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

Kollie Buway, of the City of Monrovia, Republic of Liberia……..……..Appellant	)	
Versus	)	APPEAL
Republic of Liberia, by and thru the Ministry of Justice…….…… Appellee	)	
GROWING OUT OF THE CASE:	)	
Republic of Liberia, by and thru the Ministry of Justice…….…… Plaintiff	)	
Versus	)	CRIME: RAPE
Kollie Buway, of the City of Monrovia, Republic of Liberia……..…… Defendant	)	

Heard: November 8, 2022 Decided: May 19, 2023

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The Supreme Court is called upon to again make final determination of an appeal involving the crime of rape, emanating from the final ruling of the 1st Judicial Circuit, Criminal Assizes "E", which adjudged the appellant herein, Kollie Buway guilty of the crime of rape. The records indicate that at the time the crime was committed, the appellant and private prosecutrix were 57 and 12 years old, respectively.

The certified records show that on March 4, 2009, a writ of arrest was issued out of the Paynesville Magisterial Court against the appellant, charging him with the commission of the crime of rape; thereafter, the appellant was indicted by the grand jury for Montserrado County on the single charge of rape and forwarded to the 1st Judicial Circuit, Criminal Assizes "E" for prosecution. We quote below the indictment, to wit:

"INDICTMENT

The Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not that defendant, Kollie Buway (alias Papay Kollie) committed the crime of Rape, a felony of the first degree, to wit:

1. That on Sunday, February 22, 2009, at about 9 O'clock a.m. in the Parker Paint Area, the [appellant], Kollie Buway, did have sexual intercourse with the victim…
2. That on the day and date mentioned, the victim's aunt sent her to the [appellant's] house to receive rice and palm oil. When the victim arrived at the [appellant's house], he was in his room. Upon entering the [appellant's] room it was then that he jumped on her, pushed her unto his bed and stuffed a piece of cloth in the victim's mouth. The [appellant] then took off the victim's clothes and violently had sexual intercourse with her by penetrating her anus.
3. That after the [appellant's] sexual intercourse with the victim, he gave her L$50.00 and threatened that if she told any one of the incident, he was going to kill her.
4. That the [appellant], Kollie Buway, whose age is 57, did intentionally and unlawfully penetrate the anus of the victim, whose age [was] 12 years.
5. That at the time of the relevant act, the [appellant] was 57 years; while the victim was less than 18 years. The victim was taken to the Du-port Road Clinic…"

At the arraignment, the appellant entered a plea of not guilty and opted for a bench trial, thus waiving his right to trial by a jury. Having ascertained the certainty of the appellant's waiver of his right to trial by jury, which was confirmed by the appellant and his legal counsel, the trial judge then proceeded with the hearing of evidence.

The prosecution produced four regularly witnesses, *viz.*: Weedor Dorley, the private prosecutrix, Elizabeth Kerkula, and Gboyah Alin Duo; and one rebuttal witness in person of Ma Tufur. The appellant testified *pro se*, followed by a second witness in person of Patrick Jallah.

Following the resting of evidence in *toto* by both parties, the case was submitted to the court for final ruling, which was rendered on June 22, 2010, adjudging the appellant guilty of the crime of rape and sentenced him to fifteen (15) years imprisonment at the Monrovia Central Prison.

The appellant noted exceptions to the final ruling of the trial court, announced an appeal therefrom to the Supreme Court, and thereafter filed his approved bill of exceptions consisting of seventy-one (71) counts. Having observed the appellant's voluminous bill of exceptions and repetitions in several counts, we shall address those counts we have deemed pertinent to the determination of this appeal. It is the settled law in this jurisdiction that the Supreme Court need not pass on every issue raised in a bill of exceptions or the pleadings filed by the parties, but only those that are germane to the determination of a case. *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). Moreover, it is the law that "the appellant shall state in his bill of exceptions the points of law to be especially relied upon in support of his appeal; and the bill of exceptions shall contain only such statements of facts and only such papers as may be necessary to explain the rulings on the issues or questions involved, and the appellant shall state distinctly the several matters of law in the charge to the court to which he excepted."

Hence, having reviewed the records we have determined that of the several alleged errors imputed to the trial judge by the appellant, only the ones mentioned below will be addressed since they embody the crux of the appellant's appeal and aid this Court in making a decision on this appeal.

The first of said error regards the "voluntary statement" of the private prosecutrix which the appellant alleged was illegally obtained by the State; that said statement obtained through torture and threats is inadmissible; that the appellants established an alibi defense which the trial judge did not acknowledge; that the testimony of the private prosecutrix aunty was based on hearsay and therefore inadmissible; and that the verdict was contrary to the weight of the evidence adduced by the State. The foregoing capture the crux of the appellant's contentions contained in his bill of exceptions.

