

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2020

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

Yatta Kamara, Benjamin Holder and David Dahn, of the City of)
Monrovia, Liberia.....Appellants)

Versus)

The Republic of Liberia by and thru Mother Margaret Sesay,)
of the City of Monrovia, Liberia.....Appellee)

APPEAL

GROWING OUT OF THE CASE :

The Republic of Liberia by and thru Mother Margaret Sesay,)
of the City of Monrovia, Liberia.....Plaintiff)

Versus)

BURGLARY AND
FELONIOUS
RESTRAINT

Yatta Kamara, Benjamin Holder and David Dahn, of the City of)
Monrovia, Liberia.....Defendants)

Heard: November 13, 2019

Decided: September 3, 2020

When this case was called for hearing, Counsellors Kuku Y. Dorbor and Anthony D. Mason of the Henries Law Firm appeared for the Appellants. Counsellors Wesseh A. Wesseh and Jerry D. K. Garlawulo of the Ministry of Justice, in association with Counsellor Amara M. Sheriff of the J. Johnny Momoh and Associates Legal Chambers, Inc. appeared for the Appellee.

MR. JUSTICE NAGBE DELIVERED THE OPINION OF THE COURT.

This case comes before this Bench en banc for appellate review growing out of the final ruling of His Honor A. Blamo Dixon, Resident Circuit Judge, First Judicial Circuit, Criminal Assizes “C” for Montserrado County, Republic of Liberia, when the Judge, on January 6, 2014, confirmed and entered on the records the unanimous guilty verdicts of the trial jury against the appellants, Yatta Kamara, Benjamin Holder and David Dahn, finding them guilty of the commission of the

crimes of burglary and felonious restraint. Counsel for the appellants noted exceptions and announced an appeal to this Court sitting in its March Term, A. D. 2014.

The records in this case as transcribed to this Court set forth the following facts: On April 4, 2013, the appellants were indicted by the Grand Jury of Montserrado County for allegedly committing the crimes of burglary and felonious restraint. The two-count indictment alleged that the appellants unlawfully broke into the premises of the private prosecutrix, Mother Margaret Sesay, and made away with her personal items and cash that totaled Four Thousand, Five Hundred Thirty-Five United States (US\$4,535.00) Dollars and Fourteen Thousand Liberian (L\$14,000.00) Dollars; that the appellants also feloniously restrained the private prosecutrix from entering her prayer room by denying her access to the keys of the prayer room, I D. cards and bank book of her late husband, which action on the part of the appellants deprived her of receiving her late husband's death benefit. The indictment was read to the appellants and they pleaded not guilty thus joining issue with the State. We cite herein verbatim the two-count indictment for its relevance to this Opinion:

INDICTMENT

COUNT 1

“The Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendants, Yatta Kamara, Benjamin Holder and David Dahn committed the crime of burglary, a felony of the second degree to wit:

1. That in the month of July A. D. 2012, in Logan Town, Bushrod Island, Montserrado County, Republic of Liberia, defendants Yatta Kamara, Benjamin Dahn, with criminal minds and intent to defraud another, purposely, knowingly, willfully, intentionally, and criminally committed the crime of burglary against the private prosecutrix, to wit:
2. That on the date and at the place mentioned above, the defendants criminally and unlawfully broke into the

private prosecutrix premises, stole and carried away the below listed items:

3. That physical cash and items taken include: physical cash of US\$4,200.00 that was in the private prosecutrix's bed cupboard and shoes case, respectively; one original deed for the church; five pairs of children's shoes valued at L\$5,000.00; the private prosecutrix's late husband's (Abraham Sesay) death benefit documents for social security and Ministry of Education, including I D. cards; one bank book and a bunch of keys for the prayer room; three pairs of male butter nose shoes valued at US\$90.00; one X-base tape valued at US\$75.00; one bag containing the private prosecutrix's son's school clothes and school fees L\$9,000.00, and two sets of small and large television sets valued at US\$300.00, making the total value of cash and items carried away to be US\$4,835.00 plus L\$14,000.00.
4. That the total value of items retrieved by community members is US\$300.00.
5. That the total value of cash and remaining items taken and carried away by the defendants is US\$4,535.00 plus L\$14,000.00.
6. That the defendants have no affirmative defense.
7. "Occupied structure" means a place adapted for overnight accommodation of persons or carrying on business therein, whether or not a person is actually present.
8. And the building or structure was not abandoned.
9. That the act is contrary to: 4LCLR, Title 26, Section 15.20(1) and (2); and 4LCLR, Title 26, Section 15.22 of the statutory laws of the Republic of Liberia, and the peace and dignity of the Republic of Liberia."

COUNT 2

“The Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendants, Yatta Kamara, Benjamin Holder and David Dahn, committed the crime of felonious restraint, a felony of the third degree to wit:

1. That in the month of July, A.D. 2012, in Logan Town, Bushrod Island, Montserrado County, Republic of Liberia, defendants Yatta Kamara, Benjamin Holder and David Dahn, with criminal minds and intent, criminally and unlawfully burglarized the private prosecutrix’s premises.
2. That in the process of burglarizing the private prosecutrix’s premises, the defendants feloniously restrained the private prosecutrix from entering her prayer room and from receiving her late husband’s death benefits and from withdrawing money from her account, through the taking away of her prayer room keys, ID cards and bank book.
3. That the defendants have no affirmative defense.
4. That a person commits felonious restraint, a felony of the third degree, if he knowingly, (a) restrain another unlawfully in circumstances exposing him to risk or serious bodily injury, or (b) restrains another with the purpose of holding him in condition of voluntary servitude.
5. That the defendants’ act is contrary to: Chapter Fourteen (14), Section 14.51 of the New Penal Law of the Republic of Liberia and the peace and dignity of the Republic of Liberia.”

