ROBERT TOE, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT, EIGHTH JUDICIAL CIRCUIT, NIMBA COUNTY.

Argued November 18, 1975. Decided January 2, 1976.

1. A motion for change of venue has to be made when the case is first called for trial, and not after the trial has been properly conducted.
2. A confession to a homicide may be used to aid in the proof of the *corpus delicti.*
3. A defendant, even in a capital case, who fails to pursue a matter affecting his rights, cannot afterward contend that his rights have been abused.
4. Evidence is sufficient to convict whenever the logical deduction from the total of the facts points conclusively to the guilt of the accused.
5. The uncorroborated testimony of a person accused of crime is insufficient to establish his innocence, especially when the evidence against him is clear and convincing.

Appellant was charged with the murder of a female Peace Corps volunteer for whom he worked. He was tried for the crime and found guilty. A second trial was awarded to him upon motion and he was found guilty again. The trial court affirmed the verdict and rendered judgment, sentencing the appellant to death. An appeal was taken, appellant primarily contending that the evidence was insufficient to support the verdict.

The Supreme Court exhaustively examined the record in the case and found the evidence against appellant was clear and convincing. Moreover, the Court pointed to the fact that appellant was his only witness, offering no corroborative evidence. In addition, the Court held that the species of evidence, which was largely circumstantial, was entirely proper. The judgment was *affirmed.*

O. Natty B. Davis for appellant. *Solicitor General Roland Barnes* and *Counsellor Jesse H. Banks, Jr.,* of the Ministry of Justice, for appellee.

MR. JUSTICE HORACE delivered the the opinion of the Court.

On August 25, 1971, Miss Marsha Ragno, a white Peace Corps volunteer from the United States of America, was found brutally murdered in the night of August 24, in her apartment at Gbedin in Nimba County, where the Ministry of Agriculture of the Liberian Government is operating a rice project. The record reveals that Michael Saye, houseboy of Miss Ragno, upon returning from school on August 25, 1971, went to his employer's house and observing blood stains on the window before entering the house, he ran to the Jacobsons who were also living in the rice project area to inform them that there was something wrong at Miss Ragno's place. All of them went to the house and upon entering Miss Ragno's room they found her body lying on the floor beside her bed with a bed sheet covering her head and upper part of the body. The lower part of the body was nude except for her panties on the left lower leg. Beside the body was a cutlass. When Mrs. Ruth Jacobson removed the sheet they observed that Miss Rango had been badly cut on her right hand, her neck, and about the face.

When the rice project manager was informed he immediately contacted the National Bureau of Investigation (NBI), located at Sanniquellie, Nimba County. The NBI rushed to Gbedin and conducted a short preliminary investigation. A number of suspects, including appellant, were taken to Sanniquellie for further interrogation.

The NBI headquarters at Monrovia having been notified of the incident, Mr. Joseph G. Gono, Deputy Director of the NBI, was immediately dispatched to Gbedin to take charge of the investigation. Meanwhile, the body of Miss Marsha Ragno was sent to Monrovia for an autopsy, which was performed at the John F. Kennedy Medical Center by a Government pathologist on August 26, 1971. The NBI continued its investigation and it

appears that the guilty party was held to be Robert C. Toe, the appellant, who, on August 27, allegedly signed a confession that it was he who killed Miss Ragno.

Appellant was indicted for murder on September 17, 1971, at the August Term of the Circuit Court for the Eighth Judicial Circuit, Nimba County. The case came up for trial at the November 1971 Term of the said court, Judge B. Malobe presiding, where a verdict of guilty was brought in by the trial jury against the appellant. He filed a motion for a new trial which was granted by Judge Malobe. As the record of that trial is not before us, we do not know on what point or point the new trial was awarded.

At the February 1972 Term of the Circuit Court for the Eighth Judicial Circuit, Judge Roderick N. Lewis presiding, the case came up again for trial. When the case was called the judge was informed that appellant had filed a motion for change of venue which had been resisted by the State. The court heard arguments on the motion, after which it entered a ruling denying it. The trial was held and again a verdict of "guilty" was brought in by the jury of March 2, 1972. A motion for a new trial was filed by appellant and resisted by appellee. After hearing arguments on the motion, it was denied by the court. A final judgment was rendered against appellant on March 6, 1972, and he was sentenced to be hanged.

