

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

Johnetta Pinky Abu of the City of Monrovia,)
Montserrado County, Republic of Liberia.....)
.....Appellant)
)
Versus) APPEAL
)
Republic of Liberia by and thru Ministry of)
Justice of the City of Monrovia, Montserrado)
County, Republic aforementioned.....Appellee)
)
GROWING OUT OF THE CASE:)
)
Republic of Liberia by and thru Ministry of)
Justice of the City of Monrovia, Montserrado)
County, Republic aforementioned.....Plaintiff)
)
Versus) CRIME: MURDER
)
Johnetta Pinky Abu of the City of Monrovia,)
Montserrado County, Republic of Liberia.....)
.....Defendant)

Heard: November 7, 2022

Decided: August 11, 2023

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT.

On September 10, 2018, the Grand Jury for Montserrado County sitting in its August Term, returned a true bill charging the appellant, Johnetta Pinky Abu with the crime of murder, a felony of first degree. The indictment averred as follows:

“ INDICTMENT

The Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not that defendant Johnetta Pinky Abu, Intentionally, willfully, purposely and knowingly and with malice, committed the crime of Murder a felony of the first degree to wit:

1. That during the evening hours to Thursday June 14, 2018, the late Morris Johnson and the Defendant Johnetta Pinky Abu along with one Genevie were together at a local entertainment center, Pepper Fish under a friendly atmosphere which became strained when the Defendant's ex-boyfriend, Alexander Freeman, alias Nigger Blow entered the club and started dancing.
2. That an altercation ensued between the Defendant and the Victim who were lovers and led to their early departure from the entertainment center with the deceased driving the Defendant home where she entered into her apartment and locked the door.
3. That after a little while, the deceased knocked on the Defendant's door, was allowed to enter by the nurse, and entered the defendant's room where their altercation continued over allegations of extra love affairs engaged into by the Defendant.
4. That the altercation degenerated into a fist fight which saw the intervention of neighbors pleading with both the Defendant and the deceased to discontinue but to no avail.
5. That during the fight which continued despite pleas for its discontinuation, the Defendant ran to the kitchen, grabbed a knife and angrily stabbed the deceased who was attempting to escape her attack.
6. That as a result of the Defendant's action, the deceased sustained serious bodily injury which caused him to bleed profusely and to subsequently be pronounced dead on arrival at the hospital.
7. A person is guilty of Murder if he
 - (a) Purposely or knowingly causes the death of another human being;
 - or
 - (b) Causes the death of another human being under circumstances manifesting extreme indifference to the value of human life. A rebuttable presumption that such indifference exist arises if the Defendant is engaged or is an accomplice in the commission of or

- an attempt to commit, or flight after committing or attempting to commit, Treason offenses defined in Section 11.2 or 11.3 of this title, espionage, sabotage, robbery burglary, kidnapping, felonious restraint, arson, rape, aggravated involuntary sodomy, escape, piracy, or other felony involving force or danger to human life.
8. “Willfully” means engaging in a conduct purposely or knowingly unless further requirements appear from the definition of the offense.
 9. “Act” or “Action” means a bodily movement whether voluntary or involuntary.
 10. “Bodily injury” means physical pain, illness or an impairment of physical function.
 11. “Purposely” means engaging in a conduct which the actor knows is his conscious object to engage in conduct of that nature or to cause the result of that conduct.
 12. “Knowingly” means if when a person engages in a conduct he know or has a firm belief unaccompanied by substantial doubt that he is doing so, whether or not it is his purpose to do so.
 13. “Intentionally” or “with intent” means purposely.
 14. “malice” means the intent, without justification or excuse, to commit a wrongful act.
 15. That the Defendant claims that she did not see how her boyfriend the victim sustained the wound on his back.
 16. That the act of the defendant is contrary to 4LCLR, Title 26, Section 14.1(b), 4LCLR, Title 26, Section 2.2(b), Title 26, Section 1.7(m), Title 26, Section 1.7(h), Title 26, Section 2.2(e), Title 26, Section 2.2(c) of the statutory laws of the Republic of Liberia; and the peace and dignity of the Republic of Liberia.

True Bill/ Ignoramus

Witnesses

Addresses

- | | |
|----------------------------|-----------------------------------|
| 1. Genevieve Jallah | Paynesville, Cement Hill Junction |
| 2. Cecelia Barclay | Gbangbar Town, RIA Highway |
| 3. Naomi Gbarzee | Roberts Field Highway |
| 4. Liberia National Police | Monrovia, Liberia |
| 5. Others | |

Albert Ballah
Foreman of the Jury

Filed this 10th day of September A. D. 2018

Clerk of Court, Criminal Court “A”

The records show that on the said September 10, 2018, the First Judicial Circuit for Montserrado Count, Criminal Assizes “A” ordered a writ of arrest and served same on the appellant thereby bringing her under the jurisdiction of the court. Trial of the case commenced in earnest with the empaneling of the petit jury followed by the arraignment of the appellant who pleaded not guilty of the crime charged in the indictment. After a full trial, on December 31, 2018, the jury retired in its room of deliberation and returned with a majority verdict of guilty. Three jurors found the appellant not guilty while nine others found her guilty of the crime of murder.

The records also show that the appellant filed a motion for a new trial which was regularly heard on January 7, 2019, and denied by the trial court. On the self-same date, that is, January 7, 2019, the pre-sentencing report of the Division of Probation Services of the Ministry of Justice was filed and heard by the trial court.

Thereafter, the trial court entered final ruling adjudging the appellant guilty of the crime of murder and sentenced her to a prison term of twenty-five years with three years of parole for community service. The appellant noted her exceptions to this final ruling and announced an appeal to the Supreme Court.

Because our review of the records show that that the trial court’s summary and analyses of the evidence adduced by the parties depict of the substantive facts in the

case, we deemed it necessary to reproduce, verbatim, the trial court's final ruling as follows:

“Defendant Johnetta Pinky Abu was indicted by the Grand Jury of Montserrado County on the 10th day of September A. D. 2018, for the commission of the crime of murder.

According to the indictment, on June 14, 2018 the late Morris Johnson and the Defendant Johnetta Pinky Abu who are both lovers along with one Genevie Jallah were together at a local entertainment center called Pepper Fish, when an altercation ensued between the deceased and the defendant over one Nigger Blow, who is believed to be a former lover of the Defendant Pinky Abu.

