

water and by wiping the floor that was stained with blood; that the murder weapon, the knife, was found hidden in the ceiling of the house where the appellant and the decedent lived and where the incident occurred; that it was also found by the police that no force was applied against the window screen as alleged by the appellant. The indictment stated that the Police investigation established that it was the appellant who murdered the victim with the knife and hid it in the ceiling of their premises, wiped the blood with their bed sheet and pretended as though the victim was stabbed accidentally at the instance of unknown men; that the appellant has no affirmative defense; therefore, he was charged with the commission of the crime murder consistent with *4LCLR, Title 26, Section 14.1 (a) and 4LCLR, Title 26, Section 50.5 and 53.3; and 4LCLR, Title 26, Section 2.2 (a) and (b) of the Statutory Laws of the Republic of Liberia*; and the peace and dignity of the Republic of Liberia. We quote the indictment that brought the appellant under the jurisdiction of the court:

“INDICTMENT

The Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendant, James Kesselly, committed the crime of Murder, a felony of the first degree, to wit:

1. That on the 4th day of the month November, A .D. 2012, in Rocksprings Valley Community, City of Monrovia, Montserrado County, Republic of Liberia, defendant James Kesselly, with criminal mind and wicked intent, purposely, knowingly, willfully, recklessly and criminally committed the crime of Murder.
2. That on the date and at the place mentioned above, while defendant James Kesselly, boyfriend of the victim and the victim Marwoi James were in bed, she sustained a deep cut across her left breast about five centimeters long allegedly by a sharp knife.
3. That the victim began to bleed profusely and was rushed to the J.F.K. Hospital where she died at about 5 O'clock a.m.
4. That the defendant said his wife woke him up and said there was a criminal who was trying to open their window, and that he therefore stood behind the window with a long knife.
5. That his girlfriend, the victim, got out of bed and stood behind him, and that the force from the window screen as the criminal pushed it, made it to strike the knife in his hand which as a result struck the victim's left breast and gashed it.
6. That at the time of the incident, no one was around, and the defendant had destroyed the evidence at the crime scene by placing the blood soaked bed sheet in the water and by wiping the floor that was stained with blood, and that the murder weapon , the knife, was found hidden in the ceiling of the house.
7. It was also found by the police that no force was applied against the window screen as implied by the defendant.
8. That the defendant has no affirmative defense.
 1. A person is Guilty of "MURDER" if he:
 - (a). Purposely or knowingly causes the death of another being, or

(b).Causes the death of another human being under circumstances manifesting extreme indifference to the value of life. A rebuttable presumption that such indifference in the commission of, or an attempt to commit treason offenses defined in Section 11.3 of the New Penal Law of the Republic of Liberia.

9. That defendants' act is contrary to: 4LCLR, Title 26, Section 14.1(a) and 4LCLR, Title 26, Section 50.5 and 53.3; and 4LCLR, Title 26, Section 2.2(a) and (b); of the Statutory Laws of the Republic of Liberia; and the peace and dignity of the Republic of Liberia.

TRUE BILL
TRUE BILL/IGNORAMUS”

By the application of the State, the appellee herein, to the Judge presiding during the November term of Court, 1st Judicial Circuit, Criminal Court “A”, Montserrado County, the writ of arrest was issued out of the Court and the appellant was served with a copy of the indictment; thus bringing the appellant under the jurisdiction of the Court as a requirement of the law. On February 20, 2013, the appellant was arraigned before the 1st Judicial Circuit, Criminal Court “A”, Montserrado County, where he pleaded not guilty to the allegations contained in the indictment, thereby joining issues with the State, appellee herein. The records reveal that upon the appellant's request, a fifteen-man petty jury was selected and empaneled to hear the facts and make determination in this case. Trial commenced on February 21, 2013.

During the trial, the appellee paraded six regular Witnesses and one rebuttal Witness; while the appellant paraded five Witnesses in his defense. Upon resting with evidence by both parties, the case was submitted to the trial jury for final argument. After final argument was had pro et cons, on March 19, 2013, the jury retired to their room of deliberations and returned with a unanimous Guilty verdict against the appellant. The appellant's counsel excepted to the unanimous guilty verdict of the trial jury, stating that the verdict was grossly contrary to the weight of the evidence produce by the appellee during the trial.

On March 21, 2013, the appellant's counsel filed a motion for new trial, requesting the trial Judge to set aside the verdict of the trial jury and order a new trial based on insufficiency of the evidence produced by the appellee during the trial. The appellant's counsel maintained that the evidence was contrary to the verdict returned by the trial jury; that the appellee did not prove the allegations contained in the indictment; that the testimonies of the appellant and his witnesses were ignored by the trial jury; that the elements of the crime, murder was not established against the appellant as a major requirement of the law. Therefore, the appellant's counsel requests the trial judge to set aside the verdict of the trial jury and order a new trial. In reaction to the appellant's motion for new trial, the appellee averred that the unanimous guilty verdict returned by the jury was in consonance with the weight of the evidence adduced at the trial by the appellee; that the evidence convinced the jurors to return an overwhelming verdict in favor of the appellee; that the evidence was sufficient, cogent and convincing to have warranted such unanimous verdict; that the appellee proved its case as laid out in the indictment; that it was established by the appellee's witnesses that the appellant tempered with the

crime scene, wiped the blood in the room, threw the murder weapon and/or the criminal agency into the ceiling and washed the bed cloth before calling for help; that the appellee proved that the act of the appellant was cruel, wicked, intentional and reckless with a gross disregard to the value of human life. The appellee therefore maintained that the verdict of the jury was in keeping with the evidence produced and that the appellant openly, notoriously, voluntarily and publicly confessed judgment and admitted to the averments and allegations contained in the indictment. The appellee requests the trial Judge to set aside and deny the appellant's motion for new trial in its entirety.

