KPODI WREH, Appellant, *v.* **REPUBLIC OF LIBERIA,** Appellee.

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

Heard: October 12, 1982. Decided: February 3, 1983.

1. A witness may be cross examined as to all matters touching the cause or likely to discredit him.

2. Disallowing questions on the cross to test the bias, inclination and prejudices of a witness, strangulates and limits the scope of the cross examination and the right of the defendant under trial for capital offenses in general, and constitutes reversible error.
3. In homicide, it is proper for the defendant to ask the question to know the cause of death.

4. No trial court has a right to expunge from the records the oral testimony of a witness.

5. A judge has a duty to rule on an application to the court and a refusal to do so is a misconception or misconstruction of the law.

6. A defendant in a criminal action is presumed to be innocent until the contrary is proved; and in case of a reasonable doubt as to whether his guilt is satisfactorily shown, he is entitled to an acquittal.

7. The burden to prove the guilt of a defendant in a criminal action remains unshakable and rests perpetually on the side of the affirmative to the final conclusion of the case or unless in the case of alibi.

8. It is error to refuse to accept the defendant's waiver of the production of evidence and to compel him to take the stand against his consent and against the advice of his counsel.

9. Where there is evidence to support allegations of brutality and that the confession of a defendant was involuntary at the time it was made, the court must exclude the confession from the evidence submitted to the jury.

Appellant Kpodi Wreh was indicted for the heinous crime of murder, tried, convicted, and

sentenced to death by hanging. From the conviction and sentence, he appealed to the Supreme Court. The Supreme Court, on reviewing the records, found that the constitutional rights of the defendant, that could have afforded him a fair and impartial trial, were grossly violated. Confessions and admissions of guilt made by defendant under torture were admitted into evidence. The trial court refused to accept the defendant's waiver of the production of evidence and compelled him to take the stand and testify against his will and advice of counsel.

The Supreme Court also found that the trial court strangulated and limited the scope of the cross examination by disallowing questions intended to establish the cause of death, and to test the motive, inclination and bias of the prosecution witnesses, two of whom had testified to hearsay evidence. Finally the Court found that the evidence was inconclusive, in that the evidence of the commission of the crime including the murder weapon was given by Kpoli Mah. Yet, Kpoli Mah was never called to testify and to identify the murder weapon. The judgment was *reversed* and the *case remanded* for new trial.

Wellington K. Neufville appeared for appellant. Acting Solicitor General, *Richard MacFarland,* of Ministry of Justice appeared for appellee

MR. JUSTICE KOROMA delivered the opinion of the Court

During the May 1973 Term of the Fourth Judicial Circuit Court, Maryland County, the Grand jury indicted Kpodi Wreh for the heinous crime of murder. Upon his arraignment in the August Term 1973 of said court, defendant, now Appellant Kpodi Wreh entered a plea of NOT GUILTY, thereby joining issues with the Republic of Liberia. The trial was held under the direction of the Court presided over by His Honour James M. T. Kandakai, who, upon taking evidence, charged the trial jury and ordered it to retire into its room of deliberation for the consideration of a verdict. The jury returned a guilty verdict upon which the court entered a final judgment. The appellant noted exceptions thereto and prayed for an appeal to this Court for review and final determination.

As we proceed to consider the salient points in the bill of exceptions, upon which this appeal is predicated, we shall traverse the facts upon which a verdict was brought against the appellant and a judgment of conviction entered.

The prosecution's first witness, Augustine Weah of Barclay-ville, testified to the effect that on January 24, 1973, news got to them in the town of Feleke, that one Kpodi Wreh had murdered a child. This news was given to them by Clan Chief Wreh Nyenati who also had received same from the Commissioner. Augustine Weah was appointed a member of the