As a result of the altercation the deceased and the defendant along with Genevie Jallah left the entertainment center for home, and the deceased dropped the defendant and her friend Genevie Jallah to their apartment and drove away. The indictment further states that after a while, the deceased Morris Johnson returned to the Defendant Pinky Abu's house and they started to exchange harsh words, which degenerated into a fist fight. During the fight, according to the indictment, neighbors came around intervened and pleaded with both the deceased and the defendant to discontinue but to no avail. Thereafter, the defendant angrily ran to the kitchen, grabbed a knife and stabbed the deceased who was attempting to escape from the scene. The indictment concluded that as a result of the defendant's action, the deceased sustained serious bodily injury, which caused him to bleed profusely and was dead upon arrival at the hospital.

When Defendant Johnetta Pinky Abu was arraigned before Court, she pleaded not guilty to the charge of murder, thereby joining issue with State. Subsequently, the trial jurors were screened by the parties, selected, qualified and sequestered to serve as judges of the facts.

Prosecution produced five witnesses and they are: Madam Cecelia Barclay, the maid of the defendant Pinky Abu, Naomi Gbearzee, daughter of the maid, Sgt. Wesley Doe, Jr. and Sup. Abu B. Daramy of the Liberia National Police and Mr. Abraham B. Ricks, County Coroner for Montserrado County.

Prosecution first witness Madam Cecelia Barclay testified before court and the trial jury that she is the maid of the defendant, who usually refers to her as her mother. She stated that on the night of the incident, June 14, 2018, the defendant Pinky Abu requested her to take care of the baby Paris as she and the deceased were going out. She furthered that her daughter Naomi Gbarzee was also with her that night when the defendant and the deceased when out. According to her when they returned, the defendant refused for the deceased to sleep at the house so the deceased suggested he would rather sleep in the living room, which both of them agreed to and the defendant handed the deceased a pillow to sleep. Just in a little while the defendant came out of her room while the deceased was lying down in the living room and told the deceased to go home but, he insisted that he was not leaving the apartment. Thereafter, the defendant Pinky Abu began pulling the deceased by his shirt, which situation resulted to a fist fight. The witness further testified that, she tried to stop them but she could not and therefore sent her daughter Naomi downstairs to call Genevie Jallah, a close friend of the defendant to help calm the situation but she also failed. The witness further stated that while in a confuse state and walking down the hallway, she saw victim Morris Johnson in a pool of blood and crying "oh Pinky you juke me ooh". The witness concluded that the deceased made his way out of the house to the stairs where he was lying until some neighbors who were now outside placed [him] in a vehicle and took him to the John F. Kennedy Medical Center. She later heard that Morris Johnson was pronounced dead upon arrival. The witness was cross examined by the defendant Counsel, the trial jurors and the court and discharged with thanks.

Prosecution second witness Naomi Gbearzee testified that on the night of June 14, 2018, she heard her mother Cecelia Barclay crying out loud, which noise woke her up and her mother instructed her to call Genevie Jallah, who is a neighbor and also a close friend of Pinky Abu, because the defendant and deceased Morris Johnson were fighting. She hurriedly called Genevie who came to their apartment but she never followed after her. When Genevie could not stop the fighting, she came back upstairs and after several minutes, while the deceased and the defendant were still fighting, she saw Pinky with a

knife and later heard the victim Morris Johnson crying and saying “oh Pinky you juke me”. She also stated that she saw defendant Pinky Abu bleeding from her hand. The witness concluded that while the deceased lying on the floor bleeding, Pinky Abu went out and was making some calls but she the witness could not confirm who the defendant was calling. The witness concluded that the deceased Morris and the defendant Pinky were taken to the hospital but she heard that Morris died. The witness was cross examined by the defendant counsel, the trial jurors and the court and discharged with thanks.

Prosecution third witness Sgt. Wesley Doe, Jr. an officer of the Liberia National Police, assigned at Zone 5, Depot 4, around the SKD Community, testified that he lives in the same building with the defendant Pinky Abu. At about 2:00 AM, he heard the voice of Genevie Jallah knocking on his door and shouting that the defendant Pinky Abu and deceased Morris Johnson were fighting. According to him, he immediately rushed to the scene and met the deceased Morris Johnson lying in the pool of blood and later saw defendant Pinky Abu with a cloth tied around her hand. The witness stated that they tried to get an ambulance but to no avail and later got a neighbor’s vehicle and rushed the deceased to the John F. Kennedy Medical Center where Morris Johnson, the deceased, was pronounced dead upon arrival by a nurse on duty at the hospital. The witness said that he informed his bosses at the LNP Central Office concerning the incident and they advised him to secure the crime scene and to use a glove or a plastic bag to secure the criminal agency, which he did, until the next day when criminal investigators arrived. The witness then rested evidence and was cross examined by the defendant counsel, the trial jurors and the court and was discharged with thanks.

Prosecution fourth witness Supt. Abu B. Daramy a senior officer of the Liberia National police testified that on June 14, 2018, he was informed about a homicide case involving victim Morris Johnson and Defendant Johnetta Pinky Abu. He immediately instructed an Initial Respondent Officer to secure the crime scene until a homicide team could arrive. Thereafter, a team of forensic officers proceeded to the John F. Kennedy Medical Center to find out about the status of the victim and was informed that the victim had died upon arrival and was

lying in the mortuary. They also observed that the defendant was also taking treatment at the trauma section of the same hospital. Witness Abu B. Daramy further stated that when the defendant was discharged from the hospital from injuries sustained on her hands, an investigation conducted involving her and other witnesses present during the incident gave them sufficient grounds to charge the defendant Johnetta Pinky Abu with murder and forwarded her to court for prosecution. The witness then rested evidence and was cross examined by the defense counsel, the trial jury and the court and was later discharged with thanks.

