

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A. D. 2019

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIEASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOHASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE..... ASSOCIATE JUSTICE

Damoi Shillon of the City of Monrovia)
.....APPELLANT)

Versus)

Republic of Liberia by and thru Trokon Zahn)
.....APPELLEE)

ACTION:

APPEAL

GROWING OUT OF THE CASE:

Republic of Liberia by and thru Trokon Zahn)
.....PLAINTIFF)

Versus)

Damoi Shillon and Mary Shillon of the City of)
Monrovia.....DEFENDANTS)

CRIME:

1. Aggravated Assault
2. Criminal Facilitation

HEARD: APRIL 15, 2019

DECIDED: August 9, 2019

MADAME JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The Grand Jury, having come up with probable cause that Damoi Shillon and Mary Shillon, committed the crime of aggravated assault and criminal facilitation had them indicted on said charges. The indictment alleged the following:

Count 1

That the Grand Jury for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendant, Damoi Shillon, in violation of 4LCLR Section 14.20(b) and Section 2.2(a) (b), Section 1.7(c) and (d), committed the crime of Aggravated Assault, a felony of the second degree, to wit:

1. That, on the 11th day of the month of October A. D. 2016, at about 8:00 pm, in the area of Lower Johnsonville, Montserrado County, Republic of Liberia, the defendant, Damoi Shillon with criminal mind and intent to inflict serious bodily wound on Trokon Zahn, purposely, knowingly, willfully and intentionally, committed the crime of Aggravated Assault, to wit:
2. That, the private prosecutor Trokon Zahn went to visit his girlfriend Bendu Sackie; while in the process, the defendant Damoi Shillon alleged that private prosecutor, Trokon Zahn, was not responsible as he gave no support towards his girlfriend, Bendu Sackie upkeep; that, said allegation resulted into serious

confusion between them. Thereafter, the defendant Damoi Shillon jumped him to fight, took a bench, stuck and broke his right foot instantly.

3. That as the result of defendant Damoi Shillon's act, Trokon Zahn sustained serious bodily wound and sought medical treatment at the Mawah Medical Clinic in Vai Town.
4. A person engages in conduct purposely if when he engages in the conduct, it is his conscious object to engage in conduct of that nature or cause the result of that conduct.
5. "BODILY INJURY "means physical pain, illness or any impairment of physical function.

Count 2

That, the defendant, Mary Shillon, committed the crime of Criminal Facilitation, in violation of Chapter 10.2 of the New Penal Laws of the Republic of Liberia, a felony of the third degree.

1. That, on the 11th day of the month of October A. D. 2016, at about 8:00 pm, in the area of Lower Johnsonville, Montserrado County, Republic of Liberia, the defendant, Mary Shillon with criminal mind and intent to inflict serious bodily wound on Trokon Zahn, purposely, knowingly, willfully and intentionally committed the crime of Criminal Facilitation, to wit:
2. That, Damoi Shillon jumped on the private prosecutor Trokon Zahn for a fist fight, took a bench, struck him and broke his right foot. That, while the private prosecutor Trokon Zahn was on the ground, crying for help, the defendant Mary Shillon took stones and began to throw said stones at him and made these remarks **"Thank you Damoi for breaking his foot, we told him we will deal with him"**.
3. A person is guilty of Criminal Facilitation who, believing it probable that he is rendering an aid to a person to commit a crime engages in conduct which provided such person with means or opportunity for the commission thereof and in fact aids such person to commit a felony."

Trial commenced at Criminal Court "A" during the February 2017 Term of Court. The defendants waived jury trial in accordance with Section 20.2 of the Criminal Procedure Law, allowing the judge to sit on the matter as both judge and trier of the facts. The defendants having joined issue with the State, both parties took the stand and presented evidence in support of their pleas, after which they rested with the production of evidence and summited the case to the trial judge for his determination.

The trial judge found beyond a reasonable doubt that Codefendant Damoi Shillon did commit the crime of aggravated assault and adjudged him guilty, sentencing him to two years imprisonment. On the other hand, the judge, acquitted co-defendant, Mary Shillon, of the crime of criminal facilitation, holding that the evidence presented by the State was insufficient to convict her of the offense as charged.