The records in this case further reveal that in the month of July, 2013, on a Sunday, the private prosecutrix, Mother Margaret Sesay, was arrested and detained at a police station on account of a complaint from the appellants, Yatta

Kamara, Benjamin Holder and David Dahn, all members of the Elohim Pentecostal Church, Logan Town. The records also show that while Mother Margaret Sesay was detained at the police station, the appellants broke into her home and made away with some of her personal effects and physical cash which totaled US\$4,835 plus L\$14,000.00. Predicated on this allegation by the private prosecutrix, an indictment was drawn up by the Grand Jury for Montserrado County against the appellants.

When the case was called for hearing, the parties produced witnesses who testified for the parties in addition to species of evidence presented by the prosecution during the trial. At the close of the production of evidence and arguments had, the petit jury was duly charged and instructed by the court to deliberate on the evidence adduced and the testimonies given by the parties during the trial to determine whether or not the crimes of burglary and felonious restraint were committed by the appellants as charged. The trial judge gave out two forms to the petit jury, one form for burglary and the other for felonious restraint. Following the deliberation, the petit jury returned unanimous verdicts in favor of the State and adjudged the appellants guilty of the crimes of burglary and felonious restraint. A motion for new trial was filed by the appellants as required by law wherein they contended that the verdicts of the empaneled jury was contrary to the weight of the evidence adduced at the trial; that the prosecution's principal witness and private prosecutrix, Mother Margaret Sesay, testified that it was a young boy who told her that while she was in jail he saw four unknown persons busting her door and took away suitcases, television sets, etc.; that in spite of this testimony in which a boy was named, the prosecution did not put the boy up as a witness, meaning therefore that the testimony of the private prosecutrix was based on hearsay.

The appellants also contended in their motion for new trial that the private prosecutrix testified that other people told her that it was the appellants named herein that bust her door and took away her things; however, the other people were never brought to the court to testify to the truthfulness of that allegation made against them; that under our law, such testimony is hearsay and not admissible, the appellants maintained.

The State filed a nineteen count resistance and we herein quote counts 5, 6 and 7 for their relevance to this Opinion.

“Count 5: That as to count four of the movant’s motion, prosecution says that the issue of locking door was no longer an issue to be discussed for the mere fact that defense first witness in person of Yatta Kamara clearly told the court and jury that she was the person who took away the very things which are subject of these proceedings, and subsequently returned same to the community leaders in the community in which the incident occurred in July 2012. This testimony defeats the argument as to those who burglarized the house of the private prosecutrix in these proceedings. Prosecution says that the fact that defense raised in their motion that “the fact that Rebecca was in the house before the defendants entered means the door was opened when they entered”, is an admission to the commission of the crimes by the defendants”

“Count 6: Further, prosecution says that its fourth and first rebuttal witness in person of Rebecca Teah told the court and jury that she physically saw the defendants committing the act of burglary of which allegation defense first witness, Yatta Kamara admitted to taking some of the items from the burglarized house without notifying the police or other neighbors”.

“Count 7: As to count five of movant’s motion, prosecution says that the truth of the matter is that co-defendant Yatta Kamara was the one who first introduced the name of one Mary who was never brought into court to testify on behalf of the defendants to the effect that she was the one that bust the door of Margaret Sesay to take away her things because she was not being treated well by mother Sesay. Prosecution says these are some of the tactics that were put together to invade justice after the defendants have willfully and maliciously burglarized the house of mother Sesay for the greed of property. Hence, this count should be denied, ignored and dismissed”.

Consequently, the trial judge assigned the motion for new trial and the resistance thereto and the court entertained arguments *pro et con*. On January 6, 2014, the trial judge entered court's final ruling on the records and confirmed the petit jury's Guilty Verdicts. The relevant portion of the final ruling of the trial judge, His Honor A. Blamo Dixon, Sr. is cited herein as his ruling forms the basis for the appellants' bill of exceptions before this Court. The trial judge ruled thus:

"The cardinal question before this Honorable Court is whether or not the prosecution established a prima facie case against the defendants to warrant their conviction for the alleged commission of the crimes of burglary and felonious restraint beyond all and every reasonable doubt? The answer to this question is yes. The prosecution established a prima facie case against the defendants to warrant their conviction for the alleged crimes of burglary and felonious restraint beyond all and every reasonable doubt. Section 15.20 of the New Penal Code of Liberia provides for the crime of burglary. The Penal Code defines burglary as such: "A person is guilty of burglary if he enters or surreptitiously remains in a building or occupied structure, or a separately secured or occupied portion thereof with purpose to commit a crime therein, unless the premises are at the time open to the public and the actor licensed, invited or otherwise privileged to enter or remain. It is an affirmative defense to prosecution for burglary that the building or structure was abandoned.

The Penal Code as provided in Section 14.51 defines felonious restraint and it says: "A person commits a felony of the third degree if he knowingly : (a) restrains another unlawfully in circumstances exposing him to risks or serious bodily injury; or (b) restrains another with the purpose of holding him in a condition of involuntary servitude".

The judge further ruled that "the evidence adduced and produced in the case is very clear to the extent that co-defendant Yatta Kamara admitted that she entered into the premises of the private prosecutrix and removed properties therefrom and upon serious investigation, it was established that she took those properties and of course all of those properties that she took were returned to the community leadership in the presence of the private prosecutrix and in the presence of the other co-defendants. Our law states that any admission made by a party or by an agent in the regular course of business is deemed admissible as provided in Section 25.8 of the Civil Procedure Law of Liberia.

It is worthy to note that when the home of the private prosecutrix was burglarized, she was detained upon the orders of the defendants at a local police station located in Logan Town, Bushrod Island, where she remained in said detention for three consecutive days. It is also

worthy to note that upon the detention of the private prosecutrix, she was never charged with any crime and she was never sent to any court of competent jurisdiction.

