

CASES ADJUDGED  
IN THE  
SUPREME COURT OF THE  
REPUBLIC OF LIBERIA  
AT  
NOVEMBER TERM, 1928.

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JOSEPH FABER, Appellant, v. REPUBLIC OF  
LIBERIA, Appellee.

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

Decided January 7, 1929.

1. The uncorroborated testimony of the prosecutrix shall not be deemed sufficient in law to support a charge of rape.
2. It is indispensable that the records in an appeal contain evidence submitted at the trial in the court below; as the appellate court will not entertain a case legally deficient in its records.
3. Where evidence is offered at a trial it should form a part of the records, even though it be not admitted as evidence, in order that the appellate court may ascertain whether it is sufficient evidence to convict.

Appellant was convicted of rape by the Circuit Court of the Second Judicial Circuit. On appeal to this Court, *judgment reversed.*

*H. L. Harmon* for appellant. The *Attorney General* and *Solicitor General* for appellee.

MR. JUSTICE PAGE delivered the opinion of the Court.

This case was tried and determined in the Circuit Court of the Second Judicial Circuit, Grand Bassa

County, at its May term, 1928, His Honor James H. Dent presiding.

The defendant in the court below, now appellant, being dissatisfied with the several rulings, verdict and final judgment of the court below, brings up to this Court upon a bill of exceptions this case for review and final disposition.

Before advancing in the review of the case, it may be well for this Court to consider the nature and the gross irregularity of the trial court as gathered from the records and bill of exceptions, the desire of this Court being to do justice between the parties. It will notice only those questions important to the decision of the case a solution of which can but force the Court to the conclusion it has come to.

At the said May term, Joseph Faber, defendant in the court below, now appellant, was indicted by the grand jury for the crime of rape committed on one Maud Harmon.

On June 1st at the sitting of the said May term the defendant was put on trial and being duly arraigned pled "Not guilty" to the indictment; a jury was regularly empanelled when the trial began. The prosecutrix was called to the stand and being duly qualified, deposed and thereafter was discharged by the court.

The records show that at this stage of the case the court ordered that no record or deposition of the statement of any of the witnesses be taken or recorded.

The records show further that Henry Harmon, the father of Maud the prosecutrix, and several other witnesses were called and deposed without their testimonies being recorded as by order of the judge.

The evidence being rested the court allowed ten minutes to counsel of both sides to submit their arguments, after which the jury retired under instructions of the court and returned a verdict of guilt against the prisoner

now appellant, to which verdict and final judgment exceptions were taken on the following ground:

- (a) Because said verdict is manifestly against the evidence or not predicated upon the evidence of the trial. See Bill of Exceptions.

The trial court having made it *ultra posse non potest esse*, it is difficult for this court to decide whether or not the verdict of the jury is supported by the evidence submitted. The only evidence before this Court is the uncorroborated testimony of the prosecutrix which taken alone shall not be deemed sufficient to support a charge of rape. Criminal Code of Liberia 13, § 62.

The Supreme Court takes cognizance of matters of record, only upon the face of certified copies of the proceedings in the lower court transmitted through the proper channel. *Hulsmann v. Johnson*, 2 L.L.R. 20.

It is indispensable that the records in an appeal case contain the evidence submitted in the court below as the court will not entertain a case legally deficient in its records. The testimony of deposing witnesses not being recorded and sent to this Court in the record, is fatal to the support of the verdict and judgment of the court below against the prisoner, defendant, now appellant, before this Court.

It is a fundamental rule both in pleading and practice that it is the evidence which supports the allegation or averments in both law and equity proceedings. This Court has said and will ever say that in pleadings, allegations are intended to set forth in a clear and logical manner the points constituting the offense complained of, and if not supported by evidence can in no wise amount to proof; for evidence alone enables the court to pronounce with certainty concerning the matter in dispute. We will here also remark that courts are classified into courts of record and courts not of record, but this classification at the present time is of little, if any, practical utility,

for the reason that there is no court which is classed among courts that is not obliged to keep a record of its proceedings; and the record of any court, whether of general or special jurisdiction, imports a verity.

A written record is essential to a valid judgment or decree or, in other words, to due process. No right can be based upon judicial action not evidenced by record.

It is most difficult for this Court to understand why the presiding judge would give such an order eliminating from the records the statements of witnesses duly qualified to testify in the case on records which would have enabled this Court to pass upon and decide whether or not the verdict of the jury is predicated upon that quality of evidence at the trial to convict the said defendant, now appellant, of the charge in the indictment for rape. This unwarranted act of the trial judge is not only prejudicial to the rights and interests of the appellant, but also to the appellee who has to carry the entire burden of expenses of the trial with injustice to all concerned to no purpose.

If the verdict is not founded upon legal evidence, it cannot be upheld; and if the verdict is not supported by evidence the judgment is therefore also not founded on a legal verdict; and if the judgment is founded on an illegal verdict, the entire proceedings then must naturally tumble; because where evidence is given at a trial it should form a part of the record even though it be not admitted, in order that the appellate court upon an appeal may ascertain whether it is sufficient legal evidence to convict.

This Court therefore for want of evidence is compelled to reverse the judgment of the court below and same be made null and void. And this the Court so adjudges.

And the Clerk of this Court is hereby directed to notify in due form the said court as to the effect of this judgment.

*Reversed.*