As to the issue regarding the statement by the private prosecutrix made at the police station, the records reveal that during cross examination of the private prosecutrix, she admitted that she did not immediately inform her aunty of the incident that had allegedly occurred at the home of the appellant, but that she was afraid to disclose same due to the appellant's threat to kill her if she did; that in the presence of some neighbors, her aunty threatened to pack her things and send her away from their home and that she would put a handcuff on her hand and take her to the police station if she refused to say what transpired at the

appellant's residence; that it was at this point that she told her aunty what the appellant had done to her.

It is on the basis of this testimony by the private prosecutrix that the appellant's legal counsel advanced the argument that the statement of the private prosecutrix was involuntary.

The Supreme Court has opined on the significance of circumstantial evidence in exposing crimes that are usually committed in secrecy, as follow: *"*people do not always commit offenses publicly in the open day, but often commit them in secret, or at night, and if circumstantial evidence were excluded, all secrets offenses might be committed with impunity. Circumstantial or presumptive evidence therefore is allowed in all cases where direct and positive evidence of the prisoner's guilt cannot be procured; and it is often satisfactory as direct and positive evidence when it is so connected as to positively connect one element within another for a chain of evidence sufficient to lead a mind irresistibly to the conclusion that the accused is the guilty party." *Marfarlon v. Republic,* Supreme Court Opinion, March Term A.D. 2017*; Gardea v. Republic,* Supreme Court Opinion, March Term A.D. 2014*; Massaquoi v. Republic,* Supreme Court Opinion, October Term, A.D. 2013*; Elizabeth Davies v. Republic,* 40 LLR, 659 (2001)*; Kpolleh et al., v Republic,* 36 LLR 623, 669 (1990)*; Ledlow et al., v. Republic,* 2 LLR 529, 533 (1925).

In addition to the production of circumstantial evidence in this case, the State also produced direct evidence from the crime scene in person of the twelve (12) year private prosecutrix, whose testimony corroborated and confirmed the circumstantial and evidential documents adduced in this case. Her act of courage to confront her sexual assailant in the court of law and then recount her horrific and traumatic ordeal is commendable, being a minor rape victim of tender age. The private prosecutrix also show gallantry when she narrated the heinous ordeal to her aunt, neighbors from the community, the police and the medical examiner.

Predicated on the circumstances unveiled in the records, we do not deem it unreasonable or far-fetched to accept the private prosecutrix failure to immediately disclose any incident that may have transpired; a child of that age would surely be in fear of a threat of death. Hence, the Aunty having observed the offensive odor of the private prosecutrix coupled with her complaint of stomach pain did not act unreasonably by coercing her ward to speak of what was wrong with her. Moreover, the statement of the private prosecutrix was obtained from her at the police station and not at her home. We are therefore not persuaded

by the appellant's argument that the statement should have been excluded, especially noting that the private prosecutrix did appear in court and testified confirming the allegations contained in her statement made at the police station.

As to the appellant's alibi plea, the records reveal that the appellant produced two witnesses to testify in his defense against the crime charged in the indictment. Testifying *pro se* on direct examination, the appellant stated that he lives in the Parker Paint Community; that he had two children and a girlfriend; that on the date of the alleged incident, he was on Camp Johnson Road at his friend's residence where he had been since the previous day on visitation, that is February 21, 2009; that he returned home on February 22, 2009, at about 8 o'clock post meridiem; that he was arrested on March 2, 2009 and taken to the police station for the alleged crime of rape. The appellant further testified that he had no prior interaction with the private prosecutrix on the day of the incident or even prior to that day; that he did know her from seeing her at the home of Ma Tufor, the mother Madam Weedor Dorley who had filed the complaint against him at the police station; that Ma Tufor was his former lover; that following his break-up with her mother, Ma Tufor, Madam Weedor Dorley became very abusive toward him thus prompting him to avoid all interactions with her; that his last interaction with Madam Weedor Dorley was on August 30, 2008; that even at the police station, he was not investigated or given the opportunity to face his accuser. The appellant also testified that that since his arrest and incarceration, he had not embarked upon any form of negotiation for settlement of the case with Ma Tufor; that on the contrary, Ma Tufor had visited him at the Monrovia Central Prison informing him that she was embarrassed about the situation and that she wanted to have him freed, but that he should write up a document admitting to the crime; that based on his refusal to admit to a crime he had not committed, Ma Tufor left the prison.

