CHARLIE GIO, KAHN KLUA, MAH WEAH, ESLIE HOLDER, and AMOS T. NAGBE, Appellants, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 8, 9, 10, 1966. Decided December 16, 1966.

1. Where Liberian statutes are silent, the common law is controlling.
2. A motion for separate trials of criminal defendants should be granted where their interests are conflicting.
3. A person charged with the commission of a crime has a constitutional right to counsel.
4. A judgment of conviction of a crime cannot be based on an involuntary confession.
5. A judgment of conviction of a crime cannot be based solely on the uncorroborated testimony of an accomplice.
6. The constitutional privilege against self-incrimination applies to extra-judicial confessions.
7. Law-enforcement agencies may not usurp judicial functions.
8. An involuntary confession is inadmissible into evidence in a criminal prosecution.
9. A trial court should instruct the jury to disregard improper inflammatory or prejudicial statements made by the prosecution in the presence of the jury.
10. One who counsels, plans, and procures the commission of a crime is guilty as an accessory before the fact.
11. A judgment of conviction of a crime as accessory before and after the fact may be based on the corroborated testimony of an accomplice.
12. Flight may be circumstantial evidence of guilt of a crime, inference thereof being a question of fact for the jury.

On appeal from judgments of conviction as principals and accessories before and after the fact on a verdict by a jury in a prosecution for murder the *judgments* were *affirmed* as to all the appellants *except* Eslie Holder, whose *conviction* was *reversed*.

Morgan, Grimes and Harmon Law Firm for appellants. *Solicitor General Nelson W. Broderick* for appellee.

MR. CHIEF JUSTICE WILSON delivered the opinion of the Court.

The grand jury of the County of Montserrado, sitting in the May 1965 term of the Circuit Court of the First Judicial Circuit, Montserrado County (Criminal Assizes), upon being duly selected, sworn, and empaneled to inquire into things and matters offensive to the public good, made presentment to the said court, and charged that Amos T. Nagbe and Eslie Holder, accessories before and after the fact, and Mah Weah, Charlie Gio, and Kahn Klua, principals, had committed the atrocious crime of murder, whereupon they were indicted for the commission of said crime. The indictment is laid in words and text as follows.

> "The grand jurors, good and lawful men and women of the County of Montserrado, Republic of Liberia, duly selected, sworn and empaneled to inquire within the said county in the name and by the authority of the Republic of Liberia, do upon their oaths present Amos T. Nagbe and Eslie Holder, accessories before and after the fact, and Mah Weah, Charlie Gio, and Kahn Klua, principals-defendants, for a felony to wit, murder, committted in the Township of Kakata, Montserrado County, Republic of Liberia, in manner and form as follows.
>
> "The aforesaid Amos T. Nagbe and Eslie Holder, accessories before and after the fact, codefendants, previous to the finding of this indictment, at divers times between the months of October 1964 and June 1965, the exact date being to the grand jurors unknown, in the Township of Kakata, County and Republic aforesaid, did, then and there, intending and contriving to wickedly promote and foster their own political avarice, greed, and ambition, and those of certain other persons to the grand jurors unknown, did assemble and conspire together, and did combine and agree to cause and procure the murder of a human being for human sacrifice (ritual killing), and to extract

certain parts therefrom with a primitive view to superstitiously win and gain their wicked motives and ambitions; and in furtherance of the said conspiracy, codefendant Amos T. Nagbe, accessory after and before the fact, did then and there, wickedly, unlawfully, wrongfully, deliberately, feloniously, and maliciously counsel, command, induce, and procure codefendant Mah Weah, principal, to kill and murder one Madam Korlu, and to cut off her head and extract certain other parts from her body and deliver them to him, the said Amos T. Nagbe for the purpose aforesaid, contrary to the statute laws of the Republic of Liberia, and against the peace and dignity of the State.

