**George Tehquah** of Sanniquellie Central Prison, Sanniquellie City, Nimba County, Liberia, APPELLANT Versus **His Honor Emery S. Paye**, Resident Circuit Judge 8th Judicial Circuit Court, Nimba County, and the **Republic of Liberia**, APPELLEES

APPEAL

**LRSC 38**

Heard: March 19, 2014 Decided: August 14, 2014

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

Pursuant to a true bill presented by the Grand Jurors for the Eight Judicial Circuit Court, Nimba County, sitting in its May 2009 Term, the herein appellant, George Tehquah, was indicted along with three other individuals, Jimmy Kemon, Johnson Takpah and Prince Suncun. They were jointly charged with Armed Robbery and Gang Rape. The trial court granted the application for separate trial made by Co-defendant George Tehquah, appellant in these proceedings. On arraignment, appellant pleaded not guilty, thereby joining issue with the State. Thereupon a trial jury was selected, sworn and empanelled to try the cause.

The certified records transmitted to this Court indicate that during trial, the State introduced five {5) witnesses. These included a medical practitioner and a rebuttal witness. The witnesses were deposed, cross examined and discharged. When the state rested evidence, appellant filed a Motion for Judgment of Acquittal. He essentially contended that the State had failed to present sufficient evidence to maintain a conviction and, therefore, he was entitled to acquittal as a matter of law. The Motion for Judgment of Acquittal was resisted by the State, argued pro et con, and denied by the trial court. Hereafter, Appellant Tehquah took the stand and testified in his own defense as the lone witness. The appellant waived his right to call other witnesses alleging that persons he intended calling to testify on his defense had been tampered with. Subsequently, the State introduced a rebuttal witness and rested in toto. The trial judge, having listened to final arguments, charged the jurors who, then retired, deliberated and returned a unanimous verdict of guilty against the appellant.

His Honor Emery S. Paye, Resident Circuit Judge of the Eight Judicial Circuit, presiding, in his final judgment affirmed the guilty verdict, convicted the appellant for Armed Robbery and Gang Rape and imposed a life sentence. Displeased with this final judgment, and exercising his constitutional right of appeal, appellant announced an appeal and has come up to this Court of final arbiter for redress. In support of his appeal, appellant has tendered for our review a bill of exceptions containing six (6) assignments of error.

From a quick glance at the bill of exceptions tendered by the appellant, one can clearly see that not every assignment of errors contained therein presents such issue as sufficient to claim our attention; hence, we do not feel ourselves called upon to pass on all of those. It is the law in this jurisdiction that the Supreme Court of Liberia is not duty bound to pass on every count contained in the bill of exceptions, or address every issue presented in the briefs filed by counsels. It is the exclusive province of the Supreme Court to

pass only upon those issues it deems necessary to arrive at a decision. The Liberia Company (UBCO) v. Collins, 36 LLR 828, 831 (1990); Lamco J. V. Operating Company v. Verdier, 26 LLR 445 (1978); The Management of United States Trading Company v. Morris et al,41LLR 191, 203-4 (2002).

The authority to address only the issues the Supreme Court deems worthy of its attention is articulated in Lamco J. V. Operating Company v. Verdier, 26 LLR 445 (1978), cited herein above. In that case, Mr. Justice Henries speaking for the Court said: 's to the contention that several issues were raised but not passed upon, it has always been the practice of this Court to pass upon those issues it deems meritorious or properly presented It need not pass on every issue raised in a bill of exceptions or in the brief. [Emphasis Supplied]. Ibid 448.

Also in The Management of United States Trading Company v. Morris et al, cited, Mr. Justice Morris further elucidated on this well-established principle which grants the Supreme Court this discretion. He stated:

As regard the contention that several issues were raised in this case but may not have been passed upon, it has always been the practice of this Court to pass upon those issues it deems meritorious, worthy of notice, and germane to the legal determination of the case. It need not pass on every issue raised in the bill of exceptions or in the brief filed. Thus, this Court acts in keeping with practice and precedence in determining to address itself to only the most important and germane issues for the determination of this case. 41LLR 191, 203-4 (2002).

Consistent with this principle, we have determined that counts one (1) three (3) and six (6) of the bill of exceptions are of such substance to deserve our attention; hence, we will examine the assignment of errors the defense counsel has set forth in those counts.

Count 1(one) of the assignment of errors states as follows:

1. Your Honor committed error the way and manner you denied Appellant's Motion for Judgment of Acquittal on sheets 1-17, 41st day's session, July 1, A. D. 2009 on ground of variance of prosecution witnesses testimonies as found on sheets 2, 3, 4, 5 and8, 29th and 3dh days' session of this Honorable Court and Peter Miakakay's testimonies on sheets 2-, Jun 29th and 39th days' sittings, 2009 as well as Kumba Miakakay's testimony on sheet 9 and 10, 39th day's sitting, June 29, A. D. 2009 respectively.

In count one (1) of the bill of exceptions, quoted herein above, appellant has contended that the testimonies presented by State witnesses were patently at variance with each other; that the State rested its case on insufficient evidence to maintain a conviction. According to defense lawyer, the State having woefully failed to make a prima facie case as the law imposes, the defendant was entitled to acquittal. According to defense, in the face of the State's woeful failure to present sufficient evidence, the refusal of Judge Emery S. Paye to grant appellant's Motion for Judgment of Acquittal constituted a reversible error.

In filing the Motion for Judgment of Acquittal, defense counsel relied on Section 2: 20.10 (a) of the Criminal Procedure Law, Rev. Code. The said provision permits a party facing criminal trial to file a

motion requesting to be discharged from further answering to the criminal charge after State has rested evidence inadequate to sustain a conviction.

The relevant provision of the Criminal Procedure Law provides that [t]he court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. Criminal Procedure Law, Rev. Code 2:20.10.

Also, in Kamara v. Republic, 23 LLR 331(1974), the Supreme Court was even more emphatic on the defendant being entitled to acquittal if the essential elements of the crime charged are not proven beyond reasonable doubt. Mr. Chief Justice Pierre declared for a unanimous Supreme Court as follows:

In a criminal case, the burden is on the prosecution to prove beyond a reasonable doubt the essential elements of the offense with which the accused is charged; and if this proof fails to establish any of the essential elements necessary to constitute a crime, the defendant is entitled to an acquittal. The burden of proof is never on the accused to establish the crime charged Although the accused is required to assume the burden of proving the affirmative defense upon which he relies, the burden of establishing his guilt rests on the prosecution from the beginning to the end of the trial even in a case which the defendant offers an affirmative defense. Ibid 332 (1974), [Emphasis provided].

We hasten to say that as a matter of law, we are in agreement with defense argument that the burden to establish the guilt of an accused is imposed on the State. We equally concur in defense argument that where there is failure by the State to satisfactorily carry that burden proof, the criminal defendant is entitled to acquittal.