The Motion for new trial was argued and denied; the unanimous guilty verdict against the appellant was upheld and the appellant was sentenced to life imprisonment. The Judge in his final judgment maintained that the evidence produced during trial show that at the time of the commission of the crime by the appellant, no one was around, and the appellant had destroyed the evidence at the crime scene by placing the blood-soaked bed sheet in the water and by wiping the floor that was stained with blood; and that the murdered weapon, the knife, was found hidden in the ceiling of the house. The above mentioned acts on the part of the appellant laid the basis for premeditation and malice aforethought; that the time the appellant took to carry on those activities, it should have been used to have rushed the deceased to the hospital in order to save her life; but the appellant was extremely indifferent to the value of human life; that it is not necessary that one actually be seen committing a crime before he could be held guilty, but that it is sufficient for that person to be convicted whenever the logical deductions from the facts and circumstances lead conclusively to the fact that a crime was committed and that the accused is connected with the crime; that the testimonies of the Witnesses for the State were corroborated, and to the point beyond all and every reasonable doubt. The court further stated that, the subpoenaed second Witness for the appellant, Patrolman Detective Alfred S. Chea, testified before the court and Jury as follows to wit:

"I know the Defendant in person of James Kesselly who happened to be the boyfriend of the late Nancy Marwoi James and also as the one who perpetrated the wound on the victim which led to the subsequent death of the victim'.

We note that the court hereby confirmed and reconfirmed the unanimous "Guilty" verdict of the trial Jury and further ruled that the appellant, James Kesselly, is hereby sentenced to Life Imprisonment with immediate effect. The appellant's counsel took exception to the final judgment of the trial court and announced an appeal to this Court sitting in its October Term A.D. 2013.

We are concerned that this case had lingered in this Court for several years without been heard and disposed-off. The records revealed that the appellant filed his bill of exceptions on April 3, 2013, and the Notice of Completion of Appeal on April 7, 2013. This means that,

effective as of April 7, 2013, the records of this case should have been transcribed and forwarded to this Court for its speedy determination. We wonder why the office of the Public Defense, who represented the appellant at the trial in the lower court, did not take necessary steps to ensure that this case is speedily heard and decided. There is absolutely no showing on the records before this Court that indicates that the appellant's counsel made any attempt or sought assignment from this Court for the hearing and determination of this case. The office of the Public Defense of Liberia has a mandate to represent indignant persons charged with the commission of crimes in Liberia. This representation is required to be vigorous, hearty and spirited. Public Defenders are under obligation to pursue all cases from which they announce appeal to ensure that the appeal is heard and determination made consistent with law. As a matter of fact, representation of indigent clients does not end at conviction at the lower court or affirmation of conviction at the level of this Court. The office of the Public Defense of the Republic of Liberia must ensure that it seeks the welfare of its clients before, doing and after convictions. Regular follow-ups, review of prison conditions and supervision of the welfare of convicts represented by that office are solely and exclusively part of the responsibilities of the Public Defense Program. The Program has to be robust, vigorous and legally active in giving indigents adequate legal representations as required by law. Regrettably, the appellant's counsels sat supinely and did nothing about the appellant's appeal until this Court, on its own, assigned the case for hearing and determination. We note that the prolonged inactivity of the case on appeal is not only violative of the rights of the appellant to speedy and impartial determination of his case, but also negatively reflects on the rule of law in Liberia. Thenceforth, we hereby warn and caution the Coordinator's office of the Public Defense of Liberia and all Public Defenders in Liberia to seek the welfare of their client within the ambit of the law. Anything less, this Court will not hesitate to take the most appropriate action(s) against violators.

Having reviewed the entire records, considered the facts and circumstances in this case and the laws controlling, this Court shall consider two main issues for the determination of this case.

They are:

1. Whether or not the prosecution established the guilt of the appellant beyond reasonable doubt to warrant his conviction for the crime Murder.
2. Whether or not the trial was regularly had in keeping with law and practices in this jurisdiction to sustain a judgment of guilty.

We shall first address the second issue, whether or not the trial was regularly had in keeping with law and practices in this jurisdiction to sustain a judgment of guilty. This Court held in the cases, *Sese v. Republic of Liberia* [1954] LRSC 33; 12 LLR 164 (1954); and *Sammy Dahn v. Republic of Liberia*, 34 LLR 565, that "The judgment will be affirmed where the trial was regularly and properly conducted and the evidence cogent, competent and not

impeached.” Further, this court held that “A juridical conviction connotes (1) that the offense must be correctly charged in a valid indictment; (2) that only legal evidence should be placed before the jury, or before the judge, where the judge serves both as a defacto jury and judge, which is asked to convict; and (3) that the evidence thus sifted should satisfactorily establish the guilt of the accused beyond a reasonable doubt.” *Francis Lewis v. Republic of Liberia*, 5 LLR 358. In the case: *RL v. Harmon et al* [1936] LRSC 30, 5LLR 300 (1936). The Supreme Court held further that, “the principles of impartiality, disinterestedness and fairness on the part of the judge are as old as the history of courts of justice, and it is those three cardinal principles that are supposed to exist which give credit and tolerance to the decrees of judicial tribunals.”

The records indisputably reveal that when this case was called for hearing, both the appellee and the appellant along with his counsel were present in court and announced representations. The appellant requested trial by jury, and a thirteen man petit jury was empanelled for the hearing of the factual issues in the case and determination thereto. The appellant request is consistent with law and based on *Chapter 20, section 20.1, 1LCLR*. It states that,

“The defendant is entitled to trial by jury in a criminal action in which he is charged with any crime other than petty larceny or a petty offense”.

