

**Dangbaye Wogbeh** of the City of Monrovia, Liberia APPELLANT VERSUS The  
**Republic of Liberia** APPELLEE

APPEAL FROM THE FIRST JUDICIAL CIRCUIT, CRIMINAL ASSIZES 'A'  
FOR MONTSERRADO COUNTY, REPUBLIC OF LIBERIA.

**LRSC 7**

Heard: November 9, 2009. Decided: January 14, 2010.

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

During the February 2007 Term of the First Judicial Circuit Criminal Assizes 'A' for Montserrado County, an indictment was found against Dahn Gbaye Wogbe, and ten (10) others (to be identified). They were charged aggravated assault, a felony of the second degree.

The indictment alleges that on March 3, 2007, at Duport Road in Paynesville City, Montserrado County, Republic of Liberia, appellant Dahn Gbaye and ten (10) other defendants, allegedly inflicted serious bodily injuries on Daniel A. Binda, Sr., Othelo McCritty, Prince Weah, Sunny Boy Benson and Jackson, all private prosecutors. The crime was committed, according to the indictment, when appellants criminally, wickedly and intentionally moved on the land of Private Prosecutor Daniel A. Bindah, lying and situated at Duport Road. That there and then appellants allegedly wasted acid water and used cutlasses, irons, sticks and other dangerous weapons to inflict serious bodily injuries on diverse parts of private prosecutors' bodies; and that defendants' criminal conduct caused the victims to bleed profusely and below listed item belonging to private prosecutors were allegedly taken away by the defendants:-

- (1) One Nokia phone (6600) valued at USD300.00
  - (2) One Nokia phone (3310) valued at USD100.00
  - (3) One Samsun phone valued at USD150.00
  - (4) Three pairs of Timberland booths valued at USD105.00
  - (5) Lost cash USD150.00
- TOTAL = USD805.00

The case was called for hearing at the November 2007 Term of the court. But Appellant Dahn Gbaye Wogbeh, for reasons not provided in the record, was the only criminal defendant arrested and brought under the jurisdiction of the court.

Subsequently, prosecution filed a motion for severance and same was granted consistent with I LCLR, title II, (Criminal Procedure Law), section 16.10 (1973) which provides:-

*"If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or by a joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants, or provide whatever other relief justice requires."*

Defense thereafter moved the court to dismiss the indictment. In its three count motion spread on the minutes of court, defense contended that the state charged appellant with the crime aggravated assault which allegedly took place in Paynesville; yet, argued defense, there was no police charge sheet in the court file to show that the alleged crime was brought to the attention of the police, and that the police thereafter investigated and subsequently charged appellant as a suspect. Defense strongly contended that the failure of the state to have commenced these proceedings with the police was a fatal defect which made the indictment a fit subject for dismissal. According to defense, under practice and procedure in this jurisdiction, the only time a matter can be taken to court without police investigation and charge sheet is where there is no police in the environment; but in the instant case, Paynesville, where the crime is said to have been committed, has three police depots yet none of them pressed charges of aggravated assault against appellant.

Resisting the motion, prosecution contended that same was not sufficient reason to warrant the dismissal of the indictment. Prosecution maintained that although the police are the first actors in the state prosecution's machinery, not proceeding with its case, as in the instance, through the police was not fatal. What matters, according to prosecution, is the evidence that will be adduced at the trial. The court sustained prosecution's argument and dismissed defense motion seeking to quash the indictment.

On arraignment, Appellant Wogbeh pleaded not guilty and on November 18, 2007, hearing commenced with Her Honor Evelina Z. Quaqua, presiding by assignment.

Producing evidence, prosecution paraded three (3) witnesses. The general testimony of prosecution's first witness, Jackson David, is summarized as follows:

The witness told the court that in March 2007, he was hired along with four other persons by Mr. Daniel Bindah (principal private prosecutor) to build him a house in the Duport Road area. Mr. Binda dropped them at the site and went to buy food for the workers.

While the workers were walking inspecting the site, they heard appellant calling people to come out as *"the people have come on the land."*

Appellant and those he called started taking weapons, including cutlasses and bottles. At that point, they the workers got concerned and frightened and therefore started to run from the site. But appellant and his men chased them and soon started to chop them with cutlasses. According to this witness, appellant himself had a bottle in his hand containing water which he pressed and sprayed on the witness' back and also on his neck. One of appellant's men took a rock and almost burst my head with it; *"I bent down and the rock passed over my head."* The group grabbed me and said my business was finished. I told them I am not a bad man; that I am just a contractor. At that point, I heard the appellant calling his wife to go for the other bottle under the bed saying: *"we want to kill these people for them not to work for any money again in this place; by that time, I was rolling on the ground and was helpless"*. After that I put my two hands over my eyes. Appellant said *"no more I will see again when we have finished with your two eyes"*. The witness said one of the big men in the community told them to come and sit down by him. The big man asked what type of crime these people committed for which you want to kill them. While the big man was talking, I opened my other eye that the acid water never went into. As soon as I tried to do that, some of appellant's men again wanted to flash more acid water on us. The big man told them to stop. The big man sent for the police. The police people came and put us in the car and carried us to police depot, zone five and the ambulance thereafter took us first to JFK where we were advised to go to MSF Hospital. It was at the MSF Hospital, the white people started treating my back and I did not know myself again.

