

**Abraham Varmuyah Corneh and Abu Campbell alias Mustapha, APPELLANTS Versus  
Republic of Liberia, APPELLEE**

**APPEAL**

**LRSC 27**

Heard: March 19, 2014 Decided: August 13, 2014

**MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE  
COURT.**

This appeal to the Honourable Supreme Court by the appellants, Abraham Varmuyan Corneh and Abu Campbell, alias Mustapha, stems from the dissatisfaction of a verdict and a subsequent judgment by the trial court of the Eleventh Judicial Circuit, Bomi County, Republic of Liberia, against the appellants for the Crime of Criminal Attempt to Commit Murder, and the conviction and sentencing of the appellants by the court to five (5) years imprisonment.

The certified records to this court indicate that on the 3rd of January A.D. 2008, the appellants were indicted by the Grand Jury of the First Judicial Circuit, Criminal Assizes A for Montserrado County, sitting in its November Term A.D. 2007 for Aggravated Assault. Subsequently, the indictment was amended and the appellants were charged with the commission of the crime of "Criminal Attempt to Commit Murder.

At the call of the case by the First Judicial Circuit, Criminal Assizes "B", presided over by Her Honor Evelina Z. Quaqua, assigned Circuit Judge, the appellants requested a change of venue, stating in their motion that they would not get an impartial trial in Montserrado County. The court granted the motion, and ordered the case transfer to the Eleventh Circuit, Bomi County, where, upon call of the case, the appellants made an application to the trial court to waive jury trial. This application was granted and the court proceeded to make a general finding of the facts and evidence.

Setting out to prove the charge as alleged in the indictment, the prosecution produced four (4) witnesses, all of whom took the stand and testified as to their certain knowledge of the matter which we deem relevant to state herein.

Prosecution's first witness, Counsellor M. Wilkins Wright, testified that in 2005, he was hired by Dr. Abid A. Shafi, one of the private prosecutors, to institute an action of ejectment on his behalf for property leased from the owners of a land situated in Vai Town, Bushrod Island, Monrovia. According to Counsellor Wright, co-appellant Abraham Varmuyan Corneh made application to the court to intervene on behalf of the defendants who were sought to be evicted. Counsellor Wright explained that he won the case in favor of Dr. Shafi; thereafter, in February 2007, a bill of costs and writ of possession were issued and served by the court on the defendants. The defendants opted to remain in the apartments and to negotiate rental payment with Dr. Shafi.

Counsellor Wright said that Dr. Shafi requested him to initiate other suits against co-appellant Corneh and his tenants; however, co-appellant being an old personal friend of his, he proposed a settlement deal to harmonize the differences between Corneh and Dr. Shafi so the parties could live in peace. Co-appellant Corneh refused and rejected his proposal. He further testified that in February, 2007, he continued to interact with Dr. Shafi in the enforcement of the judgment against the defendants who were Indian Nationals. Counsellor Wright stated that during the morning hours of Saturday, December 15, 2007, between 7:15 a.m. to 7:45 a.m. he stopped at Dr. Shafi's store in Vai Town to follow up on the case and to purchase some spare parts for his vehicle. While standing with Dr. Shafi in front of the store, co-appellant Abu Campbell appeared with a bottle and said to Dr. Shafi, "This Vai Town Case which cannot end, this is your end today". Counsellor Wright stated that as co-appellant Abu Campbell said these words, he opened the bottle and threw acid water on Dr. Shafi and him; and fled the scene. Others, he said, came to their rescue, including two of the prosecution witnesses, Samuel Morris Jallah and Fahn Kiadii. He narrated that the entire right side of Dr. Shafi's face, under his neck, entire chest, and stomach were burned by the acid and his and Dr. Shafi's clothes were also destroyed by the acid. He further testified that they reported the case to the police and subsequently went to the Redemption Hospital where they received treatment. The witness explained that the police arrested co-appellant Abu Campbell a week after the incident and that he received information that it was co-appellant Abraham Varmuyan Corneh who orchestrated the evil meted against them by hiring the services of co-appellant Abu Campbell to throw the acid on them in return for a partial payment of two thousand Liberian Dollars, with a promise to pay the balance of ten thousand Liberian Dollars after he had successfully executed the mission to eliminate both he and Dr. Shafi. After the writ of arrest was issued, the witness said co-appellant Abraham Varmuyan went into hiding and his lawyer, Attorney J. Daiku Mulbah, tried to secure a criminal appearance bond for both the appellants, but he, Counsellor Wright, objected on the ground that co-appellant Abraham Varmuyan Corneh had not personally appeared before the court to pray for and obtain a bond. Upon this, co-appellant Corneh resurfaced and was brought under the court's jurisdiction by his lawyer.

Prosecution thereafter called forth its second witness, Dr. Abid A. Shafi who testified that he came to Liberia from Pakistan as a professor of Chemistry and started a business (Auto-tech). He secured a building through a lease agreement with one Sherbu Kiawu in 1984, and began paying rent to him. Thereafter, in 1989, the witness testified, he received an order from the Civil Law Court, Montserrado County, ordering him to pay the rent to the court. In 1989, after the 14th of July, he and other lessees were advised by their lawyers that based on a court's order they should enter into rental negotiation with Chief Murphy Vey John People. Dr. Shafi stated that this culminated into him entering an agreement with the new owners of the building.

The prosecution witness further explained that in 1996, the tenants in the upstairs apartments left the country due to the April 6 crisis and left the apartments unattended. At this point, Mr. Abraham Vamuyan Corneh took over the apartments and started renting them out while he, Dr. Shafi, was still occupying the ground floor. Dr. Shafi said that due to the political situation of the country at the time, he decided not to take legal action against co-appellant Corneh. However, in 1999, he observed

that Mr. Abraham Vamuyan Corneh began a construction on a piece of land which he, Dr. Shafi, had leased from Chief Murphy's and Vey John's families. In consideration of his investment and his loss as a result of the unlawful and illegal occupation of his apartments by co-appellant Corneh, Dr. Shafi said that he decided to take legal action against Mr. Corneh. Dr. Shafi testified that he immediately then filed a lawsuit in the Civil Law Court for repossession of his apartments, following which he began receiving death threats from the co-appellant and his brother, Abraham Konneh. Dr. Shafi narrated that one day the co-appellant walked into his store and openly threatened that he and his brothers would send Dr. Shafi to Pakistan as cargo. According to Dr. Shafi, he became frightened due to the continuous threats from Mr. Corneh and his supporters, noting that in the early 1996, a man named Caleb Ben Kiawon was beaten behind the Sheriff's Yard in Vai Town because he supported Chief Murphy and John Vey's families, co-appellant Corneh's opponents in the Vai Town land case. Again in 1997, Dr. Shafi said he observed some physical commotion in Vai Town between Chief Murphy and Vey John's supporters and co-appellant Abraham Vamuyan Corneh's supporters which is alleged to have contributed to the demise of a young man.