Section 25.5 of the Civil Procedure Law at Subsection 1 states: "The burden of proof rests on the party who alleges a fact, except that when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disproved by that party". Subsection 2 of said law states: "It is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence". The prosecution also produced P/1 up to and including P/4, all of which were testified to, identified, recognized, confirmed, reconfirmed and admitted into evidence to form part of the records in the case. The defendants, during the course of the trial did not produce any document before this Honorable Court. The law states as provided in Section 25.6 of the Civil Procedure Law: "The best evidence, which the case admits of, must always be produced that is no evidence is sufficient which supposes the existence of better evidence". In the mind of this Honorable Court, P/1 up to and including P/4 constitute the best evidence in the case.

Article 20 of the 1986 Constitution of Liberia at page 8, Subsection (a) provides: "No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except at the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law. Justice shall be done without sale, denial or delay; and the parties shall have the right to trial by jury."

Wherefore, and in view of the foregoing and the laws controlling, it is the holding of this Honorable Court that the two separate and distinct unanimous guilty verdicts of the trial jury finding the defendants guilty for the commission of the crimes of burglary and felonious restraints are hereby confirmed and affirmed by this Honorable Court. The three defendants: Yatta Kamara, Benjamin Holder and David Dahn alias Abu Sesay are hereby adjudged guilty for the commission of the crimes of burglary and felonious restraint.

They are hereby sentenced to imprisonment for a period of one calendar year for the commission of the crime of burglary and also sentenced to imprisonment for a period of six months for the commission of the crime of felonious restraint. The said defendants are hereby ordered to make restitution of the amount of US\$4,535.00 plus LD14,000.00 and to return the prayer room keys of the private prosecutrix so that she will have access to said prayer room. The clerk of Court is hereby ordered to issue a commitment and have same placed in the hands of the sheriff for execution. And it is hereby so ordered".

The appellants not being satisfied with the final ruling of the trial judge, noted exceptions and announced an appeal to the Honorable Supreme Court of Liberia for appellate review of the verdicts and other errors that attended the entire proceedings. We also quote verbatim the appellants' sixteen-count bill of exceptions for the benefit of this Opinion.

"An now come the appellants, and most respectfully pray Your Honor to approve the appellants' bill of exceptions so that the Honorable Supreme Court can review and correct the many erroneous and illegal ruling that were made by Your Honor in the above entitled cause of action as follows to wit:

1. That Your Honor erred and made a reversible error when Your Honor failed to take into account that the prosecution first witness in person of Margaret Sesay stated that she was told by other people that the defendants were the ones that burglarized her house, but she did not bring in her informant to testify before court.
2. That Your Honor erred and made a reversible error when Your Honor ruled that the detention of the private prosecutrix by the police constitute the felonious restraint aspect of the crimes charged for which the defendants are found guilty.
3. That Your Honor erred and made a reversible error when in charging the jury you told the jurors that the detention of the private prosecutrix for three days without being charged by the police constitute felonious restraint.
4. That Your Honor erred and made a reversible error when Your Honor failed and neglected to take into account that a lady by the name of Mary was the one who stole the money and left the country because madam Sesay and her children were not treating her good or taking good care of her.
5. That Your Honor erred and made a reversible error when you failed and neglected to take into account the testimony of State's witness Austin Samuel when he told the court that he did not see the defendants busting the door or heard any busting sound, even though he saw the defendants around.
6. That Your Honor erred and made a reversible error when you told the jury that Mary is a minor and as such she cannot bear any criminal liability.

7. That Your Honor erred and made a reversible error when Your Honor failed and neglected to take into account the testimony of Curtis (a State's witness) that defendant, Yatta Kamara returned those items she took voluntarily.
8. That Your Honor erred and made a reversible error when you failed to take into account the testimony of defendant Yatta Kamara to the effect that she took those things she returned based upon the authorization of madam Sesay, the private prosecutrix.
9. That Your Honor erred and made a reversible error when Your Honor failed and neglected to take into account the testimony of State's witnesses that the door was bust when they along with the police and madam Sesay reached the house when it was already bust and Rebecca seen in the house.
10. That Your Honor erred and made a reversible error when Your Honor failed and neglected to take into account the testimony of State's witnesses that they prepared the listing of items that madam Sesay presented to the court which were the things Yatta took from madam Sesay's house and turned over to them.
11. That Your Honor erred and made a reversible error when Your Honor failed and neglected to take judicial notice that the prosecution did not prove their case as charged in the indictment beyond a reasonable doubt to the effect that the witness that appeared before the Grand Jury upon whose testimonies the defendants were indicted did not testify to the conduct of the defendants that could prove the crime charged and also the transcripts of the witnesses that were with the grand jury were not produced at the court.
12. That Your Honor erred and made a reversible error when Your Honor failed and neglected to take judicial notice that, it is not the quantity of witnesses produced by the prosecution but the credibility of those witnesses that in you final judgment you modified their testimonies contrary to their testimonies produced during trial.
13. That your honor erred and made a reversible error when Your Honor failed and neglected to take judicial notice that the defendants were not given the opportunity to confront their accusers in an investigation at the police station of the alleged crimes,

and before the Grand Jury but was manipulated and concluded in the absence of all of the witness in that there were no transcripts of their investigation produced before the Grand Jury.

14. That Your Honor erred and made a reversible error when Your Honor failed and neglected to take judicial notice that the prosecution did not establish the defendants' criminal liabilities.

15. That Your Honor erred and made a reversible error when Your Honor failed to take judicial notice of the facts that the prosecution witnesses' testimonies were not corroborated.

16. That Your Honor erred and made a reversible error when Your Honor failed and neglected to set the jury verdicts aside and the defendants be relieved of the crimes charged on ground that the State failed to establish the guilt of the defendants to the crimes they were charged.