"And the grand jurors aforesaid, upon their oaths aforesaid do further present that the said Mah Weah, Charlie Gio, and Kahn Klua, principals-defendants, upon the counsel, command, inducement, and procurement of Amos T. Nagbe and Eslie Holder, accessories before and after the fact, defendants, between the night of Friday, the 4th day of June, 1965, and Saturday morning, the 5th day of June, 1965, in the said Township of Kakata, Montserrado County, Republic of Liberia, did, then and there being, not having the fear of God before their eyes, make an assault upon the body and person of the said Madam Korlu, and other wrongs to the grand jurors unknown done to her, and with certain deadly weapons to wit, namely, knives, which deadly weapons one or more of the said defendants had and held in their hands, without legal justification or excuse, wickedly, unlawfully, wilfully, and deliberately, feloniously, premeditatively, and with malice aforesaid, strike, cut, and wound the said Madam Korlu, and did cut off her throat, separating the head from the body with intent to kill and murder her the said Madam Korlu, and did extract certain parts from her body, and from which mortal wounds

the said Madam Korlu did instantly die; thereby the crime of murder the said defendants did do and commit, contrary to the statute laws of the Republic of Liberia, and against the peace and dignity of the State.

"And the grand jurors aforesaid, do, upon their oaths aforesaid, further present that the aforesaid Mah Weah, Charlie Gio, and Kahn Klua, principals-defendants, did then and there deliver the head of Madam Korlu, and other parts selected from her body to Amos T. Nagbe, accessory before and after the fact, defendant, who did, then and there receive the head of the said Madam Korlu and other parts extracted from her body for the purpose aforementioned contrary to the statute laws of the Republic of Liberia in such cases made and provided, and against the peace and dignity of the State.

"And the grand jurors aforesaid, do upon their oaths aforesaid, present that the aforesaid Amos T. Nagbe and Eslie Holder, accessories before and after the fact, and Mah Weah, Charlie Gio, and Kahn Klua, principals-defendants, at the time and place aforesaid, and in manner and form aforesaid, did wickedly, unlawfully, wilfully, deliberately, feloniously, premeditatively, and with malice aforethought do and commit the crime of murder, contrary to the form, force, and effect of the statute laws in such cases made and provided, and against the peace and dignity of the Republic of Liberia.

"All of which the Republic of Liberia, plaintiff, is ready to prove.

"Dated this 13th day of July 1965.

"Respectfully submitted:
Republic of Liberia, plaintiff,
by: ALFRED J. RAYNES,
County Attorney for Montserrado County, Republic of Liberia.

"Witnesses:
BLANYO DAVIS,
SIAWAY AFRICA,
KARNEH TEHIEN,
YOUNGA, et al.,
NBI agents.

Madam Korlu, preserved head.
Statements of accused."

At the call of this case, defendants moved the trial court for severance at trial in favor of codefendant Nagbe because of certain alleged extrajudicial confessions involving and implicating him to his prejudice alleged to have been made at a public but nonjudicial investigation, by codefendant Kahn. This application was denied, which appellants contend was error on part of the judge, submitting that under the law, as in this case, where the defenses of two codefendants clash or are antagonistic severance or separate trials should be granted as a matter of right. This application was strongly resisted by the prosecution which contended that under the law, where several defendants are jointly indicted, a motion for severance should be granted only if, upon the face of the indictment, there is no causal connections between those praying for severance and others. The prosecution relied on *Bryant* v. *Republic,* 6 L.L.R. 128 (1937).

Appellants resisted this contention of the prosecution and insisted that whilst this opinion of the Court does have general application, this case is an exception to the rule because, whilst it is true that there is a causal connection between codefendants Nagbe and Kahn Klua, their interests have clashed because of this extrajudicial investigation held. Kahn is supposed to have made a confession intending to involve him as having committed this crime.

The Solicitor General, whilst arguing before this Court, argued that there is no statute which affords to defendants jointly indicted the right of severance, and that hence it is not a right of codefendants to be granted severance but a privilege left to the discretion of the court.

Whilst conceding that there is no specific statute which affords to defendants jointly indicted the right of severance, it is permissible under the laws of Liberia to apply common-law provisions in deciding issues raised in our courts; and when our statutes are silent on any point, the common law is accepted as controlling. In compliance with this principle, Mr. Justice Tubman held in *Bryant* v. *Republic,* 6 L.L.R. 128 (1937), that:

> "When several defendants are jointly indicted, a motion for severance should be granted as of right if, upon the face of the indictment, there is no causal connection between those praying a severance and the others." *Bryant* v. *Republic,* 6 L.L.R. 128 (1937) Syllabus 9.

Further exploring this principle, we find under the same legal principle and authority, a provision that this privilege must be enjoyed as a matter of right if the interest of those seeking a severance clash with that of the other defendants. (See 53 AM. JUR. 66–67 *Trials* § § 59, 60.)