On cross examination, the appellant maintained that he was innocent of the crime; that it was orchestrated by Madam Weedor and her family to get back at him for breaking up with her mother, Ma Tufor; that the basis of his belief is predicated on an alleged threat made by Madam Weedor Dorley when he refused to rekindle the love affair with her mother.

We first address the allegation by the appellant that the private prosecutrix family had a grudge against him and was using her to bring the charge of rape against him. This Court wonders what motive the 12 years old private prosecutrix had that could drive her to falsely accuse the appellant, when she was at such a tender age and not privy to the love affair and threats alleged by the appellant. This Court has opined that "…to determine the trustworthiness, reliability and admission of statements made by child victims of abuse, courts should consider the following factors:

1. The child's age and maturity,
2. The nature and duration of the abuse,
3. The relationship of the child to the offender,
4. The coherence of the statement, bearing in mind that young children my sometimes describe incidents in age-appropriate language and in a disorganized manner,
5. The child's capacity to observe, retain, and communicate information,
6. The nature and character of the statement itself, considering the child's developmental limitations in understanding and describing sexual behavior,
7. Any motivation of the child to make false allegation or a false denial,
8. The child's susceptibility to suggestion and the integrity of the situation under which the statement was obtained, and
9. All the circumstances under which the statement was made"

All of the above are seen in this case. The private prosecutrix was of the tender age of twelve (12) years old; she and her aunty lived in the same vicinity with the appellant, since she knew the appellant's residence; she was very coherent in her testimony and demonstrated sharp retentive memory by vividly describing what occurred on Sunday, February 22, 2009; she recalled that she was sent to the appellant's house by her aunt for rice and oil and when she entered, the appellant "shock [shook] her and locked the door; in childlike language she described her anus as "butt hole" and the appellant's penis as "toto/nut" and the sexual act as a "bad thing" being done to her. Given these proved facts, we hold that the testimony of the private prosecutrix is credible and that the trial judge did not err when he approved its inclusion in the prosecution's evidence; and that same corroborates and confirms the allegations in the police charge sheet and the medical report.

We proceed to the appellant's alibi defense. An alibi, according to the Supreme Court, is an effective defense in a criminal case because of its character of proving the physical impossibility of a person being in more than one place at the same time. It is the physical circumstance which derives its potency as a defense of the fact that it involves the physical impossibility of the guilt of the accused. From this standpoint, an alibi is not only a legitimate defense but may be a very complete defense. It affords, if established, the most perfect, physically conclusive evidence of the defendant's innocence; but if during a proceeding it can be shown that an alibi was manufactured, and was untrue, it will nullify the favorable effect of the alibi of the accused. *Corneh et al. v RL*, Supreme Court Opinion, October Term, A. D. 2014; *Fartoma v RL*, Supreme Court Opinion, October Term, A. D. 2010; *Ben v. Republic of Liberia*, 31 LLR 107, (1983). An alibi defense not only infers that the accused could not have committed the crime charged against him/her because he/she

was at a different location than the crime scene, but when adequately proven, it creates a reasonable doubt as to the defendant's guilt, and ultimately the defendant is entitled to an acquittal. However, unless an accused is able to prove his alibi or his presence in a place other than the scene of the crime at the time of its commission, his alibi is unconvincing, and his defense must crumble. From the same perspective, it should also be noted that determination of the veracity of an alibi is within the purview of the jury, or where the case is heard as a bench trial, by the judge. *Forleh et al. v. Republic*, 42 LLR 23 (2004); *Yancy v. RL*, 27 LLR 365, 414 (1978).

Accordingly, it then became the responsibility of the appellant under the plea of an alibi to show not only the improbability, but impossibility as well, that he could have been present at the place of the commission of the crime. *Yancy et al. v. Republic of Liberia*, 27 LLR 365 (1978).

In substantiation thereof, the appellant's second witness attempted to corroborate the appellant's testimony, to the effect that on the day and time the indictment alleged that the crime was committed he was at a different location.

The records show that this witness, Patrick Jallah testified that the appellant slept at his house on Saturday, February 21, 2009, and remained there until sometime between 11 and 12 O'clock noon on Sunday, February 22, 2009. The trial judge thereafter subjected the two testimonies to an authenticity test, which is the province of a jury or a judge in the case of a bench trial as in the present case. It is settled law that the jury is the exclusive judge of the evidence; and this province is ascribed to a trial judge *de jure*, to sit as both judge of the facts and of the evidence in a bench trial. *Yeakula et al. v* RL, Supreme Court Opinion, October Term, 2014; St. *Stephen v. Gbedzee*, Supreme court opinion, March Term A.D. 2013.