*On the cross the witness was asked:*

*"Ques: ...on the day of the incident, did you see the defendant among the people who you alleged attacked you?"*

*"Ans: Yes, I say I saw the man, he was the one that gave the order to the boys to do bad to me."*

*"Ques: Mr. Witness you also told this court that the defendant told his wife to bring another bottle. Did you know the defendant's wife prior to that date?"*

*"Ans: I do not know the woman but I only heard the man telling his wife to bring the acid water in the bottle."*

*"Ques: You claimed that you were attacked by the defendant and others and that the police were later*

*called on the scene. Please tell this court and the jury if you know whether the police ever conducted any investigation to determine who assaulted you and why you were assaulted."*

*"Ans: I was on the ground, and one of the big men called the police with ambulance."*

*A juror asked the witness the following question:*

*"Ques: Mr. Witness, are you the only person that got wounded?"*

*"Ans: No we all were wounded. The other people got chopped off."*

*On the issue of time of the incident, the witness was asked the following question:*

*"Ques: Mr. witness, do you confirm the statement you made on the direct on yesterday, November 18, 2007.... which I quote: "We were five in number, we then asked him how will we see the area; he said I can carry you there and show you there. It was around 3 p.m." Do you confirm that statement?"*

*"Ans: Yes."*

See sheet 1, (Wednesday November 19, 2007), November 2007 Term, 33 rd Day's Jury Sitting.

*Mr. Othelor McCritty, prosecution's second witness testified as summarized herein:-*

That while they were at the site, a group of guys headed by the defendant moved on them with some acid water, cutlasses, and sticks; that when the group reached them, the group decided to flash the acid water on them; that the acid water was in the mineral and clorax bottles; that the five of them had nothing to defend themselves so they decided to run away from their attackers; that as they tried running away, the group caught them, took off their clothes including this witness' dexter (shoes), said to cost USD30.00 and also took from his pocket, USD150.00, which money he had just received from Western Union; that the group started beating them and wasting acid water on them. The witness testified that appellant headed all these activities that were meted to them, the victims. The witness exhibited to the jury the scars of the acid water on his back. He also showed the scar on his head of what he described as the mark of a shovel; that in the process, appellant's wife went for some more acid water to use to be sprayed on them; *"they said they wanted to kill us and in all this, the defendant was heading the group."* Their attackers were about ten persons in number. He said they started crying and begging saying that they came only to do a piece of job; but none of the attackers

listened; that though they started bleeding, yet the group was still using acid water on them. When the wife brought additional acid water, the group again started using it and this is the way they maltreated us and it affected the eyes of one of us; *"luckily, the police came and rescued us from them; even the police had difficulty taking us from this group but had to fight hard to rescue us."* That the police sent for an ambulance which took them to JFK and subsequently to MSF clinic at Mamba Point.

*The witness was crossed on the following question:-*

*"Que: Mr. Witness, did you or anyone on your behalf after the incident file any formal complaint against this defendant in the dock to any state authority?"*

*"Ans: Actually we were bleeding. I never went to call police I never even had the chance to do that. We were lucky that the police got the information and they came there only to rescue us. Even when the police came there, these people were speaking their tribe stating that they were going to kill us only when it was going to get dark "*

*A jury posed this question to the witness:*

*"Ques: You said that the defendant used acid water on you people, please tell the court and the jury whether the defendant used the acid water on all of you people."*

*"Ans: Some of my friends were beaten while the same time, the defendant was using acid water on us."*

Prosecution third witness Daniel A. Binda substantially re-counted the history of the dispute over the land, where the crime is said to have taken place. He also told the court that the victims of the assault were taken to the hospital and treated. The witness told the court that examination of victims' bodies shows that some chemicals and cutlasses were used on them. Photographs showing the inflicted injuries were testified to, identified and the court's mark of identification placed on same. The court's marked photographs show serious bodily injuries, especially those inflicted on the face and eyes of victim/witness Jackson David.

When its third witness was discharged from the stand, prosecution made the following submission:-

*"At this stage, prosecution informs court that she now rests with the production of both witnesses material and oral and reserves the right for a rebuttal witness if the need arrives. And submit."*

At the following hearing on December 28, 2007, defense then filed a motion or judgment of acquittal. In the five count motion, defense strenuously contended that the state had failed to establish a prima facie case of aggravated assault against the appellant; hence appellant was entitled to a judgment of acquittal as a matter of law, citing section 20.10, I LCL Rev, title II (Criminal Procedure Law); appellant, also citing the case *Marpleh v. R.L.* reported in 19 LLR 335 (1969), further contended that it is a settled law that in all criminal cases, the prosecution must prove beyond a reasonable doubt the *corpus delicti*, meaning the criminal act charged and the identity of the person charged with that crime.

Appellant says that although the indictment states that appellant used cutlasses, acid water and other deadly weapons to inflict serious bodily injury on the private prosecutor, yet prosecution failed to produce any police charge sheet, charging the appellant with the commission of said crime. To reinforce, appellant contended that although prosecution's three witnesses testified that the police went to the scene of the alleged crime and took private prosecutors to hospital for treatment, no effort was made by the prosecution to subpoena any of the police officers for the purpose of testifying.

Appellant argued strenuously, that in our jurisdiction where an accused is suspected of committing a violent crime, the police are the ones that should conduct an investigation of the alleged crime and determine whether there is sufficient evidence to charge the accused with the commission of the crime charged. In the instant case, appellant further contended, although crime was committed on Duport Road, Paynesville where there are over five police depot, not a single police officer was produced to identify the defendant as the doer of the act, nor was any police charge sheet produced identifying the appellant as the perpetrator of the alleged crime. Hence, a prima facie case was not established. Appellant also maintained that at the close of its production of evidence, prosecution failed to admit into evidence any documentary or demonstrative evidence linking appellant to the commission of the crime as charged.

Under these circumstances appellant was entitled to judgment of acquittal consistent with practice and procedure in this jurisdiction.