Predicated on this, it is our opinion that the trial judge erred when he denied the severance prayed for when it was clear that there was a clash of interest between codefendants Nagbe and Klua as referred to *supra.*

Stating the reasons and motives which led to this murder is the charge in the indictment that the defendants "assembled and conspired together, combined and agreed to procure the murder of a human being for human sacrifice, and to extract certain parts, the purpose being to gain and further their vicious motives and political ambitions."

The main points that are necessary and indispensable to

a fair and impartial determination of this matter and which must provide, as they have always done, a guideline in cases of this kind are: (1) establishment of the *corpus delicti*; and (2) the criminal agency.

In this we find ourselves faced with events that are alleged to have occurred prior to and since the commission of the crime and up to the time of the trial which took place at the August 1965 term of the Circuit Court of the First Judicial Circuit, Montserrado County.

The *corpus delicti,* as the record reveals, was conceded even in arguments before this Court by both sides.

We desire here to remark and express our abhorrence at this despicable disregard of human life; for, not contented with the murder of decedent, the murderers decapitated her.

There is nothing of record to show that, prior to this brutal murder, any misunderstanding, quarrel or anything that could suggest malice aforethought took place or existed between decedent and the confessed murderers. We must therefore conclude that it was a cold-blooded murder, and as far as memory can go, the first of its kind in our criminal history.

We are determined not to indulge in extreme legal technicalities, or the abridgement of basic legal and constitutional safeguards to convict or to acquit in this case involving a crime atrocious in character, primitive and barbarous in its execution.

It was on the night of the 4th of June, 1965, in the Township of Kakata, Montserrado County, that Madam Korlu was murdered and her head severed from her body. This headless body was found on the following day lying in a warehouse behind the house in which she was murdered. Upon being alerted, a team of policemen and investigating officers, headed by the deputy director of police, was dispatched to Kakata to inquire into this brutal murder. As a result of this inquiry and police probe, clues appeared to have been revealed and the following

suspects were arrested and taken into custody: Charlie Gio, Mah Weah, Kahn Klua, Amos T. Nagbe, Eslie Holder, and Blanyo Davis.

The accused were subsequently transferred to Monrovia and there imprisoned.

Predicated upon the information communicated to the Attorney General by the law-enforcement agents, consisting of their findings in this matter, the Attorney General held a public investigation at the Temple of Justice, and made record, at which, together with the investigation held by the police and NBI at Kakata, it is alleged that certain confessions were made. The confessions alleged to have been made to the police and NBI personnel at Kakata were recorded by these law-enforcement agents and were produced at the trial of this case as part of the evidence of the prosecution.

It was established, however, that these confessions were made and exacted at exclusive meetings in which only the accused and law-enforcement agents were present. The statements, after having been recorded by these law-enforcement agents, were signed by the accused.

When an opportunity was afforded them, referring to codefendants Nagbe and Holder, they and each of them denied involvement in the commission of this crime and charged brutalities, tortue, and coercion as the means by which these confessions were exacted. The police and NBI personnel who obtained these confessions from these defendants denied that they were obtained under duress or by cruel methods and insisted that they were voluntarily made.

It is unfortunate that, joining issue with the police and NBI on the making of voluntary confessions by the defendants, the opportunity for corroboration of the statements of those law enforcement agents, or those of the defendants, could not be had since a third party or parties were excluded from the closed-door investigations out of which these alleged confessions were made and

subscribed to; hence a doubt as to whether or not they were voluntarily made.

Before analyzing and arriving at a determination of this very serious matter, we would like to remark, and this to serve principally as a guideline to further inquiries by law enforcement agents for the detention and presentment of criminal suspects so as to secure a legitimate and successful prosecution of these suspects, that every restraint must be exercised in the handling of persons suspected of having committed a crime. When confessions are obtained in a manner other than the law requires or permits, such confessions must be declared and considered by a court of justice as involuntary and therefore inconclusive.

In his argument before this Court, the Honorable Solicitor General Nelson William Broderick insisted that the confessions made by the defendants to which they had subscribed were voluntary and that no torture or other forceful means were employed to exact this testimony. As against this insistence of the prosecution is the denial of the defendants that these confessions were voluntarily made. According to the record made at the trial, defendants exhibited scars and other physical signs as proof of torture and forceful measures that were employed.

There is nothing in the record to show the prosecution made any effort to disprove that these physical signs of maltreatment were caused by means other than what defendants claimed was the torture employed by the law enforcement agents.