Prosecution fifth witness Abraham B. Ricks, County Coroner for Montserrado County told the court and the trial jury that on June 14, 2018, he was informed by the Crime Services Division (CSD), Liberia National Police that a certain death on arrival had occurred around the SKD Community. Therefore, on June 20, 2018, he proceeded to the St. Moses Funeral Parlor, where the body was deposited and waiting on the coroner inquest. Accordingly, he constituted a 15-man Coroner Jury to conduct an external examination of the body. According to the witness, they carefully observed the body beginning from the head and chest and found that they were normal. He however stated that, when they looked at the left hand finger, they saw it injured about 3-inches wound and photographed same. They also observed on the right side of the back and saw a deep stab wound, which penetrated 3 ½ inches deep. After that, they also looked at other parts of the body like the feet and back and there were also no sign of bruises or laceration on back. According to him, the most affected side of the body was the right side of the victim which was the 3 ½ inches deep wound. The witness concluded that after these observations, they compiled the report with the names and telephone numbers of the 15-man Coroner Jury. The witness then rested evidence and was cross examined by the defense counsel, the Trial jury and the court and discharged with thanks.

Immediately following the testimony and cross examination of prosecution fifth witness, the prosecution made an application to the court that it has concluded with the production of oral and documentary evidence and prayed for the admission into evidence its documentary evidence to form a cogent part of the proceedings and was ready for its

side of the case for argument. The said application was noted by the court.

Thereafter the defense produced six witnesses in persons of the principal witness, defendant Johnetta Pinky Abu, Genevie Jallah, a friend of the defendant, Mr. Abraham Patrick Abu, father of the defendant, Joseph H. Constant, Jr. brother of former lover of the deceased, Alfreda Hansen, friend of the defendant and Titus Allen Sebo, neighbor of the defendant.

Defense first witness Johnetta Pinky Abu testified that she and the deceased were lovers and had very good time from the initial stage of their relationship. From the beginning of the relationship, she resided in Fiama and he, the deceased, lived at Thinker's Village at his parents' residence. After a while, she got pregnant and due to continuous weaknesses, since this was her first pregnancy, the deceased asked her to move at his place in Thinker's Village, which she did until she gave birth. But she later observed that defendant began quarrelsome and violent towards her, which situation resulted into series of fights between them. On one occasion, the deceased beat and striped her naked for which she had to move out of the house and sought refuge at her friend's residence. The defendant further stated that after some time, the deceased came and begged her and because she had love for him, she moved back to his house. Notwithstanding, his attitude of domestic violence did not change but continue in the presence of his family, who did not intervene. As a result of his attitude coupled with a text message received from the deceased in which, he threatened to kill her, their daughter and himself, if she did not leave his apartment upon his return from Buchanan, Grand Bassa County, she left the deceased house and leased an apartment in the SKD Community. According to the witness, as far as she was concerned, the relationship does not exist upon her departure from the deceased's house. Therefore, the deceased only use to come at her apartment stayed downstairs and gave his daughter food to Madam Cecelia Barclay, the maid. As time elapsed, the deceased began to beg her through her friend Genevie and she consented to resume the relationship.

The witness further testified that on the fateful night, June 14, 2018, the deceased asked to take her and her friend Genevie Jallah for a drink but

she refused at first on grounds that the deceased always made her shame whenever they went out. But after several pleas from her friend Genevie, she agreed to accompany him out along with Genevie. They then arrived at the entertainment center, Pepper Fish and she observed that the deceased was drinking a lot of alcohol and knowing how he usually behaves when he takes in alcohol, she advised him to discontinue, but he assured her that he would not misbehave. Just in that time, her former boyfriend, Nigger Blow arrived at the same entertainment center and requested the bar tender to play his music, since he is a musician. She further stated that when the deceased saw her former friend Nigger Blow, he became irritated and started misbehaving. They therefore had to leave the entertainment center prematurely and went home and the deceased dropped them to their apartments and drove away. According to her after a while, the deceased came back to her apartment and she asked the maid to open the door but as soon the door was opened, the deceased rushed on her and continued his insults stating that the reason why she did not want to go with him, because she was expecting her boyfriend to sleep with her that night. The witness further stated that when she went to the ice box to drink, she saw the deceased standing right behind her, slapped her in the face, threw her on the ground, sat on her and started to really beat on her, tore her clothes and continue punching her on the head. According to her, Cecelia her maid was standing and crying and told them to stop but the deceased could not listen and continue to beat on her to the extent that even when her friend Genevie Jallah was called to intervene, the deceased refused and continue to beat on her. The witness further testified that the beating was so severe and she could not stand it any longer and therefore, when she managed to wake up from under him, she ran to the kitchen, took a knife, thinking that when the deceased sees the knife and sees her condition, he would get afraid and runaway but he did not. He however rushed on her again and said to her, "I told you, I will kill you, kill Paris my daughter and myself". So they began to tussle over the knife and while tussling over the knife, it dropped and the deceased picked it up and started to run after her saying that he would juke her to death. It was during that process that the deceased stabbed her on her right hand while she was running in her

room. Afterwards, the deceased ran downstairs. Thereafter, the neighbors came in her apartment, saw her in a pool of blood crying, they put alcohol on her hands and put a towel around her. They then took her downstairs, where she met a group of people standing but she could not remember anything or the people standing. According to her, she was rushed to the hospital and could not remember anything until the next day; she was informed that her boyfriend Morris Johnson was dead. The witness then rested evidence and was cross examined by the prosecution counsel, the trial jury and the court and was discharged with thanks.

Defense second witness Genevie Jallah testified before court and the trial jury that she got to know the defendant Johnetta Pinky Abu, when she moved in the SKD Community and befriended her. According to her, the deceased used to beat on Pinky for which Pinky left his residence and moved at the SKD Community. At one point the deceased came to her and asked her to beg Pinky so they could resume their relationship and he was sorry and promised not to beat on Pinky any longer or misbehave. Therefore, she began to talk to Pinky and the deceased and Pinky resumed their love relationship. She further stated that prior to the day of the incident on June 13, 2018, she had gone for a graduation of the AME University and received several messages from the deceased that he wanted to take her out alone but she refused. Therefore, on the following day which was the 14th of June 2018, the deceased told Pinky that they should go out and while they were out, she Genevie went to meet them and when she arrived; she saw the deceased drinking excessively at the Techno entertainment center. Afterwards according to the witness, they left for Pepper Fish, where they were when Nigger Blow, the former boyfriend of the defendant, came in and an argument ensued between the deceased and the defendant, which resulted to their premature departure from the Pepper Fish entertainment center and the deceased drove them back to their apartment. While she was trying to sleep, her daughter woke her up and informed her that Naomi had come to see her because the defendant and the deceased were in a fight at the defendant's apartment. When she went upstairs, she met Pinky Abu naked and the deceased was punching

