

ANDREW QUEZON, Appellant, v. REPUBLIC OF
LIBERIA, Appellee.

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

Argued April 16, 1974. Decided May 3, 1974.

1. When a defendant has been poorly represented in a criminal case by counsel he retained, the inadequacy of such counsel does not in itself justify a reversal of the judgment on appeal.
2. In a criminal case, especially when the crime is a capital offense, an indigent defendant must have assigned to him by the trial court the most competent counsel available.
3. It is reversible error for a judgment to be rendered by a trial court prior to the expiration of the time required of the trial judge by statute to withhold judgment.
4. The jury is the sole trier of the facts, for although the judge rules on the admissibility of evidence, it is the jury which determines the weight and credibility of the evidence.

The appellant was tried for murder and convicted after trial. The court imposed a death sentence in the judgment rendered. An appeal was taken to the Supreme Court.

A contention was raised in the appeal that appellant had been poorly represented in the trial court. The Court pointed out that appellant had retained his own counsel in the lower court. However, the opinion emphasized that in criminal cases, and especially those constituting a capital offense, where the defendant is indigent and cannot retain his own counsel, the trial court must assign the most competent counsel available to the defendant.

In the instant case the Court deemed the charge to the jury to be prejudicial to the defendant and also found that the court had rendered judgment prematurely. The judgment consequently with the agreement thereto of the Solicitor General, which the Court highly commended, was *reversed* and the case *remanded* for a new trial.

Frank Smith for appellant. *Solicitor General Barnes* for appellee.

MR. JUSTICE HENRIES delivered the opinion of the Court.

The appellant is alleged to have stabbed Dennis Gbaingan with a dagger. The injured man was taken to the LAMCO Hospital in Yekepa, Nimba County, where he died, allegedly as a result of the wounds inflicted. The appellant was indicted for murder at the November 1971 Term of the Eighth Judicial Circuit Court, Nimba County and the case was called for trial at the May 1972 Term of the said court, with Judge Frederick K. Tulay, presiding. The case was tried and the jury returned a verdict of guilty against the appellant. Judgment confirming the verdict was rendered by the court, and the appellant was sentenced to death by hanging. The appellant took exceptions and appealed to this Court.

When this case was argued before us, appellant's counsel stressed that the appellant did not receive a fair and impartial trial because he was poorly represented in the lower court. It must be borne in mind that appellant retained his own counsel. While we might agree that the case could have been handled more skillfully, yet we do not agree that that fact in itself is sufficient to make the trial unfair and thus warrant a reversal. The appellant relied on *Quai v. Republic*, 12 LLR 402 (1957). In that case, the court assigned counsel to represent the defendant. When that case was appealed, this Court held that in trials conducted *in forma pauperis* trial courts should assign the most competent available counsel, particularly in cases involving a capital offense in order to insure a fair and impartial trial. We reaffirm this position, but limit it to criminal cases, particularly those involving capital offenses. It is inapplicable where the appellant is not indigent and retains counsel.

The bill of exceptions, which is poorly drawn, contains six counts, but we find only two that merit our attention.

(1) That the judge erred in his charge to the jury when, in effect, he directed a verdict be returned against the appellant.

(2) That he erred when he rendered final judgment three days after the verdict was returned.

With respect to the last issue, the appellant cited our Criminal Procedure Law.

"If the defendant is acquitted, judgment shall be rendered immediately. If the defendant is convicted, judgment shall be rendered and sentence pronounced without unreasonable delay, and after the receipt of a presentence report if such report is requested by the court. In no case, unless the defendant expressly waives his right to move in arrest of judgment or for a new trial, shall judgment be rendered or sentence pronounced before the expiration of five days after a verdict or finding of guilty, and after overruling of any motion in arrest of judgment or for a new trial."

Rev. Code 2:23.2.

It is clear that the judgment rendered three days after a verdict of guilt was in violation of this section.

The reason for requiring five days after a verdict before rendering judgment is apparent when one looks at the sections of the Criminal Procedure Law governing post-trial motions. A motion for a new trial shall be made within four days after a verdict. Rev. Code 2:22.1(3). A motion in arrest of judgment shall be made within five days after a verdict of guilty. *Id.*, 2:22.2. A defendant can take advantage of these sections only if he has the opportunity to do so within the time allotted by them. This Court, speaking through Mr. Justice Pierre, now Chief Justice, in *Republic v. Weafuah*, 16 LLR 122 (1964), held that it is unwise, if not irregular, for a judge to render judgment immediately after ruling in denial of a motion for a new trial without al-

lowing some time, no matter how short, for the defendant to assert his right to file in arrest of judgment. When that case was decided, our statutes provided for the filing of a motion in arrest of judgment, but did not provide for the time within which to file the motion. Now there is a statutory time within which to file such a motion, and it was error on the part of the trial judge to render judgment before the allowed time had expired. The defendant might elect to file only a motion for a new trial or he might choose to file both motions, assuming the grounds exist, since the filing of one does not necessarily preclude the other. But whether he chooses to file one or both or none of the motions referred to he must be given the time required by law to exercise his right to make these post-trial motions, which imposes upon the judge the duty not to render judgment before the expiration of the time required by statute.

As for the judge's charge to the jury, we find that the judge said, among other things:

"In so far as the law is concerned, it is the opinion of this court that the prosecution has made a prima facie case and that the defendant has woefully failed to make a proper defense; that he did it in a heat of passion or that he did it because decedent was the aggressor. He simply tells you that he did not touch the person of the decedent at all. A very weak defense indeed."

Without any hesitation we must hold that this statement was manifestly prejudicial to the defendant, for it tended to mislead the jury which is the sole trier of the facts. The judge is concerned with the admissibility of evidence, but it is the jury which must determine the weight and credibility of the evidence. See *Bing v. Republic*, 18 LLR 377 (1968); *Simpson v. Republic*, 3 LLR 300 (1932); *Jones v. Republic*, 13 LLR 623 (1960). It was, therefore, reversible error for the judge to give such instructions to the jury. We must here commend Solicitor

General Barnes who conceded that error had been committed and joined with counsel for appellant in requesting that this case be remanded.

In view of the foregoing, the judgment of the lower court is hereby reversed and the case is remanded for a new trial. It is so ordered.

Reversed and remanded.