Taking into consideration the facts and circumstances which surrounded this closed-door investigation and inquiry, we cannot get ourselves to the point of agreeing that the confessions made and recorded by these agents were voluntarily made. Consequently, there must be other circumstances that had to be produced in corroboration of these confessions and thereby establish the guilt of the defendants.

That which also gives cause to our restraint and unwillingness to conclude that these confessions were voluntary is the fact that when the public hearing was had by the Attorney General first, which was extrajudicial, defendants denied their association with and participation in the commission of the crime charged directly or indirectly; hence our conclusion that corroborating evidence, either positive, circumstantial, or presumptive, is necessary to arrive at the conclusion of guilt.

We will here remark that the police or other investigation services have the authority to apprehend suspected criminals and hold them in custody as a preliminary step to accumulating evidence to connect the accused with the crime charged; but this privilege and authority are abused when the accused is required to give testimony that could be self-incriminating; still worse if made under duress or under circumstances which can exact an involuntary confession. So that, as anxious and determined as the law enforcement agents may be in apprehending and attaching criminal agency to an individual, the object being, and this we must consider their obligation to society and the State, to convict for the crime committed, indiscretion inspired by an overassessment of authority can lead to irregularities and illegalities that can aid in escape from a just conviction, freedom, and release to a criminal worthy of sentence.

Crime detection and the apprehension of criminals fall within the authority of the police and law enforcement agencies; and in this they justly deserve the cooperation of the courts and the public for the safety of the state; and on them the protection of the life and limb of the individual primarily rests.

Except in rare cases, crimes are committed in secret and safeguards are usually taken as a prevention to detection; hence the progress of science has engendered advanced scientific methods by which crime outside of the ordinary and outmoded process may be detected, crimi-

nal agencies more easily attached, and suspects brought before the courts of justice for due process and a judicial trial. And here we must emphasize that there can be no usurpation of judicial functions by law enforcement agents.

Extrajudicial inquiry for the detection of crime is limited to probing for facts for the establishment of the *corpus delicti* and attaching criminal agencies. If, by some coincidence or spontaneous and voluntary act of anyone, be he or she detained on suspicion or not, a statement is made confessing association with, or commission of, the crime, this not only lessens the burden of the law-enforcement agents but is evidence of the highest degree to convict for the crime committed. Conversely, where methods are employed such as exacting confessions by forceful means, threats, and torture, this class of confession must be considered as involuntary and therefore inconclusive to convict.

We would like to remark just here that when a criminal suspect is taken into custody, such custody remains and is intended only for security of the person charged, to be handed over to the courts for the issuance of due process and judicial prosecution. Evidence to attach criminal liability for the crime committed cannot be demanded or sought from the detained suspect unless voluntarily given.

Closed-door inquiry for the detection of a crime cannot be denied law-enforcement agents until, within the time provided by statute, sufficient evidence has been assembled to attach criminal liability.

Exacting confessions from persons criminally charged in these closed-door inquiries when there is no freedom of choice open to the person charged affords an opportunity, sometimes unmeritoriously exerted, to claim duress and other forceful means as a circumstance by which these confessions were made when a public trial of the case is had, thereby joining issue with the law-enforcement agents whose statement of the confessions having been

made voluntarily could not judicially overweigh that of the person charged because of the absence of a third party or the public to unbalance the equation. Here the authority of the law-enforcement agent is overstepped and the rights and privileges of the individual invaded.

Because the Constitution of Liberia vests a person charged with the commission of crime the right of representation in person, by counsel, or both, the enjoyment of this option matures to the person charged immediately he or she is taken into custody; and where the service of counsel is sought it cannot be denied.

At the end of the testimony of prosecution witnesses, the written statements that were exacted from the defendants whilst they were in the custody of the law-enforcement agents and made to the exclusion of the public when offered into evidence were objected to because of the circumstances under which they were obtained; that is to say, duress and torture. The trial court overruled the objections of the defendants, to which ruling exceptions were noted.

Whilst it is true that the jurors are the sole judges of the facts, no written statement extrajudicially made where the right of confrontation is denied can be submitted to a jury as conclusive evidence against the accused unless the court explains to the jury the legal value such a written statement can have in deciding upon a verdict in a case, especially so when there are signs of forceful means that were employed in obtaining those written statements. It is a violation of a constitutional right to require one criminally charged or suspected of having committed a crime to give evidence against himself; still worse when such evidence is reproduced by a law enforcement officer and the defendant made to subscribe to it against his will.