on her, beating on her and their baby Paris was sitting next to them crying. When she inquired from the deceased, “ehh you promised me that you won’t beat on Pinky again?” he did not answer but said “this stupid girl, she wants to spoil my daughter’s future, making my daughter to come in contract with drugs people”. The witness said that she knelt down, pleaded with Morris the deceased but he refused to stop beating on Pinky. She further stated that she was on a video call while pleading with the deceased and held his hand but he shoved her hand and she fell down; so she hurriedly ran downstairs to call one Orlando and a police officer who lived with them in the yard. When she returned, she saw the deceased Morris Johnson passed by her in the hallway, running with speed downstairs and when she reached the living room, she saw Pinky in the pool of blood crying and she began blaming the maid Cecelia why they did not tie or cover lappa around Pinky the defendant. In the process the police officer and Orlando came for the defendant, while they were attending to her. Just with in that time, a fellow by the name of Allen said that, he saw someone sitting downstairs lying on the wall. When they ran downstairs, it was Morris and she called Morris but he could not respond. Therefore, they used a neighbor’s vehicle and drove him to the hospital. When they took the victim to the hospital, according to the witness, he was pronounced dead by the nurse on duty, and was subsequently taken to the mortuary. The witness then rested evidence and was cross examined by the defense counsel, the Trial and the court and was later discharged with thanks.

Defense third witness Mr. John P. Abu testified that, he is the father of the Defendant, Johnetta Pinky Abu and that he got to know the late Morris N. Johnson, when his daughter the defendant introduced him as her finance. During that time, the deceased was residing at his home in Thinker’s Village, while his daughter, the defendant was residing in Sinkor. According to the witness, when the defendant got pregnant, she moved to the residence of the late Morris, where she gave birth. The witness further stated that on one occasion his daughter the defendant was beaten unmercifully by the deceased and she had to seek refuge at one of her friends’ place, where she was until a meeting was called by him at the deceased residence. During the meeting where he was

accompanied by a Catholic elder, the deceased stated that he regretted his action and faithfully promised not to beat on the defendant again. The second example of the deceased brutality, the witness continued, was when he the deceased had gone to Buchanan, Grand Bassa County and made a threatening remark that, he did not want to see the defendant in his house when he returns and if, she did not leave, he the deceased was going to kill the defendant, their daughter Paris and afterwards kill himself. As a result of this statement, the defendant left the house for the second time and went to stay with her sister Winifred Cole in the Duport Road. The witness further stated that the defendant was at this place when he arranged for another meeting at the defendant's grandmother place in Garnerville. During the meeting, the defendant said she did not want to stay at the deceased's residence any longer and he the father advised his daughter the defendant to find an apartment and he was going to pay, which she did and moved in the SKD Community. The witness concluded that he made two visits to the defendant's new apartment; one was just a mere visitation and the other was when the defendant was sick. He never went there again until the unfortunate incident of June 14, 2018. The witness was cross-examined by the prosecution, the Trial jurors and the Court and discharged with thanks.

The defendant fourth witness Joseph H. Constance, Jr. testified that he knew the late Morris Johnson, commonly called Papie, when he Morris Johnson had a love relationship with his late sister Victoria Constance sometime in the year, 2000. The witness stated that on one occasion, they had gone to visit his sister Victoria who is now deceased and saw bruises on her body and inquired whether Morris beat on her and she burst into tears and said "yes". According to the witness, they, the family members, tried to take their sister to the hospital but she refused on the order of the late Morris Johnson, who stated that he had the capacity to send his fiancée to hospital. Therefore, according to witness Constance, he remarked to his sister that if she wanted to die for love business, she should go right ahead but he, the brother Constance, was only going to cry and remember her for two weeks. The witness concluded that he was never present on the day of the incident of June 14, 2018, which caused the death of Morris Johnson. He was then cross-

examined by the prosecution, the trial jury and the court and later discharged with thanks.

The defense fifth witness Madam Alfreda Hanson described herself as a close friend of the defendant and both of them played for the same basketball team. The witness stated that she knew the deceased as a fiancé of the defendant. She told the court and the trial jurors that the deceased and the defendant always used to fight but she remembered particularly four of these fights: the first was when [she] was called and met the deceased beating the defendant with no clothes on her and since she could not separate them, she had to call the husband of one Haja, a neighbor to help stop them. The second fight was when she met defendant unconscious and naked. According to the witness, she met the daughter of the defendant standing there crying as well as the mother of the deceased, who was also standing there. The third time, when she was again called, she and her mother went and in the process of separating them, her mother fell and sustained injury. That same very night, according to the witness, the defendant and her daughter were taken to her (the witness) house, where they stayed for two days until the deceased and other family members begged the defendant to go home, which she did. The fourth and the last fight was when she went in the yard of the deceased and saw him in a boxer insulting and when she, the witness went inside the house to get the defendant, he, the deceased, jumped on the defendant again and, it was Haja's husband again who came and parted them.

The witness said that she was not present during the incident of June 14, 2018, but after series of calls that night, which she did not respond because, she was at sleep, she was later informed by one Barchue that the defendant, Pinky and the deceased Morris were in a fight and Morris sustained major injury and was taken to the hospital, where he was pronounced dead. The witness further stated that she proceeded to the hospital the next morning, was unable to see the defendant but saw the body of the late Morris and burst into tears. The witness also stated that she saw the defendant after days of the incident and noticed injury marks in the palm of her hand and thumb and also at the back of her hand. The witness stated that the defendant then told [her] that it was Morris the deceased who injured her and showed photos of the injuries.

The witness concluded her evidence and was cross-examined by the prosecution, the trial jurors and was discharged with thanks.