coroner jury by the territorial coroner, John T. Gedekan, and was among the jury who conducted the coroner investigation on January 25, 1973. His testimony disclosed further that the crime of murder was committed on January 23, 1973, two days before the coroner investigation, and that the appellant had taken them to the scene of the crime, and showed them the dead body and the arm that he said he had chopped off. As to the cutlass that was used in the perpetration of the crime, witness Augustine Weah testified that it was produced before the coroner jury by one Kpoli Mah, said to be the brother of the appellant. When questioned by the jury and cross-examiner, witness Weah testified that there were three sources of information given the coroner jury as to who committed the murder: (1) that the appellant firstly reported himself to a group of townspeople whose supervisor reported the incident to the clan chief. The clan chief submitted this report to the commissioner, who in turn reported to John T. Gedekan, territorial coroner; (2) that it was Kpoli Mah who brought the cutlass to the coroner jury and also reported the incident to them; (3) and that it was the appellant himself who is said to have led the coroner jury to the spot and showed them the dead body and the arm that was chopped off, and that he had given no reason for his act

The second and third witnesses for the prosecution were Myer Weah and Combo Julu, respectively, both of them residents of Barclayville, Maryland County. They testified to the effect that they first learned about the commission of the crime through the commissioner who himself was given this information by the town chief. Subsequently, the appellant carried them to the spot and showed them the mutilated body of a 14 year old boy whom, according to their testimony, the appellant admitted killing.

The fourth witness for the prosecution was one Kpelle Nyenati, clan chief in the District of Barclayville. He testified to the effect that when information got to him as to the commission of the crime, he sent for the appellant who was at home but refused to come, stating that it was night. On the next day when the appellant answered the call of the clan chief, he is reported to have admitted before the chief and his general council that he killed the 14 year old boy. That following this admission, the appellant led them into the bush and to the place where he is said to have committed the crime and showed them the dead body. When asked to give reason for committing this crime, the clan chief testified, the appellant offered none. At the conclusion of this council, the clan chief wrote and informed the commissioner about the incident and upon the arrival of the latter, the clan chief turned the appellant over to him. On the cross-examination, this witness disclosed that although the appellant admitted to him and the council that he had committed this crime, yet, the Chief's original source of information as to the commission of the crime by the appellant was a group of people, among them, one Teah Tobbe, Gedoba Judo and Kpoli Mah. Kpoli Mah is said to have been the one to whom the cutlass allegedly used to commit the crime was given

by the appellant and who also gave same to the clan chief and council.

John T. Gedekan, the territorial coroner of Barclayville, was the prosecution's fifth witness who testified as to the investigation conducted by the coroner jury, the appellant and the tribal people being the witnesses before the said jury. The findings of the coroner jury was reduced to writing and identified by this witness.

Youwlo Bloe, the prosecution's sixth witness testified mainly to what was told him by the clan chief and the alleged confession the appellant is said to have made that he committed the crime.

The seventh and eight witnesses for the prosecution were police officers James Ivy and Jailor Samuel Dennis. Jailor Dennis had reported to the police that the appellant had escaped from jail and his whereabouts unknown. Police Officer Ivy promised to search for the appellant but before he could proceed to do so, the appellant was apprehended and turned over to him by the chief of the Kplepo People of Gedetarbo. On the cross-examination, Jailor Samuel Dennis testified that he had taken the appellant to work on his private farm from where he escaped. In other words, the appellant did not break jail to run away.

At the conclusion of the evidence of the prosecution, instruments bearing courts marks P/1 through P/3, same being the cutlass, the coroner report and the clothes of the decedent were admitted into evidence over the objection of the appellant on the grounds of insufficiency of identification.

At this point, counsel for appellant moved the Court to strike from the records all of the evidence relating to admissions allegedly made by the appellant on the grounds that such evidence was taken against the statutory laws of Liberia and the constitutional rights of the defendant. This motion having been denied and overruled, the appellant informed the trial court that he waived the production of evidence and submitted for argument. In passing upon this waiver, the court had this to say:

"For substantial justice, this court feels compelled to hear evidence from the accused in his own defense. And reverting to our ruling just made when the application was made for exclusion of the alleged admission of the accused, the court says that it cannot deny the said application nor grant the same until it shall have heard from the defendant. Application not granted and so ordered."