Defendants Nagbe and Holder denied at the trial of this case before the circuit court that they voluntarily made the statements which were reproduced in a written document and signed by them. They insisted that same

were exacted from them under pressure and torture. The prosecution produced only one witness in rebuttal of this part of defendants' statement. That witness was Samuel B. Williams, one of the law-enforcement agents who were charged with having imposed these torturous measures to compel said defendants to subscribe to such documents. There being no other evidence to rebut this charge of torture, we must conclude that it was employed and that the written statements so procured must be regarded as inadmissible; therefore the trial judge erred in submitting them to the jury over the objections of appellants.

Another issue that presented itself in this case involved the following inflammatory remarks alleged to have been made by the Attorney General in his argument to the jury:

> "Counsel for defense are only interested in the two civilized defendants and not the poor native defendants. I wonder why; for they have not taken any steps whatsoever to defend these poor native defendants and are only contending for the civilized ones."

These remarks, the defendants contended, were sufficient to influence and inflame the minds of the jury. The defendants requested the trial court to instruct the jury to pay no attention to these remarks. This the trial court refused to do. The refusal was reserved as an exception and listed in Count 7 in the bill of exceptions for consideration of this court on appeal.

Resisting the grounds of exceptions taken by appellants at the trial, appellee claimed the absence of this exception from the record and contended that therefore it could not have been made a point of review by this Court. We observe, however, that there is no outright denial by the prosecution of the making of these remarks in argument to the jury.

In approving Count 7 of the bill of exceptions, the judge merely made the following notation: "Approved in so far as it is supported by the record." Leaving the re-

sponsibility and burden on this Court to search the voluminous record to determine whether any notation was made of this exception and denial of action by the trial judge who, having only an 11-count bill of exceptions before him to approve of, and his memory fresh of what transpired at the trial, preferred the evasive method of making this general notation.

In the practice of our courts, argument before a jury goes only to a *viva voce* survey of the evidence adduced at the trial and this is not recorded. It is in keeping with our practice for a lawyer or his client to call attention to inflammatory remarks that can influence the minds of the jury adversely to the interest of a party. The judge is in duty bound to exclude such remarks as being prejudicial and irrelevant, since they could not be inclusive of matters by which the jury is under oath to try and determine at the trial. If those remarks were made, we consider them to be highly improper and the judge, on his own motion even without exceptions by the parties against whom they were made, committed an error by refusing to instruct the jury to ignore them. The more so was this necessary in the instant case because recourse to the verdict reveals that, with the exception of the foreman of the jury, the entire panel were illiterate and the class of citizens referred to as "poor native defendants."

Characterizing, as we have done, these recorded confessions that were made to the law enforcement agents at Kakata in an investigation which excluded third parties and the public, to be inconclusive as evidence of guilt against the accused without corroboration by other events and circumstances, we must go into the record of the trial as well as other circumstances, if they exist, to determine whether or not defendants are guilty of the charge.

Apart from the written confessions, we have the testimony of codefendant Khan Klua who, although an active accomplice in the murder and decapitation of decedent, was discharged on a *nolle prosequi* entered by the State

and secured as a witness for the prosecution; consequently, under our law, his statement must be considered with great restraint and caution. Relevant portions thereof read as follows.

"On Friday night at Kakata, defendants Weah and Charlie Gio went to me and they told me that defendant Amos T. Nagbe had requested defendant Weah to give him a human head. I told defendant Weah that what he had told me was a dangerous thing and as such I did not want to be involved. Here then he told me that defendant Nagbe said that if we were to give him a human head, any trouble resulting therefrom would be his, defendant Nagbe's, responsibility. In addition to this, defendant Charlie Gio told me defendant Nagbe promised that if we gave him a human head, he would pay $300 for it. . . .