Defense sixth witness Mr. Titus Allen Sebo testified that he lives in the same building with the defendant Johnetta Pinky Abu, but lives downstairs while Pinky lives upstairs. On the day of the incident according to the witness, between 1:30AM to 1:40AM, the deceased and the defendant had come from out, when he the witness heard noise from the defendant's apartment upstairs. The witness said that he later heard a male voice saying, "I juke you, I juke you" and coming down the stairs. According to the witness, he came out and while going upstairs, he saw the late Morris sitting on the septic tank with a knife between him and the conomo. When he arrived upstairs in the defendant's apartment, he saw her lying in a pool of blood and when he came back downstairs, he and the others saw Morris helpless and when they took him from the septic tank under the light, they saw a blue long knife and they took Morris to the hospital where he was pronounced dead upon arrival. The witness stated that the green knife introduced into evidence by the prosecution is not the knife that they saw when they lifted up the victim but rather a blue knife. The witness then concluded his testimony and was cross-examined by the prosecution and the court and discharged with thanks.

Immediately following the testimony of the defendant's sixth witness, it rested with the production of evidence and prayed the court for the admission of its documentary evidence, which was subsequently granted and the defense counsel rested with the production of both oral and documentary evidence and submitted its side of the case for argument. The court then set Monday, December 31, 2018, at 11:00 am for arguments.

After the final arguments before the court and trial jurors, the testimonies of the prosecution witnesses and the defendant's witnesses were summarized and the law citations provided by the both parties were read and explained to the trial jurors in simple or layman terms. The trial jurors were subsequently charged and they proceeded into their room of deliberations and after a careful and lengthy consideration of the evidence adduced and produced in the case, returned in open court with a verdict of three not guilty while nine guilty verdict, thereby

declaring the Defendant Johnetta Pinky Abu guilty of the crime of murder in keeping with the new Jury Law of 2012/2013, Section 20.11, titled, Verdict. Thereafter, the clerk of the court was ordered to spread on the minutes of court the guilty verdict of the trial jury. However, a motion for new trial was filed on Wednesday, January 2, 2019, raising the following issues: that the trial jury received evidence out of court; that the prosecuting attorney is guilty of misconduct, that the verdict is contrary to the weight of the evidence and finally, that the trial jury ignored the principles of reasonable doubt, self-defense, heat of passion and battered woman syndrome as part of its charge, which was read to the trial jury by the court. The hearing of the said motion was set for Monday, January 7, 2019, and after law citations and arguments by the parties, the said motion was denied. See the minutes of court. The courts having listened to the testimonies, the law citations and arguments of the both parties, hereby raised the following issues, which when answered will resolve whether or not Defendant Johnetta Pinky Abu committed the crime of Murder. They are:

- 1) Whether or not the prosecution proved its case beyond a reasonable doubt to find defendant Johnetta Pinky Abu guilty of Murder?

In order to answer this question, we shall briefly examine the contention put forth by the defense counsel, which in its mind constitutes a reasonable doubt that should operate in her favor. According to the defendant, while she admits to taking a knife from her kitchen to scare the deceased, she did not stab him but stated during argument that the deceased might have committed suicide after seeing her with blood from the injury, he the deceased committed on her hands or someone might have pushed him from upstairs during their fight or some of the security personnel in the yard might have taken him for someone else while he was running down the stairs and stabbed him. The defendant through one of her witnesses testified that the knife they took from the crime scene where the deceased was lying was not a green knife as introduced into evidence by the prosecution but a blue long knife. By these arguments, the issue of what killed the deceased is not in dispute; as it was a knife. What is in dispute is who used the knife to stab the deceased?

According to the defendant and other witnesses who testified, the deceased who was her fiancé changed his attitude suddenly after she gave birth to their daughter and began very jealous and violent. He used to beat on her on several occasions and it was during one of those beatings, when they had come from out the night of June 14, 2018, that she the defendant took a knife from her kitchen just to scare him and they began tussling over the knife and after she got injured, she could not remember what happened next. Witnesses who testified on behalf of prosecution including the defendant's maid Cecelia Barclay and her daughter Naomi Gbarzee, who were present told the court and the trial jury that, they saw the defendant Pinky with a knife and the deceased saying, "oh Pinky you juke me, oh Pinky you juke me" and he began running down the stairs. The witnesses further testified that when they went downstairs, they saw the deceased Morris Johnson helpless and in a pool of blood and when they took him to the hospital, he was pronounced dead on arrival. So, where is the doubt? Only two persons are fighting and one took a knife, according to her just to scare the other and that other person ends up being stabbed and when taken to the hospital died on arrival. It is interesting to note that the defendant counsel relied on the "beyond a reasonable doubt" as opined by the Honorable Supreme Court of Liberia in the case Zoe Banjoe, Appellant, v. Republic of Liberia, as recorded in 26LLR P255, in which the Supreme Court said in Syllabus one (1): Before the Supreme Court can uphold judgment against appellant in a murder case, his responsibility for the death of the decedent must have been proved beyond a reasonable doubt. The facts in the Zoe Banjoe case are quite different from the case at bar. In that case, according to Zoe Banjoe, he shot to kill one Edwin Sando who has provoked him but in the process and in an attempt to arrest him, several other shots were fired at him from soldiers and Police officers and two decedents were killed. The trial jury brought Zoe Banjoe down guilty for murder and the court affirmed the guilty verdict, when no autopsy and forensic examinations were done to determine as to whether it was Zoe Banjoe's shotgun that killed the two decedents. In the case at bar, the defendant Pinky Abu admitted to taking a knife to scare the deceased Morris Johnson, which they both fought over. There was no other person in the house fighting either her

or the deceased, when he got stabbed and when taken to the hospital, he was pronounced dead on arrival. Assuming but not admitting that either one of the three possibilities as claimed by the defense counsel existed: that the deceased committed suicide by stabbing himself, how could he have stabbed himself in the back as produced into evidence; instead of in his front (stomach or chest)? The other scenario defense counsel says is that someone could have pushed the deceased down the stairs and he got injured, who could possibly be that person other than the person who the deceased was having a fight with, that is, defendant Pinky Abu. The defendant counsel other reasonable doubt possibility is that, the security taking care of the yard could have seen the deceased running down the stairs and taken him for someone else and stabbed him. Nonetheless, this scenario, none of the security personnel on duty was ever suspected of stabbing the deceased and taken to the Police for questioning by those who are insulating this claim.

