

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

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Sensee Kowo of the City of Ganta, Nimba County, Republic of Liberia..... Appellant	)	
	)	
VERSUS	)	APPEAL
	)	
Republic of Liberia, by and thru the Ministry of Justice ..... Appellee	)	
	)	
<u>GROWING OUT OF THE CASE:</u>	)	
	)	
Republic of Liberia, by and thru the Ministry of Justice .....Plaintiff	)	
	)	<u>CRIME:</u>
VERSUS	)	MURDER
	)	
Sensee Kowo, Martin Dolo, and Rancy Dolo of the City of Ganta, Nimba County, Liberia..... Defendants	)	

Heard: March 29, 2023

Decided: August 11, 2023

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The appellant, Sensee Kowo, is before the Supreme Court appealing his conviction of murder emanating from the final ruling of the Second Judicial Circuit Court, Grand Bassa County.

The records established that the Republic of Liberia, the appellee herein, arrested the appellant and two other defendants in persons of Rancy Dolo and Martin Dolo, and following investigation, jointly charged them for the murder of Samuel Selleh. Subsequently, the Grand Jury of the Eighth Judicial Circuit, Nimba County, indicted all the defendants for the commission of the crime of murder.

The nine (9) count indictment alleged *inter alia*, that on March 8, 2020, the decedent, Samuel Selleh, and three of his friends were seen loitering around the Jackie’s Guest House, a private business center; that two private security guards assigned to an area proximate to the said business center, namely co-defendants Martin Dolo and Rancy Dolo approached the decedent and his friends demanding to know the contents of a bag being carried by one of the decedent’s

friends; that an argument ensued because one of the decedent friends questioned the authority of the co-defendants to search their bags, noting that the co-defendants were not officers of the Liberian National Police (LNP) or the Liberia Drug Enforcement Agency (LDEA); that during the argument, co-defendant Martin Dolo called his boss, the appellant herein, Sensee Kowo, requesting that he come on the scene; that upon the appellant's arrival, and without investigating the cause of the argument, proceeded to take hold of the decedent from the back of his neck and handcuffed him, while the other co-defendants allegedly assaulted the decedent with a baton; and that the appellant continuous hold of the decedent by the neck, led to his demise from strangulation and a broken neck. The indictment concluded that following investigation, the co-defendants and the appellant's actions were found to be without any affirmative defense, and their acts being intentional and done without due regards for the life of the decedent, hence constituting the crime of murder.

On September 21, 2020, the appellants filed a motion for change of venue from Nimba County to Montserrado County, on the basis that public sentiments within Nimba County would adversely affect the outcome of the trial given that the crime was committed in Ganta City. The motion was heard by the trial judge, and thereafter granted, but with the *proviso* that the case be transferred to the Second Judicial Circuit, Grand Bassa County, and not the First Judicial Circuit, Montserrado County, as requested by the appellant and the other two co-defendants, given that the Second Judicial Circuit was contiguous to the Eighth Judicial Circuit and that the law provides that in making a determination on a motion for change of venue, the nearest jurisdiction should be considered. We are in agreement with the ruling of Judge Dahn as to the granting of the appellant and the co-defendants' motion for change of venue, as same is in consonance with Section 5.7, sub-section (b) of the Criminal Procedure Law which states thus:

“Change of Place of Prosecution

On motion of the prosecuting attorney or the defendant, the court may order the proceedings in a criminal prosecution transferred to a competent court in another county in any of

the following cases:

...(b) If there is reason to believe that an impartial trial cannot be had in the county in which it is pending...”

This Court has opined that knowing the dire consequences of one being tried criminally, especially for the crime of murder, a capital offense that carries the penalty of death or

life imprisonment, the framers of our Criminal Procedure Law stated that the purpose and construction of said law are to be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. *Criminal Procedure Law*, section 1.2; *R.L. v Williams*, Supreme Court Opinion, March Term 2019.

Accordingly, the trial judge presiding over the motion for change of venue properly applied the law when he granted same as per the request of the appellant and the co-defendants. However, we quickly note here, that our criminal statute on change of venue as quoted above makes no provision for the mandatory selection of a contiguous county. Instead, the quoted provision of the law and the choice of a contiguous county are for the convenience of the parties, ease of transporting witnesses and more compelling, to promote the ends of justice.

