Power Massaquoi of the City of Monrovia, Liberia, Appellant v **Republic of Liberia**, Appellee

APPEAL

LRSC 14

Heard: December 2, 2013 Decided: January 17, 2014

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

Our Statute provides that "a person who has sexual intercourse with another person (male or female) has committed rape if:

(a) (i) He intentionally penetrates the vagina, anus, mouth or any other opening of another person (male or female) with his penis, without the victim 's consent; or

(ii) He/She intentionally penetrates the vagina or anus of another person with a foreign object or with any other part of the body (other than the penis), without the victim's consent

(b) The victim is less than eighteen years old, provided the actor is eighteen years of age or older.

On June 22, 2009 the appellant was indicted by the grand jury of the first Judicial Circuit, Criminal Court E, Monserrado County, sitting in its May A.D. 2009 Term for the crime of rape of an eleven (11) year old girl whom we will herein refer to as the private prosecutrix.

The indictment upon which the appellant was tried and convicted charged, that on April 17, 2009, the appellant lured the private prosecutrix into his room and with the threat of a knife, he forcefully had sexual intercourse with her. The indictment also charged that at the time of the offense the appellant was 38 years old. Upon being arraigned, the defendant/appellant pleaded not guilty thus joining issue with the State which culminated into a jury trial.

The trial commenced and the prosecution produced three regular witnesses m persons of Madam Rose Toe, the private prosecutrix's mother; the private prosecutrix herself, and Jerry Aladin, a police officer assigned to the Sexual Gender Base Violence Unit of the Liberia National Police. The prosecution also produced one expert witness in person of Augustus Chea Davis, a physician assistant working at the Island Clinic and, one rebuttal witness in person of Madam Yatta Massaquoi a resident of the Rock Spring Valley Community and who lived in the same rooming house as the appellant where the alleged rape occurred. The defense for its part produced only two witnesses in persons of the appellant himself, Power Massaquoi and Rufus Toweh Sam, a member of the appellant's religious ministry.

After the production of evidence on both sides, the jury found the appellant guilty of the crime of rape. The appellant immediately filed a motion for a new trial, but said motion was resisted by prosecution and denied by the trial court. On October 9, 2009 the trial court entered final judgment against the appellant and sentenced him to a term of life imprisonment.

From this final judgment the appellant excepted and announced an appeal to the Honorable Supreme Court, on October 17, 2009 on a bill of exceptions consisting of four counts.

In count 1 of the bill of exceptions, the appellant complained that the trial judge committed reversible error when she admitted into evidence, the testimony of Madam Rose Toe, the private prosecutrix's mother which the appellant referred to as hearsay evidence. The certified records show that Madam Toe the prosecution first witness narrated what the private prosecutrix had told her concerning the events of April17, 2009, the date on which the alleged rape occurred. Upon taking the witness stand, Madam Toe testified that she noticed stain of blood on the private prosecutrix's skirt when the latter returned home from school; when she attempted questioning the private prosecutrix as to the reason for the blood stain on her skirt, the private prosecutrix ran from the home and could not be found. Madam Toe further testified that she later left the house for choir practice and upon her return that evening, the private prosecutrix had returned home and together with the father of the private prosecutrix, began to ask the private prosecutrix as to why she had run away from the home when she was questioned on the reason for the blood stain on her skirt. The witness said that the private prosecutrix in response to their enquiries narrated to them that during the morning hours she went to use the toilet, and while standing around the toilet, Power (defendant/appellant) saw her and gave his key to the toilet. After using the toilet she returned the key to Power who was in his room; Power then gave her five Liberian dollars (L$5.00) to buy him sugar, which she did; that upon returning to Power's room with the sugar, he pull her into the room and ordered her to take off her clothes, but she refused on the basis that her mother had told her not to take of her clothes before [strangers] people. Power then displayed a knife and threatened to kill her if she refused; Power then undressed her, and had sex with her. After having sex with her he gave her twenty Liberian dollars (L$20.00) and further threatened her with the knife that if she told anyone he would kill her. After narrating what her daughter told her, the witness said stain of blood was also discovered in the private prosecutrix's panties, which prompted her to contact the police, who in tum referred her to the Island Clinic for the private prosecutrix to undergo medical check-up. According to the witness, the private prosecutrix was checked and the medical results show that the private prosecutrix had been "tampered" with. Responding to questions under direct examination, the witness identified the private prosecutrix's blood stained skirt, and the blood stained panties that the private prosecutrix had worn on April 17, 2009 and the medical report obtained from the Island Clinic.

