

KAMARAH, Appellant, v. REPUBLIC OF  
LIBERIA, Appellee.

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

Decided May 15, 1930.

1. A person charged with murder resulting from the rape of a girl of tender years may be convicted on positive and circumstantial evidence.
2. Confession of a crime by an accused is admissible evidence and may be used against him in a prosecution of murder when properly corroborated.

Defendant was convicted of murder in the Circuit Court, and motion for a new trial and for arrest of judgment denied. On appeal to this Court, *affirmed*.

*A. B. Ricks* for appellant. *Edward Summerville, Solicitor General*, for appellee.

MR. JUSTICE GRIGSBY delivered the opinion of the Court.

This case comes before this Court, on a regular bill of exceptions taken to the several rulings, opinions, decisions, and the verdict and final judgment rendered against defendant in the above entitled cause in the Circuit Court of the First Judicial Circuit, Montserrado County, sitting in its law division, November term, 1929. It appears from the records that the accused was indicted and tried for one of the gravest crimes which can be committed by mortal man, and when arraigned for trial, he pled "not guilty"; thereupon a jury was empanelled to try the issue joined. The indictment having been read and the plea of the defendant made known to them, the prosecution then outlined the case by instructing them as to the nature and effect of the law controlling cases of homicide, and introduced witnesses to the stand, namely M. D. Crusoe and Thomas Wright. Summing up the statements briefly,

it appears that two very young girls named Kehemnu and Kpana during the year 1929 left their respective homes in the town of Marnvordor, went to Belle-Yellah, in the Liberian hinterland district No. 1, carrying goods and wares to sell in the market situated in the said district and on their return the following day they were accosted by one Kamarah, the defendnt and appellant in this case, who feloniously and violently caught these girls, tied Kpana, and forceably had sexual intercourse with the other, by the name of Kehemnu. During this diabolical act the girl Kehemnu being of very tender age—about eleven to twelve years—was violently seized with convulsion and started foaming at the mouth. The other girl whom the appellant had tied seeing this horrible sight, broke loose, ran to town and gave the information to several persons whom she met. The accused, meanwhile, became alarmed at the strange actions of the object of his passion, carried her down to a creek and poured some water over her face with the hope of reviving her; but not being successful in restoring her to normal condition, there is a strong presumption that he threw the body in the creek and ran back to town. This matter was also reported to the station master, who then ordered the soldiers of the Liberian Frontier Force garrisoned in the district to arrest prisoner, now appellant. After a coroner's jury was held and reported that decedent had been violently ravished, prisoner thereafter made a voluntary confession of his guilt and he was dispatched to Monrovia to abide his trial. The defense introduced the defendant to testify as witness to the effect that he never admitted to anyone that he committed murder, and submitted. After the usual preliminaries, the jury retired to their room and returned a verdict of guilt. At this stage of the case defense tendered a motion for a new trial on two main points namely:

1. Because defendant says the verdict of the jury is contrary to law and evidence controlling cases of

homicide, in that there is no corroboration in the statement of witnesses Crusoe and Wright, the only two witnesses produced on the trial of the case by prosecution.

2. And also because defendant says that witness Kpana, the little girl who it is said was with decedent at the time of the alleged rape by prisoner, was not produced at the trial, she being the best evidence that the case admits of.

The said motion being overruled as well as a subsequent one in arrest of judgment, defense comes before this Judicature by a regular bill of exceptions setting up the grounds of dissatisfaction. As a matter of course courts of justice are opened daily to parties feeling themselves aggrieved to seek the ends of justice, which rights can never be denied, without an infringement on the Constitution which declares all men to be born equally free and independent and possess certain natural, inherent and inalienable rights among which are the rights of enjoying and defending life and liberty, acquiring, possessing and protecting property and of preserving and obtaining safety. This being a case which involves life or death as a result of the verdict and judgment of the court below, prisoner comes before this Court, in order that the proceedings of the court below may be reviewed by this Court of last resort. It is not a source of pleasure for courts to sit in judgment on so important a litigation as that which involves life or death, for life surrounds the being with a promise of hope while death ends all, and so the law would rather that ninety-nine guilty persons go free, than to convict one innocent person; as such, this brings us to the arduous task of considering first, the law and evidence in this case. Evidence is arranged in three general groups, namely: Positive or direct evidence, circumstantial and presumptive. The prosecution seems to have rested its cause principally upon the two last heads; and but for this grade of evidence the rights, liberty, free-