Also Article 21(g) of the Constitution (1986) states that,

“No person shall be held to answer for a capital or infamous crime except in cases 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.*[emphasis supplied]*”

The appellant was within the ambit of the law when he requested trial by jury based on the crime charged. In this jurisdiction the right to jury trial is inviolable and sacrosanct. No court in this jurisdiction should ignore this right except at the choosing of the defendant. The defendant may select to expressly waive this right by filing the appropriate application before the court. When the right to trial by jury is expressly waived by the defendant, the court shall be empowered to proceed without jury, and the judge shall serve as jury defacto, with the authority to determine the facts and the law, and render judgment in the case. Accordingly, the records in this case reveal that the appellant requested a jury trial and it was granted. The appellant was subsequently acquainted with allegations in the indictment and he pleaded not guilty. Trial commenced appropriately with the appellee producing five witnesses

against the appellant, to link him to the commission of the crime, prove and/or establish the guilt of the appellant beyond reasonable doubt. The appellant had the opportunity, as a requirement under our law, to cross-examine appellee's witnesses and produce witnesses on his own behalf. This speaks to the fact that the case was regularly and properly conducted and that the judge properly executed his duties and responsibilities in keeping with law and the observance of trial procedure in this jurisdiction.

We must emphatically state here that the essence or propose of a criminal trial is to ensure that justice is done. Courts of law are under legal duty, and by conscience, to make sure that justice is served. This court held in the case, *Okrasi et al v. Republic of Liberia [2009] LRSC 34 (July 23, 2009)*, that "a court of law should not simply function as a mere umpire or referee in a contest between opposing parties or counsels; but a court or judge is charged by law and conscience with "fundamental duty" of seeing that the truth is established and justice is done under the statues and rules of law designed to bring about such truth, and control of the situation... and without violence or rules of practice and procedure, that cases are heard and disposed of on their merits and, if consistent with the orderly administration of justice, the procedure should be favored which will result in a determination of the merits of the case". We observed from the records in this case that all the parties were afforded the opportunity to defend their respective sides of the case and presented arguments in their respective favor. Thereafter, the jury was discharged to their room of deliberation and they subsequently delivered a unanimous guilty verdict, which was confirm and affirmed by the presiding judge; and the appellant was sentenced to life imprisonment. We hold that consistent with the criminal law and procedure, the trail was fairly and regularly conducted and the outcome is what we shall examine as we answer the next issue.

We shall now address ourselves to the second and most important issue: whether or not the appellee established the guilt of the appellant beyond reasonable doubt to warrant the conviction of the crime of murder. This issue requires the review of essential provisions of the Constitution, criminal procedure law, relevant opinions of this court which addressed this issue appropriately and the facts and circumstances as seen in the records of this case.

Article 21(h) of the Liberian Constitution (1986) provides:

"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".

Chapter 2 Section 2.1 of our Criminal Procedure Law provides that,

“A defendant in a criminal action is presumed to be innocent until the contrary is proved; and in cases of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal”.

In construing these constitutional and statutory provisions, this Court has held that in order for the Republic of Liberia to convict a criminal defendant, the prosecution must prove the guilt of the accused with such legal certainty as to exclude every reasonable hypothesis of his innocence; that material facts essential to constitute the crime charged must be proven beyond a reasonable doubt; otherwise the accused will be entitled to discharge. *Madam Elizabeth Davis v. Republic of Liberia*, [2001] LRSC 27; 40 LLR 659, 675-676 (2001), citing *John B. Dyson v. Republic of Liberia*, [1906] LRSC 6; 1 LLR 481, 483 (1906). This Court stated further, and we thus maintain that, “[t]o warrant a conviction in a criminal case, the State must prove its case beyond a reasonable doubt; and the burden of proof remains with the Prosecution throughout the trial.” *Davis*, 40 LLR at 676, citing *J. Kamara Burphy v. The Bureau of Traffic*, [1976] LRSC 24; 25 LLR 12, 23 (1976). Accordingly, it is only evidence that leads a trial to the conviction of an accused. In the absence of cogent evidence linking the accused to the commission of the crime, the accused must be acquitted. This is why this Court held in the case, *Davis Vs. Republic*, 40 LLR at 681, citing *Nimley Koffe v. Republic of Liberia*, [1970] LRSC 29; 20 LLR 18, 20 (1970), that the evidence in a criminal case against an accused must be conclusive; and if it be circumstantial, it should be so connected as to positively connect one element within another for a chain of evidence, sufficient to lead the mind irresistibly to the conclusion that the accused is the guilty party. In order to overcome presumption of innocence, proof of the defendant’s guilt must be established beyond a reasonable doubt. *Jamal Eldine v. Republic of Liberia*, 27LLR 133, 147 (1978).

Having reviewed the certified records in this case to include the police investigation report, the testimonies of appellee’s witnesses and the witnesses of the appellant, along with the documentary and demonstrative evidence adduced during trial, we now weigh all the evidence against the standards set forth above to determine whether or not the appellants’ conviction by the court below is supported by the evidence. As noted previously, and at the beginning of this opinion, in order to have a conviction of the appellants, the appellee is required by law to prove and/or establish the guilt of the appellant beyond a reasonable doubt. Hence, where there is reasonable doubt as to the appellant’s guilt, he is entitled to an acquittal. During the trial, the appellee produced six (6) witnesses, who testified to their certain knowledge about the incident that led to the death of the Madam Nancy Marwoi. The appellee’s first witness Larwoah Morwoi, the father of the deceased, took the witness stand and testified that he is a wheelbarrow rider who lived in Buzzy Quarter, Monrovia; that while he was in Buzzy Quarter on the night of November 4, 2012, he heard someone calling his son's name (Playboy), but he didn't hear a response. He said that he heard the person