At the arraignment before the Second Judicial Circuit, the appellant and co-defendant Nancy Dolo pleaded not guilty to the charge of murder alleged in the indictment, and thereafter waived their right to trial by jury. Hence, the case was proceeded with as a bench trial, which is a right granted persons accused of committing a heinous crime as murder. It is the law that "...in all such cases, the accused shall... with appropriate understanding, expressly waive the right to a jury trial..." Article 21(h), Constitution (1986); *Criminal Procedure Law*, Rev. Code, 2:20.2.

The case proceeded to trial, and at the conclusion thereof, the trial judge rendered final ruling adjudging appellant Sensee Kowo and co-defendant Nancy Dolo guilty of the commission of the crimes of murder and criminal facilitation, respectively. Thereafter, the clerk of court was ordered to inform the Division of Probation Services, Second Judicial Circuit, Grand Bass County, to conduct a presentence investigation and submit its report to the court for sentencing. The trial judge, upon the submission of the pre-sentence report, sentenced appellant Sensee Kowo and co-defendant Nancy Dolo to imprisonment of twenty (20) years and one (1) year, respectively, at the Buchanan Central Prison.

In its sentencing ruling, the trial court noted that both the appellant and co-defendant Nancy Dolo had remained incarcerated for approximately one (1) year and seven (7) months awaiting their sentencing; that co-appellant Nancy Dolo who was adjudged guilty of criminal facilitation, a 1<sup>st</sup> degree misdemeanor, had surpassed the maximum imprisonment sentence of one (1) year for said crime. Therefore, as part of his sentencing ruling, the trial judge ordered

the immediate release of co-defendant Rancy Dolo with all his constitutional rights and liberties restored. As to the appellant, he noted his exceptions to the final ruling sentencing him to twenty (20) years imprisonment and announced the present appeal to the Supreme Court.

The alleged errors imputed to the trial are couched in the appellant's twelve (12) count bill of exceptions for our review. It is the law that notwithstanding the number of errors purported to have been committed by the trial judge, as contained in an appellant's bill of exceptions, it is the prerogative of the Supreme Court to determine which errors are germane to the determination of the appeal. Also, as the Constitutional Court with final appellate jurisdiction in all cases, the Supreme Court need not pass upon every issue presented in a bill of exceptions except those that are determinative of the appeal at bar. *Olivia Newton v. Augustus D. Kormah*, Supreme Court Opinion, October Term, A. D. 2022; *CBL v. TRADEVCO*, Supreme Court Opinion October Term 2012; *Knuckles v. TRADEVCO*, 40 LLR 49, 53(2000); *Vargas v. Morns*, 39 LLR 18, 24 (1998); *LAMCO J.V. v. TRADEVCO*, 26 LLR 554 (1978).

Our review of the bill of exceptions shows that the core contention presented therein by the appellant is that the State, the appellee herein, failed to prove his guilt beyond a reasonable doubt because the evidence presented failed to establish a *prima facie* case of murder as charged in the indictment.

It is the law in our jurisdiction that in all criminal trials, in order for the State to convict, 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; and that the burden to prove the guilt of the defendant in criminal cases remains with the State throughout the trial. *Yates et al. v. RL*, Supreme Court Opinion, October Term, 2015; *Massaquoi v. Republic*, Supreme Court Opinion, October Term A.D 2013; *Davies v. Republic*, 40 LLR, 659, 676 (2001). Hence, we shall now review the testimonies presented by the State to determine whether the crime of murder was proved beyond a reasonable doubt, and we shall also review the appellant's defenses as to his innocence.

The records show that although three persons were indicted by the Grand Jury of the Eighth Judicial Circuit, Nimba County, *viz*, Sensee Kowo, Martin Dolo, and Rancy Dolo, only the appellant herein and co-defendant Rancy Dolo were arrested and brought under the

jurisdiction of the trial court. Hence, the trial court granted severance to the appellant and co-defendant Rancy Dolo predicated on an application by the State for said purpose.

At trial, the State presented four (4) witnesses in persons Yei Yeni, Aminata Morris, Supt. Oscar T Sayen, Commander of the Crime Services Department (CSD), Nimba County Police Detachment, and Franklin Sayetorkah, Acting Coroner, Eighth Judicial Circuit, Nimba County.