Testifying further, Dr. Shafi said following filing of the action against co-appellant Corneh and his tenants, other lessees also commenced legal action against co-appellant Corneh. People then reported that co-appellant Corneh said he, Dr. Shafi, was frisky and was getting other lessees "frisky" and that he would be taught a lesson. In early 2000, while he was trying to open the doors of his store, one of co-appellant Corneh's brothers, Siaka Konneh, attacked him from his back and hit his neck. He fell and became unconscious. When he regained his consciousness, he went to the Ministry of Justice to file a complaint. Subsequently, Mr. Siaka Konneh was arrested and charged with the commission of the crime of aggravated assault and detained at the Monrovia Central Prison. Dr. Shafi said he decided not to pursue the case since he was living in Vai Town.

Dr. Shafi narrated that due to his past experiences with Mr. Corneh and his supporters he became terrified and therefore employed a security guard to watch his back when he opened his store in the morning, and to remain with him until he left to go home. His security guard was advised to always be on the alert. On December 15, 2007, at about 7:15 a.m. Counsellor Wright came and asked him to take a look at the tail light of his car. They walked out and while talking with Counsellor Wright in front of his store, and his security, Samuel Morris Jallah, standing in the middle of the door, he heard a very familiar voice saying, This Vai Town case cannot end, today is the end of you, Dr. Shafi. Dr. Shafi said that he turned towards the voice and co-appellant Abu Campbell, alias Mustapha, then threw the acid water on his face and body. Thereafter, co-appellant Abu Campbell ran towards the York Trading covering his face with his shirt. According to Dr. Shafi, his security Samuel Morris Jallah rushed towards him and advised him to leave the man who threw the acid water on him because he knew him. At this point, Frank Kiadii joined them and Dr. Shafi requested that the store boys bring a lot of water and pour it over his body. The matter was reported to the police, and on the advice of Counsellor Wright, a photographer took pictures of the burns on his body and his clothes.

Witness Shafi, like Counsellor Wright, narrated both appellants went into hiding after the incident, until the 24th of December when co-appellant Abu Campbell was arrested. The lawyer for the

appellants then attempted to get a criminal criminal bond for both appellants but the state raised an objection to the approval of a criminal appearance for co-appellant Corneh when he had not been brought under the jurisdiction of the court. This was when co- appellant Corneh came to court, was arrested and later released on a criminal appearance bond.

Prosecution's third witness, Samuel Morris Jallah took the stand confirming that he had been employed by Dr. Abid A. Shafi because of the constant threats on Dr. Shafi's life by the people in Vai Town. He explained he did his own background investigation in Vai Town and a ghetto found in the area in order to identify those who wanted to cause harm to Dr. Shafi. During his investigation, Jallah said, he discovered that co-appellant Abu Campbell and a boy named Snake were the guys in Vai Town that he needed to keep close watch on. On the 24th day of November 2007, Mr. Jallah said that he saw Mr. A. B. Corneh passing in a Jeep, slowed down and brought down his wind- shield; everyone in the store got concerned and became more careful. On December 15, 2007, the day of incident, Mr. Jallah said he along with Dr. Shafi opened the store at about 7:00 a.m. and later Counsellor Wright came to the store. Both men decided to go out of the store, while Mr. Jallah said he stood in the door on a look-out while the men carried on their discussion outside. It was during this time that co-appellant Abu Campbell arrived with a camouflage cap pull low over his face so his face could not be seen properly. Mr. Jallah narrated that when he realized it was co-appellant Campbell, he tried to rush down the stairs to Dr. Shafi but was late as co- appellant Campbell had already thrown the acid on Dr. Shafi and Counsellor Wright. After wasting the acid on the men, co-appellant Abu Campbell ran away from the scene. As he had already recognized co-appellant Campbell, he decided to first take care of Dr. Shafi instead of running after the said co- appellant. He therefore rushed Dr. Shafi inside of the store, took off his clothes and began pouring water on him. The witness said that Counsellor Wright advised that the matter should first be reported to the police and that pictures be taken. According to the witness, after the incident he went to the ghetto and saw co-appellant Abu Campbell there where he observed that some of the acid thrown on Dr. Shafi and Counselor Wright had wasted on co-appellant Campbell's hand.

Prosecution's fourth witness, Fahn Lartey Kiadii, testified that his father, Johnnie lartey Kadii, who was ill, asked that he Fahn go to Dr. Shafi and request for some money to enable him attend the clinic. The witness said on his way to Dr. Shafi on the morning of Saturday, December 15, 2007, while crossing the road, he saw Counsellor Wright and Dr. Shafi standing in front of the store holding some discussion. He identified Abu Campbell and saw him flash something in a mineral water bottle on Dr. Shafi and then started to run towards the Fouta Corporation, whilst trying to cover up his face with his T-Shirt. Abu took the road near York Trading and passed in the Corneh's Yard. According to the witness, Abu was wearing faded blue jeans with black T-shirt, white sneakers, and an army camouflage cap. At that point, Kaidii said he crossed the road, and the boys at the store were trying to take care of Dr. Shafi. Dr. Shafi instructed them to run and fetch water, and they began pouring water on Dr. Shafi's body.

After the fourth witness' testimony, the state rested with the production of evidence and reserved the right to produce rebuttal witnesses if the need arose.

The state having rested evidence, the appellants filed a motion for judgment of acquittal stating that the evidence produced against the defendant/appellants were inadequate or insufficient to convict for the offense charged in the indictment. The motion was resisted, argued by the parties and denied by the court; following which the defense produced five witnesses, all duly sworn to testify.

