

BENNY SAMPSON and VICTOR JOHNSON, Appellants, v. REPUBLIC OF LIBERIA, Appellee.

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

Argued January 29, 1952. Decided March 7, 1952.

1. An indictment must allege with precision and certainty every material fact constituting the offense charged.
2. Where an indictment for arson does not charge the accused with the death of a person as a result of the crime, a conviction thereof and sentence based on the death is illegal.
3. A bill of exceptions must state distinctly the ground upon which the exception is taken.

On appeal from conviction of arson, *judgment reversed and case remanded.*

Richard A. Henries for appellants. *The County Attorney* for Montserrado County for appellee.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

Appellants with others were tenants in a house, known commonly as Pratt's house, in the Commonwealth of Monrovia. The house was under the control of Miss Susanna Williams.

From the records of the case forwarded us by the clerk of the trial court and certified as correct, we are informed that, on the night of December 10, 1948, the house was completely destroyed by fire, some of the residents losing practically everything.

Appellants and Peter Doe Allison were suspected of intentionally setting fire to the house, and were duly arrested and placed on trial for arson.

The following is the grand jury presentment:

"The Grand Jurors for the County of Montserrado and Republic of Liberia, upon their oath do present: that Benny Sampson, Victor Johnson and Peter Doe Allison, defendants of the City of Monrovia, County of Montserrado and Republic, heretofore to wit:

"That on the 10th day of December, in the year of Our Lord Nineteen Hundred Forty-Eight, in the Commonwealth District, City of Monrovia, Montserrado County and Republic of Liberia, Benny Sampson, Victor Johnson and Peter Doe Allison, defendants aforesaid, then and there unlawfully, wilfully, wrongfully, maliciously, intentionally and feloniously did set fire to and burn down the home of Caroline Pratt of the City of Monrovia, County and Republic aforesaid; then and thereby committing the crime of arson; contrary to the form, force and effect of the Statute Laws of Liberia in such cases made and provided and against the peace and dignity of this Republic.

"And so the Grand Jurors aforesaid, upon their oath aforesaid do say, that Benny Sampson, Victor Johnson, and Peter Doe Allison, defendants aforesaid, at the time and place aforesaid, and in the manner and form aforesaid, the crime of arson did do and commit; contrary to the form, force and effect of the Statute Laws of Liberia in such cases made and provided, and against the peace and dignity of this Republic."

Defendant Allison was acquitted by the jury. The other two defendants, now appellants, have appealed to this Court for a review of their conviction.

During the burning of the house two little girls, wards of Miss Williams, were burned to death. The indictment preferred against defendants, now appellants, was silent as to the death of these two children in the fire. Hence appellants were not given the notice required by the law as to what the state intended to prove against them. Nevertheless the trial judge rendered the following judgment:

"Section 65, paragraph 3 of the Criminal Code of Liberia, under the crime of arson, provides that 'anyone convicted of the offence shall be imprisoned for a term not exceeding ten years. Where death results from arson, the offender shall suffer death by hanging.'

"At the call of this case, three defendants, namely Benny Sampson, Victor Johnson and Peter Doe Allison, were brought before this court charged with the crime of arson, and having thereupon pleaded not guilty, and having been thereupon duly tried by a jury, one of said defendants, by name of Peter Doe Allison, was, by verdict of said jury acquitted; and the other two defendants namely: Benny Sampson and Victor Johnson were, by verdict of said jury, convicted on the 9th day of December, 1949.

"It is therefore adjudged:

"That the above named two defendants, namely Benny Sampson and Victor Johnson be imprisoned in the common jail of this County until the 20th day of January, 1950, and on said day between the hours of 6 A.M. and 6 P.M. be then and at such time in the usual place of execution hanged by the neck until they are dead. And may God have mercy on their souls. Let a warrant be issued accordingly."

Although the Criminal Code provides that, in case of death, the penalty for arson shall be hanging, nevertheless the accused must be notified and charged in the indictment with the death of person or persons as a result of the crime, before a court can legally impose the death penalty.

"The accused is entitled to a plain statement of the charge against him, and such charge must be positive, and not by the way of recital, and must be more than a mere statement of a legal conclusion. The indictment or information must allege every material fact going to constitute the offense charged with precision and certainty, and cannot be aided by intendment.

The charge must be stated with as much certainty as the circumstances of the case will permit, and so that the court can see, admitting the facts to be stated, that the criminal offense has been committed and that the court has jurisdiction. . . . The defendant must be able to ascertain from the charge itself what he is called upon to answer, and the offense must be so defined and identified that the accused, if convicted or acquitted, will be able to defend himself in case he be indicted again for the same offense by pleading the record of such former conviction or acquittal. The same, or substantially the same, certainty is required in criminal as in civil pleadings, and must be such as clearly to designate not only the particular kind of offense, but the specific criminal act for which the accused is to answer." 14 R.C.L. 173-74, *Indictments and Informations*, § 23.

Under the circumstances herein, to impose the death sentence upon appellants is unfair, unjust, and illegal. This Court will not be a party thereto.

As we have noticed in several other bills of exceptions recently, there is a tendency herein on the part of counsel and of the trial judge to shift responsibility to this Court. Hence we again point out that, not only is counsel required to set forth distinctly in the bill of exceptions the ground upon which an exception is taken, but the trial judge may not properly approve a bill of exceptions by stating: "Approved so far as is supported by the records." It is improper to place upon this Court the burden of searching the records in order to discover the exceptions taken and the grounds therefor. In *Foster v. Republic*, 2 L.L.R. 405 (1922), involving grand larceny, it was pointed out that this Court will not consider any exception in a bill of exceptions when the ground is not distinctly set forth.

We reverse the judgment herein and remand the case for a new trial. And since defendants, now appellants,

have been confined in jail since 1949, this case is to have precedence over all other criminal cases at the first session of the Circuit Court of the First Judicial Circuit immediately after the receipt of the mandate from this Court; and appellants are to be admitted to bail if they so desire. And it is hereby so ordered.

Reversed.