"When we got where Madam Korlu was, Weah told me to hold her feet, which I did, and defendant Charlie Gio held her hands. Defendant Weah then cut her throat. After Madam Korlu's throat had been cut she was beheaded. Defendant Weah took from her body a piece of lappa she was then wearing, wrapped the head in the lappa, and he and defendant Charlie Gio left and said that they were going to the BWI campus. I did not follow them; hence I do not know what they did with the head. Mr. Nagbe was the boss of defendant Weah at BWI. When the NBI agents went to Kakata, defendant Weah informed them that the head of Madam Korlu was given to defendant Nagbe. Defendant Nagbe refuted what defendant Weah had said; Nagbe said that defendant Weah and Charlie Gio were in possession of the head. During the arguments between defendants Weah and Charlie Gio, Weah and Nagbe stated that in addition to the head of the murdered woman, her eyes and tongue were extracted from her body and also given to Mr. Nagbe by them. At the soldiers' barracks, two

of the NBI agents told Mr. Nagbe that Charlie Gio and Weah had told them that he, Nagbe, had the head of Madam Korlu. Nagbe denied this and said that the head was in possession of Weah and Charlie Gio; whereupon defendant Weah requested the NBI to demand Mr. Nagbe to produce the head as it was in his possession. Weah was called and he corroborated the fact that Nagbe was in possession of the head. I told them all I knew was that I assisted in killing Madam Korlu and that codefendants Weah and Charlie Gio took the head away and subsequently informed me that it had been delivered to Mr. Nagbe. I do not know because I was not present, but I do know that they took the head away. I also told the NBI that Nagbe did not tell me to kill any human being. All I know is what was told me by Charlie Gio and Weah."

Besides the caution which the statute commands in accepting the testimony of an accomplice to a crime, especially since he confessed having actively participated in the murder of Madam Korlu, a confession of this character and nature can only affect the witness and not the other accomplice to the commission of a crime, unless such confession is corroborated by other evidence. As this Court has held:

> "Besides receiving with great caution the evidence given by an accessory, it should be corroborated both as to the circumstances of the offense and the participation of the accused. *Semble* the better practice is to charge the jury not to convict upon the uncorroborated testimony of an accomplice." *Capps* v. *Republic* 2 L.L.R. 313 (1919) Syllabus 2.

The testimony of defendant Kahn Klua, a confessed accomplice to the commission of this crime, being inconclusive to convict codefendant Nagbe unless corroborated, we will now take a further look into the minutes of the trial of this case and see if there are other connecting

circumstances that could fairly and judiciously move us to a conclusion of the participation of codefendant Nagbe in the commission of this crime.

Following on the stand as a witness for the prosecution was Blanyo Davis, the relevant portion of whose testimony relating to codefendant Nagbe being as follows.

> "After the NBI asked me what about Madam Korlu's death, they said that we got the fact that you are one of the murderers. I told them that I knew nothing about Madam Korlu's death, nor did I know her personally. They then said that Mr. Nagbe said that you know something about this woman's death. We stayed on that until about 2:30 in the morning, but still I told them that I knew nothing about it. At this time, I made a request to the NBI boys to bring Mr. Nagbe the next morning to permit me to ask him one or two questions and they agreed to that. The next morning they brought Mr. Nagbe. In the presence of all of them I said to Mr. Nagbe: 'You and I are friends and since you have put yourself in this mess, we feel sorry for you, but it seems that you want to involve innocent persons which will have more sin than what you have already committed. So now tell me, upon your commission and the three obligations that you and I took together, do you swear that I know anything about this woman's death?' His answer was: 'No.' The second was: 'What induced you to have told the NBI that you gave me a parcel containing the parts taken from the head of the woman; all this in the presence of the NBI boy?' His answer to me was: 'Man, forget about that and let us harmonize and you must cooperate with me.' I asked him: 'What do I know to harmonize? Do you mean for me to lie on myself?' He said: 'Oh man, after all they will use us as accessories before and after the fact.' At this stage I got mad enough to box him. Then the NBI told me: 'Never mind, old man, we have got the facts and

Nagbe is trying to lie on you because what he made reference to the first time, he admitted to them that he took it to his farm.' When they got behind him to go to the farm he said: 'No, it was at his farm, but he had given it to Mr. Holder. He told them that he carried it and put it under my house. When he was asked whether or not he saw any of the little boys, he said 'Yes, but the parcel was put in the cellar under my house.' The NBI told me that he was lying."

This statement of witness Davis strikes us to be of great importance and significant. It was made on oath and relates a circumstance connected with the commission of this crime, which we cannot conveniently overlook, since there is nothing of record which goes to show that it has been successfully denied and/or impeached. This must be considered, therefore, as a sequence in corroboration to the confessions made to the law-enforcement agents at Kakata, which confessions, though not declared by us as conclusive to convict, must, however, lay a premise by which a corroboration could make it sufficient to convict if the corroborating circumstances are convincing.

The indictment charges conspiracy and in an effort to prove this, Blanyo Davis was called to the stand. He testified as follows.