The appellants presented five (5) witnesses to include: appellant Sensee Kowo and Rancy Dolo who testified *pro se* as the first and second witnesses respectively; while the other three witnesses, in order of their testimonies, were Julius Suah, Nelwin Dugbei, and Prince L. Mahyee.

The crux of the testimonies of the witnesses for the State, was to prove that the appellant held the deceased Samuel Selleh by the collar of his shirt from the back of his neck while two of his security staff, co-defendants Martin Dolo and Rancy Dolo, battered the deceased with a baton; that as a result of the appellant's grip on the neck of the deceased, coupled with the beating rendered by the said co-defendants, the neck of the deceased was broken which caused his death.

The records indicate that the species of evidence relied on by the State in prosecuting the appellant and co-defendant Dolo for the crime of murder included voluntary statements obtained from eye witnesses by the LNP, the coroner jury's report which set the basis for LNP charge of murder; the instruments allegedly used in the commission of the crime; and, the witnesses' testimony.

The State's first witness, Yei Yini, testified on the direct that on March 8, 2020, while escorting her friend Aminata Morris to her house, they encountered two private security officers along the road who expressed interest in befriending the said Aminata Morris, but they ignored their request and continued on their way; that upon reaching the Jackie's Guest House, she observed that the two private security officers were questioning four boys on their loitering at the front of the guest house; that one of the private security officers then requested to inspect the contents of a bag that was in the possession of one of the boys; that after complying with the request which revealed that the said bag contained a pen and note book, the boy requested that the security officers identify themselves; that predicated on the request for identification, the private security officers accused the boy of being disrespectful, and an

argument ensued between them; that while the argument was ongoing, one of the security officers called his boss, the appellant, who arrived on the scene while the boys were already leaving; that immediately upon disembarking the motor bike, the appellant held the deceased by his shirt at the back of his neck, while the two private security officers beat him with a baton; that she and her friend Aminata pleaded with the appellant to let go of the deceased, but he refused and even slapped Aminata in the process; that the appellant only let go of the deceased after noticing that he had gone limp; that officers of the Liberia National Police (LNP) later came on the scene and required voluntary statements from those present.

The State's second witness, Aminata Morris, testified that she visited witness Yei Yini on March 8, 2020, at her house and upon concluding her visit, they both proceeded to take a walk on the road toward the Jackie's Guest House; that while *en route*, they encountered two private security officers, one of whom expressed interest in becoming her friend but she snubbed him; that she and her friend, the appellee's first witness, along with the two private security officers walked together until they reached the Jackie's Guest House, at which time they observed four boys standing at the front of the guest house; that one of the security officers inquired from the boys as to the purpose of them loitering at the front of the guest house and also what was in the bag that was in the possession of one of the boys; that it was later discovered that the bag only contained a pen, and a notebook; that arguments ensued between the private security officers and the boys, prompting the security officers to call their boss, the appellant; that although the four boys who were involved in the argument with the private security officers had left the scene prior to the arrival of the appellant, immediately upon his arrival, the appellant confronted two other boys who were standing by the road, and held on to one of them by his shirt around his neck; that the two private security officers joined him to beat the boy, even though the boy informed them that he knew nothing of the incident; that she and her friend appealed to the appellant to release the boy's shirt, but he refused and even slapped her causing her to sustain injury to her chest. She concluded that the appellant held onto the deceased until he realized that the deceased had become helpless, and when he let go of the deceased, he fell to the ground.

In response to a question on cross examination regarding persons that were on the scene when the incident described by the witness occurred, she testified that her friend Yini, the State's first witness, a fellow named Stanley, the deceased, and herself were the only ones on the scene in addition to the appellant and the two defendants/securities.

The witness was further questioned if she knew this Stanley person and what was his full name, but she responded that she did not know his full name; that she had only learned that his name was Stanley on the next day following the incident. She further testified that while on the scene of the incident, Stanley did nothing with respect to the entire altercation; that although she did not provide any statement to the police, her testimony was predicated on the request of her friend Yei Yini.