Co-defendant Damoi Shillon, appellant before this Court, announced an appeal to the Supreme Court, filing a two count bill of exceptions which reads as follows:

“(1) That the verdict is contrary to the weight of the evidence adduced at trial (see the entire case file).

(2) That your honor erred when you convicted the defendant even though the State neither produced nor admitted into evidence the criminal agency, the bench, which was allegedly used to break the private prosecutor’s foot as found on sheet 7 of 36th Day Jury Sitting.”

Count 1 of the appellant’s bill of exceptions makes a general statement that the lower court erred as the verdict/judgment was contrary to the weight of the evidence; it states nothing in particular, no specifics that the judge failed to consider or overlooked in convicting the appellant or facts which when considered by the trial court would have outweighed the evidence presented by the State and therefore form a reasonable doubt that the appellant indeed was guilty of the crime as charged. This Count of the bill of exceptions refers the Court to review the entire trial records on appeal and consider whether the evidence produced by the State indeed proved beyond a reasonable doubt, as required in criminal cases, and that the appellant did indeed commit the crime of aggravated assault.

Our Criminal Procedure Code (1974) defines a bill of exceptions as follows: “A bill of exceptions is defined as a specification of the matter(s) excepted to and relied upon for the appeal, together with a statement of the basis of the exceptions.” *Criminal Procedure Law Rev. Code 2: 24.9*. This Court has also held: “The object of a bill of exceptions is to put the controverted rulings or decisions upon the record for the information of the appellate court”. *Wiah v. R.L.* , 38 LLR 385, 389 (1997).

Expounding however, on Count 1 of his bill of exceptions and in his argument before this Court, the counsel for the appellant questioned the trial judge’s findings that the appellant’s evidence was not sufficient to warrant a verdict/judgment of acquittal. The testimonies of the appellant and other defense witnesses tended to establish that it was when the private prosecutor, Trokon Zahn, was pursuing the appellant with a chair to strike him as the appellant had slapped the private prosecutor’s girlfriend, Bendu, that his foot got caught up in the brace of a bench and it got broken, but the judge was not persuaded by the defense witnesses. The Counsel for the defense assigned this as a cause sufficient for the judge to have found in favor of the appellant.

This argument by the appellant compels us to review the records and the testimonies of witnesses presented by the parties.

In substantiating its charge against the appellants, the State presented six witnesses. The first witness being the private prosecutor, Mr. Trokon Zahn, a volunteer worker and Gospel Literature distributor with the Pilgrim Tracts Society.

Mr. Trokon Zahn testified that on October 11, 2016, at about 8:00p.m., he went to visit his girlfriend, Bendu Sackie, in Laklay Town Community because he had gotten several missed calls from her that day. Having gone to her house to inquire why

she kept calling him, and while in discussion with her, her uncle, Jeffery Shillon, came in and told him that the family wanted to meet with him. He followed the uncle in obedience to his invitation and found few family members including the appellant seated. Jeffery then told Trokon that the reason the family had called him was to inform him that since his niece, private prosecutor's girlfriend Bendu, had left the private prosecutor's house and gone back to the family, he (Trokon) had stopped supporting and feeding her. The witness said he smiled when the statement was made and this angered the appellant who asked him why he was smiling as if what his brother Jeffery was saying was stupid. The private prosecutor stated that he told Damoi that they were not equals and they were making no confusion. Damoi responded by calling him a foolish man and thereafter an argument ensued during which time Damoi grew aggressive, threatening to beat him up; he then got up to leave the yard but the appellant kept obstructing him, trying to put up a fight; that since the appellant had just undergone a surgery, he did not want to put himself in trouble by engaging into a fight with him. The appellant, the witness said, however became uncontrollable; his brother Jeffery Shillon tried to quiet him down, telling him that he was not the one who called the private prosecutor to a meeting and he wondered why the appellant likes to fight for every small thing but despite Jeffery Shillon attempt to tone down the appellant's aggressiveness, the appellant insisted on jumping him for a fight. Still attempting to leave the yard, Trokon testified that the appellant went to him, pushed him against the wall, picked up a bench and hit it on his leg and broke it; and while on the ground, Mary Shillon, began to throw stones at him, stating: "Thank you Damoi, we told him we were going to deal with him if he did not move from behind Bendu". While the co-defendant was stoning him, the witness stated that one Janet Kofa came to his rescue; his family was called and they took him away to 12th Street where he underwent treatment for his broken leg.