say that his daughter, the deceased, Nancy Marwoi, was bleeding; that he and his wife call the appellant immediately and they rushed to JFK, where he was told by the appellant that his daughter was taken; that when they got at JFK, they were informed that his daughter, Nancy Marwoi had died; that when he asked the appellant what happened that led to the death of his daughter, the appellant lied and said to him that it was armed robbers that entered the house and killed his daughter; that after two days or so, they were called by a woman from the Police headquarters to go there; that upon their arrival at the Police Headquarters, the appellant, told the CID or the police that he has something to tell them. In the presence of the appellant's brother, Koboi, he identified them as parents of the deceased and he told them that he beg them; that he was the one that stabbed their daughter with the knife; that after he told them this, the police asked him for the knife if they could see it and he answered yes. He directed the Police where the knife could be found and the knife was retrieved from the ceiling of their room; that the Police have the knife that the appellant used to kill his daughter. On cross-examination, the witnesses reemphasized that it was the appellant that killed his daughter because the appellant himself told them in the presence of the Police. He testified that he was not on the scene but it was the appellant that told him and others that he was responsible for death of his daughter. When asked by the Jury as to whether the appellant made the confession of killing his daughter in the presence of the police, the Witness testified in the affirmative. When asked again by one of the jurors as to the age of the deceased and his knowledge of her living with the appellant, the witness testified, his daughter was born 1989; that in 2004 he got to know that his daughter, the deceased, was in relationship with the appellant.

Appellee's second witness, Kebbeh Flumo, mother of the deceased, took the witness stand and was aided by an interpreter; due to the fact that she could not understand the English language. She was directed and cross-examined through the interpreter and her answers were transmitted in English to form part of the records before us. We observed that the testimony of the Kebbeh Flumo corroborated the testimony of appellee's first witness, Larwoah Morwoi. The witness confirmed all that her husband stated while he testified on the witness stand. When asked by a juror as to whether the appellant was under any pressure when he made the confession, the Witness testified that he was sitting freely; there was no problem when he told them that he killed their daughter. When asked as to whether he gave any reason for his conduct, the Witness testified in the negative. When asked by the court as to where the appellant made the confession and in whose presence he made the confession, the witness testified that the confession was made at the Police station and she could remember three police officers being present, along with her Husband, the appellant's brother and others that she does not know.

Three officers from the Liberia National Police testified and confirmed as follows: witness Anthony Sherman of the Homicide Division of the Liberia National Police testified that on November 4, 2012, he was at his house, when he received a telephone call from the LNP Charge of Quarters that there was a case of an alleged armed robbery reported by one James Kesselly. He testified that when he came to the charge of quarters he met the appellant who was the reporting

person, and upon hearing his complaint, he immediately registered same and took the complainant to reconstruct the crime scene; that upon reaching on the crime scene, the appellant then demonstrated to him and others his position at the time when the alleged robber was trying to gain entry into his room and he further told them that he was asleep that night; that it was the victim who woke him up from their mattress and told him robbers were gaining entry into their room. There and then, he switched off the lights and went to the window, leaving his wife and the kid on the bed. Few minutes later, he heard his wife screaming on his name for help; that as a crime scene detective, we thoroughly searched the entire room, checked the window from the outside and the inside to see as to whether there was any force entry made into his room and from our observation, there was no force entry into the room; that after inspecting the crime scene and observing that there was no force entry, he primarily took the appellant to be the prime suspect; that after observing the appellant to be the prime suspect and looking at the environment at the time, he assured the community dwellers who came around that they are doing everything within their power to get after the perpetrator(s) of the crime. The witness testified further that he took the appellant at Central and later proceeded at the hospital to where the victim was undergoing treatment when she expired. The witness stated that upon his return from the hospital and the thorough review of the pieces of evidence available to him, he informed the appellant that he was actually the suspect in connection to the death of the victim; that he told appellant his rights under the law, his miranda rights, which states that every stage of the investigation, the investigator should inform the accused person his/her right to telephone call, the right to a legal counsel at every stage of the investigation, because any utterance from him will be used in a competent court of jurisdiction; that after the appellant was acquainted with his rights, he requested to be represented by a legal counsel, and he was represented by Atty. Swaliho Sesay, Public Defender, Montserrat Country; The witness further testified that he did not speak to the appellant further after he was considered as the prime suspect until the arrival of the Public Defender, in person of Atty. Swaliho Sesay. The witness maintained that the investigation revealed and fully established that the appellant murdered the victim; he tampered with the crime scene as well, took away the murder weapon that he used, climbed in the ceiling, placed it in a tub, came into the room, wiped all the blood that was spread in the room, took the bed sheet that they were lying on that contained blood, placed it into a bucket, washed away the blood, came into the room and alarmed that indeed criminal had entered into their room and that he wanted help. The witness identified the murder weapon as being a Chinese knife with red handle; that it took two days to retrieve the murder weapon from the ceiling in the house of the appellant based on information provided by himself. The witness further testified that "the first day actually they were not opportune to talk to the appellant due to the fact that there was no Public Defender to represent him then. The second day after his lawyer arrived, he admitted to using this weapon, the weapon was retrieved there and then at their house, in the attic; and before being retrieved, it was photograph and collected; that since the appellant told them that armed robber killed his fiancée, they expected to see blood pouring in the room, but after initially checking, they did not observe any blood on the floor mat. "It was after thoroughly checking, we

observed that the bed sheet that they were sleeping on was before the house into a bucket and was washed of the blood; that while they were still thoroughly checking, they observed a cloth of blood under the floor mat where the two floor mat meet and join, and looking at the motive and intention, if the perpetrator did not mean what he did, immediately after the commission of the crime, he would have cried for help, but regarded of him not caring for life he purposely planned to murder the victim. The witness stated that the appellant murdered the victim and after knowing that the victim will not actually live to link him to the crime, he there and then alarmed confusing the mind of his neighbor who then rushed into the room to assist him in the process and they took her to the hospital.