The State's third witness, Franklin Sayetorkah, testified in his capacity as Acting Coroner for District # 1, Ganta City, Nimba County. He narrated that on March 9, 2020, the police informed him of the deceased, who was then deposited at the E & J Funeral Home, and requested him to conduct an examination of the body; that he convened a coroner's jury of fifteen (15) persons which discovered bruises on the chest, neck and back of the deceased; that the jury further noted that the deceased neck was weak and that upon turning the neck of the deceased sideways, they observed that blood flowed out of the deceased mouth; hence, the jury concluded that the neck of the deceased was broken.

On cross examination, the witness testified and confirmed that no member of the coroner's jury was medical personnel; that the jury's determination that the deceased neck was broken was based on their physical observation that the neck was 'weak' and there was a flow of blood from the deceased mouth.

The appellee presented as its fourth witness, Superintendent Oscar T. Sayeh of the Crime Service Division, (CSD), Nimba Detachment, Liberia National Police. The witness testified that on March 9, 2020, he was informed of a homicide case in Ganta City; that upon his arrival at the police station in Ganta City, he commenced an investigation by leading a team of police officers to the hospital where the deceased had been taken; that a medical practitioner at the hospital named Timothy Walee informed the team that the deceased was pronounced dead upon arrival; that the team proceeded to the E & J Funeral Home to view the body of the deceased, and while there, observed bruises on the chest, back, and left arm of the deceased; that following the visit to the funeral home, the police informed the coroner of District #1 to conduct an examination of the deceased body and report his findings to the police. The witness further testified that the police visited the crime scene and talked to some eyes witnesses; that based on their investigation, the police arrested the appellant and co-defendant Rancy Dolo, and after further investigation, charged them with the commission of the crime of murder and forwarded the case to court. On cross examination, the witness confirmed his entire testimony given on direct examination.

In his defense, the appellant testified *inter alia* that on March 8, 2020, while sitting in the restaurant at the Jackie's Guest House, a security officer of the SYK Security Firm in person of co-defendant Martin Dolo called to inform him that some boys were engaged in disorderly and uncontrollable conduct at the Jackie's Guest House, within the vicinity of their assigned posts; that noting the urgency in the voice of by private security Martin Dolo regarding the conduct of the said boys, he walked to the scene to inquire about the situation; that upon arriving at the scene, he observed the presence of four boys and two private security officers in persons of Rancy Dolo and Martin Dolo; that one of the boys was at the time assaulting private security Martin Dolo, which prompted him to intervene by pleading with the boys to respect the private security officers, especially since they were uniformed, but his plea yielded no result; that given the refusal of the boys to desist from their action, he called an officer from the Ganta Police Depot in person of officer Carrington Luo, to come on the scene; that upon hearing the call for police officers to come on the scene, the four boys attempted to flee, but he was able to hold on to one person by the tail of his shirt; that the other boys began to throw stones at them, one of which hit him (appellant) on his wrist and another stone hit the chest of the boy whom he had detained, thus causing the said boy to fall to the ground; that it was at that moment that he observed one Stanley Yini standing nearby with a stone in his hand; that he detained Stanley Yini until the arrival of two police officers, one of whom he had called earlier, and turned Stanley over to the police officers; that the scene of the incident became tense upon the arrival of the father of the boy who had been hit by the stone; that the private security officers who decided to leave the scene as the situation began to escalate were pursued, but only Martin Dolo was caught and brutally beaten by some motorcyclists who had come on the scene, until he was rescued by some other private security guards and taken to the police station. The witness further testified that due to the increasing tension and violence at the scene of the incident, he left the area and went to the police station; that after it was reported that the boy whom he had prevented from escaping the crime scene had died, and that angry mob had attempted to burn his place of residence, he was advised by the general police commander for Nimba County, A. C. P. Augustine Leo Warri, to go into hiding until the arrival of ERU officers from Monrovia; that upon the arrival of the ERU officers, he was escorted to the Bong County Police Detachment and thereafter forwarded to the headquarters of the Liberia National Police; that he made two separate voluntary statements at the police station; and that he was subsequently taken back to Sanniquellie and detained until he was formally charged with murder and forwarded to court.



On cross examination, the appellant narrated that he was the boss of the two private security officers in persons of Martin Dolo and Rancy Dolo; that Martin Dolo was the Manager of the SYK Security Firm and that he was responsible to supervise four areas of assignment which were within the vicinity of the scene of the incident; that the incident occurred at the back side of Jackie's Guest House, opposite the USAID fence. The witness further confirmed that he wrote two different voluntary statements: one in the office of Unit 109 and the other statement was taken in the office of the Professional Standard Division, LNP on March 10, 2020 and March 17, 2020 respectively. As to whether or not he encountered some people at the scene of the incident who pleaded with him to release the deceased, the witness testified that he did not encounter anyone and neither did he slap anyone as claimed by the appellee's witnesses. Moreover, the appellant testified that he did not go on the scene of the incident with any form of weapon.