But the critical question at this point is whether this principle contention as raised by the defense is supported by the records to entitle appellant to acquittal. In order to address this important question, we need to first take a close look at the indictment upon which the appellant, George Tequah was tried and convicted. This is because in criminal prosecution, as already indicated, the State is required under the law extant to prove every material averment set forth in the indictment.

For the benefit of this Opinion, let's take a look at the indictment quoted hereunder:

INDICTMENT COUNT 1.

The Grand Jurors for Nimba County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendants, Jimmy Kemon, George Tehquah, Johnson Takpah and Prince Suncun, committed the crime of Armed Robbery and Gang Rape, a felony of the first degree, and a capital offense, to wit:

That, on the 8th day of September, A. D. 2008, at the hour of 11:30 p.m., Defendants, George Tehquah and Jimmy Kemon, visited his [Peter Miakakay's] shop, and upon their departure, private prosecutor, Peter Miakakay and his wife, Kumba closed their shop and went to bed but around 3:00 clock a.m., his shop back door was opened by Jimmy Kemon, George Tehquah, Johnson Takpah and Prince Suncun while in the course of committing a theft. The defendants Jimmy Kemon and George Tequah were seen

standing over them and did threaten to kill them or a (group of persons) to wit: placed them under gun point and demanded them to show where their money was saved, thereat, one of the defendants, Jimmy Kemon walked straightly to their safe, burst into same and did take and carry along with other defendants the following personal and lawful properties:

1.USD$8,800.00

2. LD$30,000.00

3. LD$45,000.00

4. 13 pieces of cell phones valued at $460.00USD

5. Pieces of scratch cards valued at $100.00USD

6. 1 wrist watch, to wit·

The defendants did threaten to kill a person or group of persons, to wit: to inflict bodily injury upon a person or group of persons, place a person or group of persons, to wit: threaten with imminent danger, place a person or group of persons under gun point (single barrel short guns and a pistol), to wit·

And, during the robbery, personal injury was sustained as a result of the acts of the offenders, valuable were taken away.

An act is in the course of committing a theft if it occurs in an attempt to commit a theft, whether or not the theft is successfully completed.

An act is also in the course of committing a theft if it occurs in the immediate flight from communication of, or an unsuccessful effort to, commit the theft.

Theft means to knowingly take, misappropriate, convert, exercise unauthorized control over, make an unauthorized transfer of an interest in the property of another, with the purpose of depriving the owner thereof.

Bodily injury means physical pain, illness or any impairment of physical function.

Contrary to: 4 LCLR, Title 26, Section 15.32; and 4 LCLR, Title 26, Section 1.7 (c); and 4 LCLR, Title 26, Section 15:34; and 4 LCLR, Title 26, Section 15.51 (a); of the Statutory Laws of the Republic of Liberia; and peace and dignity of the Republic of Liberia.

COUNT 2.

The Grand Jurors for Nimba County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendants, Jimmy Kemon George Tehquah, Johnson Takpah and Prince Suncun, committed the crime of Gang Rape, a felony of the first degree, to wit:

That, on the 8th day of September, A.D. 2008, at the hour of 3:0'clock A.M on the Cocopa Rubber Plantation, to be exact at Camp #1, the defendants, Jimmy Kemon, George Tehquah, Johnson Takpah and Prince Suncun, purposely promoted and facilitated rape. The defendants aforesaid did enter the

premises (shop) of the victim, Kumba Miakakay and her husband, put them under gun point, beat the both of them severely and had sexual intercourse with Kumba Miakakay without her consent.

A person engages in conduct purposely if when he engages in that conduct, it is his conscious object to engage in conduct of that nature or to cause the result of that conduct.

A person facilitates the crime of rape if believing it probably that (he) (she) is rendering aid to a person who intends to commit a rape, (he) (she) engages in conduct which provides such persons with means or opportunity for the commission thereof and which in fact aids such person to commit rape.

Rape is having sexual intercourse with another by intentionally penetrating the vagina, anus, mouth, or any other opening of another person, male or female, with the penis without the victim's consent.

In this case, the victim, whose age is 35 years old was raped with force or violence.

Sexual intercourse means penetration, however slight, of the vagina, anus, mouth, or any other opening of another person by the penis. A person consents if he/she agrees by choice and has the freedom and capacity to make that choice.

There is a presumption of a lack of consent in this case because: at the time of the relevant act or immediately before it began, a person, to wit: Jimmy Kemon and others were using violence against Kumba Miakakay and were causing the victim to fear that immediate violence would be used against her.

The defendant intentionally induced Kumba Miakakay to consent to the relevant act by putting her under gun point, to wit:

AND THE DEFENDANTS DO NOT HAVE AN AFFIRMATIVE DEFENSE. Contrary to: 4 LCLR, Title 26, Section 14.70(2), and 4 LCLR, Title 26, Section 2.2 (a); 4 LCLR, Title 26, Section 10.2(1); and 4 LCLR, Title 26. Section

14.70(1); and 4 LCLR, Title 26, Section 14.70(3); and 4 LCLR. Section 14.70(4) (a) ii); and 4 LCLR, Title 26, Section 14.70(4) (b); of the Statutory Laws of the Republic of Liberia; and peace and dignity of the Republic of Liberia.

The Republic of Liberia will present the following evidence:

7 photo copies of F.O.C; 3 crime scene photos, 15 rounds of pistol 5 single barrel shots,1 empty shell of single barrel gun, 4 single barrel short guns,13-set flash light, 1 under wear and1 damaged cash box.

The Republic of Liberia will call the following witnesses: Peter Miakakay, Madam Kumba Miakakay, Capt. Oscar Sayeh, Dep. Lt. Armstrong Wonleh, Det. Solia Jarlima and Junior Johnson."

In an effort to carry the burden of proof contemplated under the law so as to maintain a judgment of conviction, the State presented both oral and documentary evidence during trial.

One of the Private Prosecutors and a resident of Camp #1, Cocopa Rubber Plantation, Peter Miakakay, was the first witness presented by the State. The witness introduced himself as a Weighing Clerk of the

Cocopa Rubber Plantation and one also engaged in some private business ventures. The witness identified the appellant/defendant as George Tehquah, commonly called Senegalese.