The State's second witness, Bendu Sackie, the appellant's niece and private prosecutor's girlfriend, basically corroborated the testimony of the first witness, that the appellant kept hitting the private prosecutor in the chest though the private prosecutor sought to get away. When she held the private prosecutor hand trying to get him away from the yard, the appellant got angry and turned on her, hitting and knocking her down to the ground. Thereafter, the appellant went back to the private prosecutor, knocked him on the ground, took a bench and hit it on his leg and broke it. She then went around calling for help while the private prosecutor lied on the ground crying.

The third witness of the State, Mr. Joseph Darwokolor, an X-ray technician at the Mawah Health Center, took the stand and testified that the private prosecutor was brought to the Mawah Health Center on October 26, 2016, and that he conducted an X-ray. The witness not been a radiologist, the defense objected to his reading of the X-ray. The trial court sustained the objection to any further testimony as to the result of the X-ray.

Next, was the State's fourth witness, Mr. Emmanuel Porkpah, a Physician Assistant at the Mawah Health Center. He confirmed that the private prosecutor visited the health center on October 26, 2016, while he served in the emergency room; that when the X-ray was brought to him, he observed that the private prosecutor had a fractured leg; that the private prosecutor told him that he was involved in a fight and someone knocked his ankle with a bench; that he advised him to consult a bone specialist.

The State's fifth witness, Officer Moses Galakpah, testified that one of his police aids, Joseph Bundoj, told him that Block "C" Community Chairman, Alex Borbor, had called the police in the community and told them that an incident had occurred on October 11, 2016, which led to the private prosecutor's leg been broken and that appellant Damoi was accused of being the perpetrator; that when the police responded to the call, the appellant, Damoi, absconded through the back door of the house turning himself into the police later, on October 13, 2016. He testified that the brother of the appellant, Jeffery Shillon, told him that the appellant had broken the leg of the private prosecutor; that later during his investigation of the incident, the appellant's family rode with him to see the private prosecutor and they met the private prosecutor sitting outside with a swollen leg at his home on 12th Street; that the appellant's family began to apologize to the private prosecutor and his family but the brother of the private prosecutor, Jacob, demanded that the appellant's family make a promissory note to take care of all the medical expenses, pay Seven Hundred Fifty United States Dollars (US\$750.00) to the private prosecutor, and replace the the private prosecutor's phone and charger that got missing during the fight. The appellant's family, he said, refused to make the promissory note; thereafter, he concluded his investigation and charged the appellant with aggravated assault sending him to the Paynesville Magisterial Court for prosecution.

The State's sixth and final witness, Alex Sonnyboy Borbor, the Community Leader of Block C, testified that on the night of the incident he was called; that while on his way to the scene, he encountered the private prosecutor at the junction with his girlfriend Bendu, a friend named Alfred, and the appellant's brother Jeffery Shillon. When he asked what had happened to the private prosecutor, Jeffery told him that the private prosecutor and the appellant were fighting and the appellant hit the bench on the private prosecutor and broke his legs; that Jeffery Shillon suggested that they take the private prosecutor to a herbalist at Cookspoon Hill, but while on the way to the herbalist, the private prosecutor's brother called and told him not to go to the herbalist. The witness confirmed that he called the police; that the family of the appellant met with him and told him that they wanted the matter to be settled at the community level but he told them that in order to do that they had to get the private prosecutor involved. Later, the witness testified that the appellant's father-in-law brought a car to take them to see the private prosecutor and they all agreed that when they got to the private prosecutor's house, whatever was said to them, even if they were cursed, they would all say sorry. They got to the house and the private

prosecutor family was upset that they were just going to see them since the incident; that despite all that was said to them by the private prosecutor's family, as agreed, they kept saying sorry; later when the family calmed down, they stated that the only thing that would satisfy them was that appellant's family took responsibility for the victim's treatment, pay him US\$750.00, and replace his phone and charger that got missing during the incident. The witness said that the appellant's family refused to make the settlement as suggested, stating that the amount claimed was huge.

The State rested with evidence after its sixth witness had testified.