It is from this final judgment, as well as the adverse rulings of the court against appellant during the trial, that this case is before us on appeal, based upon a bill of exceptions containing eight counts.

Before going into the bill of exceptions, we deem it necessary for the purpose of clarifying our conclusions, to give the gist of the evidence adduced at the trial in the court below.

The State produced eight witnesses to testify in support of the indictment. The first witness was Fred Cox,

workshop foreman for the Gbedin rice project. He testified to the fact that on the morning of August 25, 1971, appellant went to his house at 6:45 and asked whether he knew of any transport vehicle leaving for Cape Palmas (home of appellant) that day, to which he replied in the affirmative, because he had been at Suacoco the day before where he heard that one of the Ministry of Agriculture's trucks would be leaving for Cape Palmas the next day. He said he told appellant that the truck would not travel through Gbedin but would go straight from Suacoco to Cape Palmas. He also stated that appellant told him that morning that he had gone hunting the previous night and upon returning at about 4:00–5:00 A.M. he passed by his farm and before reaching his farm house he heard voices in his kitchen but he did not see anyone, assumedly because they had left by the time he got there.

The second witness to testify for the prosecution was Ruth Jacobson. She told how she and her husband were told by the decedent's houseboy, Michael Saye, on August 25, 1971, that he had observed blood stains on the window of decedent's apartment. Upon getting to the decedent's apartment door, she found decedent lying in a pool of blood, with the upper part of her body and head covered by a sheet and the lower part of her body nude except for her panties which were on the lower part of her left leg. She also testified to seeing on the newly painted wall some large printed letters spelling some names, and that all the drawers and closets were open and the contents of the cupboard spilled on the floor. In answer to a question from the court she stated that appellant never went to the apartment where the murder was committed on the morning of August 25, where they were all gathered; and the names printed on the wall were names of persons appellant had had palaver with, whom, she had been told, he made threats against. Previously she had herself heard appellant in anger make threats against other people's

lives. She identified photographs of decedent's body and of the writing on the wall of decedent's living room taken by the NBI photographer, because she was present when they were taken.

The third witness was Mr. Ernest F. Garnett, head of the NBI team located at Sanniquellie. He stated that at 2:15 P.M. on August 25, 1971, Mr. Campbell, the Project Director at Gbedin, went to Sanniquellie and informed him that Miss Ragno had been found dead in her room. He went to Gbedin where he found Miss Ragno's body on the floor in front of her bed in a pool of blood and a cutlass by her side. He observed that Miss Ragno had been cut on her neck, her head, and her face. Photographs of the scene were taken. In the living room some names were written on a cardboard partition. He began then and there to interrogate suspects. He sent for experts from Monrovia to analyze the handwriting. He took appellant and a few other suspects to Sanniquellie for further questioning. According to information given him, appellant had, a few days prior to the killing of Miss Ragno, attempted to rape her. He also testified that as the investigation progressed the cutlass found near the body was identified as belonging to appellant. After several days' investigation appellant admitted the killing. To erase all doubts appellant was taken to Gbedin, where in the presence of the citizens of that locality he reenacted the crime, and photographs were taken of the scene as appellant reenacted the crime. Ernest F. Garnett, the third witness identified the photographs of decedent's body as found when dead, and the writings on the wall of Miss Ragno's living room, as well as the cutlass found near her body. He further identified the written confession of appellant, which he stated appellant had signed in his presence, for it was witnessed by him. He further identified the photographs of the reenactment of the crime by appellant.

The fourth witness was Michael Saye. He told that

he and the decedent were going out for flowers, when on their way home they had met appellant and a friend going to a farm. He stated that appellant had grabbed Miss Ragno's hand and told her to go with him to his farm, which she refused to do. After holding her hand for a while appellant released it and he and decedent went to their homes. The next morning he went to school and upon returning home he went to decedent's home to wash her dishes, but when he got there he saw blood on the windows. He then ran to the Peace Corps offices and told them he had seen blood on Miss Ragno's windows. The Peace Corps people reported the matter to the Project Director who informed the NBI. He also said that one day appellant went to Miss Ragno and asked her for money, which she refused to give him. He further testified to seeing a cutlass lying beside the dead woman and that the room was wet with blood. He identified the cutlass which he said he saw beside decedent's body when they entered the room. On cross-examination, when asked whether he knew whether appellant and decedent had had any previous altercation, he replied in the affirmative, and said that on two occasions appellant had asked decedent for money to the point that decedent had gotten annoyed and reported him to Mr. John N. Chambers, another Peace Corps volunteer. At this point defense gave notice of rebuttal to that part of the answer of the witness and asked for a subpoena to be served on John Norman Chambers as a rebuttal witness. We mention this here because of what will be said later on this point.