"On the 16th day of June, 1965, I was arrested by the NBI and taken to Kakata where the NBI had their temporary investigation at the Town Hall. When they got there, they asked me if any meeting was held at my home, and what sort of meeting. I told them: 'Yes, we had a meeting, but this meeting was only in the interest of the township. After our township election in October, Mr. Holder, Mr. Nagbe, and myself would like to formulate plans for the development of the township, which meeting was held at my place because I was the leader of Mr. Holder's campaign in the election. Being that my

foot is broken, I cannot walk in town, they generally walk to my place for meeting.' "

On the cross-examination the following question was asked witness Davis.

"Q. In your statement in chief, you made reference to a meeting convening at your house in Kakata. Say whether or not at these meetings any discussion, understanding, plot, or conspiracy was formed to kill and murder anybody and take away his or her head and parts of the body for any purpose whatsoever.

"A. I have told you that the meetings were to make plans for the development of our township. There were no other plans pertaining to killing or otherwise."

These statements and answers of the prosecution's star witness Davis, fail to indicate any meetings held or known to have been held to formulate plans and thereby conspire to murder. But the atrocious murder was committed as confessed to by the three perpetrators of this crime, namely Kahn Klua, Weah, and Charlie Gio. There must have been some background or motive which inspired the brutal murder and beheading of Madam Korlu. In keeping with the testimony made and recorded by a medical doctor at the time when the head of the decedent was taken to the hospital for examination, it was discovered that certain parts had been extracted. This brings us to the conclusion that the killing was purposely planned and designed for a purpose which, although not clearly established, leaves no doubt that these parts were intended to be used for ritualistic purposes and that it could not have been the original planning and design of the perpetrators of this murder, there being nothing to show that they did it spontaneously and for an expressed purpose.

We therefore cannot, in the face of these incriminating

circumstances testified to by the police officers, and especially by witness Blanyo Davis, conclude that codefendant Nagbe is innocent of the charges made against him, he having engineered, counseled, and advised the perpetration of this heinous crime.

We also observed in the record three signed statements of confessions subscribed to by codefendant Nagbe whilst in the custody of the law-enforcement agents in Kakata. Each is different in some respect, but all go to show what part he played in securing the services of the three men who murdered Madam Korlu. Some of these statements harmonize with the testimony of witness Kahn Klua, a party in the commission of the crime. Although made under circumstances which render these statements inconclusive to convict without corroboration, especially the testimony of witness Blanyo Davis, the statements buttress our conviction of the involvement of codefendant Nagbe in the commission of this crime.

Codefendant Eslie Holder also subscribed to a written confession that was made to the police and NBI in their closed-door investigations. Denying any knowledge of the crime committed, he stated that he had been approached by former Vice-President C. L. Simpson in Monrovia as to the latter's desire and anxiety to run for the Presidency and that he told former Vice-President Simpson that the people were not yet tired of President Tubman and asked why he was still ambitious for the Presidency. Codefendant Holder testified further that former Vice-President Simpson told him that he wanted certain parts from a human being, which information he is said to have conveyed to Kakata to Mr. Nagbe, the business manager of BWI, and Mr. Blanyo Davis, the supply officer of BWI, in a meeting wherein Mr. Nagbe readily agreed and promised to get the parts needed, which he said would be his job. The witness concluded by stating that he had no idea of killing, nor did he take any parts down to Mr. Simpson in Monrovia. This

statement was made and subscribed to whilst in custody of the police and the NBI in their closed-door meeting. When free from the custody of these law-enforcement agents and exposed to a public judicial trial, Holder testified that his written statement was contrived and mechanically prepared by the police who forced him to sign it; however, he categorically denied all of the admissions that this written statement contained.

As we have previously mentioned in this opinion, testimony obtained under the circumstances complained of must be considered as inconclusive unless corroborated, as we declared in the case of codefendant Nagbe. The only circumstances which could have possibly led us to the conclusion reached by us in the case of codefendant Nagbe was the testimony of witness Blanyo Davis, which exonerated rather than implicated codefendant Holder.

The prosecution stressed and strongly argued before this Court that codefendant Holder took flight from Kakata after being warned of his pending arrest. This, if true, carries a very strong presumption of guilt as this Court has held in the following cases cited by the prosecution:

> "Where a crime has been committed flight is *in itself* an offense against the law and carries with it strong presumption of guilt." *Paye* v. *Republic,* 10 L.L.R. 55 (1948) Syllabus 2.
>
> "Flight is in itself an offence against the law and carries with it a great presumption of guilt; it will subject a party to forfeiture even where the accusation which produced it is not proven and the party not condemned." *Freeman* v. *Republic,* 1 L.L.R. 306 (1897) Syllabus 2.