The Black's Law Dictionary, Ninth Edition, by Bryan A. Garner, Editor in Chief, defines Beyond Reasonable Doubt as the standard used by a Jury to determine whether a criminal defendant is guilty. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the mind of Jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. Nonetheless, as in the case at bar, the Trial jury were convinced from the facts and circumstances that, it is the defendant Johnetta Pinky Abu who stabbed and killed the late Morris Johnson.

Moreover, the Supreme Court of the Republic of Liberia has held in 30 LLR (Nimely vs. R.L.) Page 676, syl. 2 &5, Text at Page 680 to 683. "It is not necessary that one actually be seen committing a crime before he could be held guilty, but that it is sufficient for that person to be convicted whenever the logical deductions from the facts and circumstances lead conclusively to the fact that the crime was committed and that the accused is connected with the crime. In view of the foregoing, the prosecution proved its case of murder beyond a reasonable doubt for the conviction of defendant Johnetta Pinky Abu.

2) Whether or not Defendant Johnetta Pinky Abu can plead Affirmative Defense and at the same time deny stabbing the late Morris Johnson, which led to his subsequent death?

The answer is No! According to defendant Johnetta Pinky Abu, when she and the deceased first started their love relationship, the deceased Morris Johnson was a loving man, who was so kind and catered to her and at times to her family. However, later on in their relationship, the deceased became so jealous and violent to the extent that whenever they went out, he would make her shame and at times beat on her and strip her naked. She further stated that on one occasion the deceased beat on her so severely that she had to leave his house and sought refuge at her friend's residence. On another occasion, he sent her a threatened message that if he came from Buchanan and still met her at his house, he would kill her, kill their daughter and kill himself. The defendant's second witness in person, Genevieve Jallah, told the Court that, when the Defendant moved to her community, the SKD Community and befriended her, the deceased on several occasions came and requested her to beg the defendant as he wanted for him and the defendant to resume their love relationship and promised her that, he will not misbehave and beat on the defendant again. He however misbehaved and beat on her again, when he started it at the Pepper Fish Entertainment Center and began beating on her again on the day, June 14, 2018, of the fight, where she appealed to him to stop but he refused and therefore, she left the scene. The third witness for the defendant, Mr. John P. Abu, told the Court that the late Morris Johnson was a brutal man, whom on one occasion beat on his daughter so severely that she had to take refuge at one of her friend's residences. As a result of this, he called a meeting and in their presence, the deceased begged and promised not to beat on his daughter the defendant again. The second incident occurred, when the deceased sent a message to the defendant and threatened to kill her, their daughter and kill himself, which made the defendant to pack her things and move to her sister's place on Duport Road. According to the witness, when he again called a meeting, his daughter the defendant at this time refused to go back to the deceased's residence and the father was constrained to rent an

apartment for her in the SKD Community. He was however not present during the day of the fight, which subsequently led to the death of the deceased.

The Defendant fourth witness is Joseph H. Constance, Jr., who testified that the late Morris Johnson had a love relationship with his sister, who is now deceased. According to the witness, he went to visit his sister one occasion at the late Morris Johnson's residence, when he saw bruises all over the body of his sister and when he inquired what happened to her, she burst into tears and stated that her fiancé Morris Johnson's beat on her. He further stated that when requested taking his sister to the hospital, she refused on the order of the late Morris Johnson, a situation that annoyed him and he remarked, "if you want to die for love, go ahead but if you die, I will only cry for two weeks". Witness Constance also stated that he was not present on the day of the fight that led to the death of the late Morris Johnson.

The Defendant fifth witness Alfreda Hanson who described herself as a close friend of the defendant told the court that the deceased and the defendant always used to fight but remembered particularly four of those fights: the first was when she was called and went and met the deceased beating the defendant with no clothes on her and since she could not separate them, she had to call the husband of one Haja, a neighbor to help stop them. The second fight was when she met the defendant unconscious and naked. According to witness, she met the daughter of the defendant standing there crying as well as the mother of the deceased, who was also standing there. The third time was, when she was again called, she and her mother went and in the process of separating them, her mother fell and sustained injury. That same very night, according to the witness, the defendant and her daughter were taken to her (the witness) house, where they stayed for two days until the deceased and other family members begged the defendant to go home, which she did. The fourth and last fight was when she went in the yard of the deceased and saw in the boxer insulting and when she, the witness went inside the house to get the defendant, he the deceased jumped on the defendant again and, it was Haja husband again who came and parted them. The witness said that she was not present during the incident of June 14, 2018.

The defendant sixth witness Titus Allen Sebo testified that he lives in the same building with the defendant Johnetta Pinky Abu, but lives downstairs while Pinky lives upstairs. On the day of the incident according to the witness, between 1:30 AM to 1:40 AM, the deceased and the defendant had come from out, when he the witness heard the noise from the defendant's apartment upstairs. The witness said that he later heard a male voice saying, "I juke you, I juke you" and coming down the stairs. According to the witness, he came out and while going upstairs, he saw the late Morris sitting on the septic tank with a knife between him and the conomo. When he arrived upstairs in the defendant's apartment, he saw her lying in a pool of blood and when he came back downstairs, he and others saw Morris helpless and when they took him from the septic tank under the light, they saw a blue long knife and they took Morris to the hospital where he was pronounced dead upon arrival. The witness stated that the green knife introduced into evidence by the prosecution is not the knife that they saw when they lifted up the victim but rather a blue knife. He also stated that he was not present during the fight upstairs the apartment.