The fifth witness was Mr. John G. Gono, Deputy Director of the NBI. His testimony was a detailed statement of how he had arrived at Gbedin on the evening of August 25, 1971, to join and take charge of the investigation of the homicide. He stated that when he arrived the team had a number of persons in their custody for routine interrogation, among whom was the appellant.

They continued the interrogation in order to eliminate all innocent persons. He then recounted in detail the questioning of appellant and how appellant had contradicted himself several times when asked more than once about some incident or circumstance. He testified that appellant's mannerism during the interrogation was unusual and suspicious. The investigation revealed that on the night of the murder appellant had left his house with a cutlass to go hunting. When appellant was confronted with the cutlass found near decedent's body, he admitted that it was his but said at first that he had lost it two or three months earlier. The witness said all through the interrogation every now and then that "I want to tell the truth now," which gave them the impression that what he had been saying was untrue. One evening appellant sent for him to say he was ready to talk. Appellant was then taken to the NBI office, and in the presence of Mr. Ernest Garnett and Police Sergeant Isaac Dahn appellant made his initial confession of having killed Miss Ragno. At first he attempted to implicate others by stating that the names that were written on the cardboard wall were his accomplices but that he did the killing with the cutlass. After pointing out the improbability of accomplices writing only their names on a partition at the scene of the crime and excluding the name of the actual perpetrator, he capitulated and said it was he alone that did the killing. From that point he became more cooperative and when asked whether he could reenact the crime he readily consented. He was taken to Gbedin, and in the presence of the Chief of the Gbedin Rice Project and about one hundred other persons, appellant reenacted the crime. Photographs were taken of the entire reenactment. He further stated that when appellant was asked what was his motive for killing decedent, he replied that he had asked decedent to lend him some money and she refused and when he asked her the second time she did not only refuse but insulted him and called him a black monkey and used

other curse words. That was his reason for killing her. He identified the confession signed by appellant, the report of the document analyst or handwriting expert, and the photographs of the reenactment of the crime by appellant.

The sixth witness was Mr. Michael W. Sarteh, agent in charge and Assistant Document Analyst of the NBI. This witness testified to the fact that he had made an analysis of the handwriting of six persons in the area where Miss Ragno was murdered, including that of appellant, and that his comparison and analysis showed conclusively that the specimen handwriting of appellant given to him was identical with the handwriting found on the cardboard partition in Miss Ragno's living room on the morning the body was discovered. He identified photographs of the handwriting on the wall of Miss Ragno's living room. He also identified his report and confirmed the signature on it as being his.

The seventh witness was Mr. John N. Chambers, apparently a Peace Corps volunteer living in the Gbedin rice project area. He told of how on the evening of August 23, 1971, Miss Ragno went to his home and asked him to accompany her for a drink to the small bar they have on the project. He left what he was doing and accompanied her. While they were having a drink she told him that while she was out picking flowers, appellant had asked her to go into the bush with him. He told her that this was serious and should be reported, but she insisted that he say nothing about it as she regarded it as a joke. He only saw decedent about five to ten minutes on August 24, 1971. The next day he took a crew of mechanics to Ganta to get some machinery. Mrs. Jacobson accompanied him. They returned to Gbedin about 1 o'clock that afternoon. About five minutes after he got home he was hurriedly summoned by Mr. Campbell, the Project Director, to Miss Ragno's home. Upon arriving there he saw Miss Ragno's body on the floor covered with

a sheet. He left and immediately informed the head office of the Peace Corps in Monrovia.

The eighth and last witness was Dr. T. C. O. Chiori, Liberian Government pathologist, who performed the autopsy on the body of Miss Marsha Ragno at the John F. Kennedy Medical Center. His testimony was mainly that he had performed the autopsy and had submitted his report thereon. He identified the report and confirmed the signature on it as being his.