This is his testimony in chief:

On September 8, 2008, George and Jimmy Kemon came to my shop to buy drinks. They were with me until11:30p.m. I told them it was late and I wanted to go to bed. They left and went home. I closed my shop. My bed is behind my counter where my wife and I sleep. After 3:00a.m. in the morning, I saw Jimmy Kemon and George Tehquah coming from the backdoor of my shop. I shouted who is that, and George Tehquah fired gun over my bed head on the wall He said you all shut up your mouths at the same time beating us with cutlass, and started bursting my cash box. At the same time, George Tehquah was standing over me beating me and asking me #where is the diamond and the US Dollars': I told him the money I had is what you have taken so. To my surprise, I saw plenty people all over in the house. The other people said you have to kill these people because he recognized us. Then Jimmy Kemon asked me whether I know him and I said no, because if I say yes he would had killed me. Then Jimmy Kemon hauled my wife from the bed and put her right side the bed with the comforter and started raping her in front of me. Then I started crying and while crying many people came around including securities. At the same time, they were exchanging themselves over my wife by raping her. I thought my wife was dead When people were saying who is that, then Jimmy Kemon and George Tehquah along with the other group started going to where they came from. There and then I fought hard and opened the door and people came and took my wife. When my wife was taken out I went back to the house at the back where they passed and saw the single barrel gun that they used lying on my steps and the empty shot shell were on the bed When the police came, I handed the single-barrel gun to them along with the empty shell They took my wife to the clinic. From there, the two persons were named herein because I know them physically. They had been my neighbors. This is what happened to my wife and myself. As a result, sickness is in our bodies and we are going to hospital for treatment. I rest.

During cross examination by defense lawyers, the witness was asked the following questions:

Q. Mr. Witness, in your general statement, you said that the light was on in the house and you recognized those who attacked you and your family. Will I be correct if I said that Defendant George Tehquah and Jimmy Kemon are those that you recognized based on your knowledge and your interaction with them?

A. Yes, I saw them physically.

Q. Mr. Witness, you also said the two defendants raped your wife one after another. Am I correct?

A. Yes the two of them raped my wife.

Q. At the time the alleged rape was taking place, in what position or situation were you in?

A. I was beaten, lying on the bed and [they were] pointing gun at me stating that I shouldn't talk; if I talk they will kill me.

Q. Was the defendant in the dock one of those that pointed gun at you?

A. Yes

Q. Mr. Witness, my question is did George Tehquah have the gun pointed at you while at the same time engaged in the rape of your wife?

A. I saw him with the gun standing over her but I was not to myself to know whether he had the gun when he was sexing my wife and because he was the first person who haul my wife from the bed

Q. Mr. Witness, you further said that there was a lot of gangsters that entered your room that night. Besides the two rapists, what did the rest do if you can remember?

A. There were plenty people in the house but I could physically see George Tehquah and Jimmy Kemon and I saw what they did

Q. Mr. Witness, who beat on your person for which you were not of yourself?

A. Jimmy Kemon and George Tehquah.

Kumba Miakakay, private prosecutrix, also a resident of Cocopa Camp #1, and a businesswoman was prosecution's second witness. She testified substantially in the manner following:

"September 8, 2008 in the evening time I saw George Tehquah and Jimmy Kemon when they came in our shop to buy. We began to serve them. They were there late. I began to tell my husband that I am going inside. As it was late, my husband decided to close the shop at 11:00p.m. for us to go to bed Around 3:00 in the morning, George Tehquah and Jimmy entered through our backdoor. When they entered, they shot; then we came to ourselves and started asking who is that. And George Tehquah began to shoot the gun over our bed. We started to shout saying you all come for us. George Tehquah started to beat my husband with cutlass. Jimmy Kemon started to burst the cash box, and he took the money. Thereafter, they began to ask us for the diamond and the USD; they demanded that we give them the diamond and the US dollars otherwise they will kill us. After that one George Tehquah started to ask us whether we know them. We told them no. We said whatever you want here you can take them and let us live. While we were begging them they said we must not talk. George Tehquah hauled me and threw me on the ground and scattered all my wearing. He began to rape me, while the others were going from here and there checking. After that, Jimmy Kemon told my husband not to shake, "it is the time to enjoy': Jimmy Kemon began to rape me too, and said if you shake I will kill you. While they were using me I was helpless. Thereafter, people began to come to our cry and when these guys noticed that people were coming, they decided to go through the same route that they first entered. At that time, my husband was finding way to open the door. He later opened the door, and police and the people entered. Because of the gun sound the people started coming from all around. When my husband opened the door and the people saw my condition they ran for car quickly. When the car came the people took me like baby and carried me to our clinic in Camp #1. The people said I should be admitted at the hospital. There I was for one week before I was discharged

During cross examination, defense counsel posed the following questions to the witness:

Q. Madam Witness please say for the benefit of the court and Jury how many persons, you as one of the alleged victims of the September 8, 2008 incident, recognized [to have] entered your house that night and committed the offenses of rape and armed robbery?

A. The ones I could recognize were two, George Tehquah and Jimmy Kemon.

Q. Madam Witness, in your general statement, you told us that the incident occurred at night about 3:00a.m. Does the area you live in Cocopa have electricity, that is to say, was the light on when the incident occurred in the morning.

A. We did not have current but we had lantern and flashlight

Q. Madam Witness, in your statement you told us that Co-defendant George Tehquah was there firing, kindly refresh your memory and tell us how many times did George Tehquah fired his gun?

A. He only fired one time.

Q. Madam Witness, prior to September 8, 2008, did you personally know Defendant George Tehquah and Co-defendant Jimmy Kemon or have you ever interacted with them?

A. Yes.

Q. Madam Witness, you said that you saw George Tehquah and Jimmy Kemon that night. How many men had sexual intercourse with you that night?

A. They were two.

The State, after the discharge of Witness Kumba Miakakay, introduced its third witness, Gayflor N. Banna. The witness was a Registered Nurse, (RN), holding license No. 5064, having graduated from the United Methodist University, Ashmun Street, Monrovia. Witness Bana was at the time the Administrator and Officer-In- Charge (overseer) of the clinic in Bunadin Town, Saclepea District, Nimba County. His duty as Officer-In-Charge included assessment, diagnoses and treatment of illnesses at the Bunadin Clinic. As regard his experience, the witness worked at the Ganta United Methodist Hospital as examiner of patients in the OPD (Outside Patients Department. He also worked with the Power Clinic as Officer-In-Charge (OIC). Prior to his appointment as Administrator of the Bunadin Clinic, Witness Bana also worked as Screener at the G.W. Harley Hospital.

The witness testified that the patient, Kumba Miakakay, was rushed to the clinic at 4:30a.m. in apparent severe pain as a result of reported attack on her by armed robbers. According to the witness, Miakakay was unable to walk due to the attack. The witness explained that he found from physical examination of the patient that there was hematoma of the labia inflammation. He thereafter admitted and referred for MD's further assessment and evaluation. The MD's evaluation revealed that there was digital and penis penetration by aliens and there were signs of the patient being stepped on in the abdomen.

A medical report signed by Dr. Valentine Sawyer, MD. license No. 448, initialed by the witness was testified to by the witness and admitted in evidence. The medical instrument, signed on September 8,

2009, revealed that there was forceful penetration through the virginal with digital pointed edge and a penis (penal).