The defense's first witness, co-appellant Abraham Varmuyan Corneh, testified that he had known Dr. Abid A. Shafi since 1990, when the witness served as the Chairman of the Self-Emergency Food and someone had gone to him for food for Dr. Shafi. He also testified that he had had close relationship with Counsellor M. Wilkins Wright since 1991, and particularly emphasized that the relationship between him and Counsellor Wright went beyond ordinary friendship. He said he was unaware of the crime committed and for which he was indicted. At the time of the commission of the crime, the witness testified that he was out of Liberia. He also told the court that he usually travelled out of country every December and was out of Liberia when the incident occurred. He claimed to have travelled to the Republic of Sierra Leone on the 12th of December 2007 and returned to Liberia on January 14, 2008. In support of this claim, he displayed his passport evidencing that he was out of the bailiwick of the Republic of Liberia at the time of the commission of the crime.

Co-appellant Campbell took the stand and denied being hired to waste acid on anybody. He stated that he was a God fearing man and would not be misled against God's will. Co-appellant testified that he worked as a contractor during the month of December 2007, and on Christmas eve, while he was at home, sitting in his yard, he was arrested by some police officers and taken straight to the Central Prison. He alleged that later after his arrest, Counsellor Wright and Dr. Shafi visited the prison and told him they wanted him to serve as state witness against co-appellant Abraham Varmuyan Corneh whom they had tried many times to attach to crimes previously committed relative to the land issue in Vai Town, but had been unsuccessful. In this case, if co-appellant Campbell could help to connect co-appellant Corneh to the crime, the Vai Town land issue would be settled as co-appellant Corneh was the only obstacle to the acquisition of disputed properties in Vai Town. In return for such testimony, co-appellant alleged that Counsellor Wright and Dr. Shafi promised to ensure that he did not go to jail, but Co-appellant Campbell said he turned them down, and after spending a month in jail, was bailed out. About six months after his release, Campbell said Dr. Shafi sent to call him and offered to give him seven hundred dollars every Saturday for food, only if he agreed to testify against co-appellant Corneh. Co-appellant Campbell said Dr. Shafi also promised that he would give him an additional One Thousand, Five Hundred United States Dollars for Campbell's cooperation. Campbell said he was again approached by Dr. Shafi who told him that the case was about to be called and wanted his testimony against co-appellant Corneh. Dr. Shafi, the witness said, reiterated his offer to pay him One Thousand, Five Hundred United States Dollars and took him to Counsellor's Wright's law office on Benson's Street. At Counsellor Wright's law office, co-appellant Campbell said Counsellor Wright told him that he would take him to the County Attorney's Office at the Temple of Justice to serve as a state witness. He also explained that Counsellor Wright assured him that he would not go to jail if he accepted to serve as state witness. Counsellor Wright also promised to give him seven hundred United States Dollars

(US\$700.00) down payment against the one thousand United States promised and upon leaving Counselor Wright's office, Dr. Shafi gave him fifty United States Dollars (US\$50.00) for transportation. On the first day of hearing, Campbell narrated that the County Attorney for Montserrado County sent for him and ask him to serve as state witness, which he refused to do, because he was God-fearing and not willing to lie because of money.

Defense third witness, Mrs. Jebbeh Corneh, wife of co-appellant Corneh, and its defense fourth witnesses, Adam Corneh, both testified that on the 11th day of December 2007, a day before co-appellant Abraham Vamuyan Corneh's departure, co-appellant Corneh called a staff meeting, informing all of his staff that he would be traveling to Sierra Leone the following day, the 12th of December 2007; that co-appellant Corneh left Liberia and returned on the 14th of January 2008. Mrs. Jebbeh Corneh in her testimony further narrated that she did not know anything about the incident until she received a telephone call from a print media personnel, and later two young men went to her supposedly from the print and electronic media, and told her that some people wanted to link her husband, co-appellant Corneh, with a crime committed in Vai Town on December 15, 2007, and they had been calling him but his phones were off. She explained that later in the night, she received another call from someone saying "I know A.V. is not in the Country, but there is a story that we have to print in the newspaper on Monday, the other people have come and given us money, so what do we do?" According to the witness, she referred that person to Counsellor Daku Mulbah because her husband was not in the country.

Defense's fifth witness, Nuoh Sherman, testified that co-appellant Abu Campbell was arrested on December 24, 2007, while they were sitting together at an entertainment center in Vai Town. He also testified that co-appellant Campbell was sent for by Dr. Shafi following his release from jail, and when he asked Campbell why he was called by Dr. Shafi, Campbell explained that the state wanted him as state witness and that he was offered seven hundred dollar a week by Dr. Shafi. This witness said he accompanied Campbell to Counsellor Wright's office on Benson Street the next day and waited for him at an entertainment center. After the meeting, witness Sherman said Campbell told him that Shafi and Counsellor Wright were also offering him one thousand, five hundred United States Dollars to be state witness, stating that only through his statement they could get the co-appellant Corneh. The witness said he advised Campbell to be careful as he was accused by those who were asking him to be a state witness. He also advised Campbell that when he took the witness stand, he should tell the court all that had transpired among him and the private prosecutors, Counsellor Wright and Dr. Shafi.

The defense, after its fifth witness' testimony rested evidence. Thereafter the defense requested the court to have the case submitted for argument. However, prosecution was allowed to produce rebuttal evidence as it had earlier given notice to the court to introduce rebuttal witnesses to rebut answers given by co-appellant Corneh: (1) that he knew the co-appellant Campbell casually (2) that he had never encouraged Campbell and the others to carry out violence against persons not seen to be favorable to the Corneh family's in the Vai Town Land matter; (3) he had never intervened to have Campbell and others released in cases where they had assaulted those in opposition to the Corneh Family.

We shall quote verbatim the relevant portion of the questions posed and the testimonies of the rebuttal witnesses.