When trial resumed after the filing of the motion for judgment of acquittal, prosecution informed court, and same was supported by the record, that it had filed a five count motion for what it called "*motion for admissibility into evidence of p/1-in-bulk.*" Counts 2-5 are here quoted as follows:-

*"2. And that movant says that at the commencement of the trial, movant produced three (3) witnesses whose testimonies made reference to photos. These photos have been testified to, identified and marked by court as p/1-in-bulk. They were also confirmed and re-confirmed by court based upon prosecution witnesses' identification. Prosecution gives notice to court to produce the photos at the hearing."*

*"3. And also that prosecution says that at the time of resting with the production of evidence, even though notice was given for resting INTOTO, prosecution inadvertently failed to request court for the admissibility into evidence of P/1-in-bulk to form a cogent part of prosecution evidence before court."*

*"4. And also further to count three (3) above, prosecution says that our statute as found on page 424 of 15 LLR, syl. 3 in the case WILLIE WALKER, APPELLANT V. GIBSON D.N. MORRIS, APPELLEE, states that "All documentary evidence which is material to issues of facts raised in the pleading, and which is received and marked by court, should be presented to the jury."*

*"5. And that prosecution says that court marked instrument P/1-in-bulk is very material, relevant and cogent to the evidence adduced at the trial in proving prosecution's case and if left out and not presented to the jury for their credibility, [same] will prejudice prosecution's interest and may have an adverse effect."*

Prosecution also spread on the minutes of court an eight count resistance to the motion for judgment of acquittal. Arguing that both statutory and case laws cited by defense were inapplicable to the case at bar. Prosecution principally contended that the evidence adduced at the trial was cogent and sufficient to warrant conviction of the appellant. The prosecution therefore prayed court to dismiss defense motion for judgment of acquittal.

On the other hand, defense also filed a nine count resistance to prosecution's motion to admit into evidence prosecution's documentary evidence testified to and marked by court as P/1-in-bulk. Defense submitted that prosecution having rested in toto with the production of evidence, and the court having received a motion for judgment of acquittal, it was a strange practice for the prosecution to rewind the clock by making an application for admissibility into evidence of an instrument it failed to admit when it had the time to do so.

Defense contended that if the court were to allow this, it would be like re-winding the clock to restart a football game that is well advanced in its second half, thereby violating our trial procedure.

By rulings dated January 7, 2008, and January 8, 2008, respectively, Judge Evelina Z.

Quaqua denied both defendant's motion for judgment of acquittal and his resistance to prosecution's motion to admit documents into evidence. We have been unable to find or see in the record the legal foundation for her two rulings.

On January 8, 2008, Defense first witness Dahngbaye Wogbeh took the stand to testify on his own behalf. In his general testimony, Witness Wogbeh said:

*"...In 1995, I asked a sister of the catholic church that I wanted a piece of land, but not in the center of Monrovia because I did not want conflict. She led me to her uncle Richard Blind. He told me he will take me to Duport Road where he also got some land. First, I bought two (2) lots from him. I then bought a dump truck load of sand and put same on the land. I placed a sign board that carried my name, my telephone number and the place I work, Don Bosco Home, asking anyone who has connection to this land to get in contact with me. For a year I did not hear from anybody. Then I paid for the second two lots. I hired a team of carpenters, masoners and some laborer boys so that they will take 3 or 4 weeks to complete the building. A few months after the completion of the building, I decided to construct the second building which I also completed. I lived on that land for ten good years without anybody asking any question until March 14, 2005, at which time I received a letter from the Ministry of Justice [signed] by Moses Pennue, co-ordinator for the Joint Security. I was informed that some one said that I built house on their land. Based on the letter I received on the 14 th day of March, I went to the Justice Ministry. When I entered the building, Mr. Pennue asked me, "are you Wongbeh?; "I thought they said you were a general?" I said no. I took my I.D card and gave it to him. He told me to go and come back tomorrow; that he will get Binda along with Theresa Bedell and others On March 31, 2005, while at the red light on my way back to Lofa, I received a call from the [Duport] community members that some men dressed in court uniforms were breaking down one of my buildings. I ran back to Duport road. No car was going inside Duport road. [So by the time I got there], most of the people [had] run away. But as God would have it, Col. Amos Binda [one of the private prosecutors] was caught right handed. I came and met him with the children in the community. He is the man indicting me today."*

*"I asked him to give me copy of the writ giving him the authority to go and break down the building. He started pretending that he was a mad man falling down and getting up. So I told him that I was taking him to the police station.*

*While on our way we met some police officers. Mr. Binda took his I.D. card which showed that he was an N.B.I. Officer. It was then I got to know his rank. The officers advised that I should take his complaint. When I got to the NBI office, it was difficult to meet him. One week of walking to the NBI office, I could not see the director neither to talk to Binda. The last morning I got there, I met one fellow by the name of Dahn. I taught him at St. Frances. He said one Binda reported to our office here that he was attacked by one Wogbeh and anytime they see him coming to complain, they should*



have you arrested. The little boy advised me to go back home when things are calm down then I can pick up the case. So I went home and went back to work. After two and the half years on February 15, 2007, I received a survey notice for the same land. This time the survey notice was in favor of one Fred Mulbah, Theresa Bedell and one Caroline Bedell. So I decided to write the Ministry of Lands and Mines informing the surveyor that this land case had been hanging at that Ministry, the Justice Ministry and infact Mr. Binda took me to court and the court dismissed the case; hence there was no need to ask for another survey again. I would like to suggest to the surveyor to please advise the parties concerned that if they are not satisfied with the decision of the Justice Ministry, then let them go to court instead of harassing me. I hand delivered the letter to the surveyor and he told me he will not make any decision until he got on the land. I told them that Binda will come with his group to break down my building. He said this will not happen. I said okay. Knowing the records of this Binda man, I decided to go to the Deputy Director of Police 102, Tarpeh, I went along with the Deputy Director of GSA, Mr. Fajiah. I appealed to him that some people said they were going to do a survey. Usually when this man comes to do the survey, they will destroy my building. Yes he consented and gave us fourteen police officers and he told me I was responsible to transport them. The fourteen police officers arrived on Duport Road around 8 a.m. About 10:30 in the morning, Binda with a pickup loaded with men, another taxi filled with man, arrived. These men had sticks and cutlasses, because they said they came to do survey. When they arrived they did not know that fourteen officers were already on the land waiting for the survey. They jumped down from the car running left and right, left and right, then the fourteen police officers came back to the land and they asked Binda and his group why they were running up and down on the land? It was at that time the surveyor came and said we came to do a survey. The police officers told us to sit down to understand what was really happening. At this time, I saw Daniel Binda, one Fred Mulbah, who had just come from the States. He said he will break down my building and build his house there. They all invited me across the road to one Musu shop. Because of the presence of the police, they became calm and sat down as the surveyor asked the question why I did not want the survey? I give him a copy of the court ruling and a copy of the letter from the Ministry of Justice, and another from Lands Mines and I told him that these are the documents.