Appellee's fourth Witness in person of Abu B. Daramy, Chief Inspector, assigned at the crime against person unit of the Crime Services Department of the Liberian National Police, took the stand and testified to his certain knowledge regarding the investigation conducted by the Liberian National Police. His testimony essentially and principally corroborated the testimony of Anthony Sherman of the Homicide Division of the Liberia National Police. Accordingly, witness Daramy stated that when the LNP investigation team visited the JFK morgue, they saw the victim lying on the stretcher with face up and her back on the stretcher. No underpants; that they saw laceration which was horizontal from one side of the breast to the other end of the breast, which they believed would not be stabbed wound; that the wound was a very sharp and clean wound that could only be inflicted by a very sharp object; that upon acquainting the appellant with the window, the window screen and the type of wound on the victim, that would only be perpetrated by someone within and that the wound was not stab wound. The witness testified that from the facts and circumstances as revealed by the investigation, it was fully established that the appellant murdered the victim and took actions to conceal his acts.

Appellee's fifth witness in person of Mr. Abraham B. Ricks took the stand and testified for and on behalf of the appellee to the effect that he was employed with the Ministry of Justice and worked as coroner for the Republic of Liberia; that he had served as coroner for more than seven years; that his duty as coroner was to take care of all suspicious death. He testified that he investigated the case of the deceased in these proceedings, and that his investigation established foul play, and that the deceased was slaughtered on the left breast that penetrated to her heart thereby causing her death. The Witness testified that the deceased was gashed to a degree 6" in length and 4" in-depth". He testified that at the end of his investigation he prepared his findings and submitted same to the County Attorney. The Witness testified to and identified the Report containing the photos of the victim which was marked by the court and confirmed by the Witness.

The appellee tried its best to link the appellant to the commission of the crime by means of circumstantial evidence and the confession of the appellant to the Police and some family members of the victim that he murdered or killed Madam Nancy Marwoi. The appellee stated that the appellant in good faith and with the knowledge of his constitutional right to remain silent, and that any statement made

by him will be used against him in a court of competent jurisdiction, confessed to the commission of the crime. Moreover, the appellee contends that the appellant's action after the commission of the crime demonstrates gross disregards to human life and indicates that he perpetrated the act against the victim for reason yet undisclosed. We shall subsequently elaborate on this further in this opinion.

The appellant took the witness stand and testified on his own behalf. He stated that he was living on the Capital Bypass prior to his incarceration; that he was involved with the sale of phone accessories to earn a living; that he was living in Buzzy Quarter prior to his stay in the Rock Spring Valley community; that he moved from Buzzy Quarter due to constant armed robbery attacks; that it was on November 3, 2012, precisely, Saturday, when he came from Broad Street from his business area, he met a group of people in the room witnessing television; ~~that~~ he came with food in the plastic bag because that Saturday, they didn't cook; that later that evening he and the deceased got water to go take bath; that after bath, both of them came in the room, but people were still in the room watching television; so he remained in his underwear with his short trouser; brown short trouser, and the deceased had lapper; that they went to bed thereafter until at about 3am to 4am when she woke him up and said that unknown persons were trying to open the window; that this is how he got up and located a knife that he bought in May 2012 at the time unknown men had carried his phone from that same window; that he took the knife and stood beside of the dresser. The appellant, indescrbing the room and the placement of the windows, said that if you enter the room, two of the windows are directly opposite the door. These two are nailed and can't open; that the other two windows are on the left and are screened; that it was his father-in-law who helped him fix the screens to three of the windows because they are double windows. The appellant contended that when he woke up that night, he took the knife and went at the window, leaving the victim and their little daughter lying on the bed; that it was raining that night and the window was opened from outside, but the screen was closed; that when the screen came back with force, it was how he sent his hand back with force with the knife in his hand to strike the window in the darkness; that at that point, he heard the victim's voice and she said "oh"; that it was there and then that he turned around, held her and laid her right down to the bed foot, right behind him; that he immediately switched on the light and called for help; and neighbors from the other rooms in the house came to the door to aid him take the victim to the hospital; that when he opened the door, one B. Nelson, along with one Aaron, came in the room; that the others were at the door of the room; that Aaron and B. Nelson helped him took the victim to the hospital. The appellant explained that while taking the victim to the Hospital he met one Clarence Farley who came closer to him and asked him how he managed? He explained to him, that he was the one that "mistakenly" hit the deceased in the dark and injured her. The appellant further testified that he informed other community dwellers that came on the scene that it was [rouge] criminals who hurt the deceased through the window; that he also told the Police that night that it was [rogue] who hurt the deceased; also at the JFK medical center, he told the doctors that it was [rogue] that injured the deceased. When his in-laws arrived at the hospital and asked him, he also told them that it was [rogue] that injured the deceased. When asked as to whether he threw the knife in the ceiling after inflicting the

wound on the victim, the witness testified in the negative. At that stage prosecution gave notice for rebuttal. The Witness again testified in the negative when asked as to whether he wiped the room of all blood; prosecution again gave notice for rebuttal, but the witness confirmed in his testimony that the confession he made at the Police station about what transpired was made voluntarily.