Therefore, and in view of the foregoing, appellant most respectfully prays Your Honor to approve the appellants' bill of exceptions so that the Honorable Supreme Court can reverse and correct the many erroneous and illegal rulings made by your Honor in these proceedings."

From the arguments advanced by the parties before this Court, coupled with all that we have gathered from the records in this case, two issues present themselves for the determination of this matter; and they are:

1. Whether or not there was corroboration in the testimonies of the State's witnesses that could convict the appellants of burglary? and
2. Whether or not given the facts and circumstances in this case, felonious restraint will lie as charged?

We shall discuss these issues as they are presented. The first issue, whether or not there was corroboration in the testimonies of the State's witnesses that could convict the appellants of burglary, we take recourse to the records in the case to be guided by the testimonies of the parties herein.

The records show that on Sunday, July 22, 2012, members of the Elohim Pentecostal Church located in Logan Town, Bushrod Island, along with one of the appellants, Benjamin Holder, alias Pastor Abu Sesay, requested Mother Margaret Sesay for the instruments to conduct their regular worship service, but she refused; that predicated on her refusal to surrender the instruments to the members, they called in the police to intervene and as a result, the private prosecutrix was detained by the police.

While in police detention, the private prosecutrix complained that her home was burglarized by the appellants; that based on this allegation, the appellants were arrested and subsequently indicted on April 4, 2013 by the Grand Jury for Montserrado County for the crimes of burglary and felonious restraint.

On December 10, 2013, the trial commenced and the State produced four regular witnesses, namely: Margaret Sesay, the private prosecutrix, Kaetus Curtis, Rebecca Teah and Austin Samuel. The private prosecutrix informed the trial court and the petit jury that while she was at the police station, a boy told her that her home was burglarized; that the appellants occupied her home for three days and three nights during her stay at the police station; that the boy also told her that he saw about four persons inside the house of the private prosecutrix that bust the door to the house. She inquired from the boy whether what he saw and told her was the truth and he answered in the affirmative. The private prosecutrix quoting the boy, or informant, said this in her testimony:

“He said when they broke the door I saw that they brought two suitcases down and put them in the car; I saw them bring televisions down – big and small and put them in the car then I saw a black bag in their hands and they put it in the car. I saw them putting a tape recorder in the car and I was just monitoring them”.

On the cross examination, the defense counsel asked the private prosecutrix whether or not she herself saw the appellants burglarizing her home? She answered in the negative and we quote: “I did not see them, but people went to me and said Mother Sesay, the people who brought you to the police station – Yatta Kamara, David Dahn and Benjamin Holder are busting your door and bringing your items down in the car”.

The State’s second witness, Kaetus Curtis, in his testimony and a response to a question as to what did they notice when they arrived at the home of the private prosecutrix said:

“When we got at the house, we met the door opened. It was actually like the door was spoiled and the lock was played with, but did not really get to know who spoiled the lock. Another thing we did was to take down some items that were out of the place and how the place looked like because it was in a disorderly manner. So we copied what we saw there and that is what we presented to the neighborhood”.

On the cross examination, the defense counsel inquired whether the State’s second witness having arrived at the home of the private prosecutrix and met the door opened, if yes, whether he knew who bust the door. In response, he said:

“we did not find out who bust the door, but they said a little girl might have been the one that bust the door to go for her things, but we did not get to know who bust the door because nobody told us that they bust the door”.

The defense counsel further inquired from the State's second witness whether he must have learnt from the community that a little girl might have been the one that bust the door and if he could identify the little girl. In response, the witness said:

"They said that this little girl who also lives in the house might have been the one that opened the door to go for her things. So that means the little girl was living with Mother Sesay, but that was something as I said a rumor because people were saying many things over and over and so it was not something for us to hold to anybody because nobody took the responsibility of busting the door".

The State's third witness, Mr. Austin Samuels, testified that when he arrived at the house of the private prosecutrix, he saw a car in front of the house, the identical car that Yatta used during the funeral of her father. When he got there the house was quiet and decided to go upstairs in the building; that when he climbed he saw the busting of the door with some tools all on the ground. Later, he heard people talking in the house and decided to come downstairs and within five minutes he saw Ciafa, the fellow who sleeps in the church, opening the door and came downstairs with a suitcase on his head; not too long he saw Yatta coming down the stairs. The witness concluded that he stood by and watched Yatta and Ciafa did what they could and thereafter went to the police station and informed the private prosecutrix about it.

The State's fourth witness, Madam Rebecca Teah, informed the court and the petit jury that:

"It was on Sunday that they came to arrest mother; they brought a policeman downstairs. I was upstairs when they brought the policeman to arrest mother. They arrested mother and mother said let me lock my door, then mother locked her door and they carried her in jail. I was sitting down in the pallor waiting for them because I thought mother would come back and so I was there. I went to see and they came back. When they came back, they bust mother's door and took her things from inside and they put it outside. One boy called Muciafa put the things on his head and carry the things downstairs in the car. The suitcase, he will put it outside, the video, the TV and all the small, small things he put it outside and they put it in the car and carried it. That's the one I know".

Further on the direct examination, when quizzed as to who bust the door, the witness responded: "That's Abu and his sister Mamie". However, this allegation was never mentioned in the testimony of the witness except on direct examination and it stands alone from the testimonies of the three witnesses of the prosecution and that no testimony of any of the four rebuttal witnesses corroborates this allegation by the witness against the appellants.

Thereafter, the appellants testified in their own behalf substantially denying all the allegations contained in the testimonies of the State's witnesses including that of the private prosecutrix, Mother Margaret Sesay. We culled from the

certified records in this case the entire testimony of witness Yatta Kamara, the principal defendant.