The appellant's second witness, Rancy Dolo, testified that on March 8, 2020 he was assigned at the USAID fence opposite the Jackie's Guest House; that while on assignment, his boss Martin Dolo informed them that some boys were smoking drugs around their area of assignment, and that they should disperse the boys; that upon their surveillance of the area, they observed four boys loitering around their area of assignment and whom they later questioned about the information reaching them that some persons were smoking drugs at their area of assignment; and it was for that reason the request was made to inspect the bags of the boys, but they refused to have their bags searched and left the area; that upon returning to his assigned post, following visit to other places of assignment, he observed that the same four boys had returned to the vicinity of the Jackie's Guest House, and began demanding that he and Martin Dolo identify themselves as to whether they were officers of the Liberia Drug Enforcement Agency (LDEA) or the LNP; that because the boys began to assault them, Martin Dolo called the appellant and upon the latter's arrival at the scene, he immediately displayed his identification card which identified him as a police officer; that upon calling for other police officers, the boys attempted to flee the scene, but Martin Dolo was able to restrain one of them from fleeing, and this enabled the appellant to take hold of the assailant's shirt; that because the appellant had detained one of the boys, the other boys began to throw stones; that one of the stones hit the appellant's hand, at which time he, the witness, fled from the scene. The witness further testified that he was later arrested at his home and taken to the police station in Sanniquellie where he explained his account of what had transpired, and signed a statement thereafter; that his statement was then written by one of the police officers, and thereafter given to him to sign. The witness further stated that his statement written by the police was not read to him prior to his signing same; the witness also denied making any

statement at the police station to the effect that the appellant held one of the boys by his neck and pulled him from the stairs... or that the appellant requested him to handcuff the deceased while he (appellant) held unto him. On cross examination, the witness confirmed that some portions of his statement written by the police were inaccurate.

The appellant's third and fourth witnesses, Julius Suah and Nelwin Dugbei testified that they were at the scene of the incident involving the appellant; that the appellant came from within the Jackie's Guest House after an uproar between some private security officers and four boys; that the appellant held the shirt of one of the boys while the other boys fled the scene; that the boys started throwing stones, one of which hit the appellant and another hit the deceased, who at the time the appellant was holding by his shirt; that after one of the stones hit the deceased, he dropped to the ground; that the appellant apprehended one of the boys that was throwing the stones and turned him over to the police officers who came on the scene; that they followed up at the police station and made statements as to their respective accounts of what they had witnessed. However, the certified records show no such statement by witness Suah. As to the testimony of the appellant's fourth witness Nelwin Dugbei's account of the incident, on cross examination, he confirmed that on the day of the incident, he was present at the scene around the Jackie's Guest House, and confirmed that he did see a rioting group of people throwing stones toward the scene of the incident.

The appellant's fifth witness in person of Prince L. Mahyee, Jr. testified that he was at the Jackie's Guest House when a riot broke outside the guest house; that he went on the scene and noticed that there was confrontation between the private security officers and some other persons to include motorcyclists; that while making inquiry as to the cause of the altercation, he noticed that stones were being thrown, hence he returned into the guest house for safety and remained there till late at night; that it was the following day that he heard about the death of the deceased.

Having narrated the testimonies of both the appellee and appellant's witnesses, we first take recourse to the Penal Law to outline the necessary elements that must be established for murder to lie, and thereafter juxtapose same with the evidence adduced by the State in substantiation of the indictment.

Section 14.1 of the Penal Law defines murder thus:

“A person is guilty of murder if he:

- a). Purposely or knowingly causes the death of another human being; or
- b). Causes the death of another human being under circumstances manifesting extreme indifference to the value of human life. A rebuttable presumption that such indifference exists arises if the defendant is engaged or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit, treason, offenses defined in Sections 11.2 or 11.3 of this title, espionage, sabotage, robbery, burglary, kidnapping, felonious restraint, arson, rape, aggravated involuntary sodomy, escape, piracy, or other felony involving force or danger to human life.”