"When the surveyor looked at all the documents, he told Fred Mulbah and Binda that he could not conduct the survey based upon the documents I provided him. So Fred Mulbah made a remark that he had come from the States and he was going to make sure that Daniel Amos Binda destroy all of my buildings; that he was going to build house there and I told him it was not possible. I told him the Liberia he left way back was not the Liberia today. Binda made a statement to one kpelle man not knowing that I speak kpelle very well. I responded to him in kpelle and told him it was never going to happen. Fred Mulbah spoke Lorma to his friends that came with him that they were going to find another time to come. I then spoke Lorman to him and I told him also that it will never happen. After that, the entire group left. Police remained on Duport road unit 5:30p.m. Around 5:40, they decided to come back to Central. I came along with them and told the Deputy Director of Police thank you. While on my way back from Duport road, approaching where my land is located, I saw a taxi with

men on top and inside the taxi. When they got to the scene, these men with sticks went and broke down the building which I took picture of. When they broke it down and damaged the cement that we kept in the building, the residents of the community were able to recognize one person. The next morning I decided to take that one person to court to help trace the other people, not knowing that was the worst thing I ever did. The next day Binda came in the court, Paynesville Town Hall Court. He earlier went to the court and freed the man. When he was in the court he said he wanted to fight me and he will beat me and nothing will come out of it. That day in the court it was not an easy thing. There was no control, I left the court room and went about my business. That same day, the newspaper reported it They went to the Duport road and reported it in the newspaper. I even went to ELBC and asked the government to come to my rescue. I even went to TRUTH FM asking the government to come to my rescue; my property was being destroyed for no reason. After the Paynesville court could not help me, I came to the County Attorney, Hon. Samuel Jacobs. I explained my problem to him then he told me that he will invite the surveyor to come and wrote a letter to the surveyor on the 23rd day of February, inviting him for a conference. Knowing fully well what they did on the Duport Road, he refused to come to the call of the County Attorney, on the 22nd day of February. Another letter was written to have him come on the 29 th. The letter was hand delivered to him by me. Again he refused to come to the call of the County Attorney. I did not want Fred Mulbah to run away form this country, as he was going back to the States. On the rd day of March, the County Attorney wrote [arrest] orders for Daniel Binda, Fred Mulbah, Theresa Bedell and others. I went to the police station to effect this arrest but they said the police director had to sign the writ before any officer could go any where. So I was between the police station and Temple of Justice. I even went to the embassy but the embassy told me I had to get court orders. While in the process, people advised me not to go back to Duport road and not to sleep there because of the way things were going on. My wife is not living on Duport road. From 2005, she is living in Sinkor. So when I came back again it was difficult to sign this paper, prior to that date at about 1:a.m. in the morning, a group of men dressed in black tshirt, head tie and jeans trousers with spray cans on their back went to the fourth building; that whole night they sprayed the entire building with acid water. The dogs were barking according to the people.

"In the morning I was called. I went there and saw the building sprayed with acid water. I took the picture and went to the County Attorney and complained that things were getting worse day by day. I was now between the County Attorney office, and the police station for one week. On March 7, I was in the County Attorney office; he has promised me that day he was going to make available police for us to go and find these people. While in his office, I received a telephone call around 3:30 going to 4:p.m.; the message was that people were at my house breaking down the building that they sprayed the acid water on. Again I walked in the office of the County Attorney and cried on him. All the security that were present can attest to that. When I cried to him, he said he could not do anything but I should go and come back tomorrow. Not knowing indictment was waiting for me for the destruction of my own property. That day I said to myself, why will good people allow criminals to damage the reputation they worked for over the years. My people I was no where around at the Duport road, I was

at the County Attorney office. I am not a violent person, I am a man who fears God and I will never jeopardize the future of my child and my . While at that office, it was now approaching 5 to 6 where do I find car from here before getting to Duport road, I called Honorable Fangalo and asked him to allow the driver to come and pick me up at the Temple of Justice and he said to me he was already in a meeting in town he was using the car and not the driver so I should wait for him and going to come and pick me up. My people, Honorable Fangalo drove in the yard of the Temple of Justice. I got in the car and we drove to Zone 5 police station. high earned personality I worked for over the years There I met 6 boys in prison and they said other people got wounded because of the demolition of my building and the police people took them to the hospital. I walked to the CID commander and asked him. He said they were investigating those boys in the prison; go talk to one of those in the prison. They remained behind the bar and I was asking them; they said one Fred Mulbah and Uncle Joe; that it was Binda who had paid the children to go and break down the building; that Fred Mulbah was going back to the States so they wanted this building demolished so that they could build a new house there and they promised them US\$300.00 (Three hundred United States dollars) for the job. I asked them if they can lead me to see this Fred Mulbah and this Uncle Joe? They said; "the man can come here he can be talking with the police people." I then told them I am waiting for the report from the police people. The next day when I went to the police station, these boys had been put out and Binda signed for them. I decided to take Binda to court at the Paynesville Town hall. While in the court process again, the newspaper people went and reported this story. Two of the boys quoted in the newspaper said they were misled by one Junior, Fred Mulbah and Uncle Joe who told them to go and break down my building. Again I decided to buy the newspaper to keep same as evidence for tomorrow. So I decided to go behind the County Attorney to have these people arrested. I walked to the County Attorney office for several days seeking for justice but I could not find it anywhere. I wonder they said justice is blind, I started to notice that justice can see, justice can select for reasons best known to itself. The first time they broke the building, I took them to Central police, they charged the driver who led the people and they said they will take us to court. As usual, Binda and his friend Fred Mulbah because they had U.S. dollars, they played their game at the police station. I will stay at the police station from 8:00a.m to 12 midnight until I was able to get copy of the charge sheet. To my surprise one Sunday morning, I saw Binda with the police commander from Paynesville, they said I was indicted by the County Attorney and that is how I was brought here. One thing that came to my mind that remains; that is, why lot of people died at the NSA during the years of the civil war? I am of the opinion it was the work of Daniel Binda, the man sitting down over there, because you can see in the clear case as mine today. The plaintiff had turned to be defendant, but I know the God that I serve is a living God; that God that never lies to me will make sure that the truth and nothing but the truth be said in this case. I REST."

