FRANK BERRY, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Decided February 3, 1928.

1. The uncorroborated testimony of the prosecutrix is not sufficient to support conviction on a charge of rape.
2. Sufficient legal evidence alone enables the court to pronounce with legal certainty on the matter in justice.
3. A party may waive his right to move for a new trial without losing his right to move in an arrest of judgment.
4. To allow any member of a jury empanelled in a criminal case to leave the panel, go at large, or be engaged in things unbecoming a juror, is an irregularity and violation of the positive law of the land, which strictly enjoins that they be kept together; and if left unnoticed may lead to the most direful infringement of the rights and liberties of litigants. Such an irregularity when brought to the notice of the court should have its careful and strictest attention.

Appellant, defendant below, was convicted of rape. On appeal to this Court upon a bill of exceptions, *reversed*.

Counsellor D. A. B. Worrell for appellant. *The Solicitor General* and *E. A. Morgan* for appellee.

MR. JUSTICE PAGE delivered the opinion of the Court.

This is an appeal case originally tried and determined at the May term of the Circuit Court, Grand Bassa County, 1926, and brought up to this Court upon a bill of exceptions taken to the verdict, several rulings and final judgment of the court below.

After a careful consideration of the same, this Court has arrived at a conclusion founded upon principles of law and justice.

The first exception to claim our attention is to the verdict of the petit jury rendered against the defendant,

now appellant, not being supported by evidence. We are of the opinion that this exception is well taken, as will appear by inspection of the records. No evidence was given at the trial against prisoner save the uncorroborated testimony of the prosecutrix and on inspection we find this evidence to be contradictory and evasive. Aramitha Taylor, the grandmother of Ida, the prosecutrix, one of the witnesses, in answer to the question: "Miss Witness, state for the benefit of the court and jury all you know of the commission of the offense," said, "I sent a complaint while I was in the heat of passion to the grand jury against prisoner but afterwards wrote the County Attorney that the report about Ida, the prosecutrix, and the prisoner was false and that he should throw the case out of court as the child Ida had never told me that prisoner raped her nor did she call his name; it was outside influence and information that caused me to make the complaint against prisoner." This witness on cross-examination said also, "I saw blood on her clothes and on inquiring of her she said she went for wood and cut herself with a cutlass."

Witnesses Florence Dean and Mary Philips testified to only what was told them by prosecutrix—that prisoner had raped her, but this was after telling her grandmother that she was hurt by a cutlass while cutting wood. The circumstances surrounding the testimony of prosecutrix are not sufficient to warrant a conviction against prisoner, nor is there to be found in the records of the case a positive, direct and public accusation against prisoner by the prosecutrix to enable the court to pronounce with certainty concerning the matter in dispute.

Appellant in his seventh exception says that the court below overruled his motion in arrest of judgment without giving him the chance to prove the facts as set forth in counts one, two and three of his said motion, which we say in fairness to justice, the court should not have done. A party may waive his right to move for a new trial without losing his right to move in arrest of judgment, *Brown*

v. *Grant,* 1 L.L.R. 87 (1876). This Court says the court below ought to have given the motion of the prisoner, now appellant, a hearing whether it was entertained or not; and this should have been done upon the principle that we should hear before we condemn, and we further say that this motion should have had the careful consideration of the court for reasons because counts one, two and three set up that on the second day of the trial after jury had been empanelled, Juryman Joseph A. Mason separated himself from the panel and did remain away for a long period of time, about thirty minutes, which delayed the trial; and that Juryman Thomas J. Haynes, after the case had been submitted, separated himself at night from the panel and conversed with outsiders who were not the officers sworn to attend the jury; and that Juryman U. S. Johnson separated himself and held communication with one Charlot Early. This motion being supported by affidavit (see motion), it is difficult for this Court to understand upon what principle of reason or justice the court below could have acted to dismiss the motion without hearing, and allow the irregularity and misconduct of the jury as expressed to obtain.

Where a juror separates himself from the panel and holds communication with one outside, it is an irregularity which is good ground for a new trial, and where this is refused and judgment is rendered on said verdict, it will be ground for reversal of said judgment, for it is an admitted fact that a verdict of a questionable character will cause irregularities and suspicion in the proceedings and a suspicious verdict is one that needs legal help in itself. *Williams* v. *R. Lewis & Co.,* 1 L.L.R. 229 (1890). It is an evil and should not be tolerated by any court of judicature and should be watched and guarded against with jealous circumspection as it carries with it a tendency to pollute and adulterate that justice secured to litigants by the Constitution; hence this Court looks with great disfavor upon same.

This Court therefore adjudges that the said verdict of the jury be set aside and that the judgment of the court below be and the same is hereby reversed, and that the Clerk of this Court is hereby ordered to transmit under seal of this Court a mandate to the court below to the effect of this judgment; and it is so ordered.

Reversed.