“It was on Sunday morning, my late father’s wife, Margaret Sesay, called me and she said Mamie where are you I am on my way to service. She said your brother brought people to arrest me for the church business and we on our way to the police station. So, I told her that I am on my way. As I drove there, I got at the house junction where I met her and two officers on their way to the police station. So, I began to ask the officers what happened. He began to explain. The officer said that my stepmother Margaret Sesay insulted church members, refused to give the church instruments, locked up the church bathroom and insulted Pastor Abu Sesay. So, I told the officer that we should go back at the house so that we can settle it family way and he respected my view. Then we got at the church. The whole church was outside down. People were standing all outside and I began to ask Pastor Abu Sesay and he said Mamie don’t ask me but instead ask the church members, they are the best people to explain to you.

My brother and I, and Margaret Sesay were put in a circle by the church members and they began to explain but what they explained was quite different from what she told me and was beyond my control. So, that’s how we went back to the police station.

On our way to the police station we met her son, Andrew who used to play for the church during the time my father was alive. He got in the car with us. The church members said that Andrew had one of the church’s keyboards that he has already sold. So, I asked him, and he said that he did not sell the keyboard but instead he gave it to someone for fixing. So, I asked him whether I could stop to where they were fixing it so we could pick it up and he said yes but the police officer said there was no time. So that’s how we proceeded to the police station.

When we got at the police station, we all sat down. My mother began to explain. After she got through explaining the church members also explained and then Andrew who is her son began to talk back at the officer, so the officer told him if he talk, back they were going to detain him. In that time one of the church members raised up the keyboard issue. That’s how Andrew also was handcuffed right to where he was sitting on the window bar and the oldma, Margaret Sesay was still on the detention bench. So, she started saying Mamie please don’t allow me sleep here to jail me. I said oldma, they will not jail you; and we were there talking with them. So, I decided to go back at the church and get my brother, Pastor Abu Sesay, Mr. Dahn, who was my late father’s best friend so we could come back at the police station to get our mother released.

When I got there the whole community was still filled with people. The community people said Mary had run away from the house. She bust the door and ran away from the house. So, I went in the church, I told my brother, I told Mr. Dahn and we went upstairs. When we got there, we met the front door opened, the big outside lock was bust. We met the caretaker, the oldma who testified here yesterday upstairs. So, I asked for Mary and said oldma they said Mary came here and bust the door. She said yes and this is why I am trying to straighten up things. So, I asked her will you sleep here, or will you wait for the oldma she said no I will go home. So, I decided to send for lock by the boy who sleeps in the church house by the name of Siafa. Since no one was sleeping in the house I decided to take those few important things and put in my car for safekeeping.

I took two televisions, one small one big one; two brand new suitcases one brown in the hallway and I asked Siafa to take it downstairs to put it in my car which he did. The caretaker was still in the house trying to straighten up things. She was in papa's bedroom making up the bed. So, I told her to get outside since she is not sleeping there so I can go. That's how Siafa brought the lock, the church's carpenter fixed the door and I carried the keys. Abu, Mr. Dahn, we got in my car and I decided to make a stop at the police station to see the oldma. I told her and said oldma I just from the house, Mary bust the door and ran away. She was surprised and I said that's what happened. So, I told her I already bought a new lock, took few of the important things from the living room and is right in my car. She said ok.

After some time, she called me back to her. She said can you please talk to the officer to allow me go back home because I was menstruating so I should talk to the people for her to go home. So, I said ok and which I did. We went back home with the same officer guarding her. She went in the house but stayed so long. The people started to get vex with me. So I went in the house and I asked her is anything the matter? She said no, that's how she got outside, gave me papa's prayer room key, I locked the door and we went back to the station. The police said she was staying there for seventy-two hours and they were sending them to court. That's how I drove out.

On my way to the police station the next morning, the community chair called me and said is this Yatta Kamara and I said yes. He said we came to the police station, we got your mother out but she is saying she has no clothes to wear because you took all her things. So, I said why the oldma said I took all her things. I said why the oldma will say that she doesn't have clothes to wear and that I took all of her clothes. I did not take her clothes instead I took empty suitcases so he said since you are on your way just come so we can talk. That's how I went to Logan Town. She, the oldma was there, the community chairman was there, few church members were there, my own fiancé was there, and I presented the things I took. The community

chairman brought camera and took photos, listed the items that I brought back and presented it to the oldma.

After few days, community people called us, church members, family, friends to make peace and the peace just couldn't hold because she said she wanted the church and my brother should step out. Later to my surprise she brought a writ of arrest at my house with an officer after the hour of 4:0'clock and I was detained. So, they stood my bond and told me to produce my brother Abu Sesay, my father's friend Mr. Dahn the next day and that we were charged with burglary and felonious restraint. And that's how our court process started".

In response to questions as to the relationship that existed between the witness, Yatta Kamara, and the private prosecutrix, and to clarify as to why she broke into Madam Sesay's residence, the witness said:

"Margaret and myself were very close before even the death of my father. I was close to my father and my father was close to her and because of my father I used to love her...I did not break into madam Sesay's residence as she claimed. Instead, I tried to protect the house because I am a child of the Sesay family so for the fact that my mother is not around I should take charge".

In addition to the testimony of the principal witness, Yatta Kamara, four other witnesses, namely, Jartu Sarteh, Yatta Watson, Ciafa Murvee and Mercy Grams testified. But the testimony of Ciafa Murvee captured the attention of this Court as same corroborates largely the testimony of the principal witness, Yatta Kamara, and for better reference, we quote Ciafa's testimony verbatim.