During cross examination of Madam Toe, the following questions and answers were exchanged between the defense counsel and the witness, which we quote below:

"Q: Madam Witness, the actual act that is being alleged by the state constituting the crime of rape was allegedly committed on the 11h of April 2009 in the room of defendant Power Massaquoi. The act complained of was illegal sexual intercourse with the victim which you have narrated. Madam witness, please tell this court and grand jury were you present when this act was committed?

A: No

Q: Madam Witness, so all of the accounts you have given was narrated to you by somebody am I correct?

A. It was narrated to me by my daughter. See 16th day Jury Sitting, Monday august 31, 2009 sheet 7.

Following the above responses by Madam Toe, the counsel for the defense moved the court to have her entire testimony stricken from the records since, according to the defense counsel, it was hearsay testimony and a violation of§ 25.7 of the Civil Procedure Law. This submission was resisted by the prosecution on grounds that the testimony of the witness falls within the exceptions provision of § 25.7 and was being offered only to prove that the statement was made. The trial court after entertaining arguments from both sides granted the resistance of the prosecution and denied the defense's submission. It is this portion of the ruling of the trial court that the defendant/appellant has challenged in count one (1) of his bill of exceptions.

The Civil Procedure Law § 25.7 provides, "hearsay evidence is not admissible except to the extent under the circumstances stated in paragraph 2, 3, and 5 of this section and as otherwise established by law." A recourse to paragraph 5 of§ 25.7 states, "statements made out of court and offered in evidence through a witness or a writing not to establish the truth of the matter stated but to establish the fact that the statement was made, is not to be excluded as hearsay under paragraph 1 of this section." The records show that the testimony of Madam Toe, was corroborated by its second witness, in person of the private prosecutrix, who happened to be the victim herself. It was revealed that upon taking the witness stand, the private prosecutrix testified as to the alleged interaction between her and the appellant on the morning of April 17, 2009, to the effect that on Friday morning she went to use the toilet, and while standing there, Power asked her if she wanted to use the toilet and she said yes. He handed her the key and she went on to use the toilet. The witness said when she was through using the toilet she took the key back to his (Power) room and placed it on the table. Power then gave her five Liberian dollars (L$5.00) to buy him sugar which she did, but upon returning to his room with the sugar, Power ordered her to enter the room. The witness said she refused and told Power that her mother told her not to enter anybody's (stranger's) room. Power

then pulled her into his room, closed the door and ordered her to take off her clothes. Again the witness said she refused and told Power that her mother had told her not to take off her clothes before [strangers] anybody. Power then displayed a knife and threatened to kill her. According to the witness, Power took off her clothes and had sexual intercourse with her. He then gave her twenty Liberian dollars (L$20.00) and further threatened that if she told anybody of what had transpired he would kill her by throwing the knife behind her.

The records show that during cross examination the following questions and answers were exchanged between the defense counsel and the private prosecutrix who was testifying in camera due to her age:

Q: Madam Witness, after the incident did you go to school?

A: Yes.

Q: Madam Witness, when you went to school that day, were you in any pain or in any problem?

A: Yes.

Q: If your answer is yes, madam Witness, what part of your body were you feeling pain?

A: Under me. See 17 day Jury Sitting September 1, 2009 sheet 2.

Still testifying under cross examination, the witness said that when the incident happened on April 17, 2009, she went to school and told her friend about the pain she was experiencing "under" her. She also testified to the effect that her mother took her to the Island Clinic where she was treated.