Col. Paye M. Layuah took the stand as prosecution's fourth witness. The witness was an employee of the Liberian Government/Ministry of Justice with assignment as Major Crime investigator. He identified the appellant/defendant, commonly known as Senegalese. In his testimony in chief, Colonel Layuah told the court and jury as indicated herein below:

On September 9, 2008, I was ordered by the then County Attorney for Nimba County, Mr. G. William Kai, Sr. to team up with the late Maj. Wuo Gaye, the then CID Commander to proceed to Cocopa, Camp No. 1 to investigate an Armed Robbery and Gang Rape case. Our team left Sanniquellie on the same date and arrived at Ganta by 12:00noon. Upon arrival, we went to the Ganta Methodist Hospital. We saw one Madam Maikakay, the victim admitted at Ganta Hospital We asked the doctor or the nurse in charge to permit us talk to the victim and we were permitted to talk to her. She explained to us that on the Sh of September, 2008, she and her husband were armed robbed and she was also raped We asked her if she sees any of the perpetrators, will she recognize any and she said yes and she recognized two. The two were Jimmy Kemon and George Tehquah, commonly known as Senegalese. She also told us that after the commission of the crime at their back door, they found a single barrel shot gun which was turned over to the police depot in Cocopa. Based upon the information received from the victim, we proceeded to Cocopa Camp #1. Upon arrival therefore, we invited defendants George Tehquah and Jimmy Kemon for questioning. During our probe, we informed the two defendants of their Miranda rights and the defendant in the dock, George Tehquah, voluntarily confessed to us that he and his friend Jimmy Kemon, along with one Codie, Jallah, Success and one Johnson Tokpah, were the ones that committed the act. He said I want to confess so that you should use me as State witness. And when we asked him how many arms were used in the commission of the crime, he told me three single barrel guns were used He identified the one that was in the possession of the police in Cocopa to be one of the arms and that the other arms that were secured by them from the crime scene were turned over to Johsnon Tokpah and he also admitted being a part of the armed robbery and also being in possession of the remaining arms. He led us to a cassava farm where we dug the remaining two arms. During defendant Tequah's confession, he informed us further that on the third of September, he received a call by mobile phone from their deputy security commander, Prince Rennie who was at the time detained at the Central Prison that he George Tehquah should contact his friends from Ganta to terrorize the Community as well as all the business centers in the community so that the administration of Cocopa will know that when he Rennie is in Cocopa, Armed Robbery in Cocopa will not happen. According to defendant Tehquah, he contacted his three friends, Codee, Jallah and Success and they arrived at Cocopa on the seventh day of September. When they got there, instead of going in, they went on the highway of Yarsonnoa and Cocopa and called them on a mobile that they were around . According to defendant Tehquah, he, defendant Kemon and Defendant Tokpah wereon the same highway, and not the three friends just named He further said that he Tehquah and Jallah rode on a red Honda bike and went to Cocopa Camp No. 1 and the rest came in two-two. When they all went in, they were hosted in the one room Jimmy Kemon and George Tehquah were living and later, they took the three friends to Makakay's shop to introduce the shop to them so that they will know the location of the safe in the shop and in the same shop, the people

lived with their bed in the shop. They were there up to 10:00 p.m. until Mr. Makakay told them that he was tired and to go to bed. And so they left. At 3:00a.m. on the 8th , they burst the back door and entered and he Tehquah shot in the air and told the victim not to open their mouth or else he will kill them. All of them entered While they were in there, Jimmy Kemon and Jallah took cutlasses and began to whip the victims. Defendant Tehquah, according to him, ordered the Madam to go on the ground to leave the bed but in the Madam's statement she did not leave the bed but she was hauled by Tehquah. While he was raping her, Jimmy had the gun pointed at her husband not to leave from where he was lying down and not to even shout. After raping the madam, Jimmy told the husband do not move, it is time to enjoy and he also went and raped the woman too while the others were busting the safe. It was Jimmy who first of all identified the safe. During our investigation, when they were confronted with the first arm on the scene to know why the arm was left on the crime scene, George Tehquah told us that the arm dropped from Jimmy Kemon. He said because the neighbors were coming from the front of the house, they were in a rush. Jimmy also said that the arm dropped from him, George Tehquah and not him. So it was arguments between them. But they identified the arms used According to them, the proceeds from the armed robbery were to be divided among them to include George Tehquah, Jimmy Kemon, Cadee, Success, Jallah and Prince Rennie who called them to carry on the operation on a mobile phone. During our investigation, we also took voluntary statements from them. A Magisterial charge sheet was prepared charging them with armed robbery and gang rape as well as prosecutorial summary. They were turned over to the magisterial court for prosecution.

After the State rested evidence, as herein above detailed, and with the reservation to produce rebuttal evidence, if necessary, defense counsel at this point moved the court to enter a judgment of acquittal in appellant's favour. Defense primarily contended in its motion that the totality of the evidence presented was insufficient to authorize a conviction as a matter of law.

For the benefit of this Opinion, we quote the Motion:

At this stage, counsel for defendant moves this Honourable Court for a Judgment of Acquittal in favour of the defendant in the dock, for the following legal and factual reasons to wit:

(1) Defense says that the prosecution has woefully failed to prove a prima facie case against the defendant in the dock either by positive or circumstantial evidence; for, the private prosecutor and the private prosecutrix have failed to convince the court and Jury that at 3:00a.m., Armed Robbers entered their house and were allowed to remain therein and to be seen by their victims, especially when all the lights in the neighborhood were on as crimes are committed in secrecy. If the defendant in the dock intended to arm rob the private prosecutors who are his immediate neighbors, it is hard to believe that the defendant will be armed robbing his neighbors without hiding himself; but rather to allow the victim to see him, recognize him and describe him.

(2) And also because the prosecution witnesses have contradicted themselves from the inception of this case up to and including their testimonies. The indictment which brought the defendant under the jurisdiction of this court named several items and sundry whereas the Magisterial Court writ also says that the amount the private prosecutor complained of is $800.00USD and $30,000.00LD. The indictment also says $LD30,000.00LD and $45,000.00LD respectively, whereas, Co-plaintiff Kumba Miakakay said

$LD30,000.00 LD and also Co-plaintiff Mr. Maikakay's testimony differed Lastly, that no other witness ever corroborated with the lone plaintiff as to having seen the defendant physically committing the crime or having acted in concert with another person whose testimony would link him. Wherefore and in view of the foregoing, defense counsels beg leave of this Honourable Court to invoke sec. 20.10 of 1LCLR as found on page 378 and grant unto the movant a judgment of acquittal as the law directs. This defense counsel so prays and submits.

State prosecutors resisted defense Motion for Judgment of Acquittal stating that it lacked any legal or factual basis, hence, a fit material for outright rejection.