The general portion of the autopsy we feel should be quoted.

> "The body was that of a well-nourished bonny Caucasian female, hardly recognizable. There were numerous cuts on the head and back, more especially on the right side of the neck. A deep cut on the left side of the neck had cut through the external jugular and external carotid vessels. Palpation revealed that one of the cervical vertibrae had been fractured by the force of the cut. On the vault of the skull a little to the right side there was a cut going through the outer table of the skull with a comminuted fracture of the inner table. There was also a deep cut on the right malar bone, right parietal area, and left frontal bone extending to the inner concha of the left eye with much bruising and oedema of the left eyelid.
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> "Also on the lower neck and upper part of the front of the chest were deep gaping stab wounds, three on the right side and one on the left side with a hairline fracture of the left clavicle. The right arm had a gaping wound at the back of the elbow and the right hand was almost completely severed from the forearm.
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> "Examination of the vulva and vagina showed no bruising or lacerations although there was a 1-1/2 cm. long tear on the posterior aspect of the vaginal introitus. No spermatozoa demonstrated in vaginal smear.

The tear in the posterior introitus makes it difficult to be sure that intercourse and ejaculation actually took place."

The report stated as the cause of death: "Exsanguination from multiple head and neck injuries as a result of homicide."

With this witness the prosecution concluded oral testimony and offered written and demonstrative species in evidence, some of which were objected to. The objections were overruled and the said written demonstrative species admitted into evidence. After the prosecution had rested, oddly, taking into consideration the evidence adduced by the prosecution, the defense moved the court for a directed verdict. This was resisted by the prosecution and after argument denied by the court.

The defendant then took the stand and testified in his own behalf. He started off by saying that he did not kill Miss Ragno, and that he was on his farm when the news broke about her death. That on his way to work he was told by one Frederick Bernard, a tractor operator, that a Peace Corps woman had been killed. He then returned to his farm to call his wife to go to the camp. When they arrived at the camp they went to the murder scene and met the NBI. After being there an hour he went to buy cigarettes, at which time he was sent for by the Project Director. When he got there the Director, pointing to him, told the NBI: "There is Robert Toe." He was told by the NBI to get into the jeep and was taken to Sanniquellie. At the NBI office Mr. Gono told him it had been said he had killed the woman; he denied it and asked for the name of Gono's informant and when they refused he insisted that he be told who told them that he had killed the woman. Gono then ordered that he be handcuffed. When he inquired as to why he should be handcuffed, Mr. Crump, a member of the NISS slapped him, placed his feet in shackles and began to beat him. They told him they were beating him be-

cause he had killed Miss Ragno, which he vehemently denied. After locking him up for the night, he was taken out the next morning and brought to Gbedin to show them how he had killed the woman. He refused and they handcuffed him, began to beat him, and forced him to open the door to Miss Ragno's apartment. After that they told him what to do and he did as he was told. After being cross-examined, the court asked him if he had any other witnesses and he replied "no." The record shows that after the witness was discharged, the defense rested and submitted the case for argument.

Since there were no eyewitnesses to the murder, it will never be known what actually happened in decedent's apartment on the night of August 24, 1971, unless the perpetrator of the crime decides one day to tell the story. Suffice it to say that the autopsy report presents a gruesome picture.

Now that we have reviewed the evidence let us turn to the bill of exceptions. We will set forth all the counts thereof.

> "1. Appellant submits that Your Honor erred by denial of defendant's motion for a change of venue when defendant informed the court that upon his oath he believed that he could not obtain a fair and impartial trial in Nimba County because of existing local prejudice.
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> "2. And also because appellant further submits that Your Honor erred by overruling objection of appellant in admitting into evidence articles marked by the court G, D, E, and F, respectively, and also instruments marked by court M, as well as K, same being unconstitutional.
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> "3. And also because Your Honor erred when defendant prayed for a subpoena to be issued and served on John N. Chambers to rebut the answer given by the prosecution's witness, Michael Saye, to the question propounded to him on cross-examination, quote:

'Can you explain to the court and jury some of the palaver which you referred to?' Answer, 'I can explain: One day defendant came to Miss Marsha, he asked her for money. The next day he came back, he was still troubling the lady for the money, etc.'

"4. And also because Your Honor erred by the way and manner you charged the empanelled jury.