The appellant's second witness who was a subpoenaed *Witness*, in person of Alfred Chea took the witness stand and testified that he was employed with the Liberia National Police (LNP) as a police officer; that he had been in the employ of the LNP since 2005; that he served in the homicide division of the LNP; that he knew the appellant to be the boyfriend of the victim and the one who perpetrated the wound on the victim which led to her death; that he was one of the agents that investigated the appellant after his arrest and that every stage he was represented by his lawyer, by the name of Atty. Swaliho A. Sesay. After the response of the subpoenaed *Witness*, the appellant's counsel rested his direct examination of the witness. We observed that because this witness did not say anything different from what appellee's third and fourth witnesses said, and because he did not say anything in defense of the appellant, the appellee waived cross-examination of the witness; a decision we think was appropriate. We shall speak more on this issue subsequently.

Appellant's third witness in person of B. Nelson P. Nyuma took the stand and testified that, he lived in the Rock Spring valley; that he was a technician apprentice, a job he did for living; that he had been living in the community for close to five years; that on the night of November 4, 2012, while in his house, he heard the voice shout once which caused him to run outside; that when he got outside, he saw the appellant's door opened and he was trying to bring the victim outside. According to him, that's how he aided her and woke up other people in the house. The witness testified that they decided to take her to the hospital by way of the Jallah Town's road near the SP gas station. Explaining further, he testified that he saw a police car parked at Destiny Entertainment Center, that's how he ran to call them and they took the victim to the hospital. The witness testified that when he heard the voice and came out door, he saw one Catherine, Aaron, Williams and his big brother Jacob at the appellant's door. On cross examination, the *Witness* testified that when he heard the shout, he came outside and met the deceased lying on the ground with the appellant standing over her trying to bring her outside. He also said that he only saw the appellant and the deceased when he came outside, even though their eleven (11) month baby was there, but his attention was only placed [focused] on the appellant and victim, so he didn't see the baby. When asked as to what the appellant explained to him when he entered their room, the *Witness* testified that,

"When I entered the room, I asked him James what happened and he said that when he and Nancy were sleeping she said that criminals were around and that is how he put off the light; and when he cut off the light, he went to the window. The window was not lock, but the screen was locked with nail behind it. He had the knife in his hand and then he said he doesn't know how Nancy woke up and came to him, that is how she bother with the knife and [got wounded]; that is how he started calling for help"

Appellant's fourth witness in person of Alfreda Cheabow took the stand and testified that she lived on Capital Bypass, Rock Springs Valley; she knew the Defendant and the victim as they were close neighbors;

that on November 4, 2012 at the hour of 3:00am to 4:00am, she was lying down in her room when she heard a voice saying your "please help me, your please help]. The witness testified that the appellant call her boyfriend name and ask him to please help him because his wife was bleeding. that she grew fearful and decided to pull back her boyfriend for fear that it was armed robbers. She testified as follows:

"When he opened the door, we met the late Nancy lying down between their door and our door in the corridor bleeding. At that time she was speechless and that is how they took her and carried her outside. When they carried her outside they went and woke up the rest of the neighbors and been that I was so scared, I went back in the room and locked my door. So later he called in the yard that his wife died and that is how I went outside and met the people crying."

When asked about what the appellant told her that led to the death of the victim, the witness testified that she heard the appellant saying "rogue *plugged his wife*". She also testified that when she came out of her room that night, she met one Catherine, Aaron, and the appellant.

~~We observed that appellant's witness person of Catherine~~ Gant stated exactly the same narrative given by previous witnesses. None of the appellant's witnesses spoke to or against the core issues which appellee tries to link the appellant to the commission of the crime of murder: The issues about his voluntary confession at the Liberia National Police Headquarters, the wiping of the victim's blood from the room after the appellant allegedly stabbed the victim, the concealing of the criminal agency, and the washing of the bed sheet allegedly by the appellant prior to calling the neighbors for help. We believe these are core issues that tend to incriminate the appellant and fully establish malice, criminal mind and wicked intent, purposely, knowingly, willfully, recklessly and criminally perpetrated by the appellant, thus, committing the crime of murder. The law in this jurisdiction is that, every person in any criminal action in which he is an accused has a privilege not to be called as a witness and not to testify. He may, however, subject to the limitations contained in this chapter, testify in his own behalf in accordance with the rules governing other witnesses. *Criminal Procedure Law, Chapter 2, section 2.5, captioned, Privileges and duties of accused persons*. If a privilege is exercised not to testify or to keep another from testifying, either in the action or with respect to particular matters, or to refuse to disclose or to keep another from disclosing any matter, the judge and counsel may not comment thereon; no presumption shall arise with respect to the exercise of the privilege, and the trier of the fact may not draw any adverse inference there from. In those jury cases wherein the right to exercise a privilege may be misunderstood and unfavorable inference drawn by the trier of fact, or maybe impaired in the particular case, the court, at the request of the party exercising the privilege, may instruct the jury in support of that party's right to assert such privilege. *Criminal Procedure Law, Chapter 2, section 2.6, captioned, Reference at trial to exercise of Privileges*.

However, if the defendant chooses to take the stand, he is under a legal duty to adequately address himself to all incriminating allegations against him. The appellee alleged and