Prosecution first rebuttal witness, Mr. Ben O. Kiawon took the stand and answered to question posed:

Q. Mr. Witness when on the stand, defendant A. Vamuyan Corneh informed the court that he knew Abu Campbell only casually through his father. Also, Mr. Corneh was asked if he knew about or participated in violence in Vai Town to which he responded that it was irrelevant and because he was accused of attempted Murder. Finally, Mr. Corneh was asked if he knew about the incident in Vai Town in which persons or people opposed to Chief Murphy and Vey John people attacked, assaulted and broke the arm of Ben Kiawon. To this question, Mr. Corneh answered that he overheard it but he was not around. Mr. Witness, as rebuttal witness, you will please comment on and rebut answers given by Mr. Corneh.

A. First of all, this court asked me if I know Mr. Corneh or Abu Campbell and I answered "yes.". I know both Mr. Corneh and Abu Campbell and their parents very well because we come from the same place. This is upon the oath I took. On January 3, 1994, I was a member of the Interim Legislative Assembly (ILA) and this day I'd gone to repair my car in Vamuyan Sheriff's yard opposite Vamuyan Corneh's residence I saw a group of young people between the ages of 18 to 22 years. Every one of them carried some silent weapon. Among them, I recognized Abu Campbell. This incident took place at 9:30 a.m. I never had the least thought that they were coming to attack me. All of a sudden they attacked me. While I was trying to defend myself they broke my arm. My driver Soko Darley came to rescue me and got into a tussle with them, I managed to escape and ran to the ECOMOG. And the ECOMOG gave me four men. When we got there they escaped, but we managed to catch six persons and among them was Abu Campbell. And the ECOMOG said these are your own people because the ECOMOG asked me if I knew them and I said yes. In their confession they said that it was Mr. Corneh who sent them and that it was planned by a group of them. Among the group, the rebuttal witness Ben A. Kiawon said, were his first cousin, Boakai Sony and his friend Folley Dempster. His Cousin Boakai told him one day after their Friday prayer that they missed him this time but next time they would not miss him.

Prosecution's second rebuttal witness, Mr. Jusu Sesay answer to the question posed is as follows:

Q. Mr. Witness, Mr. Corneh denied having an employee or knowing anybody by the name of Mohammed Farah Adid. You have been called as a rebuttal witness to rebut this answer. You will please comment on and rebut this answer given by Mr. Corneh to the best of your knowledge

A. Corneh has a security by the name of Mohammed Farah Adid who was given acid water by Mr. Corneh to waste it on us in Jenneka's yard. This happened 2005 July 6, at the hour of 7-8 p.m. I was going to Corneh's market toilet to ease myself and that night I met those two securities at the gate. Trying to enter they stopped me and asked me which yard I was from and I told them Jenneka yard. Farah Adid said no one from that yard was allowed to enter the market at that hour. I told him, I have a table on this field. I sell on this field so I have all right to use the toilet any time but he refused and while talking from one thing to another, he (Farah) took acid and wasted some on me. So, I

started to shout. And I heard Abu Campbell ask, what you did to him? and Farah said, I want to kill him. Farah ran behind me with the acid water. When we reached the light he left. A neighbor from the community came to my aid and then looked at my face. All was swollen up. The T-shirt all burned.

The prosecution had also given notice that it would rebut co-appellant Campbell statement that he was a Christian and God fearing and would not be led to waste acid on anyone, and that he had not been arrested before. Dr. Abid A. Shafi was brought again as a rebuttal witness to testify to the criminal record of Campbell. He answered to question posed as follows:

Q. Mr. Witness, Mr. Campbell on the cross-examination answered to questions as whether he had a criminal record or had been arrested prior to December 15, 2007, his answer was No, I have not been arrested before. Please comment on this answer of Mr. Campbell as a rebuttal witness.

A. Mr. Campbell had been arrested several times according to the record section of the Liberian Police Headquarters. It was confirmed from the records that he had a link to theft, robbery and assault as recently as in the year 2008, when Mr. Morris Konneh, a policeman, sued him for terroristic threats and assault and a writ of arrest was issued by the Ministry of Justice and the magistrate's court. Records indicate that Campbell was in 1996, remanded by the Ministry of Justice on criminal charges.

Dr. Shafi went on to testify that Campbell had a long history of criminal activities between 1996 to 2008. Dr. Shafi stated further that he had in his possession a DVD of recording of Mr. Abu Campbell's confession regarding the wasting of acid water on him and Counsellor Wright and who actually paid him to do it.

The defense objected to the statement referencing Dr. Shafi's possession of a DVD and asked the court to have this portion of the testimony stricken off the record since this statement went beyond the scope of the rebuttal and amounted to a surprise and a violation of the appellants' right to notice of existence of such evidence. The prosecution countered that the testimony was important, valid and valuable to the prosecution case; that it was the very purpose of rebuttal evidence, to refute evidence given by the defense after the defense had rested; the fact that Dr. Shafi mentioned his possession of a DVD recording did not prove the truthfulness of the averment or information contained therein, but established the fact that the statement was indeed made. The court proceeded to entertain argument pro et con after Dr. Shafi had rested and the Judge overruled the objection of the defense.

Given his final judgment in the matter, the Judge's judgment in part reads as follows:

The court says having examined the testimonies of both sets of witnesses, that is to say the Prosecution's witnesses and that of the defendants' witnesses, it may now address the main issue as herein stated above. In the mind of this court, Prosecution has produced prima facie evidence against the defendants, to the effect that all the Prosecution's witnesses' testimonies corroborated with each other, and that there was no variance in their testimonies in chief. The court observed that when the defendants took the stand they did not rebut the testimonies of the



prosecution's witnesses in the entire proceedings which to the mind of this court, have admitted that the commission of Criminal Attempt to Commit Murder was committed by them. The court says that under our law when allegations are being made against a party or parties, and that party fails or neglects to rebut them, it is considered that said allegations are being admitted as it is in the instant case.

WHEREFORE and in view of the foregoing, it is the considered opinion and final judgment of this court that the defendants herein are guilty of the commission of Criminal Attempt to Commit Murder, and they are hereby sentenced to the common jail for the period of five years to serve as a deterrent to others who may want to follow suit. And it is hereby so ordered.

