IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2023

BEFORE HER HONOR: SIE-A-NYENE G. YUOH…….……. CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE……..ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE…….…....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA…….……ASSOCIATE JUSTICE
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR. …….ASSOCIATE JUSTICE

Roosevelt Demann of the City of Monrovia, Montserrado County, R. L…….Appellant	
Versus	APPEAL
His Honor Judge Roosevelt Willie, Resident Judge, Criminal Assizes "A" for Montserrado and the Republic of Liberia…Appellees	
GROWING OUT OF THE CASE:	
Republic of Liberia……Plaintiff	
Versus	CRIME: MURDER
Roosevelt Demann of the City of Monrovia, Montserrado County, R. L……..Defendant	

Heard: November 9, 2022 Decided: August 11, 2023

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

The Liberian Constitution at Article 21 enumerates rights guarantee to all persons accused of committing offenses against the Republic irrespective of the ghastly nature of the offenses. Of relevance to this appeal prosecuted by Roosevelt Demann, appellant convicted in the court below of the crime of murder, a felony of the first degree, is Article 21(h) which provides as follows:

> "No person shall be held to answer for a capital or infamous crime except in case of impeachment, cases arising in the Armed Forces and petty offenses, unless upon indictment by a Grand Jury and in all such cases, the accused shall have the right to a speedy, public and impartial trial by a jury of the vicinity, unless such person shall with appropriate understanding, expressly waive the right to a jury trial. In all criminal

> cases, the accused shall have the right to be represented by counsel of his choice, to confront witnesses against him and to have compulsory process for obtaining witnesses in his favor. He shall not be compelled to furnish evidence against himself and he shall be presumed innocent until the contrary is proved beyond a reasonable doubt. No person shall be subject to double jeopardy."

The above quoted provision of the Liberian Constitution (1986) encapsulates several essential requirements in a criminal prosecution of an accused which have been extensively interpreted and settled by this Court in a litany of opinions before and after the coming into force of the Constitution (1986). *R. L. v. Jonathan K. Williams et al, Supreme Court Opinion, March Term, A.D. 2019, Darpul et al v. Judge Williams et al., Supreme Court Opinion, October Term, A. D. 2012, Sackor v. R. L. 21 LLR 394 (1973), Dennis et al v. R. L. 20 LLR 47 (1970).* These requirements instruct: (1) that for all capital or infamous offenses (felonious crimes), there must be an indictment by a grand jury and a trial by jury of the vicinity unless waived by the accused with the appropriate understanding; (2) that the accused shall be represented by a counsel of his choice at every stage of the criminal prosecution from arrest up to and including sentencing in case of a conviction; (3) that there must be a speedy, public and impartial trial; (4) that the accused has the right to confront witnesses against him, the right not to be compelled to produce evidence against himself and the right for a compulsory process of obtaining witnesses in his favor; and (5) that the accused is presumed innocent until the contrary is proved beyond a reasonable doubt. It has been held that these fundamental rules set forth under Article 21. *Ibid* are in tangent with its preceding Article 20(a) which also provides that " no person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with the due process of law. Justice shall be done without sale, denial or delay, and in all cases not arising in courts not of record, under courts martial and upon impeachment, the parties shall have the right to trial by jury." *Darpul et al, supra.*

In a landmark and celebrated Opinion, *Wolo v. Wolo, 5 LLR 423 (1937)*, Mr. Chief Justice Louis Arthur Grimes speaking for this Court enunciated that "the term due process of law, when applied to judicial proceedings means that there must be a competent tribunal to pass on the subject matter; notice actual or constructive, *an opportunity to appear and produce evidence, to be heard in person or by counsel,*

and if the subject-matter involves a determination of the personal liability of defendant he must be brought within the jurisdiction by service of process within the state, or by his voluntary appearance. And there must be a course of legal proceedings according to those rules and principles which have been established by our jurisprudence for the protection and enforcement of private rights" emphasis supplied