"Last year July 20, 2012, mother Margret Sesay went at the church and took the church's instruments. She took them and carried them upstairs to have party, but she never returned them. On the 22nd of July after the church members came to church, they needed the instruments and they went there to her upstairs to ask for the instruments, but she refused to give them. So, the church decided to call the police. They went and brought the police. At that time, I was there – I am the caretaker of the church- at that time I was there, and Mary came in with a rock; she decided to go upstairs. When she went there, she bust the door. After busting the door, she took a big Ghana must go bag with a small purple bag of rice in her hand and carried it.

Before then, the old lady went upstairs there and I heard her saying oh Mary you bust the door? Mary left and it stay long – Yatta was not there when they were carrying Margaret to the police station, but I saw Yatta coming along with Margaret Sesay in a car with the police people and they went upstairs. When they went upstairs, they decided to buy lock, but before then, she told Yatta to take some of her things and carry for safekeeping. Yatta took the things and locked

the door, turned the keys over to her, but she told Yatta to keep the keys. Yatta kept the keys and they came downstairs, got in the car and carried her to the police station. Monday, the same Yatta brought her from the police station and carried her upstairs and she took bath and got in the car and they went to the police station. Tuesday was then they brought her back home and turned her keys over to her with all her things. That's what I saw".

Further, this Court, in determining the issue whether or not burglary occurred and the appellants herein be held responsible as charged by the Grand Jury, we take and include excerpts from the testimonies of co-appellants, David Dahn and Benjamin Holder, alias Abu Sesay, for their relevance to draw a clear line of corroboration of their denial of the commission of the crime of burglary in support to the testimonies of the principal witness, Yatta Kamara, and witness Ciafa Murvee.

In his testimony before the court and petit jury, witness David Dahn said in substance that:

"...first of all, the allegation against me is false. It does not represent me and is too far from my character. On July 22, 2012, on a Sunday, I received several phone calls from the Pastor of the church in person of Abu Sesay, also known as Benjamin Holder, one of the co-defendants in this matter that there was a serious problem in the church in Logan Town and the members had gone for church service and madam Sesay had removed and taken away from the church all the church musical instruments and the drums upstairs to her apartment thereby denying them the privilege to go to church. So as key Elder of the church, I, David Dahn, should come immediately before things go out of hand...When I arrived at the police depot they were already there. So, I joined them in the office of the police/CID officer, Sergeant Flomo Nunu to whom the complaint was lodged. The officer advised that we should all proceed to the church premises and the residence of mother Sesay to establish whether indeed the church drums and musical instruments were removed and were in her possession.

We, the police officer, mother Margaret Sesay, Pastor Abu Sesay and I went to the church premises and upon our arrival it was observed that the neighborhood was very crowded on that day and eye witnesses and neighbors informed us that the daughter of mother Margaret Sesay went upstairs and bust the front door while we were at the police station. However, we went upstairs on the porch of mother Sesay's residence and the police officer asked her to bring the items or drums she took from the church. The items were brought to the porch while we were there. When she brought the items to the porch the officer asked the church officers, meaning Pastor Abu Sesay, myself, David Dahn to confirm whether those were the items involved and the items were confirmed and taken at the church. At that stage, the step-daughter of mother Sesay in person of

Yatta Mamie Kamara said to her step-mother that before my pa could die so, so confusion; this is not good. Then she asked her stepmother Margaret Sesay for the keys to her residence so that she Yatta Kamara can take some of her personal items so that upon her release from the police custody then she will return them. In the presence of the police officer the stepdaughter received the keys from her step-mother who willingly gave the keys to Yatta Kamara.

Few days later after the case was withdrawn, the community convened a meeting and it was at that meeting the community organization informed us that the items that the stepdaughter, Yatta Kamara took for safekeeping were returned. Sometime later on September 5, 2012, we received writ of arrest from the Magistrate court in New Kru Town based on a complaint of mother Margaret Sesay v. Benjamin Holder, Yatta Kamara and David Dahn for felonious restraint and burglary”.

The relevant excerpts of the testimony of Abu Sesay are also stated herein:

“...on a Monday we went for service and we discovered that the drums, the speakers, the keyboard and other equipment were missing. We were told by residents of the community that Margaret used these equipment and was playing music with them and were in her possession. We asked her and said she never had anything for the church, and she will not give to anyone except those were her property. We came for service on a Thursday, but she stopped the service by not giving the instruments, everyone talked to her she said she was going to give them on Saturday but to no avail. Lastly, she promised that she was going to give them on Sunday, we went up there with the elder of the church in person of the late Nobo Johnson, we told her daughter Mary to inform her that we have come for the instruments as she promised, she also refused so the elders together with few members went to knock on her door but to our utmost surprise she naked herself and open the door; we all turned our backs and came downstairs. She and her son Andrew began to insult the members of the church on the Sunday morning. Some of them were becoming emotional, I talked to them and quiet them down and we took the decision along with the elders of the church to involve the police that it will not be healthy. The police then came in and invited us to the station; they did their preliminary investigation asking the both parties to explain and after the explanation, she was charged. When they told her that if she could give the instruments back to the church so that we could be able to worship God, they were going to keep her until Monday and sent us to court. It was then she agreed to come with the police to give those things to the church. When we arrived at the house, she returned those things to the police who then gave them back to us to worship. Two other things were outstanding, the articles of incorporation and the church deed; those she refused to give. The police asked us to return to the police station after the worship service but just before

then she called my sister, Yatta Kamara who came based on the close relationship that existed between the two of them.

When Yatta came back with the police, the oldma and her came back then she asked me Abu what happened I saw the police carrying the oldma, the way she asked me in the angry mood I told her ask the members and some of the residents they will explain better”.

On direct examination, co-appellant Abu Sesay, alias Benjamin Holder further explained:

“We had our service and from there we went back to the police station. While at the police station, we received the news that Mary used rock to break into the house so that she could take her things when she heard that her mother was at the police station”.