Excepting to this judgment, the appellants appealed to this Court for review of the matter. The appellants filed a ten count bill of exceptions basically contenting that under the law the indictment as charged must be proved beyond a reasonable doubt but the prosecution did not prove the indictment; that under the law, crimes are defined by, and the penalty therefor provided by statute, that there is no crime under our law known and referred to as Criminal Attempt to Commit Murder; Criminal Attempt and "Murder" are two separate and distinct charges; notwithstanding, the defendants/appellants were charged, tried and convicted for the commission of a crime which does not exist under our law; and also that under the law, the best evidence must always be produced, especially so, when it is the police which sets the criminal justice system into motion; whenever a crime is alleged to have been committed, the police must first investigate and make a report, pursuant to which an indictment is drawn and a writ issued; when there is no police report, there can be no criminal prosecution; hence, the trial court committed an error when it, in the absence of a police report, entered judgment against defendants/appellants for the commission of a non-statutory crime of Criminal Attempt to Commit Murder and sentenced them to five (5) years imprisonment.

A perusal of the records and the salient issues determinative of this appeal to this Honorable Court Supreme Court are:

1. Where a crime is alleged to have been committed, in order to prosecute, must the police first investigate and make a report, pursuant to which an indictment is drawn and a writ of arrest issued?
2. Whether the trial Judge's finding of guilty and sentencing of the appellants to five years imprisonment is supported by the evidence adduced by the prosecution? That is, whether the prosecution proved beyond a reasonable doubt the crime charged in the indictment as it relates to both of the appellants?
3. Whether the crime of Criminal Attempt to Commit Murder is provided for by statute?

The first issue raised seeks to address the contention of the appellants that in order to prosecute for a crime, the police must first investigate, pursuant to which an indictment is drawn and a writ issued; that failure to do so violates the best evidence rule and therefore a conviction and judgment by a court without a police involvement is erroneous.

A review of the records in this case reveals that no police officer testified, nor was any police report introduced into evidence and we deduced that the state did not think it necessary for prosecution of this case.

Police involvement in criminal cases is based on the fact that the state is the prosecutor in criminal cases and that the police is the machinery that assist the state in gathering evidence to establish a probable cause for an indictment. However, probable cause can also be established by our magisterial courts upon the request of the defendant, or upon the request of the defendant to the Justice of the Peace Courts based on a preliminary examination of a criminal complaint brought directly to them by individuals. Criminal Procedure Law, Rev. Code II: 14.4. A police report is supplementary evidence largely based on eye witness testimony relating to the commission of an alleged crime. Hence, in the absence of an official police report, other pieces of evidence such as eye witnesses' accounts, victims' testimonies, and documentary evidence (e.i. medical report) are sufficient grounds to establish probable cause. In the case *Fazzah v. National Economy Committee*, 8 LLR 85, 89 (1943), this Court held that a magistrate or justice of the peace has limited jurisdiction to conduct preliminary examination above their trial jurisdiction upon the request of the defendant. The law empowers the magistrate or the justice of the peace to hold the defendant to answer said charge in the Circuit Court if the evidence shows that there is probable cause to believe that an offense has been committed and that the defendant has committed it; otherwise, the court shall discharge him. After concluding the preliminary examination, if the defendant has been held to answer, the magistrate or justice of the peace shall transmit forthwith to the clerk of the Circuit Court having jurisdiction of the offense all papers in the proceeding and any bail which has been taken. The record of the testimony of the witnesses taken at the examination shall be signed and certified by him." Criminal Procedure Law, Rev. Code II: 12.4; *Thomas v. MOJ et al*, 26 LLR 129, 132 (1977). In the case of an indictable offense, the grand jury may inquire into all indictable offenses presented to it by a prosecuting attorney or otherwise come to its knowledge; and if there is a probable cause to believe a person guilty of such an offense, shall charge him therewith by indictment. Criminal Procedure Law, Rev. Code II: 15.2.

In this case at bar, this matter was prosecuted by the state after an inquiry by the grand jury establishing probable cause, presentment of a true bill and an indictment. The state which is responsible for the prosecution of criminal cases did not think that there was a need for a police report or to bring a police to testify on hearsay when there were eye witnesses to testify to the commission of the crime, particularly as to the physical evidence of harm suffered by the private prosecutors. We must therefore hasten to disabuse this contention of the appellants that prosecution of cases must be initiated by a police report pursuant to which an indictment is drawn.

As to our second issue raised, the Liberian Constitution, Article 21(h), clearly states that in all criminal cases, an accused shall be presumed innocent until the contrary is proved beyond a reasonable doubt. Our Criminal Procedure Law and case decided by this Court sets the same standard mandated by the Constitution. Section 2.1 of the Criminal Procedure Law reads: 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. This principle of law is also enunciated in numerous Supreme Court Opinions; such as, *Bestman v. R.L.*, Supreme Court Opinion, October Term, A.D. 2013; *Munnah v. Sommah*, 35LLR 40 (1988); and *Thomas v. R.L.*, 35LLR 759 (1988).

We are therefore under an obligation to review and analyze the evidence presented and determine whether the state and the trial court met the obligation which the law imposes to warrant a criminal conviction of persons accused of having committed a crime.

The indictment under which the appellants were charged tried and convicted substantially reads:

#### INDICTMENT

Plaintiff complains and says that on the 15th of December A.D. 2007 at Vai Town, City of Monrovia, Montserrado County, Republic of Liberia the within and above named defendants being there and there and then with criminal and wicked intent to inflict serious bodily injuries on the Private Prosecutors, Counsellor M. Wilkins Wright and Dr. Abid A. Shafi criminally, knowingly, purposely, and intentionally did waste and/or splash a container of acid water on the Private Prosecutors by 2nd defendant Abu Campbell under the instruction of 1st defendant Abraham Varmuyan Conneh, who was seen standing on the other side of the street observing the incident. Plaintiff further complains and says that, some of the Acid wasted on Counsellor M. Wilkins Wright's face and right arm, who was having some business discussion with Dr. Abid A. Shafi; and the Acid also wasted on his (CIIr. Wilkins Wright) clothes and ate up holes in his shirt. Hence, the crime of CRIMINAL ATTEMPT TO COMMIT MURDER the defendants did do and commit at the above named place, date and time; contrary to the statutory laws of the Republic of Liberia.