"5. And appellant submits that Your Honor also erred when you permitted the same rebuttal witness to testify on behalf of the prosecution instead of the defendant who prayed for a subpoena to be issued and served on John N. Chambers to rebut prosecution witness Michael Saye's statement.

"6. And appellant submits that Your Honor erred by sustaining the objection of the appellee to the following question: 'Mr. Witness, what was the relationship between you and the decedent, Miss Ragno?'

"7. And because appellant further submits that Your Honor erred in the way and manner you overruled the objection of appellant to the question propounded by the prosecution on direct examination: 'Q. Mr. Witness, refresh your memory and tell the court and jury as to your findings in said investigation conducted by you in which Robert Toe, now defendant was one of the suspects?'

"8. And appellant also says that Your Honor erred when you denied appellant's motion for a new trial and by entering final judgment by affirming and confirming the verdict of the jury, sentencing defendant to die by hanging on the 7th day of April, 1972.

"Wherefore, and in view of the foregoing, appellant brings the above as his bill of exceptions and prays that Your Honor approve same so that the Supreme Court may find its way clear to review and correct the errors herein complained of as is just, right, equitable and consistent with law and justice."

With respect to count one of the bill of exceptions, we

have been unable to find any precedent applicable to the issue as raised here. All legal precedents relate to cases where the issue of change of venue is raised in the court where the indictment was found and the case was being called for the first time.

Our Criminal Procedure law states that "a motion for the transfer of proceedings on the ground that the county in which the prosecution is pending is not one of the counties specified in sections 5.1–5.6 must be made at or before arraignment. A motion for the transfer of proceedings on any other ground must be made at any time before the jury is sworn, or where trial by jury is not required or is waived before any evidence is received." Rev. Code 2:5.7(2). As we understand it "transfer of proceedings on any other ground" applies to § 5.7(1, b), "if there is reason to believe that an impartial trial cannot be had in the county in which it is pending."

But the foregoing does not clarify whether one may apply for change of venue on a new trial, when a former trial had been held and a verdict brought in against defendant. In the 1956 Code the motion had to be made before the call of the case. This phrase is modified in the most recent statute as quoted above.

During argument, counsel for appellant contended that a new trial means a trial *de novo* and, therefore, the right to change of venue exists when a new trial has been awarded. Appellee's counsel contended that appellant had waived his right to change of venue for local prejudice when he failed to exercise that right at the first trial, and actually took part in it. There is no question in our mind as to the right of a defendant to a change of venue because of local prejudice. The problem is, when is that right to be exercised?

The trial judge passed on the point and his ruling is quoted herein.

> "The defendant contends that a new trial having been awarded him, the case necessarily comes up *de novo*

and consequently the statutory phrase "prior to the call of the case" will apply. We shall divert our attention to what is called the spirit and intent of the law and not mere words. It would seem reasonable, or better still logical, to say that the benefit of a change of venue upon an indictment because of local prejudice should be made at the initial stage of the trial, that is to say, when the case is first called for trial and not after a trial has been regularly conducted and a new trial awarded. To introduce such a procedure in our opinion affects the spirit and intent of the statute with regards to change of venue in criminal cases."

We think the ruling of the trial judge is logical and sound. It must not be forgotten that a new trial is not on a new indictment; it is new only insofar as the judge and trial jury are concerned; the principal evidence is more or less the same. This is the more so when the change of venue is applied for merely on the point of local prejudice. We feel, therefore, that when appellant neglected to ask for a change of venue before the case was first called or before he was arraigned at the first trial he waived his right in this respect.

"The right of a party to a change of venue may be waived by his acts, as by invoking affirmative action of the court inconsistent therewith. . . . Dependent on variant statutes as to the time when an application for a change of venue should be made and the conditions under which it may be granted, a party's right to a change of venue may be waived by acts of participation in the proceedings." 92 C.J.S., *Venue,* § 216 (1955).

"It is ordinarily for the trial court to determine from all the attending facts and circumstances whether the motion was made within reasonable time after the case was at issue upon the facts, but in view of the fact that there is a tendency to make use of the privilege of change of venue to obstruct and delay the

progress of litigation, courts have felt impelled to lay down certain rules as to the appropriate time for seeking a change.

