holding that the verdict of the jury and the final judgment confirming the same should not be disturbed. The judgment of the court below is, therefore, hereby affirmed. And it is hereby so ordered.

Judgment affirmed.