Following this ruling, the appellant, who was his own lone witness, took the stand and testified to the effect that the decedent was living with one Barnie Doe at the time when he

got missing. That it was the said Barnie Doe who reported to the chief of the missing child, and that instead of going to look for the child, the chief and Barnie Doe went to inquire from the appellant as to the whereabouts of the child. He, the appellant, told them of his lack of knowledge of the whereabouts of the child. The chief and Barnie Doe left to go to inform the paramount chief and the commissioner. Prior to the arrival of the paramount chief and the commissioner, the appellant testified that he was caught and tied, thrown down to the ground and pepper put into his eyes, all of his personal effects taken, and his house broken down.

Following this, the Commissioner arrived on the scene and asked if it is he who killed the child and he answered "yes". Thereafter he was sent to jail. On the cross-examination, he told the trial that he left the jailor's farm without permission to attend his sisters funeral at Firestone. However, when he arrived at the place, the Kplepo People who knew him as a prisoner, arrested and turned him over to the magistrate at Gedetarbo. From there, he was transferred to the jail at Harper, Maryland County.

This concluded the entire evidence upon which the jury was charged and who, after deliberation, returned a verdict of guilty against the appellant. A motion for new trial having been heard and denied, the court entered final judgment against the appellant sentencing him to death by hanging. From this judgment, the appellant has appealed and upon an eleven-count bill of exceptions, this case is before us for final determination.

Before we consider the legal and factual issues raised in the bill of exceptions and pass upon the issues of law and facts in the briefs which were argued before this Court with eloquence, we would like to remind ourselves and be guided by the warning of Mr. Justice T. McCants-Stewart when he said:

"The dearest of man's inalienable rights is life. We may deprive him of liberty with only temporary effect; we may deny him the pursuit of happiness, but such denial is not necessarily permanent; but if we take his life, it is the end of all. Courts, therefore, while never forgetting the duty to guard with jealous care the rights of litigants in general, should watch with special care every incident of a trial where human life is at stake." *Lawrence v. Republic*, 2 LLR 65 (1912).

For purposes of this opinion, we shall pass on count one through count four jointly and pass upon counts five through eleven severally of the bill of exceptions. In counts 1, 2, 3 and 4, the appellant argued that the trial court committed reversible error when it disallowed questions put to witnesses Combo Julu and Kpelle Nyenati and sustained objections to questions put to the same witnesses. The questions objected to and sustained, were intended

to test their motive, inclination and bias especially as to the hearsay evidence to which they testified. The two witnesses testified to the effect that it was from one Kpoli Mah, the brother of the appellant, and Barnie Doe with whom the decedent lived antecedent to his death, that they primarily gained the information of the commission of the crime by the appellant. The cutlass which was said to have been the fruit of crime and testified to by these witnesses, was said to have been produced by Kpoli Mah and yet the said Kpoli Mah was never called on the stand to testify. Hence, the basis for the questions directed to the hear sayers but disallowed by the court. Question put as to whether the panel of coroner jurors warned the appellant not to make any confession or make any statement in the absence of a legal counsel and whether the alleged confession was voluntarily made, was disallowed on the ground of eliciting expert testimony. In disallowing these questions, the trial court strangulated and limited the scope of the cross-examiner in particular and the right of the appellant under trial for capital offense in general. This Court, speaking through Mr. Chief Justice Grimes has stated that:

"In some jurisdictions a witness may be cross- examined only on matters brought out in the direct examination, but in Liberia that rule does not obtain, for our statute provides that a witness may be cross-examined as to all matters touching the cause or likely to discredit him." *Yancy Delaney v. Republic,* 4 LLR 3 (1933).

The appellant, by and through his counsel, strongly con-tended in his argument before this Court that the trial judge committed a reversible error when he *sua sponte* overruled appellant's questions to witness Combo Julu and sustained the prosecution's objections to question directed to Kpelle Nyenati, all of which questions were intended to test the bias, inclination and prejudices of these witnesses. These arguments as contained in counts 1, 2, 3 and 4 of the appellant's brief being factually and legally grounded, are sustained as against counts 1, 2, 3 and 4 of the appellee's brief.