dom and life of citizens would be in imminent danger and unsecured, and to a great extent exposed to the hatred, ridicule and diabolical acts of criminals, who in the perpetration of their wicked and unlawful conduct would seek secrecy under the cover of night or in some secret place to shield it from public gaze. As to the exceptions taken by the defense to the corroboration of evidence adduced at the trial, this leads us to carefully premise the deposition which convicted prisoner. It was given in evidence that on the day when Kehumnu the decedent was murdered, prisoner was out of town in the garb of wild game hunting, having about him a dirk and a gun. He was also short in stature, bare headed, wearing an old khaki suit. Witness M. D. Crusoe testified that after Kpana made this report of the conduct of prisoner he sent out a squad of soldiers to secure his arrest, but he was not seen by the squad but later on prisoner returned from the bush and was arrested by one Lieutenant Coma Falley and was carried to him exactly attired as was described by Kpana the complainant. The body of the decedent having been found and taken to the compound, it was placed in a little house nearby. Prisoner was carried by M. D. Crusoe in company with Kpana, the decedent's remains exhibited to him. Witness said to the prisoner, "Kpana told the town people and myself that you killed Kehemnu. Did you, and if so, how did you manage?" He uttered not a word but remained silent. This was the psychological moment to make a bold declaration of his innocence, but it appears that a remorse of conscience kept him silent. There is a maxim of law which says he who is silent when he should speak, assents. It further appears from witness Crusoe's statement that after prisoner had returned from the inspection of the remains of decedent, an inquest was held by coroner's jury which discovered that decedent had been ravished, her sexual organs badly mutilated and blood oozing therefrom. The examination being ended, the prisoner was

delivered to the soldiers to be dispatched to Monrovia. Then said he to the soldiers and others, "I have something to tell you," and then made an open declaration as follows: "I do not know why the devil fooled me, I ravished Kehemnu which resulted in her death." Although during the trial he testified that he never admitted to any one of having committed the crime, yet witness Thomas F. Wright on the stand for the prosecution testified that the prisoner did make the confession as outlined by witness Crusoe, and that he was exactly attired as described by complainant to the town people and civil authorities of Belle-Yellah. Both Captains Grants and Outley were present during the confession. Witness Wright further stated that he was on the main road referred to by Kpana and saw prisoner coming out of the bush attired as heretofore described. It is strongly contended by the defense that the State to convict should have placed the little girl Kpana on the stand to testify, she being the best evidence the case admits of. While it may appear to the mind of the Court that Kpana should have been put on the stand by the prosecution to testify, yet, the peculiar circumstance of the facts in connection with this case could never cause the verdict of the jury and judgment of the court to be reversed on account of the testimony being absent during the trial, as it has been conclusively proved by corroborating evidence that prisoner confessed his guilt. The fact having been made clear to the mind of this Court, by the corroborating testimonies of the witnesses adduced at the trial by the prosecution, thereby removing every hypothesis of doubt as to the prisoner's innocence, the court below was therefore justified in not disturbing the verdict of the jury.

Having carefully examined the evidence and the law in the case, we can with moral certainty say that Kamarah the prisoner did ravish Kehemnu the decedent and that she being a girl of tender years, died from the nervous shock and the brutalities of the prisoner. It is no de-

fense that prisoner had no malice prepense before the commission of the crime. A man of such huge and extraordinary parts taking a little girl into the bush upon deception and forceably and violently ravishing her whilst under full arm with gun and dirk, is sufficient for any court to presume that the said acts were committed with malice aforethought. In view of the foregoing facts, this Court therefore in the discharge of its duty affirms the judgment of the court below. And it is hereby so ordered.

*Affirmed.*