Counsel for the appellant then filed a motion for judgment of acquittal. The motion was denied and the judge of the lower court ruled that the evidence provided by the State in respect to the appellant, Damoi Shillon, if not rebutted by the defense, would sustain a conviction of the crime of aggravated assault as charged. On the other hand, in regards to the crime of criminal facilitation as charged against Mary Shillon, the court held that the evidence produced by the State was not sufficient to bring a conviction against her and therefore acquitted her.

Based on the Court's denial of the motion for acquittal, the appellant produced three witnesses in his defense.

The first defense witness, the appellant himself, took the stand. He narrated that the family had called the private prosecutor to a meeting when he visited his niece Bendu Sackie; that the meeting was based on a discussion of his niece, Bendu's behavior which the family attributed to her relationship with Trokon, the private prosecutor; that during their discussion with Trokon, he said that Trokon insulted him and an argument ensued; Bendu got involved in defense of Trokon and pointed her finger in his face, wasted hot water on him and burst the bucket on him. He then knocked her hand advising her to take her finger from his face; Trokon then took to Bendu's defense, went after him, with a chair; that in the process of advancing towards him with a chair, Trokon fell over a bench and got his foot caught in the bracing of the bench and broke his foot. The appellant denied that he had a fight with the private prosecutor and broke his leg; that his family had only offered to take the private prosecutor to a herbalist because he was their brother-in-law.

The second defense witness, Jeffery B. Shillon, brother of the appellant, took the stand and confirmed that a discussion ensued about his niece Bendu and her behavior in the home which they attributed to her relationship with the private prosecutor. He confirmed that it was Bendu and the appellant who were engaged in a fight and it was when the private prosecutor came in her defense, running with a chair towards the appellant that he hit a bench and got his leg broken. The defense third witness, Lorpu Shillon, wife of Jeffery Shillon, confirmed the appellant's account that he got his foot broken when his foot caught in the brace of a bench and fell while pursuing the appellant for hitting on Bendu.

The judge having listened to all the evidence presented by the parties, acting as both the judge and jury, weighed same and ruled finding the appellant Damoi Shillon guilty of aggravated assault as charged.

As stated above, the appellant has not specifically stated in count 1 of his bill of exceptions the evidence produced and the weight of which under the circumstances would form a reasonable doubt as to the charge against the appellant that would warrant an overturn of the trial court's judgment. We do not believe that merely because the defense witnesses testified that the private prosecutor broke his own leg when he ran after the appellant and while running got his leg caught up in the brace of the bench, that this would be reason for the appellant's acquittal.

The testimonies of the appellant and his family members whom he brought forth as witnesses, though denied that it was the appellant who took a bench and hit the private prosecutor, Trokon Zahn's leg and broke it, they did not refute the testimonies that when the private prosecutor broke his leg, Jeffery Shillon, brother of the appellant did all he could to remedy the situation; that immediately after the incident, Jeffery attempted to take the private prosecutor to a herbalist but the private prosecutor refused based on the advice of his family; that the family reported the matter to the Community Leader who reported the matter to the police and when the police arrived based on the call, the appellant ran away and turned himself in two days later; that the appellant's family went with the Community Leader to see the private prosecutor's family to apologize and settle the matter but when the family requested compensation, which they wanted spelt out in a promissory, the appellant's family refused to accept the condition set stating that the amount requested was exorbitant; that at another time, the family also went with Officer Galakpai to see how they could plead with the private prosecutor and his family to settle the matter, but upon the insistence of the family demands the appellant's family again refused to settle. Even the appellant, when crossed examined, stated that his family was prepared to pay for the treatment of the private prosecutor's leg but they were not disposed to pay US\$750.00, and for a phone and charger as the private prosecutor's family demanded (See minutes of 37th Day Jury Sitting, Wednesday March 29, 2017).

Importantly, this Court also considers the flight of the appellant when the police was called by the Community Leader. The Supreme Court has held that flight is indicative of criminal guilt and that the fact of flight weighs heavily against the criminal defendant in support of his guilt: *Logan vs. Republic*, 33 LLR 434, 448 (1985).

The Court has held that credibility of a witness and the weight and value to be given to his testimony in a criminal prosecution is a matter to be determined by the jury or by the court if it sits without a jury, as in this case. The court or jury, in making such determination, may take into consideration any attendant facts or circumstances which tend to throw light on the accuracy, truthfulness and sincerity

of witness; Republic of Liberia vs. Eid et al., 37 LLR 761, 775-776 (1961). The trial judge having heard the testimonies presented by the witnesses, weigh each testimony and found the appellant guilty of aggravated assault as charged, we are reluctant to overturn the trial court's judgment based on the evidence adduced at the trial.