On this appeal, the appellant has assigned as errors the denial of the trial court to grant his motion for a change of venue fearing that he will not have a fair and impartial hearing in the First Judicial Circuit for Montserrado County and the denial to testify for himself on grounds that he withdrew his plea of not guilty and replaced same with a plea of guilty having been examined of the consequence of a guilty plea in a capital offense case such as the instant case. These allegations being of the magnitude touching on the fundamental rights of the appellant, we deem it expedient to treat them with the utmost priority. The appellant's bill of exceptions avers as follows:

> "1. The defendant submits that Your Honour committed reversible error when you ruled defendant guilty of murder, even though the prosecution failed and refused to prove intent, motive, malice aforethought and/or pre-meditation to sustain the crime of murder.
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> 2. That Your Honour ruling is also qualified to be reviewed by the Highest Court of this land because the species of evidence adduced during trial by prosecution did not support the crime of murder as charged.
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> 3. That Your Honour further erred when you overruled the two important questions asked by the defendant's lawyer as found on sheet 5 to 6 of the 18th day jury's sitting dated August, 2018, which sough to [inquire] in substance from one of the police investigators, Inspector Abu Daramy, who testified for the state as to whether the coroner jury examined the body of the deceased, and also whether there were findings and/or report to that effect, one and the second question was whether there were findings an autopsy conducted on the body of the deceased? All of the two questions were denied on ground of not the best evidence, and that the coroner and the pathology would be, but

none of them appear to testify, yet Your Honour ruled the defendant guilty of murder.

4. That Your Honour additionally erred when your ruling unintentionally over sighting the [salient] evidence from prosecution witness, Zubah Zaza's testimonies, as found on sheet 4, 15th day jury's sitting, Thursday, August 30, 2018, which states in substance that the 'deceased/Beyan Lamin was asked by the defendant to go with him at the police station, but Beyan said he could not go with the defendant, except with different police officer, thus precipitating the tussle to make the victim to obey the officer's order, yet you ruled the defendant guilty of murder.

5. That Your Honour also committed a [reversible] error when you again unintentionally overlooked overwhelming evidence from count one (1) of the prosecution's indictment that there was an increasing tussle between the deceased and the defendant, and that the tread or line of testimonies run through all of the prosecution's key witnesses testimonies, yet Your Honour held the defendant as law enforcement officer for murder.

6. That Your Honour further committed reversible error when you based your ruling predominantly on the basis of the guilty plea by the defendant without taking into account that that plea does not [shield] and/or exonerate the state from the proof of beyond a reasonable doubt requirement and that the plea of guilty by the defendant was premised on the ground that his motion for change of place of trial was denied holding that evidence provided was not enough to be granted. Further, the motion to rescind the former motion of change of venue was also quashed on ground that the motion to rescind ruling on motion given by a judge during trial is not provided in criminal proceeding. This frustrated the defendant to enter the plea of guilty.

7. That Your Honour also committed reversible error when you denied defendant from producing evidence or testifying on his own behalf to disprove testimonies of the state's witnesses, and that Your Honour referred to such denial as waiver by defense himself. The records revealed that the defendant was in fact qualified and commenced

testifying when he was removed from the witness stand by Your Honour on account of intervention made by the state that a defendant has pleaded guilty to a crime and therefore estopped from testifying.

8. That the various errors committed hereinabove by Your Honour are enough to trigger the exception to Your Honour's ruling and as such requesting the approval of same for the Supreme Court to review.

9.That the sentence imposed by the presiding judge is not proportional to [the] facts and circumstances obtained in the case. The presiding judge in imposing the penalty and/or sentence inadvertently failed to take into account:

(a) That the defendant was an assigned officer responding to a call at the White Fence Community that the people there were being harassed by criminals;

(b) That upon the deceased been arrested by the defendant, the deceased said he could not go with the defendant, except different police officer carry him as per Mr. Zubah Zaza's testimony;

(c) That he defendant was simply enforcing the law when the sad event occurred; and

(d) That the defendant was not contending that he did not kill, but that same was not intentional.

Clearly, it can be seen from the above quoted bill of exceptions that count 6 and 7 raise substantive issues that border on the constitutional rights of the appellant to a fair and impartial trial and the right to confront the appellee, Republic of Liberia's witnesses and to produce evidence in his defense regardless of the fact that the appellant entered a plea of guilty upon ascertainment. And because these constitutional issues take precedence over all the other issues raised in the bill of exceptions, we shall proceed to consider them based on the evidence gather from the records certified to this Court of last resort.