In consonance with the principle of law regarding the province of the jury or a judge sitting in a bench trial, the trial judge listened to the totality of the testimonial evidence proffered by the appellant and his witness and determined that the alibi defense was fabricated by the appellant and his witness. In her final ruling, the trial judge reasoned that the appellant's alibi defense was fabricated because his second witness' testimony was marred with inconsistency, thus bringing into issue the credibility of the said witness who sought to corroborate his alibi. For instance, the witness testified that he and the appellant were good friends dating as far back as the 1970's, but also stated that he had never visited the appellant during the period of their very good friendship. The records show that the witness

testified that he did not know any family of the appellant, to include wife, children, or siblings; that he could not even state with certainty the area of residence of the appellant.

This Court is in total agreement with the trial judge's ruling. Not only did the witness fail to establish the purported long term friendship he claimed to have shared with the appellant, he could not even state where the appellant lived. The records show that when questioned as to where the appellant lived, the witness testified that "although he had not been to the appellant's house, he knew that the appellant lived at Congo Town". We find it extremely remote and inconceivable that two persons who have shared a close friendship for a period spanning more than thirty (30) years would not know at least the immediate family members of each other; in the case at bar, the appellant's only witness, who claimed to have been close friends with the appellant since the 1970's did not know whether his close friend, the appellant, had children, or siblings, or even a wife. In fact, he could not even locate the area of residence of his supposedly close friend. Whereas the records show that the appellant identified his place of residence as Parker Paint Community, Paynesville, the witness stated that the appellant residence was in Congo Town; further, that he had never been to the appellant's house, his close friend, since the 1970's.

Moreover, witness Jallah testified that about seven (7) persons lived with him at his house; however, none of the seven residents were brought to corroborate his testimony that the appellant had slept at his house on Saturday, February 21, 2009, and remained there until Sunday, February 22, 2009 at about 12 noon.

The trial judge rightly discredited the testimony of the witness, thereby causing the appellant's alibi to crumble. Given that the case was heard as a bench trial, the judge presiding thereon was not only examiner of the law issues, but was also discerner of the facts; it was therefore within her purview to determine the credibility of the evidence and the testimonies witnesses.

The Supreme Court has espoused that the 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. 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 the witness. *Marfarlon v. Republic,* Supreme Court Opinion, March Term A.D. 2017*; Sirleaf v. RL,* Supreme Court Opinion, March Term, 2012; Living Counsellor v. Republic, Supreme Court Opinion, October Term, (2008); *RL v. Eid et al.*, 37 LLR 761 (1995).

Given the circumstances of the attendant facts, this Court finds no abuse of discretion by the trial judge in discrediting the testimony of the appellant and his witness regarding the appellant's defense of an alibi, and we so hold.

We further hold that the appellant's failure to establish his alibi plea through substantive and corroborating proof, especially in the face of the State's incriminating evidence placing him at the scene and at the time of commission of the crime, said failure nullifies, dissolves and abolishes all presumptions of innocence in his favor and establishes a strong inference of his guilt for the heinous crime of rape.

Moreover, pursuant to the Criminal Procedure Law Rev. Code 2:21.1, all cases, to include criminal cases within our jurisdiction are governed by the rules of best evidence and burden of proof which rules respectively provide that no evidence is sufficient which supposes the existence of better and superior evidence, and that the best evidence which the case admits of must always be produced, with the caveat that the burden of proof rests on the party who alleges a fact. In criminal cases like the one now on appeal, it is the State, the appellee herein, which maintains the burden of proof throughout the trial, except when the defendant asserts an affirmative defense as in the present case, regarding the appellant's alibi defense. Civil Procedure Law Rev. Code 1:25.5; Id. 25.6; *Bestman v. Republic of Liberia*, Supreme Court Opinion, October Term, A. D. 2013; *Sirleaf v. Republic*, Supreme Court Opinion, March Term, A. D. 2012; *Okrasi v. Republic*, Supreme Court Opinion, March Term, A. D. 2009; *Wogbeh v. Republic*, Supreme Court Opinion, October Term, A. D. 2009; *Davies v. Republic*, 40 LLR 659 (2001).

We now address the appellant's assertion that the testimony of the aunty of the private prosecutrix was based on hearsay and therefore inadmissible. The records do show that the aunty narrated what her niece had told her about the incident with the appellant. However, the private prosecutrix did take the witness stand and testified to the very statement made by her aunty.