From these testimonies including that of the defendant Johnetta Pinky Abu, who was present and in the fight, a reasonable person can deduce that these are all justifications and Affirmative Defenses to have committed the killing but more than that and although the defense Counsel said he could have pleaded for Manslaughter or Self-Defense, which he did not do, he prayed the court in his charge to instruct the Trial jury on the principles of Self-Defense, Battered Women Syndrome and Heat of passion. The defense counsel also pleaded with the court in his motion for a New Trial to overturn the verdict of the Trial jury because, they failed to take into consideration the charge of the defense Counsel on the principles of Self-Defense, Battered Women Syndrome and Heat of passion. To say the least, these principles as herein above stated by the defense, which according to him the Trial jury failed to consider in their deliberations are principles only intended for Affirmative Defense and a party in litigation cannot rely on them and at the same time deny the commission of the act for which he/she is charged. It is double pleading, which is not allowed under the rule of pleadings, where the answer denies and at the same time alleges new

matter in avoidance. The Honorable Supreme Court of the Republic of Liberia has held in 32LLR P366-367, syllabuses 10 & 11, that, “an answer is a pleading by which a defendant in a suit at law endeavors to resist the plaintiff’s demand by allegations of facts, in denial or confession of allegations in the complaint, and allegations of new matters in avoidance to prevent recovery by plaintiff. However, it is double pleading, not allowed under the rule of pleading in this jurisdiction, when the answer denies and at the same time alleges new matter in avoidance. Accordingly, an answer which both denies and avoids is dismissible for inconsistency. In such a case, the defendant will be ruled to a general denial of the allegations in the complaint”.

Consequently, the defendant is ruled to a general denial of the allegations of murder, how come she uses the principles of Self-Defense, Heat of passion and Battered Woman syndrome for her not to be found guilty of the charge, which the prosecution has proven beyond all reasonable doubt.

- 3) Whether or not the crime of murder will lie against defendant Johnetta Pinky Abu under the facts and circumstances? The answer is in the affirmative.

The New Penal Code of Liberia approved July 19, 1976, Section 14.1, defines murder as follow to wit: ‘A person is guilty of murder if he:

- (a) Purposefully or knowingly causes the death of another;
- (b) Causes the death of another human being under extreme indifference to the value of human life...

“A person is guilty of murder only if he purposely or knowingly causes the death of another person human being and for the charge of murder to be sustained, it must be proved that the accused committed the unlawful killing with premeditation and malice aforethought. The penalty for murder is Death or Life Imprisonment. “New penal Code of Liberia, Section 50.3.”

Malice is defined as “the doing of a wrongful act internationally without just caused. A wicked and mischievous purpose which characterized the perpetration of an injurious act without lawful excuse. A violation of the law to the prejudice of another. And form designed of mischief

may be called malice. Malice is a wicked, vindictive temper, regardless of social duty and bent on mischief. “There may be malice in a logical sense in homicide where there is no actual intention of any mischief, but the killing is the natural consequence of a careless action. Express malice exists when the party evinces an intention to commit the crime; while implied malice is that inferred by Law from the facts proved.”

“Malice is a necessary element to the commission of a crime may be either expressed, or implied from the circumstances standing its commission. When a person has been deliberately killed by another, malice will be presumed to have existed even though no actual enmity has been proved.” Malice aforethought and premeditation are essential elements crime or murder. SEE: 13LLR (Jones vs. R.L.) Page 623,syl, Text at page 645, 34 LLR (Koffa vs. R.L.) Page 489, Syl. 6 & 7, Text at pages 499 to 500, IBID (Dahn vs. R.L.) Page 565, Syl. 1,2 & 3, Text at page 575, 20LLR (Obi vs. R. L.) Page 166, Syl. 2 & 3, 30LLR (R. L. vs. Gbandi) page 201, Syl. 4, 34 LLR (Matierzo vs. R. L.) page 791, Syl. 11, Text at page 804, 31 LLR (Toeday vs. R. L.) page 194, Syl. 2, Text pages 197 to 198.

According to prosecution’s first witness, Madam Cecelia Barclay, who the defendant Johnetta Pinky Abu says is like her mother and whom the witness also claimed is like her daughter testifying before the court said that when the defendant and the deceased came from out that fateful night of June 14, 2018, the deceased requested to sleep with the defendant that night but she refused. Thereafter, the deceased requested to sleep in the living room and the defendant agreed and handed him a pillow and the deceased stayed in the living room while the defendant went to bed in her room. Witness Cecelia Barclay further stated that after a while, the defendant came out and again requested the deceased to leave her apartment and when the deceased refused, she began pulling him by his shirt, a situation that resulted into the fight. Defendant’s second witness Genevie Jallah testifying for the defendant told the court the confusion that made them to depart the Pepper Fish entertainment center prematurely arose when the former boyfriend of the defendant Nigger Blow entered the entertainment center and began to call for the playing of his music, since he is a musician. According to her, they therefore went home and she went to her apartment. In view

of this testimony, it means that the confusion started long before the deceased and the defendant went upstairs to the defendant's apartment. The fact that the confusion started at the entertainment center and for which the defendant refused for the deceased to sleep with her and he agreed and began to sleep in the living room before the defendant came out to pull him outside, should have been a cooling period for her not to come again to commit the act, meaning, the defendant's action was premeditated and inundated with malice aforethought, which made her to go for her kitchen knife and subsequently stabbed the deceased to death. Additionally, the indictment from the Grand Jury states that the deceased was stabbed in the back, while he was running from the defendant, and the photo introduced into evidence by prosecution showed that the deceased was stabbed in the back, supporting the assertion that the deceased was stabbed while running away, when the defendant took her kitchen knife and stabbed the deceased, when he no longer posed a threat to the defendant at the time.

"The essential elements of proof of guilt of homicide, each of which must be established beyond a reasonable doubt, are the death of the person alleged to have been killed, and the fact of the killing by the defendant." 14LLR (Wlarye vs. R.L) page 224, Syl. 1, Text at Page 230. SEE ALSO syl. 2 & 3."THE Corpus delicti of a murder may be established without the production of the weapon alleged to have been used to effect the killing, and without evidence of a post mortem examination of the victim. Proof of guilt of a crime will be deemed sufficient where the evidence thereof, even if circumstantial, is of such nature as to convince any rational mind of the criminal responsibility of accused." 14 LLR(Taylor vs. R.L) Page 524 Syl. 2, 3,& 1, 29 AM JUR 2D EVIDENCE, SECTION 313, PAGES 328-329

Finally, did the prosecution satisfy the critical requirements for a conviction of the defendant? 'Indicia of judicial conviction are, firstly, that the offense has been correctly charged in a valid indictment; secondly, that admissible evidence only was placed before the Jury; and thirdly, that the evidence thus sifted has satisfactorily established the guilt of the accused beyond a reasonable doubt' Weah Dennis and Mullenbury vs. Republic of Liberia, 20LLR 47 (1970) Syl. 9 Texts at 65.