And the Grand Jurors aforesaid, upon their Oath aforesaid, do present that: Abraham Varmuyan Conneh and Abu Campbell, alias Mustapha, defendants aforesaid, at the time, place, and dates aforesaid, in the manner and from aforesaid, do say that the Crime of Criminal Attempt to Commit Murder the Defendants did do and commit; contrary to the form, force and effect or the statutory laws of Liberia, in such cases made and provided and against the peace and dignity of this Republic.

The evidence produced by the state witnesses narrated above overwhelmingly showed that while the private prosecutors, Counsellor M. Wilkins Wright and Dr. Abid A Shafi, were holding discussions in front of Dr. Shafi's store, co-appellant Abu Campbell, alias Mustapha, ran over to them exclaiming "this one Vai Town case that can't end will end today"; and that he splashed acid on both men and fled. Prosecution further gave evidence that co-appellant Campbell and others were constantly engaged in assaulting individuals not perceived to be supporter of the Corneh family. It was also established by the state fourth witness, Samuel Morris Jallah, that after the incident, he went to the ghetto in the Corneh's yard and observed that the co-appellant Campbell hand was burned from the acid that he threw, which apparently splashed on his hand while he carried out the act. This overwhelming evidence was never rebutted.

The Supreme Court has held that to corroborate, in legal parlance, means to strengthen, to add weight or credibility to an occurrence through additional conformation of facts and evidence; corroborating

evidence is additional evidence to existing evidence which strengthens or confirms the occurrence: *Elizabeth Davies v. Republic*, 40 LLR 659,682-683 (2001). Corroborated testimonies of state witnesses also showed that co-appellant Campbell, after throwing deadly substance on the two private prosecutors, and fleeing the scene, a search was set out for his arrest; despite a diligent search, he was not found until several weeks thereafter. This Court from a review of the records in the case found nowhere where in his defense did co-appellant Campbell dwell on his whereabouts during the incident or brought anyone to testify that he was not on the scene when the incident took place. He and the other defense witnesses instead went all out to prove that co-appellant A. Varmuyah Corneh was not a collaborator of the act done. This Court has held that flight from the scene of the crime may be introduced to indicate the guilt of the defendant." *Gray v. Republic*, 23LLR 49, 57 (1974); *Blay v. Republic* 15LLR 181 (1963). In the cases, *Gardiner v. R.L.*, 8LLR 406, 412 (1944); and *Woods v. R.L.* 1LLR 445, 452 (1905), this Court also held that whenever the logical deduction from the facts placed on the records leads conclusively to the logical deduction that the crime was committed by the accused, it is sufficient. In this case, where the prosecution established a prima facie case as to the guilt of co-appellant Abu Campbell and he failed to offer any evidence to the contrary, a judgment finding him guilty is justified. *R.L. v. Eid et al*, 37 LLR 761 , 777 (1995).

Given the law extant in our jurisdiction that one is presumed innocent unless proven guilty, the next question is whether the state proved its case beyond a reasonable doubt to justify the court's judgment of guilty against co- appellant Abraham Varmuyah Corneh?

The amended indictment alleged that co-appellant Abraham Varmuyah Corneh was a collaborator in the commission of the crime alleged; that co- appellant Abraham Varmuyah Corneh instructed Abu Campbell to waste acid on the private prosecutors and that co-appellant Corneh was seen standing on the other side of the street observing the incident.

The first state witness, Counsellor M. Wilkins Wright testified that Mr. Campbell confessed that he was hired by Corneh to kill Dr. Shafi by wasting acid on him; that Corneh paid him, co-appellant Campbell, about two thousand Liberian dollars and promised that after Campbell carried out the mission of eliminating Dr. Shafi then the balance of about ten thousand Liberian dollars would be paid. Counsellor Wright stated that before the arrest of Campbell, co-appellant Corneh went into hiding and under our law, Corneh, who masterminded the wasting of the acid by paying Campbell to do so, is just as guilty as Campbell who did the physical act. The second state witness, Dr. Abid A. Shafi, testified to the physical commotion in Vai Town between Chief Murphy Vey John's supporters and the co-appellant Abraham Varmuyah Corneh's supporters which led to the demise of a young man and which kept him and other lessees operating in the area to be in constant fear; that when he instituted several legal actions against the Corneh and began to win his legal suits, and others lessees began to follow and filed legal action against Corneh which they won, co-appellant Corneh and his brother Siafa began to threaten him directly and indirectly, sending him death threats; that one day co-appellant Corneh went to his store and into his office and sat and openly threaten him. Others told him that co- appellant Corneh was saying that he (Dr. Shafi) was frisky and was making other lessees frisky and that he would be taught a lesson. This, he said, led him to employ a security to watch his back whenever he was in Vai Town. Interestingly, Dr. Shafi made no mention

in his testimony in chief about the confession made by Campbell, that Corneh sent him to waste the acid on Dr. Shafi. The state third and fourth witnesses testified to the identification of co-appellant Abu Campbell as the person that threw the acid on the private prosecutors. The state first rebuttal witness, Mr. Ben O Kiawon, who had come to rebut Corneh's statement that he did not know Campbell well but casually, testified that that he knew the appellants and their parents very well that he and the appellants came from the same place (hometown); that he was attacked one time by a group of young men and his arm broken when he had gone to repair his car at a garage opposite Corneh's resident. Among those who attacked him, he said, was co-appellant Campbell; a month after the incident, co-appellant Corneh saw him and said he heard that the boys had wounded him, Kiawon, and that he was sorry. Later, he learned that the attack was planned by a group of them (Corneh and others ) and among the attackers was his, Kiawon's first cousin, Boakai Sony, now deceased, who said they missed him this time but that the next time they would not. The state's second rebuttal witness, Jusu Sesay, told the court that co-appellant Corneh had a security, Farid Adid, who wasted acid water on him one evening when he went out to use the market toilet. Farid asked him Sesay which yard he was from and he replied that he was from Jeneka yard, the yard of the opposition in the Vai Town Land matter. Sesay said while he was at the hospital taking treatment, one Cooper, who said he was the manager of co-appellant Corneh's business, went to the hospital and begged Jusu's sister not to pursue the matter and took the initiative to pay the hospital bill. The witness said when his mother came and saw the damage that the acid had left on his body, she asked him to move from Vai Town and he then moved to Paynesville. Dr. Shafi, was brought back to rebut co-appellant Campbell's testimony that he had never been arrested before. While testifying to co-appellant Campbell numerous arrested for crimes such as theft, robbery, assault, and terroristic threats and assault, Dr. Shafi stated that he had in his possession a DVD recording which he said was of co-appellant Campbell confession regarding the wasting of the acid on him and Counsellor Wright, and who actually paid him to do it.