Witness Wongbeh was crossed on the following questions:

*Ques: Mr. Witness, if my memory serves me, you told this court Mr. Binda and his group went to demolish your house and some were arrested and others were wounded and taken to hospital. My*

*question is, who arrested these people?"*

*Ans: I said I was at the County Attorney's office when I received the call that the people were breaking down my house and the police went on the scene and arrested some people there.... [At the police station] the CID Commander told me that the boys who were demolishing my house were arrested and taken to the station. And I believe what the CID commander told me."*

*Ques: Mr. Witness, in your explanations, you told this court and jury that on the day of the incident, you were not at the scene but you received a call. My question is when you got home, did you ever find out from those who called you how these people got wounded and how they were arrested by the police?"*

*Ans: My dear Sister, when I got to the police, to be precise Zone 5 Police station, there were other community members who came to the station to inquire who was leading these people. It was then the CID Commander told me that they were investigating it and they will tell me later. Even at the police station, there were several things that were taken from the people, those pans, acid that they carried. The cry of the market women "your come for us". Some of them were arrested in the swamp. I was listening to the police to get their report to pursue the case to the end. When I got Binda to the court, how he got from there, God is the only one that knows. We live in Liberia. You will never know until you gothroul n."*

*"Ques: Mr. Witness, you said while you were in the County Attorney office you received a call. I will like to know from whom did you receive the call?"*

*"Ans: My daughter, I lived in that community from the beginning, if it was not the fear that Binda had been putting in people, the whole court room would be filled with people. So there are lots of people that I cannot just name them, so to name. I will be naming a lot of people. I even went with the phone to the County Attorney office and asked him to talk with some of the people and hear for himself what is happening. Everybody in that office cried but what could I do? That is how I went to the police to inquire that day."*

*"Ques: Mr. witness, from the review of your testimony, you have tried to establish ownership to a parcel of land [though] the charge on which you are being tried for aggravated assault. In an answer to a question posed to you on the cross you stated that since 2005, Binda and others had been in the habit of breaking down your houses. Is that your defense to the allegation as contained in the indictment?"*

*"Ans: I have told this court, that I "Wogbeh" and my wife were never at the scene and did not do anything to anybody as alleged by Binda, henceforth we are here stating to the court that we have no idea neither did we take part in any violent act. We have never done [that] before and we will never do it because we are law abiding people. This is why Counselor Theophilus Gould, my wife and I had*

*cried on you on many occasions when you were Solicitor General of Liberia to grant us justice because you are a witness. When you came to build your football field, my house was the only house in that community; there is where I serve as custodian of all of your football materials, your goal poles, your pots and you were astonished when you saw me there and in your own words, you told us if any body comes to embarrass you here, let me know. Today, this place is in the bush, nobody wants to come here but as soon as it is developed, they will come to embarrass people. I stand to defend you. But today, my Savior has turned his back on me but with God above to prove our rights, total victory will be mine."*

*"Ques: Mr. witness, in your statement in chief, you said you went to ELBC and Truth F.M. calling on the Government to come to your aid. Is this not evidence of being frustrated?"*

*"Ans: That is not what we call frustration. For fear so that no one will incriminate me in any violent act to tarnish my good reputations that I worked for over the years and the radio stations to be a medium by which many good citizens listen to, I decided to choose that path to enable me receive justice for which I cried on himself, CLR. Theophilus Gould on many occasions did promise me protection after I protected his property over ten years.*

*"Ques: Mr. witness, please state as according to you which date or month or year that you were driving to your place and you saw men in and coming out of a taxi who drove to the scene where they destroyed your property?"*

*"Ans: It was fin] 2007 when I went to deputy director of police and informed him that a survey notice was served on me, dated Feb. 15, 2007. I told him I wanted him to send some police officers there because anytime these survey notices are issued, Binda and his group will come there, the next day, they break down my building. After Binda and his group arrived and the surveyor told him that he could not carry on the survey, I decided to take the police back to Central. It was at day in the afternoon, according to the call I received while coming from the police station that group of men in a taxi went again and broke down my building. The driver was caught and the police charged him and all of us were in the process looking for Binda and others.*

*"Ques: I take it Mr. witness that this [incident] occurred in the month of March 2007. Am I correct?"*

*"Ans: Just to let you know, the first house was demolished by Binda in 2005, in the month of February, 2007. The second building was again demolished by Binda again in the same 2007. At about 1 a.m., Binda led a group of men and sprayed the third building with acid water. Then in March 7, 2007, when I was at the County Attorney's office, again I received a call from the community as usual, Binda and his group had gone to demolish the building that they sprayed acid water on.*

*"Ques: Mr. witness, on what day and date did you meet the six boys in prison and you were informed*