The records show that the theory of the State’s case is that the appellant purposefully and without any regards for the life of the deceased, used his hands to strangle the deceased, Samuel Selleh, thereby breaking his neck in the process; that this act, coupled with the alleged beating inflicted upon the body of the deceased with a baton by co-defendants Martin Dolo and Nancy Dolo, at the instance of the appellant, resulted to the death of Samuel Selleh.

We take judicial cognizance of the duty of the coroner to conduct investigation of the facts and circumstance surrounding a suspicious death. Section 7.2 of the Criminal Procedure Law states thus:

“Duties of coroner; formal inquest.

Upon being notified of a death of the type described in the preceding section, the coroner shall go to the place where the body is, take charge of and examine it, record all material facts and circumstances surrounding the death, and take the names and addresses of all witnesses. He shall convene at that place a formal inquest with a jury of fifteen persons in the course of which inquest the coroner and jury may hear the testimony of witnesses. Any such testimony shall be reduced to writing by the coroner or a clerk appointed by him and shall be included in the report required by section 7.5”

Furthermore, the law also provides that if the coroner is not a medical practitioner, he is authorized to compel any medical practitioner within his jurisdiction to assist him in examining the body of the deceased. Rev. Code 2:7.3

From the above stated laws, we first observe from the coroner’s jury report that neither the jury or the coroner made any inquest into the facts and circumstances surrounding the death of Samuel Selleh from witnesses for which they could reasonably conclude a cause of death. Moreover, even though the coroner had the authority to compel a medical practitioner, especially given that no member of the fifteen-person jury were medical practitioner, he failed

to do so. The report was basically to the effect that from their observation, the neck of the deceased was broken, and that they observed wounds on the arms, chest and the back of the deceased. The report does not state a probable cause of death. We quote below the coroner's jury report:

“Fifteen (15) Men Jury Observation Report

During our observation, we found that Samuel Selleh was already dead. We equally observed that there [was] foul play.

Observations:

We observe that Samuel Selleh neck was broken. We also saw wounds on both of his arms, chest, and his back.

Conclusion:

The fifteen (15) men jury with the observation of the body of Samuel Selleh have no alternative but to submit to the government exactly what we have observed.”

Secondly, and similar to the content of the coroner jury's report, the investigative report of the police which charged the appellant and the two co-defendants with the crime of murder failed to indicate the cause of death, even though the said report states that besides the coroner's investigation, a forensic team from the headquarters of the LNP visited the scene and conducted investigation.

Considering the various statements and testimonies by eye witnesses at the crime scene which described a chaotic and riotous scene involving motorbike riders, an unspecified number of persons throwing stones where the appellant, police officers, private security officers and the deceased and some of his friends, and other by-standers, it was necessary for the State given these circumstances to have obtained the expertise of a medical practitioner to ascertain and state with certainty, the cause of death. However, the records are void of any such determination.

Moreover, the coroner's jury report as well as the police investigative report indicate that the deceased had bruises on his chest. Without any further information as to the kind of bruises that were discovered on the deceased chest, and what could have been the most likely cause of said bruises, anyone could easily attribute the bruise to the stones attack as alleged by the appellant. The *onus* of refuting this reasonable assumption was the State's responsibility. For it remains the law that in all criminal cases, the standard of proof required is “beyond a reasonable doubt”.

While it is not the prerogative of this Court to tell the State how to prosecute its cases, it is our duty to ensure that justice is dispensed adequately and efficiently. It is an elementary principle of criminal law that the State, by virtue of its authority and resources, is obligated to procure the best evidence in substantiating and proving its cases. Furthermore, as we have stated *supra* in this Opinion, at all times in a criminal case, the State maintains the obligation to meet the standard of proof beyond a reasonable doubt before a conviction of the defendant can be upheld. *Brown et al. v. Republic*, Supreme Court Opinion, October Term, A.D. 2009; *Okrasi v. Republic*, Supreme Court Opinion, March Term, A. D. 2009; *Wogbeh v. Republic*, Supreme Court Opinion, October Term, A. D. 2009. Contrary to its legal obligation in prosecuting cases, this Court observes that the manner in which the State is prosecuting cases is abysmal, to say the least. We have noted in plethora of cases that the State relies on sentiment rather than evidence to prove its cases, which act is untenable in the eyes of the law.