In count 2 of its bill of exceptions, the appellant alleges that the judge erred when he adjudged the appellant guilty of aggravated assault even though the State neither produced nor admitted into evidence the criminal agency, the bench, which was allegedly used to break the private prosecutor's foot.

Counsel for the appellant in his argument before the court stated that the bench was necessary to be brought into evidence as the appellant could not single handedly carry by the appellant and the production of the bench by the prosecution would have disputed that the appellant single handedly lifted the bench to hit the appellant as alleged.

Interestingly, the Court sees nowhere in the records where the defense set out the impossibility of the appellant being able to single handedly lift the bench because of its size and weight, and as such, could not have broken the private prosecutor's leg as charged. Besides, the appellant having taken the stand and brought witnesses to take the stand and testify in his behalf, this information was crucial to his defense. He should have countered the States allegation that he lifted the bench and assaulted the private prosecutor, thereby breaking his leg.

Further, the appellant having decided to take the witness stand, appellant should have taken every opportunity to present any and all evidence that would have disputed the allegation made against him and cast a reasonable doubt as to whether he, in fact, did use the bench to break the private prosecutor's leg, especially when the corpus delicti of the crime was in his possession and control and it was his defense that he could not have broken the private prosecutor's leg because he could not have single handedly lifted the bench. The presentation of the bench into evidence was crucial to his defense in substantiating that it was impossible that he could have broken the private prosecutor's leg with the bench as alleged when he could not lift the bench. Presentation by the defense of this evidence as alleged might have cast reasonable doubt on whether in fact the appellant did break the private prosecutor's leg. Having alleged this fact, the appellant should have sought to prove it.

In any case, the counsel for the appellant did not raise the issue of the State's failure to present the corpus delicti of the crime into evidence at the trial court, so as to have the judge rule on it, and the appellant except and include it in its bill of exceptions for our review. The appellant's counsel has brought this issue for the first time in his argument before this Court. This issue raised by the appellant is against the legal principle often enunciated by the Court, that issue(s) not raised in

the court below cannot be raised before the Supreme Court for the first time, and that the Court will not consider issues on appeal which were not raised in the court below, *Super Cold Service v. Liberian-American Insurance Corporation*, 40 LLR 189, 196 (2000), and that issues to be determined by this Court must be raised and passed upon in the court below before a review by this Court of last resort can be had, *The Intestate Estate of the late James W. Anderson et al. v. Anna Anderson*, 41 LLR 313, 318 (2002).

Our Penal Law states that a person engages in conduct purposely if when he engages in the conduct, it is his conscious object to engage in conduct of that nature or to cause the result of that conduct.

This Court having reviewed the entire records of the case, it is reluctant to set aside the final judgment of the trial judge in line with previous Opinions of this Court which state that unless the judgment of the trial court is manifestly and palpably against the weight of the evidence, courts of justice ought not to set aside a jury's verdict; that in this case, the trial judge acted as judge and jury, and after listening to the testimonies of the witnesses determined what weight and credibility to give each testimony; *Ledlow et al. vs. Republic*, 2 LLR, 569, 581-582 (1925); *Fatorma vs. R. L.*, Supreme Court Opinion, October Term, 2018; *R.L. vs. His Honor Kaba et al.*, Supreme Court Opinion, October Term 2014.

Wherefore and in View of the Foregoing, having found that the evidence produced by the prosecution was sufficient to warrant a judgment against the appellant, we affirm the judgment of the trial court.

The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction of the case and give effect to its judgment. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR T. JOSEPH B. DEBLAY, ONE OF THE PUBLIC DEFENDERS OF MONTSERRADO COUNTY, APPEARED FOR THE APPELLANT. COUNSELLOR JAMES DAKU MULBAH, SOLICITOR GENERAL OF THE REPUBLIC OF LIBERIA, AND COUNSELLORS EDWIN G. BARQUOI AND LAFAYETTE B. GOULD, SR. OF THE MINISTRY OF JUSTICE APPEARED FOR THE REPUBLIC OF LIBERIA, APPELLEE.