provided circumstantial evidence that the appellant was the one who murdered the victim; he tempered with the crime scene as well, took away the murder weapon or criminal agency that he used, climbed in the ceiling, placed it in a tub, came into the room, wiped all the blood that was cooling in the room, took the bed sheet that they were lying on that contained blood, placed it into a bucket, washed away the blood, came into the room and alarmed that indeed criminal had entered into their room and that he wanted help; that the murder weapon as being a Chinese knife with red handle was hidden in the ceiling and it took two days to retrieve the murder weapon from the ceiling in the house of the appellant based on information provided by himself; that the appellant admitted to using this weapon; the weapon was hidden in the attic and before being retrieved, it was photographed and collected; that since the appellant told neighbor and police investigators that armed robber killed his fiancée, they expected to see blood pouring in the room; but after initially checking, they did not observe any blood on the floor mat. "It was after thoroughly checking, that it was observed that the bed sheet that the appellant and the victim were sleeping on was before the house into a bucket and was washed of the blood; that while they were still thoroughly checking, it was when they observed a cloth of blood under the floor mat where the two floor mat meet and join; that looking at the motive and intention, if the perpetrator did not mean what he did, immediately after the commission of the crime, he would have cried for help, but due to his disregard for human life, he purposely planned to murder the victim; he murdered the victim and after knowing that the victim will not actually live to link him to the crime, he there and then alarmed confusing the mind of his neighbor who then rushed into the room to assist him in the process and they took her to the hospital. This Court has opined that, where damning testimony has been placed on the record against a criminal defendant, unless rebutted, such will constitute a prima facie evidence of fact. *Massaquoi V. Republic of Liberia*, [2014] LRSC 14 (2014); citing *Davies V. Republic of Liberia*, Supreme Court Opinions, October Term 2008. From the facts and circumstances in this case, and based upon the appellant's testimony, he did not deny that the victim died at his instance. He claims that the victim was accidentally stabbed with the knife he took for the purpose of attacking an alleged intruder. Unfortunately, the appellant's position was never corroborated by any of his witnesses. He alone proffered or spoke to this position, and this portion of his testimony was never corroborated by any of the witnesses he paraded. All the appellant's witnesses spoke of activities that occurred after the victim was "stabbed". We note that testimonies which tend to provide information after the fact, but do not undo the link of the defendant to the commission of the crime charge, is not tenable in law and cannot disprove damning allegations against the defendant. The law is that, the uncorroborated testimony of a person accused of a crime is insufficient to rebut clear and cogent proof of the accused's guilt. *John v. Republic of Liberia* [1958] LRSC 2; 13LLR 143 (1958); *Davis v. Republic* [2001] LRSC 27; 40LLR 659 (2001); *Zaiglor –Or v. Republic of Liberia*, [1927] LRSC 5; 2LLR 624 (1927). In order to establish a defense that is cogent to warrant an acquittal in the face of highly incriminating evidence that appears to be

believable, the defendant is under obligation to bring witnesses that will corroborate his defense for the court or jury to arrive at a justiciable outcome of the controversy. The Supreme Court has opined in the case: *Kpolleh et al v. Republic of Liberia (1990) LRSC 1; 36LLR 623 (1990)*, that, the uncorroborated testimony of the defendant is generally insufficient to support a verdict of acquittal where the evidence against the defendant is clear and cogent. We hold that in the wake of highly incriminating circumstantial evidence that establish malice, wicked intent and indifference to human life, and based on the fact that the appellant chose to take the witness stand and did not legally rebut those highly incriminating evidence proffered by the appellee, murder will lie.

During arguments before this Court the appellant's counsel vehemently argued that the appellant's constitutional rights was violated when statements were extracted from the appellant in the absence of his counsel; that the appellant was not represented by a lawyer during investigation at the Liberia National Police Headquarters. The appellant stated in count one of the bill of exceptions as follows:

"That Your Honor erred when on the 21st day of February, 2013, ruled denying Defendant's submission to have stricken off the records of court statements obtained illegally from the defendant while undergoing interrogation by officers of the Liberia National Police, as can be seen on sheet five (5) of the 8th day jury sitting. Defense excepted and same was noted".

The appellant's counsel invokes Article 21(c) of the Liberian Constitution (1986), and says that it is clearly mandatory in its pronouncement. It states that:

"Every person suspected or accused of committing a crime shall immediately upon arrest be informed in detail of the charges, of the right to remain silent and of the fact that any statement made could be used against him in a court of law. Such person shall be entitled to counsel at every stage of the investigation and shall have the right not to be interrogated except in the presence of counsel. Any admission or other statements made by the accused in the absence of such counsel shall be deemed inadmissible in a court of law".[Emphasis supplied]

We agree with the appellant's counsel that the right to counsel is inviolable. It is a constitutional right that should always be considered in all criminal proceedings. A review of the records in this case established that appellee's witnesses testified that the appellant was represented by a Public Defender from Montserrado County. When asked a question about the confession made at the LNP Headquarters in the presence of his Father-In-Law and Mother-In-Law that he stabbed the victim that night of the incident, the appellant answered as follows:

"It was Tuesday, when I asked the CID officer to help me to get my Mother-In-Law and Father-In-Law because since the incident took place I was not able to talk to them together or to explain how the incident actually happened. It was that same Tuesday when they came I explained to them in the presence of my bigger brother, who since the incident took place, have continually been asking me but I never explain to him and in the presence of the four

witness who I asked to call the people and in the absence of Attorney Sherman, who testified, when I explained the actual story”.

Not satisfied with the appellant’s response mentioned supra, the appellee asked this followup question:

“Mr. Witness, your answer is not responsive, my question is that, you, on your own volition, confessed to you parents-In-Law about the death of your girlfriend. Am I correct?”

The appellant answered as follows:

“Nobody forced me. It was then I explained how the incident occurred. I explained it willingly”.