This testimony by the private prosecutrix 1s sufficient proof to convince a reasonable mind that the private prosecutrix did narrate the same account to her mother who also testified to the effect that these statements were made to her, thus satisfying the provisions of the Civil Procedure Law regarding the exceptions to the hearsay rule as quoted *supra*. What is more interesting about the testimony of the private prosecutrix is that the counsel for the defense did not exert any effort to refute or deny the fact that the private prosecutrix made these statements to her mother, and the other witnesses for the prosecution. In fact defendant/appellant's bill of exceptions is void of any challenge to this damning testimony placed on the records by the private prosecutrix. This Court has held, that "where damning testimony has been placed on the records against a criminal defendant, unless rebutted such will constitute a prima facie evidence of the fact." Davies v. Republic, Supreme Court Opinion, October Term A.D 2008. We therefore hold that count 1 of the appellant's bill of exceptions is overruled, and we confirm the trial court's action in admitting into evidence the testimony of the private prosecutrix's mother, Madam Rose Toe.

The prosecution's third and fourth witnesses testified, recounted and corroborated the testimony of Madam Toe as was also narrated to them by the private prosecutrix. The third witness, in person of Jerry Aladin, the police officer assigned to the Sexual Gender Based Violence Unit of the Liberia National Police testified that during the police investigation, the private prosecutrix told him that while on her way to the restroom she met Power who gave her five Liberian dollars (L$5.00) to buy him sugar and that upon her return with the sugar, she took it to Power who ordered her into his room; upon entering the room, Power closed his door behind her, took off her clothes and had sexual intercourse with her and then threatened to kill her if she told anyone of what had happened. The witness stated that the private prosecutrix further told him that she discovered blood in her panties when she went to use the bathroom at school.

The fourth witness, in person of Augustus Chea Davies, a physician assistant of the Island Clinic, corroborated the testimony of prosecution first, second, and third witnesses based on the information the private prosecutrix had narrated to him while he was administering treatment to her at the Island Clinic.

As previously stated, our statute provides that "statements made out of court and offered in evidence through a witness or a writing not to establish the truth of the matter stated but to establish the fact that the statement was made, is not to be excluded as hearsay." Civil Procedure Law Rev Code 1:25.7(5). Legal authorities have also stated that "hearsay exceptions are an appropriate method to admit children's statements from sexual assault cases if the statements are otherwise proven sufficiently trustworthy, when made to law enforcement officers or social workers." See 29 Am Jur 2d Evidence §708. These authorities also state that to determine the trustworthiness and reliability of statements made by child victims of abuse, for admission under the hearsay exceptions, courts should consider the following factors, to wit:

I. the child's age and maturity,

2. the nature and duration of the abuse,

3. the relationship of the child to the offender,

4. the coherence of the statement, bearing in mind that young children may sometimes describe incidents in age-appropriate language and in a disorganized manner,

5. The child's capacity to observe, retain, and communicate information,

6. The nature and character of the statement itself, considering the child's developmental limitations in understanding and describing sexual behavior,

7. Any motivation of the child to make false allegation or a false denial,

8. The child's susceptibility to suggestion and the integrity of the situation under which the statement was obtained, and

9. All the circumstances under which the statement was made.

We hold the above statements, from one of the most cited secondary law sources in this jurisdiction to be in furtherance of the quoted provision of the Civil Procedure Law, and thus applicable to our jurisdiction by virtue of our reception statute. In retrospect of all of the facts and testimonies culled from the records, this Court says that all of the factors enunciated above are present in this case. That is, the private prosecutrix was 11 years of age, that she was allegedly abused sexually on the morning of April 17, 2009; that the prosecution rebuttal witness, as will be seen later in this opinion, testified to the effect that the private prosecutrix was acquainted with the appellant, in that she observed private prosecutrix running errands for the appellant, coupled with the fact that they lived in the same community to the extent that they shared the same toilet facilities. In addition, the testimonies of prosecution witnesses revealed a coherent account of what the private prosecutrix told them and that the appellant's testimony, which is later summarized in this opinion, revealed that the private prosecutrix had no motive to lie on him.

Taking these circumstances together we hereby further overrule count 1 of the appellant's bill of exceptions and confirm the trial court's ruling admitting the testimonies of the prosecution's witnesses who narrated the accounts of April 17, 2009, as told them by the private prosecutrix, under the exceptions to the hearsay rule of § 25.7(5) of the Civil Procedure Law, especially as the testimony of a witness is to establish the narrative account of a child that had been sexually abused and therefore was so traumatized that she initially ran away from her mother.