"An application for change of venue should ordinarily be made before a cause proceeds to trial, and is usually considered to come too late when made after the case has been tried. The statutory provisions governing the application for a change of venue sometimes impel this conclusion. Where a reasonable previous notice of the application is provided for, the only fair deduction to be made from that provision is that the notice must precede the commencement of the trial. Accordingly, it has been held that an application for a change is not timely and comes too late if made after the trial of the case has begun and the jurors are being examined as to their qualifications to sit in the case. The courts have variously held that a motion for change of venue comes too late when made after judgment has been rendered, after the issues in a case have been tried and verdict found, after a verdict and while a motion for a new trial is pending, or after the court has heard and decided the case. To permit a party to move for a change of venue after trial would in effect allow a new trial, without regard to the results of the first and thus a suit could be indefinitely protracted." 56 AM. JUR., *Venue*, § 61 (1947).

Taking into consideration all the facts and circumstances attending this case, we cannot escape the conviction that the application made for change of venue was not only untimely, but was made for the purpose of obstructing and delaying justice. Count one of the bill of exceptions is, therefore, overruled.

As to count two of the bill of exceptions, the record reveals that the photographs taken of decedent's body as it was found and the room in which it was found, were marked by the trial court "A" to "G." The written con-

fession of appellant was marked by the court "K," and the report of the document analyst, with respect to the handwriting on the cardboard partition in decedent's living room, was marked "M." Court's mark "J" was placed on the cutlass found near the body of decedent. At the time these documents and the weapon were offered into evidence, the defense entered objections as have been set forth.

> "Defendant at this stage objects to the admissibility of photographs marked by Court 'C,' 'D,' 'E,' and 'C,' 'A,' 'B,' 'J' respectively, for insufficiency of identification. And also the document marked by court 'M' carrying the genuine signature of Michael W. Sarteh, for insufficiency of identification, as well as the instrument marked by court 'K,' same being unconstitutional. Defendant objects to its admissibility, and also the medical report marked by court 'N,' for insufficiency of identification.
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> "Defendant also objects to the weapon marked by court 'J,' for insufficiency of identification, and the photograph marked by court 'L,' being unconstitutional. Defendant prays of the court and says the photographs should not be admitted into evidence."

Since documents marked "A," "B," "C," "L," and "N," and the weapon marked "J," are not mentioned in this count of the bill of exceptions, we will ignore them and direct our attention to the ones mentioned.

The record also reveals that the photographs marked "A" to "G" were those showing the body of decedent as it was when found, and the room in which it was found. These photographs were identified by witnesses Ruth Jacobson and Ernest Garnett. How then could appellant object to those marked "G," "D," "E," and "F" being admitted into evidence for insufficiency of identification in view of the record on the point, as it clearly shows. With respect to the document marked "M," the report of the document analyst, in appellant's objections as stated

above, he states that this document carried the "genuine signature of Michael W. Sarteh." Sarteh is the document analyst who identified the document on the stand and confirmed his signature attached thereto. It seems strange to us that the appellant admitted the genuineness of the signature and yet objected on the ground of insufficiency of identification.

The document marked "K," the written confession of appellant, was objected to because it is unconstitutional, without saying how it was unconstitutional. We presume he meant that it was compelling appellant to give evidence against himself. Yet, appellant did not produce a single witness to rebut the State's witnesses' statements that the confession was made and signed by him voluntarily. And what is still more significant is that when appellant took the witness stand to testify for himself, he never mentioned that he was coerced or forced to make the confession. The only time he mentioned anything about being beaten is when he was testifying to his being forced to reenact the crime. We cite authority on the point of admissibility of confessions.

> "There is much support for the general proposition that the admissibility of a confession depends upon proof of the *corpus delicti* by at least some evidence apart from the confession itself. Once the requirement of the proof of the *corpus delicti* in a homicide case is met, the confession of the accused is available to identify the person confessing as the criminal agent. It appears that while the *corpus delicti* cannot be established by the extrajudicial confession of the defendant unsupported by any other evidence, it may be established by such a confession corroborated by other facts and circumstances.
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> "In other words, a confession of a homicide may be used to aid in the proof of the *corpus delicti*. Purporting to make a practical application of the prin-

ciple that it is the *corpus delicti* plus the confession, or the confession plus the *corpus delicti,* that makes a case of homicide, it has been asserted in a prosecution for such offense that a confession may be received in evidence in advance of proof of the *corpus delicti,* since the accused will be acquitted in any event, unless proof of the *corpus delicti* independent of the confession is produced." AM. JUR., 2d., *Homicide,* § 285 (1968).