From the interaction between the appellee and the appellant during cross examination, it is abundantly clear that the appellant willingly confessed to the LNP investigator, his Parents-In-Law, his brother and others, that he was responsible for the death of the victim, that he was not forced or tortured, or pressurized to do so. He stated that nobody forced him. He explained the incident as it occurred. He therefore requested the parents of the deceased to forgive him. Whether or not it was intentional or accidental as he claimed, his action after the incident fully establish that. A review of the records show that the appellant’s counsel chose to subpoena Alfred Chea of the Liberia National Police, homicide division; who testified that he knew the appellant in the dock to be the boyfriend of the victim and the one who perpetrated the wound on the victim which led to her death; that he was one of the agents that investigated the appellant after his arrest and that every stage he was represented by his lawyer by the name of Atty. Swaliho A. Sesay, of the Public Defense Office, Montserrado County. The testimony of this witness confirmed and affirmed the testimonies of previous witnesses from the appellee. This Court wonders why witness Alfred Chea was subpoenaed by the appellant’s counsel?. We believe if the appellant’s counsel wished to authenticate whether or not his client was represented by Atty. Swaliho Sesay, Public Defender, Montserrado County, the best and most appropriate person that should have been subpoenaed was Atty. Swaliho Sesay. Atty. Sesay, who is said to be the counsel that represented the appellant at the LNP investigation, could have given the court and the jury adequate information as to whether or not he actually represented the appellant at the LNP investigation. As a matter of fact, Atty. Swaliho Sesay was part of the Office that represented the appellant during this trial. Why barred the appellant’s counsel from inviting his colleague to appear before the court to testify to this very important issue. The testimony of appellant’s 2nd witness, Alfred Chea and the position of the appellant himself that he was not pressured or molested or tortured when he made the open confession, invalidate the appellant’s counsel position that his client made the confession in the absence of his counsel and that the referenced confession should be stricken from the records of the case. A confession is a voluntary statement by the accused that she/he engaged in conduct which constitutes a crime. It is a direct acknowledgement of guilt on the part of the accused, of the elements of a crime, either by a statement of the detail of the crime or an admission of the ultimate fact. Thus, a confession may be distinguished from conduct of the accused, which tends to establish his or her guilt. *29 Amjur. 2d. evidence, section 715.* Where the constitutional and statutory rights of a criminal defendant are not violated, it is legal and proper for the trial judge to admit into evidence the voluntary statement of

confession written and signed by the defendant. *Swen v. Republic of Liberia* [2000] LRSC 14; 40LLR 138 (2000). In general, corroboration of an accused's extrajudicial confession need not, to justify a conviction, consist of evidence sufficient to prove the offense beyond a reasonable doubt, or even by a preponderance of evidence, as long as there is substantial independent evidence that the offense has been committed, and the evidence as a whole proves beyond reasonable doubt that the defendant is guilty. In other words, the corroborating evidence need not be such as independently of the confession, would warrant a conviction, nor, need it be conclusive in character. Evidence in addition to confession need not exclude every reasonable hypothesis other than guilt and is sufficient if it demonstrate conduct indicating consciousness of guilt, such as a presence at the crime scene, motive, flight. In fact, direct and positive proof of the corpus delicti, independently of the confession, is not essential, and circumstantial evidence may constitute a sufficient corroboration of a confession. 29 *Amjur 2d, evidence, section 1396*. We hold that the confession of a crime by an accused is admissible in evidence and may be used against him in prosecution when properly corroborated.

This court says that the ingredients of a juridical conviction are, firstly, that the offense has been correctly charged in a valid indictment; secondly, that admissible evidence was placed before the jury; and thirdly, that the evidence has satisfactorily established the guilt of the accused beyond reasonable doubt. *Weh Dennis and Mullenburg v. Republic*, 20 LLR 47 (1970). In the instant case, the appellant was correctly charged, only admissible evidence was placed before the court, and the evidence after going scrutiny by the court, did establish the guilt of the appellant beyond a reasonable doubt.

Speaking further on the issue conviction of an accused this court had maintained that "In order to convict a person in a criminal case, the Prosecution must prove the guilt of the accused with such legal certainty as to exclude every reasonable hypothesis of his innocence: and all material facts essential to constitute the crime must be proved beyond a reasonable doubt; otherwise, the accused will be entitled to a discharge". *Davis v. Republic* [2001] LRSC 27; 40LLR 659 (2001); *Dyson v. Republic of Liberia*, [1906] LRSC 6; 1LLR 481 (1906); *Williams v. Republic of Liberia* [2014] LRSC 47 (2014).

The establishment by the State of the guilt of the accused with the legal certainty which excludes every hypothesis of the defendant innocence is necessary. *Wright et al. v. Republic of Liberia* [2010]; LRSC 39 (2010); *Berrien v. Republic of Liberia*, [1916] LRSC 16; 2LLR 258, 262-3 (1916); A charge against an accused must be proved as laid in the indictment. *Williams v. Republic of Liberia* [2014] LRSC 47 (2014), citing *Roose v. Republic*, 28LLR, 237 (1979)

We hold that the appellee clearly established a prima facie case against the appellant, James Kesselley, who killed his fiancée, Nancy Manwoi James, by inflating deep wounds on her breast, from which she bled and later died. The testimonies were never overcome by the appellant. This Court maintains that the evidence in the instant case is overwhelmingly supportive of the verdict of guilty; as it was legally, properly, and correctly obtained. Further, the trial was regular and all safeguards of a fair trial were in place; and all the rights of the appellant were properly protected and preserved. Therefore the final verdict of the court below should not and cannot be disturbed.

WHEREFORE AND IN VIEW OF THE FOREGOING, the unanimous guilty verdict of the trial jury trial, which was confirmed by the lower court, is hereby confirmed and affirmed. The appellant, James Kesselly is hereby adjudged guilty of the crime murder and sentenced to Life imprisonment. The Clerk of this court is ordered to send a mandate to the court below to resume jurisdiction over this case and give effect to this judgment. Cost disallowed. **IT IS HEREBY SO ORDERED.**

Judgment confirmed and affirmed.

When this case was called for hearing, Counsellor T. Joseph Debblay, Coordinator, Office of Public Defenders of Liberia appeared for the appellant.

Counsellors Wesseh A. Wesseh, Assistant Minister for litigation and Cllr. Lafayette B. Gould, Sr., Legal Counsel, Ministry of Justice appeared for the appellee.