This Court will now address the issue raised in count two (2) of the bill of exceptions, wherein the appellant challenged the trial court's ruling admitting into evidence the testimony of the physician assistant as an expert witness. The appellant contended that the prosecution fourth witness in person of Augustus Chea Davies, the physician assistant of the Island Clinic, was not qualified to give expert testimony. He argued that a physician assistant is not a medical doctor or a physician to qualify under any rule of evidence for the purpose of giving expert opinion on medical matters such as rape. In addition to corroborating the testimonies of the prosecution's first, second and third witnesses, this fourth witness, Augustus Chea Davies testified to his qualification as an experienced licensed physician assistant, who graduated in 1999 from the Tubman National Institute of Medical Arts School of Physician Assistance; that after graduation he acquired basic training in the medical treatment of sexual violence victims while in the employ of the New Kru Town Clinic; that in 2006 he received training in the management of sexual violence while employed at the Tweh Farm Island Hospital. The witness stated further, that he had received several certificates for the various training while

in the employ of the Island Clinic and that he had seen many cases of sexual assaults including the present case of the private prosecutrix. The Physician Assistance further testified to the physical examination he conducted on the private prosecutrix upon her referral to the Island Clinic. A portion of his testimony reads thus:

on Saturday April 18, 2009 at about 11:30 am, I received a police report stating that the complainant [private prosecutrix] had filed a complaint with the Liberia National Police, Women and Children Protection Section, stating that she was allegedly sexually abused and we should conduct a medical examination....During examination the patient/victim was asked to undress herself Upon undressing herself, [I observed} blood stain on her undergarment.when she climbed on the examination bed the lights were focused on her body. All findings conducted on her head, hands, feet, chest, stomach and back were normal with the exception of her vagina." The witness confirmed, "upon examination of the vaginal area there was bleeding from the vaginal wall, bleeding that is not menstrual bleeding because the victim is 11 years old and is under the probative stage to menstruate." See 19 day Jury Sitting, Thursday September 3, 2009 sheet 3.

The witness further said that the bleeding observed was a s1gn of forceful penetration of the vagina by a blunt object such as a penis, a bottle or a stick, and that looking through the vagina he observed that the hymen of the victim was irregularly positioned.

It is this testimony that the appellant's counsel requested be stricken from the records since according to him, the witness did not qualify as an expert witness. The defense counsel submission was resisted by the prosecution and subsequently denied by the court. In his argument before this Court, the appellant's counsel stated that witness Davies was not qualified to testify in a rape case. Relying on the case Tunning v. Greene et al, 15 LLR 137, 144 (1963) the appellant's counsel contended that the Honorable Supreme Court had held, that "to qualify a person to give expert medical testimony, he must show that he holds a diploma or certificate from a medical college and that he is a physician." We observed that the Court in 1963 relied on a prior case, Dun v. Republic 1LLR 401 (1903).

A review of the facts in the Tunning case on this issue showed that the appellant was of the belief that only a psychiatrist possessing a diploma was competent to declare one incompetent to testify, and not a layman or a physician or a medical doctor. The Court at that time rejected the argument of the appellant and held that "a medical doctor holding a certificate is qualified to testifY as an expert with respect to mental competence". *Id.* Eleven years after the holding in the *Tunning* case, the Honorable Supreme Court, speaking through Mr. Justice Horace, defined an expert as "a person who possesses the knowledge required to draw correct inferences from evidence that relates to a matter that is not within the realm of common knowledge." Tubman v Republic 23 LLR 301, 318 (1974). Also in the case, Republic v. Wright, 38 LLR llO, 125-126 (1995), the Supreme Court held that "in order to qualify as an