We must ask whether this evidence presented by the state was sufficient proof to connect co-appellant Corneh to the throwing of acid on the private prosecutors. This Court says no.

The record before us shows that Co-appellant Corneh denied the allegation that he was a collaborator in this crime. He testified that he was in Sierra Leone on December 15, 2007, the day the incident occurred; that he travelled to the Republic of Sierra Leone on the 12th of December 2007, and whilst in Sierra Leone, he was informed about the incident and the charge of him being a collaborator in the commission of the said crime. He testified that he returned to Liberia on January 14, 2008, and his lawyer took him to the court where he was formally charged and taken to jail. Two days thereafter, he filed a bail bond and was released. In support of his alibi, he placed into evidence his passport evidencing that he was out of bailiwick of the Republic of Liberia, arrived in Sierra Leone on December 12, 2007, and departed Sierra Leone on January 14, 2008. Under the foregoing put forth by co-appellant Corneh, he sought to establish that he being out of the bailiwick of the country, he could not have participated in the commission of the crime and could not have been seen when the crime was committed. This testimony of co-appellant Corneh placed the onus on the state to dispute the alibi or show

that the co-appellant collaborated in the crime even though he was out of the country. This, the state failed to do.

In *Yancy v. RL*, 27 LLR 365 (1978), the Supreme Court held that an alibi is an effective defense in a criminal case, because of its character of proving the physical impossibility of a person being in more than one place at the same time. It is the physical circumstance which derives its potency as a defense of the fact that it involves the physical impossibility of the guilt of the accused. From this standpoint, an alibi is not only a legitimate but may be a very complete defense. It affords, if established, the most perfect, physically conclusive evidence of the defendant's innocence. But if during a proceedings it can be shown that an alibi was manufactured, and was untrue, it will nullify the favorable effect of the alibi of the accused. In *Ben v. Republic of Liberia*, 31 LLR 107, (1983), the Court also stated that alibi means "that at time of commission of the crime charged in the indictment, defendant was at a different place so remote or distant or under such circumstances that he could not have committed the offense. It is a physical circumstance and derives its entire potency as a defense from the fact that it involves the physical impossibility of guilt of the accused.

Against these definitions of an alibi, it is clearly shown from the certified records that the appellee/prosecution failed to impeach co-appellant Abraham Vamuyan Corneh's defense of alibi, or establish that his alibi was manufactured, and was not true, which would have nullified the favorable effect of the alibi of the accused. In such case, reasonable doubt as to co-appellant Corneh's involvement in this crime, as alleged arise in the mind of this Court, especially as Co-appellant Corneh's passport admitted into evidence was stamped by both Liberian and Sierra Leonean immigration authorities at the border and was never challenged during the trial. Further, in its amended indictment, the state stated that co-appellant Abraham Varmuyan Corneh was seen across the road witnessing as the acid was being wasted on the appellees. We must emphasize however that none of the state witnesses testified to the allegation contained in the indictment that co-appellant was standing on the other side of the street observing the incident as it took place. What we see from the testimonies of the state's witnesses is that the state went to great length to show previous criminal acts carried out by co-appellant Campbell and others, in which the witnesses said they were told that co-appellant Corneh was involved. For example, The state's first rebuttal witness said that when his armed was broken, he was told by his cousin that Corneh was involved in the planning of the attack; the second state rebuttal witness said that when a security of Corneh wasted acid on him, the manager of Corneh business went to beg the witness and his sister at the hospital and offered to settled the hospital bill. Dr. Shafi said he had often been threatened by Corneh while passing before his store and on one occasion Corneh visited him at his store and in his office threaten him; and that others told him that Corneh said he was frisky and he would be thought a lesson. All these testimonies failed to convincingly establish beyond a reasonable doubt co-appellant Corneh link to this crime.

Recently, in the case, *Wright et al v RL*, Supreme Court Opinion, March Term 2010, this Court speaking through Mr. Justice Kabineh Ja'neh held that the law imposes a duty on the state to prove all material allegations set out in the indictment, and further stipulating that when the total

evidence adduced at a trial is inconclusive it may create reasonable doubt and therefore the criminal defendant is entitled to acquittal. See also Section 2.1 I LCLR (Liberian Code of Laws Rev.), title II (Criminal Procedure Law); This Court has also held that in order to prosecute a crime it is important and necessary that the state establish the guilt of the accused with legal certainty that excludes every hypothesis of the defendant's innocence; *Berrian v. Republic*, 2 LLR 258, 262-263(1916).

The state's witnesses testimonies were mostly hearsay evidence, and intended to show co-appellant's support for crime being committed in the Vai Town area, they did not link co-appellant Corneh directly to this crime as was alleged in the indictment. In *Lewis v. Lewis*, 5LLR 358 (1937), this Court also said: "It is a fundamental principle of law that the prosecution in a criminal case is not allowed to resort to the accused's bad character as a basis of inference to his guilt; the reason being that such evidence is likely to move the jury to condemnation irrespective of his actual guilt of the offense charge.

Interestingly, when Dr. Shafi took the stand to testify, he made no mention of the confession Campbell allegedly made. It was only Counsellor Wright who testified that Campbell confessed that he was hired by co-appellant Corneh to kill Dr. Shafi by wasting acid on him. The question in the mind of this Court is where was the alleged confession made and before whom, since no police was brought in to testify as to what happened when Campbell was arrested or any record put into evidence of his confession. The statement by Dr. Shafi that he had in his possession a DVD recording of co-appellant Campbell's confession stating that Corneh had paid him to waste acid on Dr. Shafi was objectionable and should have been stricken from the record as the defense requested. This DVD did not relate to the answer of Campbell's character, for which Dr. Shafi was called to rebut. This statement by Dr. Shafi, amounted to a surprise and was a violation of co-appellant Corneh's right to notice of the existence of such evidence and a denial of his right to defend himself against such testimony, especially as the DVD was never produced and never mentioned when Dr. Shafi took the stand earlier to testify. In *Nimley et al v. RL*, 30LLR 676 (1983), this Court said, "A judgment of guilt cannot be upheld where it is based solely on an alleged confession of the accused, and where the alleged confession was refuted by the accused during trial.