Other citations similar in effect were presented to this Court in definition of flight under criminal circumstances.

In the testimony of defendant Holder on his own behalf, he denied having escaped from Kakata to avoid arrest. He testified that, hearing of his pending arrest and

not knowing for what purpose, he came to Monrovia to inquire from Director of Police E. Harding Smythe, why he was being sought for to be arrested, and thereafter immediately returned to Kakata where he was arrested. The prosecution stressed that he had denied leaving Kakata, and contended that his statement that he came to Monrovia did not harmonize with the one previously made that he never left Kakata. However, we must take under review the circumstances surrounding and relating to the visit to Monrovia of codefendant Holder at this time and determine by reasonable deduction whether or not this constitutes flight in contemplation of the law.

Simplifying on this point, and in an effort to make a logical deduction on the reason which led to Mr. Holder to come to Monrovia, we must refer to the answer made by Director of Police E. Harding Smythe when the following question was put to him, and his answer made, to wit:

"Q. As a witness for the prosecution, is it your intention to have this court and jury understand that after the night of June 4, 1965, Mr. Holder absconded from Kakata to avoid being arrested on the charge of complicity of participating in the murder of Madam Korlu?

"A. I have never said nor told anyone as such."

In his general statement, however, the prosecution propounded the following question to him:

"Q. Whilst Mr. Holder was on the stand testifying, he said in anwser to a question on the cross-examination that between the time that Madam Korlu was killed and buried and the time that he was arrested in connection with the crime, he had remained in Kakata continuously. You have been called as a rebutting witness to testify to whether or not within this period Mr. Holder talked with you in Monrovia. If he did, please tell this court and jury what transpired.

"A. It was on, I think, the 17th of June, it was during the nighttime early hours, when my friend Mr. Holder went to my house and told me that he had heard that they were going to lock him up in jail in connection with Madam Korlu. He then asked my advice as a friend; and I told him that I would suggest that since he and the Vice-President were grown males and the Vice-President was in town, he should go to him and tell him his story, and hear what he had to say. Mr. Holder then left my house and went away. That is all."

Assessing the probative value of these two answers of the rebutting witness of the prosecution and comparing them with the charge of flight, it makes a paradox of great proportions that one suspected of being arrested for a crime by the agents of the National Police Force and the National Bureau of Investigation would take flight to avoid arrest by the head of the service seeking his arrest.

We cannot, therefore, get ourselves to the point of understanding what was intended by the production of the Director of Police to prove that codefendant Holder went to his home to escape from the police and avoid an arrest; however, this point has been successfully cleared up in favor of codefendant Holder by the testimony of Director of Police Smythe that he did not tell anybody that Holder had absconded from Kakata to avoid being arrested of the charge of having participated in the murder of Madam Korlu. It was because of this declaration by Director of Police Smythe, which did not fulfill the purpose for which he was brought to the stand as a rebutting witness, and because it operated against the prosecution, that the Solicitor General, in his argument before this Court, waived the point of flight which was recited and strongly raised in appellee's brief.

In the absence of any other circumstances recorded at

the trial which could fairly and impartially involve codefendant Holder as an accessory before and after the fact in the commission of this crime, we must decide and conclude upon his innocence of the charge.

It does not seem necessary for us to reproduce all of the statements that were made at the trial of this case. Besides the written confessions which were obtained under circumstances that make them inconclusive to convict unless corroborated, we must rely in our determination upon the unimpeached testimony of witness Blanyo Davis and the confession of witness Kahn Klua, made at the trial in the presence of two of his accomplices to the commission of the crime, Weah and Charlie Gio, who made no effort to take the stand and deny their involvement and participation in this murder and beheading of Madam Korlu. We must, therefore, conclude upon their guilt, as also that of codefendant Nagbe. Hence the verdict of the jury and the judgment confirming it as they relate to them must be, and the same are, hereby affirmed.

For the want of sufficient evidence to convict codefendant Eslie Holder, the verdict of the jury and the judgment confirming it must be, and the same are, hereby reversed, and he is so ordered discharged without day. And it is hereby so ordered.

Judgments affirmed and reversed as indicated.