In count five (5) of his bill of exceptions, the appellant argued that the ruling of the trial judge sustaining the object-ion by prosecution to the question directed to the coroner as to the cause of death, on the ground of eliciting expert testimony, was erroneous and contravened the statute as recorded in Criminal Procedure Law, Rev. Code 2: 7.2 through 7.4. The appellee in arguing this point in its brief, vigorously contended that the trial judge was legally correct to have sustained the objection and to overrule the question since the cause of death had been stated in the coroner's report and that no oral testimony can explain a written document. Recourse to the coroner's report shows the following:

" Blo Hene was carefully examined and found that his neck was chopped and his hand was cut off by the murderer Mr. Kpodi Wreh. Therefore our conclusion is he intentionally killed

the boy."

In the above quotation constituting the coroner's report, this Court sees nowhere therein where the cause of death is stated as required by the criminal Procedure Statute. *Ibid.,* 2:7.5. Hence, the necessity did exist for the appellant to have asked the question to know the cause of death.

In *Scott v. Republic*, 1 LLR 430 (1904) and *Butchers' Association of Monrovia v. Turay*, 13 LLR 365 (1959), to which the appellee has cited us, our microscopic search has failed to find any legal support for the position taken by the trial judge when he sustained the objection of the appellee and overruled the question. The citation relied upon by the appellee in the case *Swaray v. Republic*, 15 LLR 149 (1963), is not applicable in this case. The trial judge therefore committed a reversible error in sustaining the objection of the plaintiff in the court below and overruling the defendant's question.

In count six (6) of the bill of exceptions, the appellant argued that the trial judge committed one of the greatest reversible errors when he admitted into evidence the admissions and confessions of guilt of the defendant and denied the appellant his rights under the Criminal Procedure Law which provides that

"Any admission or statement, including a confession of guilt, made by a defendant during an interrogation, inter-view, examination, or other inquiry by a peace officer or other employee or representative of the Republic shall not be admissible in evidence in a criminal prosecution against him until it is established by the prosecution that it was made voluntarily, and that the rights to be accorded an accused as set forth in paragraphs 2, 3, 4, and 5 of section 2.2, in sections 2.3 and 10.11 of this title, have been complied with and that either legal counsel was made available to the defendant if such right was requested by him or that such right was understandingly waived by him." Criminal Procedure Law, Rev. Code 2: 21.4.

The Criminal Procedure Law also provides that an accused person should have adequate legal representation; that he should have legal representation at every stage of the proceedings; and that he should be advised of his rights. *Ibid.,* 2:2.2. The Civil Procedure Law also provides several cautions to be given an accused person on interrogation. It stipulates that no peace officer or other employee of the Republic shall interrogate, interview, examine or otherwise make inquiries of a person accused or suspected of an offense, or request any statement from him, including confession of guilt, without first informing him of the following: (a) The nature of the offense of which he is accused or suspected; (b) that he has the right to have legal counsel present at all times while he is being questioned or is making any statement or admissions; (c) that he does not have to make any

statement or admission regarding the offence of which he is accused or suspected; (d) that any statement or admission made by him may be used as evidence against him in a criminal prosecution. *Ibid.,* 2: 2.3.

These extensively quoted portions of the statute are intended to protect the rights of an accused person as much as to direct and guide the actions, conduct and behavior of our courts; peace officers, employees of government and particularly prosecuting officials in bringing to justice those suspected or accused of the commission of crimes must act in strict compliance with the statute first referred to. Anything less than even the liberal application of the provisions will certainly defeat the ultimate ends of transparent justice in the prosecution of criminals.

In count six (6) of the appellee's brief which counters count six of the appellant's bill of exceptions, he has strenuously argued that the trial judge was correct and committed no reversible error when he refused to rule on the appellant's application to strike from the records the alleged admission or confession made by the appellant until he had heard from the testimony of the appellant whether or not the confession or admission was really made and the condition under which it was made. While no trial court has a right to expunge from the records the oral testimony of a witness, *Yancy v. Republic,* 4 LLR 3 (1933), yet, the refusal of a trial court to hand down a conditional or final ruling on an application as in the instant case, constitutes a misconception and misconstruction of the law. The trial court should have ruled granting or denying the application on some legal grounds. The court therefore erred in refusing to rule.