This Court says, particularly in regard of Co-appellant A. Varmuyan Corneh shown absence from the country, it has reasonable doubt about his involvement in the commission of the crime, particularly as the Supreme Court has held that a person charged with the commission of a criminal offense, ghastly as the crime may be, is presumed innocent until the contrary is proven, and where his plea is NOT GUILTY, the onus probandi is on the prosecution to establish his guilt, devoid of reasonable doubt: *Brown et al. v. Republic*, Supreme Court Opinion, October Term, A.D. 2009,decided January 21, 2010. Equally compelling is the fact that co-appellant Corneh, rather than escaping as was case of co-appellant Campbell, returned to Liberia so that he could be arrested and tried. We therefore hold that the state failed to prove its case against the co-appellant Abraham Varmuyan Corneh.

As to the third issue set forth in the bill of exceptions, the appellants contend that the crime of Criminal Attempt to Commit Murder under which the appellants were adjudged guilty is not

provided for by statute. Therefore the Judge's judgment and sentencing of the appellants to five years imprisonment was grossly erroneous. We must interject here that we find it strange that if the defense felt strongly about this charge, why did it not raise it earlier in the court below? However, this issue being one of jurisdiction as to the offense charge, we must address the issue.

The offense Criminal attempt" of the New Penal Law (1978), Chapter 10, Sections 10.1 and 4 states:

#### CRIMINAL ATTEMPT:

1. Offense. A person is guilty of criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, he purposely engages in conduct constituting a substantial step toward commission of the offense. A substantial step is any conduct, whether act, omission, or possession, which is strongly corroborative of the firmness of the actor's intent to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense if the offense could have been committed had the attendant circumstances been as the actor believed them to be.

4. Grading. Criminal attempt is an offense of the same class as the offense attempted, except that (a) an attempt to commit a felony of the first degree shall be a felony of the second degree, and (b) whenever it is established by a preponderance of the evidence at sentencing that the conduct constituting the attempt did not come dangerously close to commission of the offense, an attempt to commit a felony of the second degree shall be a felony of the third degree and an attempt to commit a felony of the third degree shall be a misdemeanor of the first degree.

The New Penal Law (1978), 4.1 "MURDER" states that A person is guilty of Murder if he:

Purposely or knowingly causes the death of another human being; or causes the death of another human being under circumstances manifesting extreme indifference to the value of human life. A rebuttable presumption that such indifference exists arises if the defendant is engaged or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit, treason, offenses defined in Sections 11.2 or 11.3 of this title espionage, sabotage, robbery, burglary, kidnapping, felonious restraint, arson, rape, aggravated involuntary sodomy, escape, piracy, or other felony involving force or danger to human life. As quoted above, criminal attempt is simply a person acting with the culpability required for commission of an offense and who takes a substantial step toward commission of the offense. Clearly a crime of criminal attempt cannot stand alone as the appellants have proposed. Though separate, it must be attached to the commission of an offense. One must attempt to do something like attempt to steal, commit fraud, kill, etc.

In the case at bar, it was been established that co-appellant Campbell ran toward the private prosecutors and said, "this Val Town case that cannot end, this is your end today. This statement implies that the intent was to take Dr. Shafi's life that day. Intent may be proved by one's word or conduct." 29 Am JUR, 2d Evidence, Section 569. The corrosive nature of the substance which was wasted on the body of Dr. Shafi implies that the intent of Campbell was to cause such grievous bodily harm to Dr. Shafi which may have led to his death. This Court, as far back as 1944, in the case



Massaquoi et al. v. R.L., 8LLR 204, 222-223 (1944), said that in an indictment for an attempt to commit a crime, it is essential to aver that the defendant did some act, which directed by a particular intent, to be averred, would have apparently resulted, in the ordinary and likely course of things, in a particular crime.

This Court says that while it is true that the offense of Criminal Attempt to Commit Murder is not provided for as a lone offense in our statute, however, it may be merged to form a single crime depending on the facts and circumstances. Criminal attempt amongst other things is any conduct whether act, omission, or possession, that is strongly corroborative of the firmness of the actor's intent to complete the commission of an offense. Depending on the facts and circumstances, the intent or outcome of the person's conduct towards the commission of the crime determines the charge to be levied on a criminal defendant.

This contention of the appellants requesting this Court to overturn the trial court's judgment because the crime charged is non-statutory, seem being without legal basis, we dismiss this contention of the appellants as alleged in their bill of exceptions.

Having read the certified records, particularly the evidence as adduced by the state, this Court has no doubt that co-appellant Abu Campbell did indeed throw acid on the private prosecutors with the intent to kill him as alleged in the indictment and he is therefore guilty of the offense charged. The judgment of the trial finding him guilty is therefore affirmed and confirmed.

The state, however, having failed to meet the threshold of establishing the guilt of co-appellant, Abraham Vamuyan Corneh, beyond a reasonable doubt, he is entitled to an acquittal. Accordingly, the trial Judge final judgment finding co-appellant Abraham Vamuyan Corneh guilty is reversed and he is discharged from further answering to the charge in this matter. The judgment is therefore affirmed in part and reversed in part.

The Clerk of this Court is hereby ordered to send a mandate to the trial court commanding the Judge presiding therein to resume jurisdiction over this matter and to give effect to this judgment. AND IT IS HEREBY SO ORDERED. Costs disallowed.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR J. JOHNNY MOMOH OF THE SHERMAN & SHERMAN, INC. APPEARED FOR THE APPELLANTS. COUNSELLORS BETTY LAMIN-BLAMO, SOLICITOR GENERAL OF LIBERIA, AND AUGUSTINE C. FAYIAH, ASSISTANT MINISTER FOR LITIGATION OF THE MINISTRY OF JUSTICE, IN ASSOCIATION WITH COUNSELLOR M. WILKINS WRIGHT OF THE WRIGHT & ASSOCIATES LAW FIRM APPEARED FOR THE APPELLEE.