The appellant's last assertion was that the verdict was contrary to the weight of the evidence adduced at the trial by the State. This Court says that given our holding that the appellant failed to prove his alibi thus a strong inference of his guilt; the corroborative testimonies of the State's witnesses, by the private prosecutrix, her aunt, the medical personnel and the police, which proved the guilt of the appellant for the commission of the crime of rape, we will not burden this Opinion by discussing same. We therefore hold that the final ruling of the trial judge being supported by the evidence and the applicable law will not be disturbed.

This Court however notes that the trial judge sentenced the appellant to a term of imprisonment for fifteen (15) years. The New Penal Law classifies rape in the following manner, to wit:

> 1. Offence: A person who has sexual intercourse with another person (male or female) has committed rape if:
>
> (a) (i) He intentionally penetrates the vagina, anus, mouth or any other opening of another person (male or female) with his penis, without the victim's consent: or
>
> (ii) He/She intentionally penetrates the vagina or anus of another person with a foreign object or with any other part of the body (other than the penis), without the victim's consent.
>
> (b) The victim is less than eighteen years old, provided the actor is eighteen years of age or older. *The New Penal Law*, Rev. Code 26:14.70 (approved December 29, 2005).

4. *Grading and Sentencing*
   (a) Rape is a felony of the first degree where:
      (i) The victim was less than eighteen (18) years of age at the time the offense was committed; or
      (ii) The offense involves gang rape as defined in sub-paragraph two (2) above; or
      (iii) The act of rape complained of results in either permanent disability or serious bodily injury to the victim; or
      (iv) At the time of the relevant act or immediately before it began the defendant threatened the victim with a firearm or other deadly weapon.

   (b) The Maximum sentence for first-degree rape shall be life imprisonment, and for the purposes of bail it shall be treated as per capital offenses under section 13.11: Capital Offenses of the Criminal Procedure Law.

   (c) Rape is a second-degree felony where the conditions set out in section 4(a)(i)-(iv) above are not met. The maximum sentence for second-degree rape shall be ten (10) years imprisonment.

Pursuant to the provisions of the law quoted above, the burden was upon the appellee to prove that the appellant intentionally penetrated the vagina, anus, or any other opening of the private prosecutrix, with his penis or any other part of his body, or with a foreign object.

In fulfillment of this obligation, the State produced the medical report which indicated that indeed the anus of the private prosecutrix was penetrated and further produced witnesses who offered corroborated testimonies that linked the appellant to the commission of the crime. For instance, the appellee's first witness established that she sent the private prosecutrix to the appellant's house for rice and oil; that it was the appellant who suggested

that the private prosecutrix be sent to him to collect the rice and oil; and that the private prosecutrix herself testified that it was the appellant who subdued her at his house and penetrated her anus with his penis. Hence, the State proved beyond all reasonable doubt, the commission of the crime of rape by the appellant.

Further, the mandate of the quoted law on grading and sentencing, rape is a felony of the first degree, where the provisions of 4(a), (i) thru (iv) are proved. In the present case, the victim was less than 18 years old, being only 12 years old at the time the crime was committed, thus making the crime a first degree felony with a sentence of life imprisonment.

We observe that although the trial judge found the appellant guilty of the crime of rape, a first degree felony pursuant to Section 14.70 of the Penal Law as amended January 17, 2006, with a maximum sentence of life imprisonment, she chose to limit his imprisonment to fifteen (15) years, without indication of any mitigating circumstances that could have warranted a sentence less than the maximum imposed by law. Moreover, the said provision of the Penal Law makes rape a felony of the first degree where the victim is less than eighteen years of age. Hence, the appellant being 57 years of age and the private prosecutrix 12 years of age at the time of the commission of the crime of rape, same constitute a felony of the first degree.

We therefore hold that the State having established a *prima facie* case by direct and circumstantial evidence, given the gruesome and horrendous act of sodomy committed by the appellant against a twelve (12) year old child and this Court having the authority to modify, reverse, or affirm the final ruling of the trial court and to also render such ruling that should have been given by the trial court, the sentence is increased from fifteen (15) years to fifty (50) years.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the trial court is affirmed but with modification that the sentence of fifteen (15) years is increased to fifty (50) years; and where the appellant has remained in prison pending the final determination of this appeal, same is incorporated in his sentence and should be so computed; and if he is at large, he shall forthwith be remanded to prison to commence serving his sentence of fifty (50) 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 this Judgment. Costs are disallowed. IT IS HEREBY SO ORDERED.

Final Ruling Affirmed.

When this case was called for hearing, Counsellors T. Jospeh B. Debley and Rachel B. Yabah Doubah, of the Office of Public Defenders of Liberia, appeared for the appellant. Counsellor Wesseh A. Wesseh, Acting Solicitor General, Ministry of Justice, Republic of Liberia appeared for the appellee.