However, there was no denial of the appellant's right since it was not within the province of the trial court to expunge from the records the oral testimony of a witness as in keeping with the citation herein above.

In count seven (7) of the bill of exceptions and brief, the appellant averred that it is patently clear that the trial was irregular when the trial judge compelled the defendant to take the stand to testify against his will and advice of his counsel, and has cited for reliance, Criminal Procedure Law, Rev. Code 2: 2.5.

In countering this averment in count seven of its brief, the appellee has argued that the trial judge correctly disallowed the appellant to waive his right to be heard in person, in that this would have worked substantial injustice to the prosecution because the prosecution had proven beyond a reasonable doubt that the appellant was guilty of the charge against him and hence it was necessary for the said appellant, who had entered a plea of not guilty, to be called upon to substantiate his innocence. For reliance, the appellee has cited us to *Dunn et.*

al. v. Republic, 1 LLR 401 (1903) and *Hance v. Republic*, 3 LLR 161 (1930).

In Liberia, a defendant in a criminal action is presumed to be innocent until the contrary is proved; and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal. Criminal Procedure Law, Rev. Code 2: 2.1. The burden to prove the guilt of a defendant in a criminal action remains unshakable and rests perpetually on the side of the affirmative to the final conclusion of the case or unless in the case of an alibi. Hence, it is nowhere provided in the Laws of Liberia where it becomes the right of a defendant to be compelled, or, as the appellee calls it, "to be called upon to substantiate his innocence." Therefore, the trial court grossly erred in refusing to accept the appellant's waiver of the production of evidence and thereby compelling him to take the stand against his consent and against the advice of his counsel.

In count eleven(11) of the bill of exceptions and count nine (9) of the appellant's brief, appellant averred that the best evidence which the case admits of was never produced at the trial, in that, Barnie Doe and Kpoli Mah who firstly informed the authorities that the appellant had allegedly admitted killing Blo Hene, and who produced the cutlass with which the crime was said to have been committed, were never produced at the trial to confront the appellant. Appellant further averred that apart from the alleged confession or admission made by him, appellant, the witnesses who testified and identified the cutlass did so from what was told them by Kpoli Mah.

The appellee countered this averment in count eleven (11) of the appellee's brief by saying that count eleven of the appellant's bill of exceptions should be denied because the final judgment of the trial judge was in keeping with the evidence adduced at the trial, and that the state witnesses had testified that the appellant had told them that he committed the crime of murder after he had led them to the spot where the body of the deceased was. Regarding the admissibility into evidence of the appellant's alleged admission or confession, the appellee argued that it was irrelevant whether Barnie Doe or Kpoli Mah had appeared in court because the prosecution witnesses had attested the admission made to them.

The best evidence which a case admits of must always be produced since no evidence is sufficient which supposes the existence of better evidence. *Ibid.,* 2: 25.6. The cutlass alleged to have been used in the perpetration of the crime was said to have been produced by Kpoli Mah, the brother of the appellant. It was never established by evidence how and when Kpodi Mah came into possession of this cutlass since he was never brought to court to testify. Every testimony given regarding the cutlass supported the fact that it was produced by Kpodi Mah. Hence, the best evidence which the case could have admitted to identified the cutlass was Kpodi Mah, since he was referred to by all the other witnesses as having

produced same as the fruit of the crime.

With reference to the admissibility of the alleged confession or admission of the appellant into evidence which we lengthily treated while passing upon count six of the bill of exceptions and brief, we reiterate that the trial judge was without the authority to expunge from the records the oral testimony of witnesses which contained the alleged confession. However, it was the obligation of the trial judge to expound this law while summarizing the facts on both sides in his charge to the jury. From this point, we shall proceed to review the charge.

In his lone testimony, which under the law should be received with caution, the appellant told the court that he was brutally treated, and that the brutal treatment led to his confession. For the benefit of this opinion, we shall quote his testimony:

"Decedent was not living with me; he was living with Barnie Doe when decedent got missing; the said Barnie Doe went and reported the missing of the child to the chief; instead of going to look for the loss child, the chief and Barnie Doe came to inquire from me the whereabouts of the decedent. I told them I did not know because I hadn't seen him. They thereafter left to consult with the paramount chief and the county commissioner who also came to inquire of me about the lost child. But before the commissioner and the paramount chief had reached, I was caught and tied, thrown down and they put pepper in my eyes, broke my house down and took all my personal effects. After which, the commissioner arrived and asked me whether I killed the child, and I said no. I was taken to the commissioner's compound, the commissioner sent me to Grandcess and right away they brought me to Harper City. This is all I know."