His Honour Emery S. Paye, presiding, rejected defense Motion for Judgment of Acquittal and sustained prosecution's resistance thereto, ruling as follows:

"Counsel says that by virtue of the testimonies offered before this Court as well as the production of the fruit of crime before this Court, the prosecution has established prima facie evidence based upon which the defendant could be convicted Counsel says further that by several opinions of the Supreme Court of Liberia, one cannot be seen committing a crime before accepting that he has committed a crime and that the circumstances attending to the commission of the crime link the defendant to the commission of the crime, it is sufficient that the defendant has committed a crime.

Wherefore and in view of the foregoing facts and circumstances and taking into consideration the gravity of the matter and for the benefit of the trial jury, let the defendant take the stand to exonerate himself for the benefit of the trial. And submits.

"The prosecution having notified this Court to the effect that it has rested with the production of both oral and documentary evidence, one of counsels for the defendant has moved this Court for a Judgment of Acquittal in favor of the defendant based on the grounds mentioned on the minutes of this Court.

The defense says that from the evidence adduced by the prosecution, the defendant in the dock has not been linked with the commission of the crime charged One of defense counsels main contention is the variances in the testimonies of the prosecution's witnesses on the issue of the amount that was allegedly armed robbed Against this motion, counsel for the prosecution has asked this court to deny the motion because, according to the counsel, those grounds for judgment of acquittal are not the appropriate grounds. Let us be reminded that this case is in two phases; namely the taking away of the money under armed robbery and the gang rape alleged to have been committed by defendants, one of whom and others put the victim and her husband under gun point and in the process, the defendant in the dock dragged the lady from the bed on the ground and had sexual intercourse with her violently without her consent while his colleague had the husband placed under gun point. Prosecution witness also testified that when the defendant in the dock got through having sex with the victim, his friend, who is not on trial, namely, Jimmy Kemon, also had violent sex with the woman against her will and consent Witnesses testified that before this incident, Defendant Tehquah shot a gun in the air and left said gun behind at the time the neighbors arrived at the call of both victims, the man and his wife. The police who are not party to a case and who investigated the matter came and confirmed the statement of the Madam/Victim and her husband with regards to the rape that allegedly occurred In addition, the medical

report which is before this court confirmed that the victim was violently rape. So the issue before this court is not only armed robbery but also gang rape. Under these circumstances, this court is reluctant to grant a judgment of acquittal in favor of the defendant in the dock.

Wherefore and in view of the foregoing, defense motion for judgment of acquittal is hereby denied and the resistance is hereby sustained Hence, this case is hereby ordered proceeded with in order for the defense to take the stand if he so wishes. And it is hereby so ordered

From a critical review of the cogent evidence the State presented, it seems clear that appellant was linked to the commission of the crime. In the absence of any contrary evidence, the trial court, in the Opinion of this Court, was justified in its dismissal of appellant's Motion for Judgment of Acquittal.

Firstly, during the trial, as already detailed herein, Prosecution's witnesses, including the two individuals who, themselves, were the victims of the armed robbery and gang rape, testified before the court and jury presenting graphic accounts of what transpired. The accounts demonstrated that a group, including the appellant, sat with them in the shop that fateful night until they decided to close the shop and retire to bed. The evidence also revealed that shortly thereafter, the house of the two private prosecutors, of which the shop was a part, was broken into by a group of armed robbers, including the appellant, who took away their money kept in the safe and thereafter attacked and gang raped Private Prosecutrix, Kumba Miakaykay. They pulled her down to the floor and raped her in the full gaze of her husband. Both witnesses testified that they recognized the appellant as one of the gang members who robbed and raped Private Prosecutrix Kumba Maikakay. Both victims, Peter and Kumba, explained that they recognized the appellant because he was someone they have had long interaction with prior to the incident. Another state witness, investigating Police officer, testifying for the State, also told the court that the appellant told investigators that he was at the shop that evening and that he was one of the gang members. A medical report was also introduced, testified to and subsequently admitted into evidence. The report demonstrated that the private prosecutrix was indeed sexually assaulted.

When one considers the totality of both the oral and documentary evidence presented by the State and duly admitted into evidence, which remained un-rebutted, it is clear that said evidence well connected the necessary elements to establish not only that the heinous crimes, Armed Robbery and Gang Rape, were committed, but also that the appellant, George Tehquah, was culpable. The contention therefore, that the State's evidence at the time it rested was insufficient to entitle the appellant to acquittal, is unjustified.

It is also noteworthy that defense vigorously raised the issue of variance in the Motion for Judgment of Acquittal maintaining that prosecution's witnesses gave varying accounts of the amounts taken away by the armed robbers. According to defense, State witnesses testifying to different figures and amounts robbed from the victims constituted material variance, thereby providing sufficient legal basis to warrant appellant's acquittal.

This Court finds this argument to be legally unfounded. Under the law extant, a person commits armed robbery if he employs the threat of arm to take away the property of another. In the case at bar, the evidence demonstrates that monies, both Liberian and United States currencies, belonging to the private prosecutors, were taken away under the force of arm by the appellant. The amount taken under the threat or force of arm does not constitute an element of the offense. In other words, whether the amounts witnesses testified to as being taken away were $800.00USD (Eight Hundred United States dollars), $30,000.00LD (Thirty Thousand Liberian dollars) or $45,000.00LD (Forty Five Thousand Liberian dollars), is not such as to constitute a variance to justify the granting of a motion for judgment of acquittal. Taking this argument even further, let us assume that a difference in accounts of the exact amounts of money were material element of the offense of armed robbery, as in the case of Theft of Property where restitution is required. Even in such a case (Theft of Property), this Court has held that the difference between the amount averred in the indictment and the amount proven during trial is not such a material variance to authorize a Judgment of Acquittal. This is because the defendant would be held to restitute only the amount proven in addition to serving a jail term for the crime committed. In other words, this Court has held that the difference between the figures set forth in the indictment and those proven at trial does not vitiate the fact that a crime was committed in such an instance.

The argument advanced by counsel for the appellant that varying figures testified to by State witnesses aggregates to material variance is comparable to Appellant Stubblefield's contention in the case, Stubblefield v. Republic, 35 LLR 275 (1988).

In that case, the State indicted and tried Wilbert Stubblefield for theft of property. The amount the State averred in the indictment as stolen by Stubblefield was$4,488,700.00 (Four Million Four Hundred Eighty-Eight Thousand, Seven Hundred dollars).However, during the trial, the evidence presented by State proved an amount far less than the figure set forth in the indictment. In fact the amount sustained by the evidence was $303,025.08 (Three Hundred Three Thousand and Twenty Five Dollars and Eight Cents).

Thereupon, counsel for Appellant Stubblefield launched a vigorous challenge. Counsel contended that variance existed between the material allegation contained in the indictment and the evidence offered in proof thereof. Counsel further claimed that this variance should have operated in the appellant's favor; hence the Supreme Court was urged to set aside the judgment of conviction entered against the appellant.