expert, a witness must possess special knowledge of some subject on which the jury's knowledge would presumably be inadequate without expert assistance." The Court further opined that "a person qualified by professional, scientific or technical training, or by practical experience, in regard to a particular subject or field of endeavour which gives him special knowledge not shared by persons in the ordinary walks of life, may testify as an expert on questions coming within the field of his training and experience." Id. Applying these principles to the facts in the case before us, this Court says that while a graduate of the Tubman National Institute of Medical Arts School in the field of Physician Assistance, and who holds certificates from workshops on rape and other sexual based violence, cannot be on par or compared with a qualified professional medical doctor or physician who has matriculated from a medical college, we reaffirm our previous holding in the *Wright* case, that in order to qualify as an expert, a witness must possess special knowledge of some subject on which the jury's knowledge would presumably be inadequate without expert assistance, and that only persons who are qualified by professional, scientific or technical training, or by practical experience, in regard to a particular subject or field or endeavor may testify as an expert witness. Jd. We hold that this does not preclude a person who is familiar with the facts and circumstances surrounding an event or who in the case such as we have now, from testifying to what he saw upon examination of a victim of sexual violence or the condition in which he saw or observed the person. It is for the jury to determine the credibility to be given to the witnesses' observation. Thus this Court in keeping with § 25.2 of the Civil Procedure Law take judicial notice of the known fact that the rise of sexual gender based violence and other forms of domestic violence is alarming and has increased the need for social workers to be trained in these areas, like the training undertaken by Mr. Davies, the physician assistant. It is also a well-known fact that in response to this national and global alarm, the world has witnessed a series of programs, seminars and workshops geared toward enhancing the skills of social workers in the areas of domestic violence and, we note that social workers in Liberia have taken advantage of these programs, seminars and workshops regardless of their academic background. Witness Augustus Davies testified that he is a licensed physician assistant having graduated from the Tubman National Institute of Medical Art School as a Physician Assistance, and that he has practiced and obtained several certificates in the field of sexual based violence while employed with the New Kru Town and the Tweh Farm Clinics, respectively. This Court says that though the witness is not a medical doctor or a physician and does not hold a degree in any of these fields to be classified as an expert witness, he is however to a large extent, with the experience and knowledge he has acquired competent to make observation on condition in which he has found victims of sexual violence, especially visibly, noticeable as to the result of his conduct of an examination of the victim, and as he had done with countless other victims of sexual (rape) abuse. As such, he is qualified to testify as to what he observed. Hence, the admission of witness Augustus

Davies' testimony into evidence cannot be deemed as an error, since the witness testimony was to his observation from the examination he personally conducted on the private prosecutrix, and the condition of which he found her to be.

We note that the counsel for the appellant does not contest witness Davies' qualifications as a licensed physician assistant who has been trained in the field of sexual gender based violence, but rather has elected to seek to convince us that because the witness is not a medical doctor/physician with a degree from a medical school, the witness is like an ordinary man with common knowledge. We disagree with this position of appellant's counsel and hereby hold that even though witness Augustus Davies is not a medical expert, he is however qualified within the scope of his training to testify as to what he observed when he conducted a physical examination on the private prosecutrix. In view of this, count two of the bill of exceptions is hereby over ruled, and the trial court's judgment confirmed.

This Court deem it unnecessary to pass upon the issue raised in count three (3) of the bill of exceptions because same is derivative of counts one (1), two (2) and four (4).

In count 4 of the bill of exceptions the appellant alleged that the trial judge committed reversible error when he heard and denied his application for a new trial. Since this Court have already disposed of the issue of hearsay evidence as raised in count one (1) of the bill of exceptions and the issue of the prosecution fourth witness being unqualified to testify as an expert witness as raised in count two (2) of the bill of exceptions, the only germane issue that is left in bringing this case to a logical conclusion is whether or not the State proved its case beyond all reasonable doubt, which, when lacking, is one of the statutory pre-requisites for the granting of a new trial.

We take recourse to the records on the testimony of the appellant and his lone witness, Rufus Toweh Sam, a member of the appellant's ministry who lived far from the community in which the appellant and private prosecutrix lived.