Thereafter, the appellants rested with their testimonies and submitted their side of the case to final argument; the prosecution took advantage of the law and produced four rebuttal witnesses, namely: Margaret Sesay, Rebecca Teah, Pastor Joseph W. Nathan and Pastor Frank Cooper.

We have cautiously perused the testimonies of the prosecution’s four rebuttal witnesses to establish the fundamental fact of who bust the door to the house of the private prosecutrix, Margaret Sesay, as claimed by her in her testimony and that of her three witnesses, allegations vehemently denied by the appellants. The testimonies of the prosecution’s rebuttal witnesses did not, in any way support the testimony of the private prosecutrix and the testimonies of her three witnesses, for none could say that appellants burglarized her house.

This brings us to the question whether or not the prosecution has established a prima facie case by corroborated testimonies from its witnesses that could amount to the commission of the crime of burglary by the appellants. The answer is no.

Recourse to the records, principally the testimony of Margaret Sesay, the private prosecutrix, did not state with certainty as to who burglarized her house and unlawfully took away her things. She averred in her testimony that she heard about the burglary of her house from a little boy who went to the police station where she was being detained and informed her; the boy was never named, whereabouts never established, nor did he ever appear to testify to what he might have seen and heard, which information the private prosecutrix made the gravamen of her complaint.

In addition, the private prosecutrix, in an answer to a question put to her on the cross examination, whether or not she was told by some people that these were the burglarizers, it was not yourself that saw them doing it? She responded “I did not see them, but people went to me and said Mother Sesay, the people who brought you to the police station – Yatta Kamara, David Dahn and Benjamin Holder are busting your door and bringing your items down in the car”.

What this Court is called upon to settle as regards the alleged burglary of the house of the private prosecutrix by the appellants, is to point in certainty to a portion of a testimony of the prosecution's four witnesses and rebuttal witnesses testifying that they were present, witnessed the appellants bust or burglarized the house and unlawfully took away the belongings of the private prosecutrix. The non-settlement of this factual issue as to whether the appellants herein burglarized the home of the private prosecutrix keeps the doubt in the mind of this Court to clearly see and determine whether or not the burglary as charged by the prosecution did occur.

Following, none of the rebuttal witnesses could point to the appellants as the doers of the act; that is, they saw the appellants either individually or severally burglarizing the house of the private prosecutrix. The uncertainty that hangs over the facts in this case is so huge as to the actual doers, if any burglary occurred. The Supreme 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". *Elizabeth Davies v. Republic of Liberia*, 40 LLR 659, 675-676 (2001); *John B. Dyson v. Republic of Liberia*, 1 LLR 481 (1906).

Chapter 2 of the Criminal Procedure Law captures the rights of defendants, and Section 2.1 squarely states: "a defendant in a criminal action is presumed to be innocent until the contrary is proved; and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal". In view of the foregoing, this Court is not inclined to agree with the trial judge when he confirmed the petit jury's verdict on account of his belief that the prosecution established a prima facie case. Prima facie evidence is: "a party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor". *Black's Law Dictionary*, Tenth Edition. This Court says from what it has read, the opposite is true; that is, the prosecution woefully failed to prove a prima facie case in the case at bar.

We have earlier stated in this Opinion that in her testimony before the court and the petit jury, the private prosecutrix said that she was at the police station when a little boy went to her and told her that he saw about four persons in her house busting the door. However, prosecution's second witness, Kaetus Curtis, on the cross examination, explained a different version about what he claimed he knew about the case in the following words:

"We did not find out who bust the door, but they said a little girl might have been the one that bust the door to go for her things, but we did not get to know who bust the door because nobody told us that they bust the door". He asserted further "they said that this little girl who also lives in the house might have been the one that opened the door to go for her things. So that means the little girl was living with mother Sesay, but that was something as I said a rumor because people were saying many things over and over and so it was not

something for us to hold to anybody because nobody took the responsible of busting the door”.

The prosecution’s witnesses having failed to state with certainty that the appellants burglarized the house of the private prosecutrix owing to their uncorroborated testimonies, the crime of burglary as charged cannot hold. This Court has held that “whenever the witnesses for the prosecution contradict each other, the doubt which results therefrom should operate in favor of the accused”. *Weh Dennis v. Republic of Liberia*, 20 LLR 47 (1970).

Consistently, the appellants denied the averments contained in the 2-count indictment holding them responsible for committing the crimes of burglary and felonious restraint. Burglary as defined by the Penal Law of Liberia, Section 15.20 states: “A person is guilty of burglary if he enters or surreptitiously remains in a building or occupied structure, or a separately secured or occupied portion thereof, with purpose to commit a crime therein, unless the premises are at the time open to the public and the actor is licensed, invited or otherwise privileged to enter or remain”. We will determine whether or not this crime as defined by statute quoted herein was committed through the testimonies of the defendants, mainly that of the principal defendant, Yatta Kamara.

In her testimony, which remains unrebutted by the prosecution, Yatta Kamara told the court and the petit jury that she was invited to the church by the private prosecutrix, Margaret Sesay, when church members, including Abu Sesay, alias Benjamin Holder, requested her to produce the church instruments for Sunday worship service but refused to do so. Consequently, co-appellant, Abu Sesay took Madam Margaret Sesay to the police to intervene in the matter. It was at that point the co-appellant, Yatta Kamara, was called by the private prosecutrix, Margaret Sesay. Among other things, witness Yatta Kamara said when she went to the church to get her brother, Pastor Abu Sesay, to go with her at the police station so as to get their mother, Margaret Sesay, from the police station is when she noticed the house was broken into. When she inquired as to who bust the door, the caretaker, Rebecca Teah, one of prosecution’s witnesses, informed her that it was Mary, the little girl who lives with Mother Margaret Sesay. With the hope of securing the belongings of the private prosecutrix, Yatta entered the house, packed a few items, purchased a pad lock and secured the door. Thereafter, she proceeded to the police station and informed Margaret Sesay what had happened to her house and what she did, and the private prosecutrix acknowledged Yatta’s gesture.