But the Supreme Court rejected the appellant's contention. Mr. Justice Junius, speaking for a unanimous Court, held thus:

In any indictment charging the defendant with theft of property, the value is bound to be stated However, it is not mandatory that the value stated in the indictment be proved, but where any portion thereof is proved during trial the defendant will be held for that portion. A reversible variance between the indictment and proof which our law speaks of must comprise of substantial departure as to a material fact Id. 286.

Two earlier cases, Swaray v. Republic, 15 LLR 149 (1963) and Passawe v. Republic, 24 LLR 516 (1976), support the holding in the Stubblefield case. In those two cases, the Supreme Court held that the

inconsistency between the figure stated in the indictment as opposed to the figure supported by the evidence presented did not depart from the offense as charged. In other words, it was the opinion of this Court as final arbiter of justice in this jurisdiction that the elements of the crime of theft were proven notwithstanding the difference between the figures charged and the figures sustained by the evidence.

It is even further noteworthy that in the instant case, the appellant was indicted, tried and convicted for Armed Robbery and Gang Rape. Conviction on these charges, whether for Armed Robbery or Gang Rape, or both, imposes no property restitution on the convict. Under the circumstance, one must wonder why counsel for the appellant elected to spend a great deal of time and energy advancing the variance argument in these proceedings. We must therefore hold that given the cogent evidence presented by the State, the trial judge committed no error in denying the Motion for Judgment of Acquittal.

We should consider as worthy of note that the Appellant/Defendant Tehquah was the single witness testifying on his own behalf. He took the stand and introduced himself as a resident of Cocopah Camp 1working as security driver. In his own defense, he testified in chief as substantially quoted hereunder:

On the 9th of September A.D. 2008, I was with the transport manager when the incident occurred at Mr. Miakakay's place. I was called upon by the police detachment commander in Cocopah Camp 1 at around 8:15a.m. He and I walked in my yard ... The deputy and other officers entered my apartment and requested that I bring my flash light. I took the flash light from the table and gave it to them. They checked my room and turned the whole room outside down including the ceiling. They also came in the piazza and checked among my dishes, coal pots and my hot water bottle. When the commander went out of the room, he told me to fix my place and to join him at the police headquarters which I did When I arrived there, he later told me to be around because the CID officers were on their way from Sanniquellie to Cocopah and would like to have words from me. I agreed I was in Camp 1 until about 2:45 p.m. When the CID officers arrived, I and other friends were sitting at a shop. While taking our little gin, the CID officers came. The deputy CSO Commander said that he wanted to take statement from me. He asked me to explain where I was when the incident took place. I made him to understand that before the incident, I was at the DPO headquarters at around 10:00p.m. on the 8th , which was on Sunday. We were at the office until after 2:00a.m. Officer George Paye, whose wife usually sells palm wine, told the other officers that we should go to his house. He had the balance wine there for us to drink. After drinking the wine, those who were not on duty decided to go home. This is how we all departed I left and went home and lied down. Less than an hour we heard noise, people running around and gun fire. This is how I got up. I thought on the incident that took place on the 12th of July at the PPD (Plant Protection Department) headquarters when unknown men opened gun fire at the PPD headquarters. This is how I went to the Transport Manager's house and we stayed together until daylight This was the statement I gave the Deputy CID Commander for Nimba County. At the end of the statement, Col Joseph Saah came up to the Police headquarters at that time. Later on, the officers told me to be around until they could get ready to leave from Cocopah. When the CID got ready to leave Cocopa, they told me to get on the pick-up at around 4:15-to 4:35 a.m. on the 9th of September. That is how I got to Sanniquellie. I spent three days in detention. Wuo Gaye who was the CID Commander later asked me whether Cocopa security were using single barrel guns because they were investigating the single barrel

issue at the time. I told him that in January, 2007,UNMIL and the Liberian Government retrieved 11 single barrels from the Chief of security, Col Joseph Seah. These single barrels were taken away. After the July 12th incident at the PPD Headquarters, a skeleton unit was formed and named as PPD Task Force with the responsibility to patrol the plantation twenty- hours. I was selected as the PPD Task Force Commander. Three days thereafter, Col Joseph Saah brought three pieces of short single barrel guns. Those three single barrel pieces were used to patrol the plantation at night to be turned over after the patrol He told us to turn those single barrels back to him. It was how he requested Johnson Tokpah to conceal them. This is what I know about Cocopah security using single barrel I later referred him to the Chief of security. This is how he went to Cocopah and asked the Chief of security and Johnson Tokpah was turned over to him (the CID Commander). I stop.

It is worth noting that appellant's lone testimony, as narrated herein above, not only was uncorroborated, but it woefully failed to make even fleeting reference in denial to the damning and incriminating testimonies made against him {the appellant). Appellant said nothing in refuting the hugely incriminatory testimony the police officer deposed in effect that appellant during investigation not only had admitted to his involvement in committing the crime charged but, in addition, had actually demonstrated his involvement and led police investigators to the very cassava farm where they buried the guns believed to have been used in committing the crime.

In the face of the overwhelming evidence deposed against the appellant in this case, defense proposition to the effect that the final judgment entered by the trial judge confirming the unanimous guilty verdict was incorrect seems ludicrous. It being a settled law in this jurisdiction, the lone and uncorroborated testimony of rigorous denial by the appellant provides no legal basis for his acquittal. And we so hold.

We proceed to the next assignment of error couched in count three (3) of the bill of exceptions. We quote same as follows:

3. Your Honor committed error the way and manner you denied appellant's request on the minutes of court for continuance of only four (4) days to prepare for Defendant George Tehquah to take the stand and ordered the trial to proceed with. To which Defendant/Appellant excepts. See minutes of court. Yet you granted prosecution time to proceed with their witnesses in court.

As can be seen, appellant's argument in count three, quoted herein above, charges the trial judge of committing error when he refused to grant defense a four-day continuance. Counsel contended that the continuance was intended to prepare adequate legal defense for Appellant George Tehquah. According to the defense, by his refusal to suspend the trial for only a four day time period, the trial judge violated the rights of the appellant to fair and impartial trial guaranteed under the laws of Liberia.

We must keep in mind that on June 8, 2009, the following two count motion was filed by Attorney Samuel K. Belleh, one of counsels for defense, praying the court for a prompt trial of the case. The two count application for advancement of the case substantially states:

1. Movant maintains and says that because of sufficient legal reasons under the practice and law under this jurisdiction and to give the defendant the right to free and speedy trial during this May Term of

Court, Movant prays this Honourable Court to advance the case: Republic of Liberia, Plaintiff versus Jimmy Kemon, et al., on trial docket to afford them the opportunity to defend themselves.

2. Movant contends further and avers that this application is made in good faith so as to speed up trial of cases during this Term of Court.

The certified records indicate that the trial court granted the appellant's motion as it was clearly consistent with the appellant/defendant's constitutional right to speedy trial. Accordingly, trial commenced and proceeded until July 1, 2009, when the State rested evidence.