*that the others were taken to the hospital?*

*"Ans: At the County Attorney's office in March 7, 2007, I received the call. At that time, it was between 3 to 4 almost going to 5. ....Late that evening, I arrived at zone 5 police station It was then he [police officer] told me that some people were arrested and were in the cell. This is how I got to know the story clearly.*

Defense second witness, Oretha Loyd, in her general testimony told the court that the victims wasted the acid water on themselves. In her own words, this is what she said:

*"...They [private prosecutors] started flashing the acid, flashing it for the marketers to leave. This time, they were not picking and choosing; anybody they saw, they were just wasting the acid until I found my way to run. They brought a bag. In this bag, they had hammer and other things in the bag. They started breaking down Wongbeh's fourth building. While breaking it, we all started calling for help again; but this time, I made my way to the police station. I met one of the marketers going to the same side (police station). We all went to call the police and UNMIL. Then we came and met four boys who ran in the swamp. Their own boys wasted acid water on them. They could not go again. We met them lying down on the road. The police started to talk to them. I never heard any response from them. The other boy that hid himself in somebody house, he was the one that called UNMIL to go for him. The UNMIL went for him and brought him. The UNMIL asked if we knew him. We all said, no "*

From whom was the boy hiding at the time, one may wonder, as this defense witness claimed, if he and the others wasted the acid on themselves. Why will this boy, one who has inflicted injury unto himself, run to hide in a stranger's house and cry out, basically calling UNMIL officer to rescue him? Although this defense witness recounted a full story, she however also responded to the question in the manner to wit:

*"Ques: Madam witness, you were not on the scene at the time Binda's men got injured with acid water?*

*"Ans: I said when they started flashing, I went to the police station*

Defense fourth witness, Col. Dave Jallah of the Liberia National Police, testifying for the defendant, in general testimony narrated that he received a call from central headquarters of the Liberia National Police; that there was a riot at Rehab turning point and instructed to proceed thereto. He said he got there and saw five persons wounded; some were wounded by acid water while others were by fist fight. Those that were allegedly involved in the fight were all invited to the station. He said that he put them

in a police chartered taxi cab and took them to zone five police base. He informed the court that he did not take part in the conduct of police investigation as he "[ ] went [back] to my assigned station at ELWA Zone Five Depot- 3.

Shelton Kartoe, defense fifth witness, in his general testimony said:

*"It was on March 7, 2007, Mr. Wogbeh called me on the telephone to his house on 9th street. When I got there, he told me that the house you built, some group of men went there and wasted acid water on the house. So you go and look at the building whether it still correct; or if it is not guaranteed, so you can put pillar under it for me. See p 106.*

Defense seventh witness was Police Inspector Joseph Sheryeh. In his general testimony, the officer told the court that he was part of the investigating team of the March 7th incident at the Duport Road. He testified that when the police brought those [arrested] on the scene, *"after we talked to them an hour or so, one Mr. Wogbeh entered my office; that he came to enquire. He said that he received a call that some people went to his residence at Duport road and destroyed his building. Mr. Wogbeh then told me that the matter is before the court and he was going to take it from that end; he later left "*

When both parties rested, the jury retired and returned a unanimous verdict of guilty against the appellant. An eleven count motion filed by appellant for a new trial was denied. By final ruling thereupon, dated January 23, A.D. 2008, Her Honor, Judge Evelina Quaqua sentenced appellant to three (3) calendar years of imprisonment.

Appellant has excepted and assigned error to this judgment, placing before this high tribunal an eleven count bill of exceptions for final appellate review.

This Court has deemed counts one, two, five, six and eleven as germane to the disposition of this case. In the referenced counts, appellant has argued:-

*"1. Your Honor made a reversible error when you entered a final judgment, finding defendant "Guilty" of the crime of aggravated assault based on the unanimous verdict of "Guilty" brought against him on January 23, 2008. Defendant/ Appellant says that the unanimous verdict of the trial jury was manifestly against the weight of evidence adduced at the trial; therefore the judgment confirming that verdict was clear erroneous. To which erroneous final judgment, Defendant/ Appellant excepts."*

*"3. Your Honor committed a reversible error when in the face of clear, cogent, and uncontroverted evidence produced by defendant which clearly showed that he (defendant) was not present at the scene of the riot, and therefore could not have committed the crime of aggravated assault, Your Honor denied*

*defendant's motion for a new trial without even bothering to pass on the cardinal issues raised in the motion and the resistance thereto. Your Honor's failure to pass on the cardinal issues raised in the motion, especially the issue of the failure of the prosecution to rebut or disprove the alibi set up by defendant/appellant, was not only erroneous, but same was also prejudicial to defendant. Defendant/appellant excepts to Your Honor's ruling denying his motion for a new trial."*

*"5. Defendant/appellant says that in criminal cases, the prosecution must establish the guilt of the accused beyond a reasonable doubt. Where, as in the instant case, the prosecution failed and neglected to rebut or disprove the defense of alibi set up by defendant, a doubt was created in respect of the presence of the defendant at the crime scene and his participation in the commission of the crime charged. This doubt should have operated in favor of defendant. Instead, Your Honor deliberately ignored this cardinal principle of our Criminal Procedure Law and proceeded to confirm the erroneous verdict of the jury. To which final judgment, Defendant/appellant excepts."*

*"6. Defendant/appellant says that Your Honor made a reversible error when, during final argument, and over defendant's counsel objection, you permitted the prosecution to call Jackson Davies, the prosecution's key witness whose photos prosecution failed and neglected to admit into evidence, to stand up and display his body to the jury. Having denied prosecution's belated motion to admit witness Jackson's photos into evidence, Your Honor inflamed the minds of the jury by permitting witness Jackson Davies to displayed his body to the jurors during final argument."*

