

T. V. A. SMITH, Plaintiff-in-Error, v. REPUBLIC OF
LIBERIA, Defendant-in-Error.

WRIT OF ERROR TO THE CIRCUIT COURT FOR THE FIRST JUDICIAL
CIRCUIT, MONTSERRADO COUNTY.

Decided May 2, 1928.

1. In prosecution for rape in order to convict, it is essential that the private prosecutrix be corroborated in the material points.
2. Material variance between the evidence of private prosecutrix and the principal witness for the State is sufficient to warrant acquittal.
3. Excessive penalty should not be imposed.

Defendant was convicted of rape in the Circuit Court below. On writ of error, *reversed*.

Barclay & Barclay for appellant. *The Solicitor General* for appellee.

MR. JUSTICE PAGE delivered the opinion of the Court.

The grand jurors for the County of Montserrado and the Republic of Liberia, at the November term, 1925 of the First Judicial Circuit, indicted T. V. A. Smith, now plaintiff-in-error, for the crime of rape based upon the oath of a girl of the Kroo tribe, by the name of Jaymu.

It was alleged by the said Jaymu, the private prosecutrix, that she was passing the Methodist Printing Office, situated on Broad Street in the City of Monrovia on the morning of the 23rd day of June, 1925, selling ground nuts, when she was called by plaintiff-in-error, defendant in the court below, who stated that he wanted to purchase some of the ground nuts but that he did not have the money or small cash at that time and she should credit him some of the ground nuts and that on her way returning home after selling, the defendant in the court below would pay her for them, to which request the said Jaymu consented.

And further, the private prosecutrix alleged that on

her way home, she stopped at the said printing office, the working place of the said plaintiff-in-error and requested her pay, whereupon she was seized and raped by the plaintiff-in-error as alleged.

The case was tried at the May term, 1926 of the First Judicial Circuit, Montserrado County. Judgment was rendered against plaintiff-in-error to the effect that the said plaintiff-in-error, defendant in the court below, be sentenced to ten years' imprisonment. The plaintiff-in-error, being dissatisfied with the ruling and judgment of the said court, applied to this Court for a writ of error, which said writ was granted February 16, 1927.

The plaintiff-in-error sets forth five assignments of error against the ruling and judgment of the court below. Assignments numbers five and six specifically claim the attention of this Court.

Upon careful inspection of the records of this case there seem to be some difficult questions in regard to the evidence produced by the State. A close inspection of the evidence of the two prime witnesses in the case, Jaymu and Gbeh, reveals that there is a variance or disagreement for which the judgment should have been arrested because the evidence of Jaymu the private prosecutrix was not corroborated as the law requires, in that she testified that the next morning after the alleged commission of the offense, the same being the morning of the 24th of June, she and her grandmother Gbeh went to the place where she, the private prosecutrix alleged that the offense was committed, in search of the defendant, and when the said Gbeh came on the stand she testified that she never went with the said Jaymu, but that she, the said Jaymu, was sent up the river the same night of the day of the alleged commission of the offense.

Hence variance in any two parts of a proceeding is fatal to the whole. B.L.D., "Variance."

And, further, inspection of the records shows an insufficiency of the evidence adduced at the trial. The

State to convict should have had the evidence of Jaymu, the prosecutrix and prime evidence for the prosecution, corroborated in all its material parts. The prosecutrix seems to have acted very strangely; that is to say, when she first came to the plaintiff-in-error's office, she was in the company with two other girls, but when she returned for her pay, she seems to have preferred meeting the prisoner alone, and that too in the dark, as she said her companions, seeing darkness coming, had gone home. Again when complaining of plaintiff-in-error to the grandmother she did not give his name; she only did this after being sent up the river to Johnsonville. When she returned to Monrovia about three months thereafter, the plaintiff-in-error was requested to give some money which said sum, when sent by the prisoner to Nellie Tweh, she claimed to be too small and becoming enraged, carried Jaymu to the County Attorney, who sent Jaymu to the doctor. The whole affair to the mind of the Court is saturated more with mercenary consideration rather than with a desire to bring the prisoner to justice.

THE DOCTOR'S CERTIFICATE: This certificate is a medical diagnosis in pathology which is a science which treats of diseases, their natures, causes, manifestation and results. When the counsel for the defense in the court below asked the doctor, "Is it a fact that some women are born without a hymen?" he replied: "Well, I never read of it or seen one." The Court says that disease in children may destroy the hymen. The Court will, however, pass over this evidence without any further comment.

All law students more or less should have some knowledge of medical science. The hymen is the curtain over the vagina and we know that it is easily destroyed in sickness and by disease.

We now come to the degree of punishment pronounced against the defendant, now plaintiff-in-error, by the lower court. The Constitution of Liberia declares that "Ex-

cessive bail shall not be required, nor excessive fines imposed, nor excessive punishment inflicted." Lib. Const., Art. I, sec. 10.

This Court calmly and maturely weighing all circumstances surrounding this case and the magnitude of the sentence imposed, is of the opinion that the judgment of the court below should be and the same is hereby reversed; the prisoner released; and the Clerk of this Court is hereby ordered to forthwith transmit under seal of this Court a mandate to the court below as to the effect of this judgment; and it is so ordered.

Reversed.