Given all we have said herein, we are of the considered view that the State only showed that a person died during a riotous and chaotic incident, but produced no evidence to establish the guilt of the appellant beyond a reasonable doubt, a mandatory requirement of our criminal law.

The elements that constitutes the crime of murder dictates that for an accused to be convicted, the evidence must either show that the convict purposed to and knowingly caused the death of another, or that he/she caused the death of another under circumstances indicating complete disregard for the value of human life. If an unlawful homicide is proved to have been committed and is shown to have been the intentional and deliberate act of the accused, the law will presume malice from the facts alone and the intention to kill, unless the accused offers evidence to show mitigating, excusing or justifying circumstances. *Yancy et al. v. RL*, 27, LLR 365, (1978).

As we stated *supra* in this Opinion, the state, in all criminal cases, maintains the legal obligation to prove its case beyond a reasonable doubt throughout the trial; and that given the inconclusiveness as to the cause of the death, it was the duty of the State to not only establish the homicide, but to prove the cause of death in rebuttal to the appellant's and his witnesses' testimony. Given the appellee's and appellant's two different accounts, one to the effect that the decedent's demise resulted from the breaking of his neck, and the other to the effect that the decedent was hit with a stone in his chest, and that same ultimately resulted to his death, it was necessarily essential to disprove that the decedent's death was a result of anything other than what the indictment alleged.

Without proof, this Court is without the authority or juridical basis to sustain a conviction for the crime of murder. However, although the elements constituting the crime of murder was not satisfactorily established, it is the law that “*the defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.*” Criminal Procedure Law, Rev. Code 2:20.10(5). Furthermore, the Supreme Court has opined that it is the offence proved at the trial and not the charge preferred that the court has authority to pass upon. *Koffa v Republic*, 34 LLR, 489, 501 (1988).

Having determined that the evidence adduced by the appellee at trial does not prove the crime of murder, we are left to determine if said evidence proves any offence(s) that is necessarily included in the charge of murder.

Pursuant to the Penal Law, the offenses that are necessarily included in the offense of murder are Manslaughter and negligent homicide.

Sections 14.2 and 14.3 of the Penal Law defines manslaughter and negligent homicide as follows:

“§ 14.2. Manslaughter.

A person is guilty of manslaughter if he:

(a) Recklessly causes the death of another human being; or

(b) Causes the death of another human being under circumstances which would be murder except that he causes the death under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse shall be determined from the viewpoint of a person in his situation under the circumstances as he believes them to be. An emotional disturbance is excusable, within the meaning of this section if it is occasioned by provocation, event or situation for which the offender was not culpably responsible.

§ 14.3. Negligent homicide.

A person is guilty of negligent homicide if he causes the death of another human being negligently.”

Noting that the two offences quoted above, although lesser than murder, are necessarily included in murder, we shall therefore proceed to juxtapose the evidence against the above quoted offenses to determine the appropriate offense that was proved by the appellee.

We take due cognizance of the key element of distinction between manslaughter and negligent homicide; that in the case of manslaughter, the act causing the homicide is reckless, whereas in the case of negligent homicide the act is negligent.

The Black's Law Dictionary, 9<sup>th</sup> ed. Defines a reckless conduct as one "*characterized by the creation of a substantial and unjustifiable risk of harm to others and by a conscious (and sometimes deliberate) disregard for or indifference to that risk...*" whereas culpable negligence is a "*negligent conduct that, while not intentional, involves a disregard of the consequences likely to result from one's action; it is gross negligence so extreme that it is punishable as a crime*".

The first question that we ask in this respect, especially considering the appellant's testimony that the decedent was struck by a rock in his chest while being held by him, the appellant, and during which time the deceased met his death, had the appellant not restrained the decedent's movement would he likely had been struck by a rock in his chest? We think most likely not.

Throughout his testimony, the appellant acknowledged that he held the decedent by his shirt from the back to prevent him from escaping; that he was still holding unto him when the alleged stone throwing began; that one of the stones that was allegedly being thrown struck him first on his wrist. At this juncture, we note that in the midst of the alleged stone throwing, even up to the point that he got hit by one of the stones, the appellant admitted that he continued to restrained the movement of the decedent. He further testified that after the stone struck the decedent causing him to collapse, it was then that he let go of him. Again we ask, could he not have averted the entire situation by either allowing the decedent to defend himself or by moving him to a safer zone? For had the appellant exercised either of the two options, or any other method that would have ensured the safety of the decedent, the unfortunate death could have been averted.