The fact that at the time when the 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. See *Glay* v. *Republic,* 15 LLR 181 (1963). Confession of a crime by an accused is admissible in evidence and may be used against him in a prosecution of murder when properly corroborated. *Kamarah* v. *Republic,* 3 LLR 204 (1930).

Count two of the bill of exceptions, being without merit, is hereby overruled.

With respect to count three of the bill of exceptions, the record shows that when witness Michael Saye answered a question on cross-examination, counsel for appellant gave notice of rebuttal and at the same time prayed for a subpoena for Mr. John N. Chambers, whose name was shown on the face of the indictment as one of the prosecution's witnesses, to rebut Michael Saye's statement. The record further shows that although the subpoena was issued, Chambers was not called, the reason being that after appellant had testified and had been cross-examined, he was asked by the court if he had any other witness, to which he replied "No." After this reply from the appellant his counsel, without objections or even requesting the appearance of his rebutting witness, rested his case and submitted for argument.

> "The principle that a defendant who has knowledge of a matter affecting his rights and fails to ask for a ruling on it, or fails to avail himself of the earliest opportunity of objections known to him, cannot afterward successfully complain, is applicable to capital cases as well."

What is even more interesting is that when John N. Chambers was on the stand he did corroborate Michael Saye's statement that decedent reported appellant to Mr. Chambers. Obviously, that is why no attempt was made by counsel for appellant to call Chambers as a rebutting witness. Count three of the bill of exceptions is overruled.

As we have been unable to discover any reversible error made by the trial judge in his charge to the jury, count four of the bill of exceptions is overruled.

As to count five of the bill of exceptions, not only is the record wanting as to any exception having been taken to John N. Chambers not taking the stand as a rebutting witness, but it is clearly shown that this person's name appeared on the face of the indictment as one of the prosecution witnesses, and as such did testify for the State. Moreover, as already stated, counsel for appellant never called Chambers as his rebutting witness. Count five of the bill of exceptions, being a misstatement of the facts as shown in the record, and no exceptions thereto having been taken, is overruled.

With reference to count seven of the bill of exceptions, the record reveals that the question stated in said count was put to witness Michael W. Sarteh, the document analyst who had examined the handwriting of appellant and others and had made his findings. Appellant's objections to the question were "(1) Assuming the province of the court and jury as to findings of the testimony of the witness on the stand; (2) Instructive." Naturally such objections were not sustained. Whether the question was

objectionable or not, certainly the grounds given were way out of line. Perhaps if the right objections had been made the court's ruling might have been different. Count seven of the bill of exceptions is overruled.

In regard to count eight of the bill of exceptions, we observe in the record a one-count motion for a new trial.

> "Defendant says that the verdict of the jury is manifestly against the evidence adduced at the trial, and defendant therefore prays the court to set aside the verdict and award him a new trial to promote substantial justice."

No attempt was made to at least show some ways in which the verdict was manifestly against the evidence presented at the trial. The motion, after being resisted by the prosecution, was denied and final judgment rendered affirming the verdict. As a careful search of the record of the trial has not shown that the verdict was against the evidence, we must also deny count eight of the bill of exceptions.

Appellee's counsel argued that error had been committed with regard to denial of change of venue, insufficiency of identification of photographs of decedent, and the failure of the trial judge to issue a subpoena for John N. Chambers as a rebutting witness. As we have already dealt with those issues quite exhaustively we will not pursue them further.

Since there were no eyewitnesses to the killing of Marsha Ragno except she and the killer, proof of the criminal agency responsible for her death, the other aspect of the *corpus delicti* which must be proved, must depend largely on circumstantial evidence. The guideline in this respect was set by this Court in *Wood* v. *Republic* 1 LLR 445, 452–453 (1905):

> "Evidence is ranged by law writers into three general groups, namely, positive or direct evidence, presumptive evidence, and circumstantial evidence. Positive

or direct evidence is that means of proof which tends to show the existence of a fact in question from a knowledge of such fact derived from one's own senses. Presumptive evidence is that which shows the existence of one fact by proof of the existence of another, from which the first may be inferred. Circumstantial evidence tends to prove a disputed fact by proof of the other facts, which have a legitimate tendency, from the laws of nature, or the usual connection of things, to lead the mind to conclude that the fact exists which is sought to be established.