*"11. Defendant/appellant says that Your Honor committed a reversible error when you erroneously ruled, denying defendant's motion for judgment of Acquittal when the state failed to establish a prima facie case of aggravated assault against the defendant. Defendant says that in our jurisdiction, all criminal prosecutions start with the police. Although the evidence adduced at the trial clearly showed that during the riot the police went on the scene and made some arrests and that those that were injured were sent by the Police to MSF Hospital in Mamba Point for treatment; yet no criminal charge was preferred by the Police against him, nor did any police officer testify for the State to link Defendant with the commission of the crime for which he was charged. The failure of the prosecution to produce a police charge sheet against the defendant, the failure of the prosecution to subpoena any of the police officers who went on the riot scene to testify on behalf of the state was fatal to the prosecution's case and Your Honor should have granted defendant's motion for a judgment of acquittal as a matter of law. Your Honor's denial of the motion for judgment of acquittal was clearly erroneous. To which ruling defendant/appellant excepts."*

*The pivotal question before us is therefore whether under the circumstances of this case, the state made a prima facie case?*

Appellant's contention has been that the unanimous verdict of the trial jury was



glaringly against the weight of evidence prosecution adduced at the trial. Appellant argues that for the trial court to have confirmed that verdict was clearly erroneous. Appellant further contends that the trial judge committed reversible error when, in the face of clear and cogent evidence and showing that appellant was at the County Attorney's office at the time of the assault, and not present at the scene of the crime, the judge adjudged defendant/appellant guilty of aggravated assault. Under this circumstance, appellant could not have committed the crime of aggravated assault at Duport Road due to the physical impossibility of being in two places at the same and identical time. That the judge failed to pass on this important issue of alibi was prejudicial to appellant such as to warrant reversal of the final judgment entered by the trial court, so the defense concluded its argument.

The law controlling in this jurisdiction, which has been repeatedly pronounced by this Court, is that conviction of a criminal defendant will be reversed by this Court of final resort where the evidence adduced at trial was insufficient. *Dyson v. Republic*, 1 LLR 481, 483 (1906), *Attoh v. Republic*, 9 LLR 3, 14, (1945), *Ali v. Republic*, 13 LLR 125, 131(1957).

Every conviction meriting affirmance by this Court shall satisfy the three basic standard requirements. This Court reaffirmed and set that old age criminal conviction standard in *Dennis et al. v. Republic*. Speaking through Mr. Justice Wardsworth in the *Dennis* case, this Court said:

*"....A juridical conviction connotes (1) that the offense must be correctly charged in a valid indictment; (2) that only legal evidence should be placed before the jury which is asked to convict; and (3) that the evidence thus sifted should satisfactorily establish the guilt of the accused beyond a reasonable doubt."* lbd. 20 LLR 47(1970), text at page 65.

We shall proceed to apply this standard to the case at bar.

The first standard requirement as set out by this principle is that the offense must be correctly charged and the indictment must be valid. As this bill constitutes a summation of all an appellant considers fatal errors and prejudices committed against his legal interest during the conduct of a trial. We have therefore reviewed the bill of exceptions with painstaking due care.

Nowhere in that body of appellant's complaint did he contests the correctness of the charge or the validity of the indictment. The law in our jurisdiction is clear as to waiver for consideration of an appellate court of any issue not raised in the bill of exceptions.

"Without an exception, an objection, no matter its intrinsic merit, is lost." Where it has not been raised in the bill of exceptions, this Court has repeatedly said and reiterated in *Republic v. Dillon*, 15 LLR, 119, 123 (1962), *Richards v. Coleman* 5 LLR, 56, 58 (1935). This is the principle whenever an objection or exception was not raised in a bill of exception to authorize a review thereof.

We therefore conclude that appellant was correctly charged and that the indictment met the legal standard of validity.

*It is a second required standard to justify juridical conviction that the petit jury, authorized to convict, be presented only with evidence which is admissible and therefore legal.*

Here appellant has raised a serious contention. Appellant has argued *"that he was not present at the scene of the crime, hence could not have committed the crime of aggravated assault. Appellant has accused the trial judge of failure to pass on the issue of alibi, an issue of cardinal importance in this case. Said failure, appellant believes, was both erroneous and prejudicial to appellant's interest. Further contending, appellant maintains that in criminal cases, guilt must be established by the prosecution beyond a reasonable doubt. According to appellant, prosecution woefully failed to shoulder this obligation of proof; hence the verdict and the judgment entered thereon did not satisfy the standard of juridical evidence.*

*Appellant has therefore prayed that the judgment under review must tumble as a matter of law.*

*Also in the bill of exceptions, it is appellant's argument that over its objection, the judge permitted Jackson Davies, prosecution's key witness whose injury photos prosecution failed and neglected to admit into evidence, to stand up and display his body to the jury. Appellant says that this display of the bodily injury was prejudicial as same inflamed the minds of the jury. Hence this was reversible error.*

Certified records before this Court indicate that prosecution presented three witnesses who testified and were cross examined. The evidence shows that a number of persons, reportedly including appellant, criminally, wickedly and intentionally inflicted serious bodily injuries on private prosecutors; that said criminal conduct caused the victims to bleed profusely. Prosecution's star witness, Jackson Davies, was allowed by the trial court, over appellant's objection, to display to the jury the injuries afflicted on his body. There was incontrovertible evidence to the effect that the assault victims were attacked with cutlasses, irons, sticks and other dangerous weapons. The dangerous weapons employed included assaulting and spraying acidic substances on the victims' bodies and also in the face of one of them. The evidence also shows that the assault took place on March 7, 2007, at the Duport Road, in Paynesville City. None of this evidence is

disputed. What appellant has contended however is that on March 7, 2007, the date the assault took place, appellant was at the office of Montserrado County Attorney's office on March 7, 2007, from morning to almost 6 p.m. Appellant testifying in his own behalf, said:

*"On the second of March, 2007, the County Attorney, Samuel Jacobs issued an arrest order for Daniel Amos Binda, Fred Mulbah, Theresa Bedell and others and given to me to be taken to the police on the 2nd. We were told that the police director had to sign that paper before they can arrest these people. When we came back to the County Attorney, he told us to come back on the 3rd of March; he was going to give us another letter to the police director. From that date until the 7th, we reported to the County Attorney's office, daily from 8 to 4 to get that letter".* Our emphasis.