Testifying in his own defense, appellant Power Massaquoi admitted interacting with the private prosecutrix on the morning of April 17, 2009. For the benefit of this Opinion we quote herein below a relevant portion of his testimony which reads thus:

"On April 17, 2009 I came out of my room about 7am in the morning hour. I met the "private prosecutrix" dressed in her [school] uniform with slippers on her feet standing at the side of my house awaiting to use the bathroom (toilet). While standing with my hand in my pocket, the private prosecutrix asked to use my key to the toilet, and being a God fearing man I decided to give her my toilet key. While she was in the process of using the restroom, I went back into my room, collected a bucket and went for water at the well. Upon my return to my room I met my toilet key on my table. This is all I know about what transpired between me and the "private prosecutrix."On that same Friday morning while I was in my room having a quiet time

with my Lord, and about the hour of2:30 p.m. I decided to leave for Grand Cape Mount County to visit a family member. While there from Friday to Sunday told them that I had come to bid them farewell because in May I intended taking a trip to the USA." See 21 day Jury Sitting, Monday September 7, 2009 sheet 3-4

The witness further testified that upon his return from Grand Cape Mount County, the private prosecutrix and her father accused him of raping the private prosecutrix. He was later arrested and taken into custody by the Liberia National Police where he was investigated. The witness said that while in police custody the family of the private prosecutrix offered a settlement of the matter if he admitted to the rape charge, that is, he pay the amount of US$1000.00 for damage and US$500.00 for dowry. The appellant said he refused because he was innocent and that he did not have money.

During cross examination the following questions and answers were exchanged between the witness and one of the prosecution's counsels.

Q:Mr. Witness, have you on any occasion sent the private prosecutrix to run errands for you?

A: No, I have never sent her on any occasion

Q:Have you ever sent other children living in your house or in the neighborhood to run errands for you, example to buy water to drink?

A: Yes.

Q:You have sent other children but you have never sent the private prosecutrix, am I correct?

A: Yes. " See 22 day Jury Sitting, Monday September 8, 2009 sheet 4.

The records however revealed that the prosecution rebuttal witness in person of Madam Yatta Massaquoi, a housemate of the appellant rebutted this part of the appellant's testimony to the effect that she had seen the appellant sent the private prosecutrix on two different occasions to buy him water to drink. See 28 day Jury Sitting, Monday September 16, 2009 sheet 3. In further support of its case the appellant introduced his witness, Rufus Sam Toweh who testified that a lady informed him that the appellant had been arrested and was in police custody on the charge of rape. The witness said upon receiving the information he went to see the appellant the following day at the Central Street Police Station; the witness said the appellant prosecutrix who informed him that the appellant will only be released if appellant admits to the rape charge; pay the amount of$1000.00 for damage and $500.00 for dowry.

We note here that the issue of an alleged out of court settlement requiring appellant to admit to the charge of rape, and paying the amounts indicated for damages and for dowry was told the appellant by his witness Rufus Toweh Sam when he returned from visiting with the family of the private prosecutrix. The records reveal that witness Sam offered no further testimony to

prove or disprove the charge of rape, but centered his testimony on the alleged events that occurred after the appellant was taken into police custody hence his testimony must crumble and we so hold.

The appellant himself testify to encountering the private prosecutrix during the morning hours of April 17, 2009 even to the extent of describing that she wore slippers on her feet but claimed that he went to the well for water and upon his return to his room he saw his key which he had earlier given private prosecutrix on the table in his room. He also testified that on the same day of April 17, 2009 he traveled to Grand Cape Mount County to bid a family member farewell since he was travelling to the U.S.A. and it was only upon his return that he was arrested for raping the private prosecutrix. This testimony of appellant was without any corroboration. We have held that "the uncorroborated testimony of a criminal defendant is insufficient grounds to authorized reversal of a judgment of conviction and that a defendant will not be set free on the strength of his lone testimony especially where two or more witnesses have testified against him." Fallah v. Republic, Supreme Court Opinion March Term 2011.