The records show that on the 5th day of June, A.D. 2018, that is, during the May Term of the First Judicial Circuit for Montserrado County, the Grand Jury for the county aforesaid retuned a true bill charging the appellant with the commission of the crime of murder, a felony of the first grade. The indictment alleged that during the night of April 29, 2018 at about 2200hours, the appellant in the course of a tussle

between him and Beyan Lamin did knowingly, purposely, intentionally, willfully, and maliciously pursue, attack and subsequently shoot the said Beyan Lamin in the head thereby rendering him dead; that the tussle took place at the Soul Clinic Road Junction witnessed by several onlookers where the appellant pulled out his weapon from his holster and fired the victim from the back while the deceased was attempting to escape from the appellant; that prior to shooting the victim dead, the appellant pursued the deceased from a street in Paynesville to the victim's relative house around the Soul Clinic Road Junction where the victim was beaten by the appellant despite plea from the deceased, his relative as well as the by-standers; that there was no danger posed to the appellant by the deceased to have necessitated the use of firearm; that the appellant also attacked the sister of the deceased and seized her phone after he was alerted that he was being recorded and said recording could be placed on Facebook; that after shooting the victim dead, the appellant boarded a motorbike operated by one Oscar Dahn and while en route to the Zone Five Police Depot, shot himself in the left hand, and placed the gun between him and the motorbike rider which also terrified the rider; and that the conduct of the appellant was contrary to the *Penal Law Rev. Code: 26:14.1, 26:2.2(b), 26:1.7(m), 26:1.7(h), 26:2.2(c),* the peace and dignity of the Republic.

On the 7th day of June, A.D. 2018, Criminal Assizes "A" of the First Judicial Circuit ordered the arrest of the appellant thereby bringing him under the jurisdiction of the court. Following the arrest of the appellant, on the 8th day of June, instant, he filed a motion for change of venue citing newspapers' comments convicting him of the commission of the crime of murder and relying on the *Civil Procedure Law Rev. Code: 1:4.5,* contended that he has convincing reason to believe that an impartial trial will not be had in Montserrado County due to local bias and prejudice. The appellant averred in his motion that the application was made in good faith and not one intended to delay the trial of the case.

In resisting the appellant's motion for a change of venue, the prosecution contended that the appellant woefully failed and neglected to state in categorical term the public sentiments and local prejudices that were publicized to render the trial in Montserrado County adverse to the interest of the appellant; that the application was made in bad faith and intended to delay the speedy and impartial hearing of the case; and that the appellant's application failed to meet the burden of proof requirement pursuant to the *Civil Procedure Law Rev. Code: 1:25:5.*

The records also show that on the 17th day of August, 2018, that is, during the August, A. D. 2018 Term, the appellant, by leave of court, submitted his motion for a change of venue followed by a resistance spread on the records of court. There and then, the trial court entertained arguments, *pro et con,* and denied the appellant's motion. The appellant's counsel excepted to the ruling and gave notice that he will take advantage of the law controlling. Intriguingly, the appellant's counsel rather than pursing a remedial process for a review of the trial court's ruling on the appellant's motion for a change of venue elected to file a motion to rescind on the 22nd day of August, A. D. 2018 purporting to rely on *Civil Procedure Law Rev. Code: 1:41.7*. The motion was resisted by the prosecution, argued before court and denied. The appellant's counsel again excepted to the ruling on the motion to rescind and gave notice that he will take advantage of the law controlling.

On the 23rd day of August, 2018, the appellant was arraigned to ascertain his plea and he pleaded not guilty. Subsequently, when the case was called for trial on the 27th day of August, 2018, the appellant's counsel, by leave of court, submitted an application for a pretrial conference to enable the parties already consulting, save court's time. Recess having expired on the self-same 23rd day of August, the appellant's counsel, by leave of court, withdrew his first plea of not guilty, and replaced same with a plea of guilty upon re-ascertainment.