We desire to state here that ordinarily, the filing of a motion to advance trial of a case, as in the instance, demonstrates the moving party's preparedness to proceed forthwith. But it is interesting to note that in the case before us, immediately after the State rested evidence, defense counsel quickly spread a Motion for Judgment of Acquittal on the minutes of court. Said motion was resisted, argued and denied on the same date, July 1, 2009. Thereupon, the trial judge ordered the trial proceeded with on the next day, July 2, 2009.

Interestingly, on July 2, 2009, the scheduled date for resumption of the trial, the very defense requesting for advancement of trial, again took the stand to make an application for postponement of trial for four days. We have reproduced the said application for the benefit of this Opinion:

At this stage, counsel for defendant most respectfully begs your Honour and the court for continuance of the cause for four days period to enable the defendant to make adequate defense if he so elects to take the stand and produce witnesses in his favour in support of his PLEA OF NOT GUILTY because the defendant-principal is now on trial [but] he is not composed at this moment due to his physical condition; and as such, counsel for defendant prays this Honourable court for continuance of the cause.

Counsel for defendant further submits and says that this request is not made for the mere purpose of delay tactics and/ or to baffle justice but to promote fair play and justice as the law provides in this jurisdiction. This is why counsel for defendant most respectfully prays court to grant unto them their request to enable them to have witnesses in their favour who are not presently within the bailiwick of this court thereby counsel prays court and your Honour for continuance of the cause. The four days will end on Sunday which this court does not sit in session on Sunday but Monday. Hence, counsel prays this court to grant unto them their request and submits."

We must note here that from the date defense counsel filed the motion to advance the trial to July 2, 2009, defense already has had at its disposal a time period of twenty (20) days. This Court is tempted to ask what defense did in preparation during that period. We ask this in the light of the reasons prompting the request for the continuance. Defense counsel has given two basic reasons for the request. Firstly, counsel claimed that their witnesses were without the bailiwick of the court. The second reason counsel provided was that the appellant "[was] not composed at this moment due to his physical condition".

This Court finds it disappointing that in his submission, appellant's counsel provided no legal reason or factual circumstances to warrant the granting of postponement, the denial of which would amount to prejudice against the appellant. Where a party has made an application for the continuance of a trial, as

in the instance, for the purpose of securing the appearance of witnesses, the court properly grants same only upon showing that the party had diligently acted without success to ensure the appearance of those witnesses. Where there has been no such showing, the court is under no duty to grant postponement of the trial. It is the law in this jurisdiction that:

No postponement of a trial shall be allowed to obtain witnesses unless it is shown to the satisfaction of the court that (a) proper and due diligence has been employed to secure their attendance, and (b) their testimony will be material, relevant, and competent." proceedings to subpoena a witness." Civil Procedure Law, Rev. Code 1:21.5.

From a careful reading of counsel's conduct as well as the circumstances surrounding his request for continuance, an objective mind can draw only one conclusion: that counsel's intention was to delay and baffle the trial. The period of twenty days which counsel had already benefitted was more than reasonable and adequate. To the mind of this Court, such space of time was sufficient under the circumstances for a truly diligent defense lawyer to have effectively utilized not only in securing the appearance of witnesses but also dealing with difficulties that may have been posed by circumstances. It is disconcerting that during this reasonable space of time, from June 8, 2009 to July 2, 2009, the records are void of any showing that defense counsel ever requested the trial court to subpoena any witness/es, or to seek the assistance of the trial court in trying to resolve any difficulties, if indeed real hurdles existed, to securing the attendance of witnesses. We shall say more later on in this Opinion about what seemed to be the real purpose of the defense lawyer.

Suffice it to say that while we are in full agreement, as argued before us by the defense lawyers, that a party be accorded every opportunity to defend its legal interest, including securing the attendance of witnesses, a party is equally duty bound to take advantage of all the safeguards available within the framework of the law to secure its own legal interests. The case, Wright v. Bacon et al., 1LLR 477 (1906) decided far back in 1906, is instructive on this point. In that case, the Supreme Court held that when an application for a continuance is supported by any legal grounds, the court is under a duty to grant it. It follows conversely that where the application for postponement has been made with a view to 'baffle the suit or defeat justice', and without the applicant providing the legal grounds therefor, the court has no duty to grant it. Since the controlling legal principle permits the granting of a continuance only on legal grounds, the failure by a party to proffer legal reason(s) to support an application for a continuance would justify the trial judge's denial of the request.

In fact, the case, Serjleh v. Republic, 20 LLR 371, (1971), presents factual circumstances analogous to those at bar on the granting of continuance. In that case, the Supreme Court of Liberia perfectly agreed with the trial judge when he rejected the applicant's motion for a continuance. The facts showed that a notice of assignment, dated November 19, 1969, was duly issued and returned served on November 20, 1969, assigning hearing of the case on November 26, 1969. Notwithstanding service of the notice on the appellant for hearing almost a week later on November 26, 1969, counsel for appellant elected to apply for a subpoena to be served on a witness, a medical doctor, on November 25, 1969, one day prior to the date set for the trial, and six days after the requesting lawyer had duly received the notice of assignment. The trial judge rejected appellant's application for postponement of the scheduled hearing on account of

the witness not being present. On appeal from a final judgment of conviction, appellant, amongst others, assigned error to the judge's ruling denying his request for continuance.

This Court disagreed with the appellant's contention that the trial judge was in error for denying his bid for rescheduling the hearing. The Supreme Court observed as follows:

In the present case, it is difficult to equate due diligence with the action of appellant in the procurement of the subpoena, for he sat by and waited until approximately 24 hours prior to the commencement of the trial before setting into operation the machinery of the court for the procurement of the testimony of the material witness. This lethargy on the part of defendant does not gain favor with this Court and the [Supreme] Court cannot say that the denial of the motion constituted an abuse of discretion in the circumstances recounted" ld. 377. [Our Emphasis].

In the instant case, it was incumbent on the defense, in our considered opinion, especially after its application for advancement of trial had been granted by the trial court, to have put the machinery of the court to work. In other words, defense counsel should have, forthwith, applied for appropriate subpoenas to secure the attendance of persons it intended to call as witnesses in defense of the appellant. Such an action would seem a matter of prime importance especially in the light of the appellant being on trial for a capital offense carrying the mandatory sentence of life imprisonment. The records before us are void of any such showing on the part of the defense team.