"From an inspection of the record we find that the evidence in this case chiefly falls under the last two heads, namely, presumptive and circumstantial. And the court would here remark that the greater number of crimes found upon the records of criminal courts are established by this species of proof. It is not frequent, speaking comparatively, that misdemeanors and crimes are committed before the public gaze. The natural tendency is to seek secrecy and concealment. So that if the law only recognized, as sufficient to convict, that quality of evidence we call positive, the safety of society would be greatly jeopardized by miscreants who would perpetrate their diabolical deeds either under cover of night, or under some other cover which the eye of justice could not penetrate. In this case the prisoner is charged with the willful and malicious killing of a human being, under circumstances greatly aggravated."

The principle stated in *Gardner* v. *Republic,* 8 LLR 406 (1944), is that it is not necessary that one actually see another commit a crime before his testimony may be accepted as valid evidence against the accused, but it is sufficient to convict whenever the logical deduction from the facts placed on record leads conclusively to the logical deduction that the crime was committed by the accused.

Under the old English rule it was required that the first part of the *corpus delicti,* that is, that the life of a human being has been taken, must be proved by positive or direct evidence; the second part, the criminal agency responsible for the death, by presumptive or circumstantial evidence. Now, the almost universal rule is that murder, as all other crimes, can be proved entirely by circumstantial evidence.

> "Generally speaking, it is the rule in criminal cases that any fact which may be established by direct evidence may also be established by circumstantial evidence. The rule is one of necessity, but the modern tendency is to be extremely liberal in admitting evidence of circumstances throwing light upon the matter before the court. Accordingly, in prosecutions for homicide, evidence of all those surrounding facts and circumstances which have any bearing upon the manner of death and any tendency to show whether it was natural, accidental, or felonious, and whether the decedent died by the hand of another, etc., is admissible. A wide latitude is generally allowed in admitting circumstantial evidence where direct evidence is lacking to establish a theory of the case. Furthermore, if a fact consists of parts or is provable by many circumstances, each of which conduces something to the establishment of it, then each part and each circumstance is admissible, although the point will not be established until the whole fact is proved. All that is necessary to render such evidence admissible is that it tend to prove the issue or constitute a link in the chain of evidence."

Because the case involves a capital offense, we have searched the record thoroughly to avoid as far as possible missing any point that would be favorable to appellant, to either mitigate the punishment or reverse the judgment. Taking all the circumstances into consideration,

we have been unable to see anything but the guilt of appellant. Let us consider the following facts which come out in the evidence.

1. Appellant inquiring about means of getting to Cape Palmas early on the morning immediately after the killing of decedent.

2. The handwriting on the wall or cardboard partition in the living room of decedent proved by expert testimony to be that of appellant.

3. Appellant's prior indecent approach to decedent in the presence of witness Michael Saye and reported by her to Mr. John N. Chambers.

4. The cutlass found on the murder scene and identified to be that of appellant, aside from admitting it in his confession.

5. The nature of the wounds inflicted on decedent's body as observed by those who saw it.

6. The autopsy report describing the wounds and stating the cause of death.

Each of these taken separately could prove nothing perhaps, but taken together they do, in our opinion, forge a strong chain of circumstantial evidence against the appellant.

An important point not to be overlooked is that appellant was the only witness for the defense. A long line of decisions of this Court has held that the uncorroborated testimony of a person accused of crime is insufficient to acquit, especially when the evidence against him is clear and cogent.

Having, therefore, most carefully examined the evidence in this case and the applicable law, we have no doubt concluding that appellant did willfully and in a most brutal manner murder Marsha Ragno on the night of August 24, 1971, at Gbedin in Nimba County. In accord with a long line of decisions of this Court, establishing that where the evidence is cogent and the trial regular, a judgment of a trial court will not be disturbed,

we hereby affirm the judgment of the court below. The Clerk of this Court is hereby directed to send a mandate to the court below to resume jurisdiction and execute its judgment. And it is so ordered.

Affirmed.