Following her release by the police, Yatta Kamara told the court and petit jury that the community in which the church is located and where Margaret Sesay resides, convened a meeting during which time Yatta returned and presented the items she had secured from the house. This vital averment by the co-appellant, Yatta Kamara, was never refuted by any of the prosecution’s witnesses. Rather, the appellants, testifying severally at different time interval, told the court and petit jury exactly what witness Yatta Kamara said supra, thus erasing the element of criminality.

It must further be noted that Yatta's involvement in the matter is a direct result of the invitation that she received from the private prosecutrix to proceed to the police station to secure her release. She was therefore licensed to enter the premises. This Court further says that none of the testimonies of the prosecution's witnesses and rebuttal witnesses established, in truth and in fact, that the alleged burglary was committed by the appellants.

The prosecution variably proceeded with this matter based on hearsay as the private prosecutrix or none of their witnesses testified from their certain knowledge that they saw the appellants burglarizing the house. The law on hearsay provides: "that hearsay evidence is not admissible except to the extent and under the circumstance stated in paragraphs 2, 3 and 5 of this section and as otherwise established by law. Civil Procedure Law, Rev. Code: 25.7. Further, in the case *Sirleaf v. Republic*, Supreme Court Opinion, March Term, 2012, this Court held: "Our criminal law, in addition to the presumption of innocence of a defendant, also imposes on the State the obligation not only to show by the preponderance of the evidence the guilt of the defendant but also to meet the standard of proof beyond all reasonable doubt before a conviction of the defendant can be upheld". The failure of the petit jury to bring a verdict that supports the evidence adduced at the trial, the judge, under this circumstance, should have granted the appellants' motion for a new trial and subsequently acquittal.

This brings us to the second and final issue: whether or not given the facts and circumstances in this case felonious restraint will lie? The Penal Law of Liberia, Section 14.51 defines felonious restraint as follows: "a person commits a felony of the third degree if he knowingly: (a) restrains another unlawfully in circumstances exposing him to risk of serious bodily injury or (b) restrains another with the purpose of holding him in a condition of involuntary servitude".

Growing out of a complaint filed to the police by co-appellant, Pastor Abu Sesay and other church members against the private prosecutrix, Mother Margaret Sesay, she was taken to the police station and based on the police preliminary investigation found merit in the complaint and held her culpable for the commission of a crime against the State; and that they will send her to court within seventy-two hours. This is the decision of the State, hence, her liberty was restrained by the State's police and in their belief that she committed a crime against the State. There is no law in our jurisdiction that will hold the appellants responsible for exerting their claim or right through the Liberia National Police which is a statutory institution of government for such matters. This being the case, the petit jury was in error when it held the appellants guilty of the crime as charged.

In count two of the appellants' bill of exceptions filed before the trial court, they alleged that the trial judge erred when he ruled that the detention of the private prosecutrix by the police constitutes the felonious restraint aspect of the crimes charged for which the defendants were found guilty. The trial judge ruled that:

"It is worthy to note that when the home of the private prosecutrix was burglarized, she was detained upon the orders of the defendants

at a local police station located in Logan Town, Bushrod Island, where she remained in said detention for three consecutive days. It is also worthy to note that upon the detention of the private prosecutrix, she was never charged with any crime and she was never sent to any court of competent jurisdiction”.

This Court is in total disagreement with the judge’s final ruling of this matter of felonious restraint holding the appellants responsible for the three-day detention of the private prosecutrix. As we stated in a preceding paragraph of this Opinion, the action of the police cannot be imputed to the appellants. This court therefore holds that the petit jury acted in error. While it is a principle of law hoary with age that the unanimous verdict of the jury should not be set aside, except the evidence adduced during trial runs contrary to fact and that much doubt is created from the uncorroborated testimonies of the State’s witnesses as is done in this case, then such verdicts should be set aside. In the case *Ramez Haider v. Aref Kassas and La Fondiara Insurance Company*, 20 LLR 324, 329, (1971), this Court set the standard for the verdict of the jury to be set aside and new trial ordered that: “where it is clearly shown that the facts presented are insufficient for the jury to arrive at a verdict that in the absence of such sufficiency of evidence the verdict falls within the necessity for granting a new trial”. It is our holding once again that the trial judge erred by confirming the verdict of the petit jury for felonious restraint as same does not pass the standard of sufficiency of evidence as the testimonies adduced by the prosecution witnesses as well as the rebuttal witnesses did not establish the culpability of the appellants relative to the crime charged. The Supreme Court of Liberia has said that: “A judgment of conviction in a criminal case must be supported by proof of all elements of the crime charged beyond a reasonable doubt”. *Heith v. Republic of Liberia*, 39 LLR 50 (2013). In the mind of this Court, the evidence adduced at trial did not show proof of the elements of the crime of felonious restraint; therefore, it will not lie.

WHEREFORE, and in view of the facts, circumstances and the laws cited, we hold that the prosecution having failed to meet the standard to establish the guilt of the appellants beyond a reasonable doubt, the verdicts of guilty brought by the petit jury and the ruling of the trial judge confirming said verdicts are hereby reversed. We further hold that in keeping with this Opinion, the appellants be released forthwith from further answering to the crimes of burglary and felonious restraint. We also direct that their criminal appearance bond be returned to them.

The clerk of this Court is hereby ordered to send a mandate to the First Judicial Circuit, Criminal Assizes “C”, commanding the judge presiding therein to resume jurisdiction over this case and give effect to this Judgment. AND IT IS HEREBY SO ORDERED.