The certified records nevertheless indicate that the trial judge subsequently modified his previous ruling and granted the appellant yet another opportunity to produce his witnesses:

In his ruling granting this special dispensation, this is what Judge Paye said:

"The defense has earlier prayed this Court for adjournment to obtain its witness. This request was highly contested by the prosecution based on legal grounds. And the Court having conceded prosecution's resistance disallowed the defense application. However, this Court says it will make a modification to the request made by the defense counsel so that the Clerk of this court can issue a writ of subpoena on the following witnesses for their appearance to give testimony for and on behalf of the defendant in the dock. They are: George Paye, asked to be identified by the Cocopa Police Commander, Marcus Nekale and the Police Commander of Cocopa namely Cornelius Walker. The defendant says that it is likely Marcus Nekale could be in Ganta or Gbarnga, being a business man. The Clerk of this Honorable Court is hereby ordered to issue writ of subpoena on each of the defendant's witnesses named to appear before this Honourable Court at the instance of the prosecution on Saturday, the 4th day of July A.D. 2009 at the precise hour of 10:00a.m. Counsels being present before this Court, it is mandatory that all be present on the date and time just mentioned for the continuation of this proceeding. AND IT IS HEREBY ORDERED. MATTER SUSPENDED.

Notwithstanding this special indulgence, defense counsel again failed to have the witnesses come to testify on his behalf, claiming that its witnesses have been tampered with and were therefore refusing to cooperate with defense counsel.

In the light of these facts and circumstances, and guided by the laws applicable thereto, the ruling by Judge Paye dismissing defense application for postponement of the trial was justified. We find defense attack on the propriety of the judge's ruling in this respect to be lazy, flimsy and baseless. It therefore need not be accorded any credence in a court of law and justice.

The last assignment of errors deserving our consideration is count six (6) in which appellant's counsel contended as follows:

6. Your Honor committed errors that defendant/appellant for any cause not due to his own fault the defendant/appellant has not received a fair and impartial trial in this proceeding [due to] the way and manner you conducted the trial See your ground of sustaining prosecution's objection to defendant/appellant's questions on the minutes of court in the entire proceedings. To which appellant excepts on the minutes of court.

As can be seen in the quoted count, appellant's counsel has clearly attacked the entire proceeding and assigned error to the manner in which the trial judge conducted the trial. According to counsel, the judge throughout the trial, improperly sustained objections interposed by State prosecutors. The judge's conduct, defense has insisted, had the net effect not only of depriving the appellant his right to fair trial but that said conduct also resulted in the appellant being unwarrantedly convicted.

This is a grave accusation. Fair trial is a fundamental right guaranteed under the Liberian Constitution. Article 20 (a) of our Constitution, in pertinent part, provides thus: "No person shall be deprived of life, liberty, security of person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with the due process of law."

Ledlow v. Republic, 2 LLR 529, 531(1925)), decided in 1925, is one classic case on this question. In that case, the Supreme Court emphasized the duty to accord every criminal defendant a fair and impartial trial as a fundamental right. This Court said: 1n all criminal cases, especially in capital cases, the [defendant] should be afforded every opportunity to establish his innocence; and when he is deprived of any right or privilege guaranteed to him by the Constitution or laws, by the subterfuge of his opponent or the action of the court, he cannot be said to have had a fair and impartial trial" Also in Quai v. Republic, the Supreme Court also held that "a judgment of conviction will be set aside where it appears that the trial was not fair and impartial'12 LLR 402 (1957)).

It can therefore be appreciated why this Court does not take lightly defense accusation that the appellant was robbed of his constitutional right to fair trial. We hasten to say that if this serious accusation was proven in the case before us, there would have been sufficient legal basis to compel a reversal of appellant's conviction.

On the face of the certified records, it appears to us that Appellant Tehquah was accorded a regular jury trial. At the trial, appellant was duly represented by counsel of his choice. In preservation of his constitutional right to speedy and impartial public trial, the trial court duly granted appellant's application for advancement of his case on the trial docket.

During trial, four State witnesses testified providing graphic accounts of what transpired. Two of the witnesses were the actual victims of the crimes of Armed Robbery and Gang Rape and testified based on their certain knowledge. The two victim witnesses told the court and jury that they recognized Appellant Tehquah as one of the perpetrators of the crimes against them. They told the court that the group, including Appellant, after taking a huge sum of money from them, each forced the wife into sex right in front of the husband as if to compel the devastated and helpless husband "to watch the show'. The investigating police officer, testifying, also told the court that Appellant Tehquah and one Jimmy Kemon were questioned after being duly informed of their Miranda rights. The appellant, according to the police officer, admitted during the probe of his involvement along with his friend Jimmy Kemon and others in the commission of this crime. Not only that appellant admitted being a part of the armed robbery and being in possession of the remaining arms, he also led the team of police officers to a farm where some arms were dug. The evidence shows that appellant had requested, in exchange for his cooperation, to be used as a State witness. It is critically important also to note here that the appellant was indeed accorded his constitutional right to confront each and all of the witnesses introduced by the State in open court.

Other than the lone testimony appellant introduced during trial, stringently denying his involvement, the damning and incriminating testimonies against him were never even slightly rebutted. At least the jury, as judges of facts, did not believe appellant's story. The jury must have been correct in the position it took as it has been consistently held by this Court that the lone and uncorroborated testimony of a criminal defendant is not enough for acquittal. This Court, in Wion, et al. v. Republic, held: When the accused in a criminal prosecution fails to explain away incriminating facts and circumstances in evidence in the trial that lay peculiarly within his knowledge, he takes the chance of reasonable inference of guilt which the jury might properly draw

from the whole evidence 30 LLR 71, 92-93 (1982). As also laid down in Paye V. Republic, 10 LLR 55, 56 (1948), is that where damning testimony has been placed on record against a criminal defendant, such will constitute prima facie evidence of fact, unless rebutted. See also: Johns v. Republic, 13 LLR 143, 151 (1958).

But it must be emphasized here once more that from our critical review of count six (6) of the assignment of errors, we have found appellant's claim that the judge acted partially throughout the trial in favour of prosecution, that the judge demonstrated partiality by sustaining only the objections raised by prosecution, to the utter prejudice of the appellant, to be nothing but wild and unguided accusation. It lacks any specificity and amounts to a fishing expedition. This Court will decline to entertain sweeping claims against a trial court, void of any clarity and specificity to the records of the proceedings, including the date and day's session of trial.

Only such references can aid this Court of last resort to ascertain the truthfulness of those claims. Defense having failed to do so, this contention is therefore not sustained.

Following careful review and meticulous inspection of the records before us, and convinced that the State did make a prima facie case conforming to the laws of the land, the unanimous guilty verdict returned by the empanelled jury as well as the judgment of conviction thereupon entered by the trial judge, ought not to be disturbed. Consistent therewith, the life sentence imposed on the appellant, George Tehquah is hereby affirmed and confirmed.

The Clerk of this Court is hereby ordered to send a mandate to the judge presiding in the court below to resume jurisdiction over the case to the effect of this judgment. AND IT IS HEREBY SO ORDERED.

Judgment Affirmed.

Counsellors James C. R. Flomo and Elijah Y. Cheapoo, Sr., Office of The Public Defense Program of Liberia, appeared for the appellant. Counsellor Betty Lamin-Blamo, Solicitor General of Liberia, appeared for the appellees.