Further testifying, appellant told the court:

*"While at that office, it was now approaching 5 to 6; [In my mind, I asked myself] 'where do I find car from here before getting to Duport road?' I called Honorable Fangalo and asked him to allow the driver to come and pick me up at the Temple of Justice and he said to me he was already in a meeting in town he was using the car and not the driver so I should wait for him, he will come and pick me up."*

Assuming that appellant was at Montserrado County Attorney's office "approaching 5 to 6" in the evening as he told the court and still was waiting for a lift, how could he have been physically present at the police depot in Paynesville City barely after one hour after the incident occurred and arrest carried out? His own witness, Police Inspector Joseph Sheryeh testified that when the police brought those [arrested] to the depot, "after we talked to them an hour or so, one Mr. Wogbeh entered my office..." He said that he received a call that some people went to his residence at Duport road and destroyed his building. Mr. Wogbeh then told me that the matter is before the court and he was going to take it from that end; he later left " By bringing a verdict of guilty against appellant, clearly the jury did not believe him.

So let us see what the law has to say on that score. Law writers are agreed that *alibi* when used in criminal law, indicates that proof by which an accused undertakes to show that because he or she was not at the scene of the crime at the time of its commission, having been at another place at the time, he or she could not have committed the crime. In other words, by an *alibi* the accused attempts to prove that he or she had been at a place so distant that his or her participation in the crime is a physical impossibility. One key observation by law writers is that *alibi* is usually easily fabricated; hence must be subject to searching scrutiny while it must also be given fair consideration to the

accused. AM JUR. 2d ALIBI, Sect. 184. (Criminal Law).

From this law citation, in invoking the principle of alibi, Appellant failed to reasonably satisfy the jury that he was else where at the time the crime was committed. Appellant along with other witnesses testified to facts tending to show that appellant was at the County Attorney's office at the Temple of Justice in Monrovia, about thirty minutes drive, more or less, from Paynesville where the crime was committed.

On the other hand, prosecution witnesses testified that not only they saw the appellant at the scene of the crime on Duport Road, Paynesville but he infact ordered the acidic substances sprayed and personally participated in the commission of the crime. Under the circumstances, it was the province of the jury to decide what credit to give to said evidence. Clearly in the opinion of the jury, the evidence in support of his alibi was unsatisfactory.

*As to the third and last standard requirement in securing juridical conviction, the evidence thus adduced at the trial be sifted and guilt pronounced only after it has been satisfactorily established beyond a reasonable doubt.*

After sifting the evidence, it is the duty of the jury to determine the guilt or innocence of the person accused in criminal cases. The credibility of the evidence is with the jury; they may believe one witness or set of witnesses and disbelieve the other. In our jurisdiction, courts are reluctant to set aside a verdict unless it is manifestly and palpably against the weight of evidence. *Ledlow et. al v. Republic* 2 LLR 569, 581 — 582 (1925).

As to the case at bar, the trial jury was reasonably satisfied that the distance from the crime scene on Duport Road to the Temple of Justice, where the county prosecutor's office is housed, and back to Paynesville police depot, was sufficient distance to have conclusively excluded appellant's physical presence and participation in the commission of the crime. This is the result of subjecting alibi defense to searching scrutiny as law writers have suggested.

The murder case *Ledlow et. al v. Republic*, supra, analogous to the instant case, has been instructive. Appellant Ledlow argued *alibi* in that murder case contending that he was at his farm on the Mechlin River, a distance of some 25 miles from the City of Buchanan at the time the murder was said to have been committed. State witnesses, on the other hand testified that they saw Ledlow in Lower Buchanan on the same June 3rd afternoon, when the crime of murder was committed. Emphasizing that jurors are the sole judges of the facts, the majority of this Court affirmed the lower court's judgment

adjudging the appellant guilty of murder. *Ibid.* 583.

To prove a case beyond reasonable doubt, this Court, in *YANCY, et. al v. Republic*, held that [the] "*quantity of proof depends somewhat on the particular circumstances of each case.*" 27 LLR 365, text at page 391 (1978). Also, in *Gardiner v. Republic*, Mr. Justice Russell speaking for this Court held: "Whenever the logical deduction from the facts placed on the record leads conclusively to the logical deduction that the crime was committed by the accused, it is sufficient." 8 LLR 406, 412 (1944).

Appellant has also contended that display of the injuries to the jury was prejudicial. This Court also cannot harmonize its view with that of appellant's counsel on this contention. A review of practice and procedure in this jurisdiction shows the contrary.

Two similar cases, *Fahnbulleh v. Republic*, 18 LLR 57, 67 (1967) and *Soko v. Republic*, also reported in 18 LLR 143, at page 145 (1967), especially the latter where medical certificate was not admitted, as the case at bar, address appellant's contention. In these two cases, injuries were inflicted by defendants and the scars were exhibited to the jury without reversal from this Court of last resort. As to this count, appellant's bill of exceptions was transmitted to this Court as a mere formal gesture.

Having considered on the whole the entire records placed before us, it is our conclusion that appellant's contentions, as contained in his bill of exceptions, are grossly inadequate to authorize a remand or reversal of the trial court's judgment. The trial having been regular and the evidence conclusive, we affirm the judgment modifying the term of imprisonment to four calendar years.

*AFFIRMED AS MODIFIED.*

*Scheaplor R. Dunbar of Pierre, Tweh & Associates Law Firm, appeared for appellant. Wilkins Wright, T. C. Gould and Yarmie Q. Gbeisay, Sr. of the Ministry of Justice, appeared for appellee.*