Thereafter, the appellant waived his right to trial by a jury and opted for a bench trial which places the judge in the position as judge of the facts and the law. The prosecution paraded three general witnesses and rested with the production of evidence, admitted its oral and documentary evidence and submitted its side of the case for argument on the 3rd day of September, 2018.

At the call of the case on the 6th day of September, 2018, the appellant's counsel, by leave of court, requested the qualification of the appellant to testify for himself. The prosecution resisted the application on ground that the appellant had pleaded guilty to the crime charged in the indictment and expressed remorse in open court thereby precluding him from producing evidence. The trial court sustained the resistance of the prosecution on that ground.

The appellant's counsel noted his exceptions to the ruling denying the appellant to testify for himself. However, the appellant, by leave of court, restated his remorse and willingness to cater to the children of the deceased and maintained that his conduct against the deceased was not deliberate. The trial court having entertained

final arguments on both sides, there and then rendered final ruling adjudging the appellant guilty of the crime of murder on the self-same 6th day of September, 2018. The appellant noted his exceptions and announced an appeal to the Supreme Court. The court proceeded to order the Probation Services of the Ministry of Justice to conduct a pre-sentencing investigation for hearing on the 13th day of September, 2018; the date on which the trial court sentenced the appellant to twenty-five years imprisonment – twenty years in jail and five years of probation doing community service provided the appellant demonstrate good behavior while serving the actual jail term, otherwise, he shall remained in jail for the full and complete twenty-five years.

As stated herein that we shall give top consideration to counts 6 and 7 of the appellant's bill of exceptions which touch on the constitutional rights of the appellant, we certify the following two issues as dispositive of this appeal.

1. Whether the trial court committed a reversible error when it denied the application of the appellant to testify for himself after the prosecution rested with the production of evidence?
2. Whether the trial court committed a reversible error when it denied the appellant's motion for a change of venue?

We shall proceed to address the issues in the order presented.

Regarding the first issue whether the trial court committed a reversible error when it denied the application of the appellant to testify for himself after the prosecution rested with the production of evidence, this Court says that the language of Article 21(h) as enumerated herein and the acts of the Legislature executory thereto are clear and unambiguous, that is to say that these provisions of our law do not need further interpretation. The rights of a defendant to produce evidence in his defense, to confront witnesses, not be compelled to produce evidence against himself or to procure a compulsory process of producing a witness or evidence are all constitutionally protected rights. *Saah James v. R.L., Supreme Court Opinion, March Term, A.D. 2023, Mathew Wright v. R. L., Supreme Court Opinion, March Term, A.D. 2022*

In the instant case, the trial court denied the appellant from testifying for himself on the ground that he pleaded guilty to the accusation of committing the crime of murder. We agree with the trial court's interpretation of *Criminal Procedure Law Rev. Code: 2:16.4* which provides that "a defendant may plead guilty or not guilty,

except, that in a capital case only a plea of not guilty may be accepted…". The controlling phrase of the Section 16.4, *ibid,* is that "…in a capital case only a plea of not guilty may be accepted…". Although the trial court accepted the plea of guilty after ascertaining from the appellant whether he understands the consequence of such plea in a capital case, it still does not preclude the appellant's to testify for himself which right is guaranteed under Article(h), *ibid.* We must also make it abundantly clear that a plea of guilt cannot be deemed as a waiver of a defendant's constitutional rights to confront prosecution's witnesses or to produce evidence in order to rebut the testimonies of the prosecution's witnesses. It is also no gainsaying that regardless of the plea of guilty made in a capital case, the burden of proof until the contrary is proved beyond a reasonable doubt rests on the prosecution. *Darpul et al, supra* This Court has held that "a reasonable doubt is that which 'prevents one from being firmly convinced of a defendant's guilt or the belief that there is a real possibility that a defendant is not guilty… It is that state of the case which after the entire comparison and consideration of all of the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty, of the truth of the charge." *Black's Law Dictionary, Ninth Edition at page 1380* So, for the petit jurors to have reached a moral certainty as to the truth of the charge levied against the criminal defendant, they must consider the totality of the evidence placed before them and assigned credibility or worth to each piece of the evidence. *Living Counsellor et al v. R. L., Supreme Court Opinion, October Term, A. D. 2008, Ishmael Kamara v. R. L., Supreme Court Opinion, October, A.D. 2021, Exodus Wamah et al. v. R.L. Supreme Court Opinion, March Term, A.D. 2022* The totality of the evidence here means evidence adduced by both parties and not an isolated one-sided evidence as we see in the present case. Therefore, the trial court committed a reversible error when it deprived the appellant the right to produce evidence in his own defense in clear violation of Article 21(h), *ibid.*