Although the prosecution witnesses had testified to the effect that the alleged confession or admission was voluntarily made by the appellant, yet the prosecution made no effort to rebut this grave allegation of cruelty committed on the appellant's body which led him to confess. Rather, the prosecution in arguing before us, cited the case *Glay v. Republic*, in which Mr. Justice Pierre speaking for this Court said,

"The fact that, at the time when a confession was made, the hands and feet of the accused were tied, or that the accused was handcuffed, or in chains, or in the stocks, is not *per se* sufficient to warrant exclusion of the confession from evidence if the confession was actually voluntary." *Glay v. Republic,* 15 LLR 181 (1963).

This citation, relied upon by the prosecution, is misinterpreted by the appellee as in that case the appellant never took the stand to testify to any brutality meted to him under which the

confession was made. Hence, this Court concluded that there being no evidence to support any allegation of brutality, there was nothing to show that the confession was involuntary. Mr. Justice Henries while speaking for this Court in 1978 in the case *Anderson et. al v. Republic,* 27 LLR 67 (1978) said this:

"We must state here unequivocally that the judge erred in his handling of the confessions both as to their admissibility and in his charge. Aside from the physical evidence of third degree methods being used upon the defendants, it is questionable that the defendants could have brought witnesses to testify to the use of force or torture during the investigation because usually this is done in a secluded interrogating room in which only law enforcement officers and the accused are present. Under such circumstances, a doubt does arise as to whether or not the confessions were voluntarily made. Furthermore, we do not understand what the judge meant when he said in his charge that none of the defendants who "confessed" said that they were under any extremity of life, liberty or limb. They described the treatment they suffered and mentioned the conditions under which they made the confessions. What more should they have done?

With respect to *Glay v. Republic*, *supra,* we must state here that the "trial judge misinterpreted the court's holding with respect to confessions made while an accused hands and feet were tied, or while he was handcuffed. The judge's interpretation, and the argument of the State, in the same vein, seems to imply that this Court condones the admissibility of confessions obtained by third-degree methods. Nothing could be further from the truth. All the Court said in that case is that if a defendant confesses voluntarily while he is tied or in chains or handcuffed, his confession should not be excluded. This is different from a situation in which one confesses because of inhumane treatment inflicted upon him to make him confess. More than this in the *Glay* case, the defendant did not take the stand during the trial to testify that he was compelled or forced to make the confession. The Court wondered why since certainly no one prevented him from so testifying. In other words, since he did not testify or contend that the confession was made under duress there was nothing to show that the confession was involuntary. The case at bar bears no analogy to the *Glay* case as all of the appellants who confessed testified to the treatment they suffered at the hands of the law enforcement officers before they confessed." *Anderson v. Republic,* 27 LLR 67, 77 (1978).

The appellant in this case having stated in his testimony that he was tied, thrown down to the ground, pepper put into his eyes, his house broken down and his personal effects taken and at which point he made the confession or admission, it is reasonably obvious that the said confession was not voluntary but rather it was the consequence of the torture he received from his accusers. The trial judge in his charge to the jury never treated this issue with judicial prudence when he told the jury that the confession or admission made by the

defendant was voluntary in keeping with the testimony of the prosecution witnesses. Hence, the conclusion of the jury in finding a verdict of guilty against the appellant.

In conclusion, it is our judicial holding that the fundamental constitutional rights of the appellant that could have afforded him a fair and impartial trial were grossly violated, rendering the evidence for his conviction inconclusive. Hence, the verdict of the jury and the judgment confirming it which sentenced Kpodi Wreh to death by hanging be and the same is hereby reversed and the case remanded for a new trial. And it is hereby so ordered.
Reversed and remanded.