We state this because it is worth noting that the appellant was in the employ of the Liberia National Police as a law enforcement officer. Hence, his presence and involvement in the incident that resulted to the death of Samuel Selleh was reasonably expected. As a police officer, upon his arrival at the scene of the incident, it became his duty to restore order to

whatever chaotic situation he may have met; if a crime had or was being committed, he was also under obligation to arrest the suspects and forward them to the nearest police station for investigation. Similarly, the appellant bore a higher degree of responsibility to ensure the protection of whoever was under his custody.

Were we to accept the appellant's account of the incident, specifically the stone throwing, even though he was not the one that threw the stones, his failure to protect the decedent in the midst of flying stones is tantamount to causing the stone to strike the decedent; and according to the appellant himself, it was the stones thrown that caused the death of the Samuel Selleh. Predicated on the evidence established in the records, we reasonably conclude that the appellant's conduct created a substantial and unjustifiable risk to the life of the decedent. Moreover, the appellant knew or ought to have known that the hurling of stones posed an imminent and foreseeable danger; hence, his indifference to that foreseeable risk was not only reckless but also grossly negligent, especially given that it resulted to harm and death. Given that it was his lawful duty as a police officer to protect lives and property, a legal obligation he failed to uphold by virtue of his conduct, we therefore hold that the evidence adduced at trial proved manslaughter.

Although the indictment contains a single charge, i.e., murder, the law provides that in the absence of multiple charges in the indictment, the defendant may be found guilty of a lesser offense than that with which he was charged, especially if the said offense is necessarily included in the offense charged. *Mayango v. R.L*, Supreme Court Opinion, October Term, 2013. As we have narrated herein, the charge of manslaughter is also included in the charge of murder.

While the offense with which the appellant was charged and convicted is egregious, to say the least, the facts and circumstances appertaining thereto, as revealed by the records, do not prove the commission of the crime of murder by the appellant beyond a reasonable doubt. Moreover, as earlier stated, with so many actors involved in the throwing of stones, and the inconclusive nature of the coroner's jury report as to the exact cause of death, the only fact remains is that aspect of testimonies which show that the appellant at all times was the one restraining the deceased, and that he was negligent in protecting the decedent. Therefore, we hold that the appellant's conviction of murder is hereby modified to manslaughter.

Accordingly, the Supreme Court, pursuant to its vested authority by the Constitution and statutory laws in this jurisdiction to ensure that the laws are appropriately applied and



scrupulously adhered to, can under such circumstances reverse or modify the judgment of the lower court and render such judgment as the lower court should have rendered. *Yeakula et al. v. R L*, Supreme Court Opinion, October Term, 2014; *Catholic Relief Services (CRS) v. Natt, Brown and Cororal*, 42 LLR 400, 416 (2004). *The Ministry of Foreign Affairs v. The Intestate Estate of the late Jarbo Sartee*, 41 LLR, 285, (2002); *Lamco J. V., Operating Company v. Rogers and Wesseh*, 29 LLR 259, 267 (1981).

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the Second Judicial Circuit, Grand Bassa County adjudging the appellant guilty of the crime of murder and sentencing him to twenty (20) years imprisonment at the Buchanan Central Prison is hereby modified to a conviction for the crime of manslaughter, and to the maximum imprisonment sentence thereof, that is five (5) years. Where the appellant has remained in prison pending the determination of this appeal, same is incorporated in his sentence and should be so computed; and if he is at large, he shall be forthwith remanded at the Buchanan Central Prison to commence serving his sentence of five (5) years as stated herein. 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 give effect to the Judgment of this Opinion. Costs are disallowed. IT IS HEREBY SO ORDERED.

*Appeal granted with modification*

*When this case was called for hearing, Counsellors Arthur T. Johnson and Edwin G. Barquoi of the Consortium of Legal Practitioners, Incorporated appeared for the appellant. Counsellors Nyenati Tuan, Solicitor General, Ministry of Justice, Republic of Liberia appeared for the appellee.*