Our Statute provides that "a defendant in all criminal actions is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt where his guilt is [not] satisfactorily shown, he is entitled to an acquittal." Criminal Procedure Law Rev Code 2:2.1. In the case *Elizabeth Davies v. Republic,* 40LLR, 659, 679 (2001) this count held, "The prosecution of all criminal matters in our jurisdiction has its foundation in certain basic principles of law. For example, it is a generally established principle of law that in all trials upon indictments in order for the state to convict, the prosecution must prove the guilt of the accused with such certainty as to exclude every reasonable hypothesis of his innocence; that material fact to constitute the crime charged be proven beyond a reasonable doubt, otherwise the accused will be entitled to a discharge." The Davies case also states that "to warrant a conviction in a criminal case, the State must prove its case beyond a reasonable doubt; and the burden of proof remains with the prosecution throughout the trial." Id. The records show that all of the prosecution witnesses to include the physician assistant not only corroborated each other testimony as to the rape of the private prosecutrix on the morning of April 17, 2009, that is, the appellant did encounter the private prosecutrix at the toilet, which the defendant himself made admissions, that he allegedly lured her into his room and with the threat of a knife, sexually abused her, but there was also the corroborated testimony as to the stain of blood discovered on the private prosecutrix skirt and her underwear which she wore on that fateful morning. The physician assistant who testified to the effect that he discovered that the bleeding observed in the private prosecutrix vagina was a sign of forceful penetration by a blunt object, either a penis, a bottle or a stick. This Court has held that "the advantage the defendant derives from the fact that the burden is on the prosecution to prove his guilt beyond a reasonable doubt, ceases when the prosecution has done this to such an effect as to

sustain a verdict of guilty. At this point, should the case close and go to the jury, it goes free from the presumptions arising from the imposition of the burden of proof. The rule requiring the actor to take on him the burden of proof is a rule of practice adopted for the proper development of the case, and ceases to operate when the evidence on the part of the prosecution established the defendant's guilt beyond a reasonable doubt." Richlieu Davies v. Republic Supreme Court Opinion, October Term 2008. In the mind of this Court, the prosecution did establish the appellant's guilt beyond all reasonable doubt, which did not warrant the granting of a new trial.

Reasonable doubt is that state of the case which after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say and feel an abiding conviction to a moral certainty of the truth of the charge. Reasonable doubt is a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. Collins v. Republic 22 LLR 365, 371 (1974). Further, in the Elizabeth Davies v. Republic case this court held that "in criminal prosecution, in order to eradicate every reasonable doubt, the evidence must be conclusive; and if it be circumstantial, it should be so connected as to positively connect one element within another for a chain of evidence sufficient to lead a mind irresistibly to the conclusion that the accused is the guilty party." We have again held that in a criminal trial everything calculated to elucidate the [crime] should be reviewed, since the conclusion depends on a number of links which alone are weak but taken together are strong and able to lead the mind to a conclusion. Kpolleh et al. v. Republic 36 LLR 623, 669 (1990). The records show that the evidence produced by the prosecution formed link by link the chain needed to lead any reasonable mind to the conclusion that the appellant is guilty of the crime of rape beyond a reasonable doubt especially so that the appellant failed to refute the damning testimony of the private prosecutrix spread on the records. We reinstate and hold here that "where damning testimony has been placed on the record against a criminal defendant, unless rebutted such will constitute a prima facie evidence of the fact." Davies v. Republic Supreme Court Opinion, October Term A.D 2008, and we need not reiterate that "prima facie evidence of fact is in law to establish a fact unless rebutted. ld. This Court further holds that count four of the bill of exceptions is hereby over ruled and that the judgment of the trial court being consistent with law is hereby affirmed.

Wherefore, and in view of all that this Court has narrated herein above, and the legal citations in support of the Court's position, we hereby affirm and confirm the judgment of the trial court that the appellant is guilty of the crime of rape of the first degree. However, this Court having the authority to rescind, modify, remand or affirm or confirm any judgment of a lower court, herewith modifies the sentence by commuting same from the maximum penalty of life imprisonment to a jail term of fifty (50) years.

The Clerk of this Court is hereby ordered to send a Mandate to the court below to resume jurisdiction and give effect to this opinion. Costs disallowed. And it is hereby so order.

Judgment Affirmed.

Counsellor J. Laveli Supuwood appeared for the appellant. Counsellor Betty Lamin-Blamo, Solicitor General, Republic of Liberia appeared for the appellee.