In addressing the second issue which is whether the trial court committed a reversible error when it denied the appellant's motion for a change of venue, we note that the facts which attended the appellant's application for a change of place of trial are analogous to those that obtained in the case *R. L. v. Jonathan K. Williams et al, Supreme Court Opinion, March Term A. D. 2019*. In that case, the co-appellee Williams, was indicted for the crime of murder, filed his application for a change of venue on grounds that he feared that he could not have a fair and impartial trial in Montserrado County due to wide spread publicity and local bias. The trial court

denied the application citing the failure of the co-appellee to show proof of negative media coverage adverse to his interest. The co-appellee filed a petition for a writ of certiorari before the Justice in Chambers who heard the petition and granted it. On appeal announced by the prosecution, this Court upheld the ruling of the Justice in Chambers as follows:

> "In line with the standard of impartiality and fairness in the administration of justice, our law grants a party the right to change of place of prosecution if he/she so swear provided that one of the following grounds is established:
>
> a. If the county in which the prosecution is pending is not one of the counties specified in section 5.1 -5.16;
> b. If there is reason to believe that an impartial trial cannot be had in the county in which it is pending;
> c. If all the parties agree and if the convenience of material witnesses and the ends of justice will be promoted thereby. *Criminal Procedure Law Rev. Code: 2.5.7*
>
> A reading of the above quoted provision of the statute is void of any substantive evidentiary burden placed on a party making a request for a change of venue as the State has so strenuously stated in its resistance to the movant's motion before the trial, and in its brief and argument before this Court. In other words, the movant is not obligated to show or proffer any evidence in order to have a motion for a change of venue granted by a court. *Sawyer v. Republic (1944) LRSC 16;; 8 LLR 311 (1944); Gbenyna v. R. L (1988) LRSC 88; 35 LLR 567 (1988).* [The] Supreme Court held that 'where a defendant in a criminal case involving a felony swears that he fears that because of local prejudices, he will be unable to obtain injustice, our statute makes it mandatory that a change of venue be granted. Unlike other provisions of the law which require certain evidentiary prerequisites before the granting of an order or motion, a movant in a change of venue must only comply with one of the three grounds stated above…"

The Williams Case further enunciated that "…the option to change a place of trial or prosecution is a right conferred to a criminal defendant in a murder trial and that the exercise of such right cannot be hindered by any court of law." More importantly,

the right to a fair and impartial trial being a constitutionally protected right, the defendant in a capital offense case situated as the appellant having sworn oath that he fears that he will not have a fair and impartial trial due to wide spread negative media coverage, the trial court was without the pale of the law when it denied the appellant's motion for a change of venue. Therefore, in answering the second issue presented on this appeal which is whether the trial court committed a reversible error when it denied the appellant's motion for a change of venue, the answer is a resounding yes. Accordingly, it is the considered opinion of this Court that the appellant was entitled to a change of place of trial as a matter of law; and we so hold.

Considering the enormity of the errors committed by the trial court, this Court sees the compelling reasons to reverse the final ruling of the trial court, set aside the sentence of twenty-five years imprisonment inclusive of five years' probation for community service and remand the cause for a new trial.

WHEREFORE and in view of the foregoing, the final ruling of the trial court is reversed and the case is ordered remanded for a new trial. The Clerk of this Court is ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over this case and enforce of the Judgment of this Opinion. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors Augustine C. Fayiah and T. Joseph Debbleh appeared for the appellant. Counsellor Wesseh A. Wesseh of the Ministry of Justice appeared for the appellee.