The prosecution in this case at bar indicted defendant Johnetta Pinky Abu on September 10, 2018, both oral and documentary evidence were placed before the Trial jury and the evidence so produced satisfactorily established the guilt of the defendant beyond a reasonable doubt.

To conclude, the defendant Johnetta Pinky Abu pleaded not guilty to the charge of murdering her fiancé and therefore never exhibited any acts of regret and remorse for stabbing him. However, her Investigative Report from the probation office of the Ministry of Justice showed that, she had no prior criminal records before this case. This Report coupled with the facts and circumstances in this case should allow the court to make an informed decision concerning the sentencing of the defendant. IN VIEW THEREFORE, the guilty verdict of the Trial jurors is hereby affirmed and confirmed and defendant Johnetta Pinky Abu is hereby sentenced to twenty-five years imprisonment, instead of death by hanging or life imprisonment as provided for under the Penal Law of Liberia, Section 50.5 and 51.3. It is further adjudged that the defendant will spend twenty-two years of her sentence behind bars, while the rest of the three years will be on Parole for Community Service depending on ‘good behavior’ as will be reported from the Prison Authorities. The clerk of this court is hereby ordered to communicate with the prison Authorities at the Monrovia Central Prison for the execution of this order.

AND IT IS HEREBY SO ORDERED

GIVEN UNDER MY HANDS AND SEAL
OF COURT THIS 7TH DAY OF JANUARY A. D. 2019

Roosevelt Z. Willie
PRESIDING CIRCUIT JUDGE ASSIGNED
FIRST JUDICIAL CIRCUIT, CRIMINAL COURT ‘A’

The appellant has assigned eighty-two errors, mostly repetitive, in her bill of exceptions which comprises pre-trial objections, trial objections and post-trial objections. For brevity, we shall summarize the objections as follows:

- 1, That the trial judge erred when he denied the appellant’s motion to admit to bail on grounds that the proof was not evident and the presumption was not

great within the contemplation of the *Criminal Procedure Law Revised Code: 2:13.1*;

2. That the trial judge erred when he denied the appellant's motion for a new trial which was filed on several grounds to include a) the lack of specificities in the indictment, b) the verdict being contrary to the weight of the evidence, c) the weapon (knife) produced by the prosecution was different from the one described in the un-rebutted testimony of the witness, Titus Allen Sebo, d) the county coroner failed to state where and when the death occurred as well as the circumstances of the death thus creating reasonable doubt, e) the deceased's cloth was intact and had no marked indicative of a pierce, f) the prosecution was engaged in misconduct, for example, Cllr. Cornelius Wennie alleged to have made inflammatory and prejudicial statement before the jury, for example, "ehh why your treating Morris (Deceased) so"; for which misconduct the prosecutor was fined US\$50.00 by the trial court, g) there is no forensic report to show the appellant's finger prints on the alleged weapon and no autopsy conducted to establish the cause of death, h) the jury took evidence outside the court proceeding, for example, the question posed by Juryman Oliver J. Fagans: "Mr. witness, did Pinky tell you at any point in time that she was going to get marry to late Morris Johnson?", and i) the prosecution failed to meet its burden of proof beyond a reasonable doubt because of its failure to rebut the testimonies of the defense's witnesses;
3. That the trial judge when he defamed, degraded the appellant's counsels and prejudiced her defense team in the presence of the prospective trial jurors after the appellant's counsels objected to a prospective juror, Mohammed Kamara who allegedly had vested interest in the conviction of the appellant. Sheets 6,7,8,9,10, 10th Day's Jury Sitting, November Term A. D. 2018, Wednesday, November 23, 2018; 11th Day's Jury Sitting;
4. That the trial judge erred when he included documents and instruments submitted to the jury, for example, the police investigative report, that were never admitted into evidence:
5. That the trial judge erred when he held that the appellant pleaded affirmative defenses while at the time same, denying stabbing the victim to death. Rather, the appellant did not plead affirmative defense, but assumed without admitting

the defenses such as self-defense, heat of passion and battered woman syndrome; and

6. That trial the judge erred when he allowed the reading of the pre-sentencing report without notice to the appellant so that the appellant could have had the opportunity to except to the report as a matter of law.

We shall address the exceptions in the order presented hereinabove.

It is the position of the appellant that in the absence of a forensic examination to have established the appellant's fingerprint considering the un-rebutted testimony of the appellant's witness, Titus Allen Sebo, that the weapon retrieved from the crime scene was a green knife and not blue, in such a case, the proof is not evident and presumption is not great. Therefore, the appellant was entitled to a bail as a matter of right. The trial court held that the question about what type of knife was used to stab the victim was irrelevant and immaterial in that it is undisputed that two persons had an affray, that the appellant admitted to taking the knife to scare the victim away and that the victim died as a result of a knife wound. In that case, one does not need a forensic examination to establish the cause of death, especially, where the coroner inquest report has shown that the victim was stabbed with a knife causing a wound 3 ½ deep which has the propensity to cause death. We agree.

The Constitution (1986) at Article 21(d)(i) provides that "all accused persons shall be bailable upon their personal recognizance or by sufficient sureties, depending upon the gravity of the charge, unless charged for capital offenses or grave offenses as defined by law". A capital offense is "a crime for which a death penalty is imposed" *Black's Law Dictionary Ninth Ed, page 1188* Our search of the law shows that murder for which the appellant was charged carries a death penalty or life imprisonment which classifies it a capital offense. *Penal Law Revised Code: 26:14.1* We note that the clear and unambiguous language of Article 21(d)(i) dictates that an accused person is not bailable once he is *charged* for a capital offense. In other words, once an indictment is drawn charging the accused of the commission of a capital offense, a bail is not available to that accused person. Even the 1973 *Criminal Procedure Law Revised Code: 2:13.1* which was enacted under the 1847 Constitution and still operational to date also provides that "a person in custody for the commission of a capital offense shall, before conviction, be entitled, as of right to be admitted to bail unless the proof is evident or the presumption great that he is guilty of the offense...After indictment for such an offense, the burden is on the

defendant to show that the proof is not evident or the presumption not great. *After conviction for a capital offense, no person shall be continued at large on bail or be admitted to bail except in accordance with the provisions of paragraph 3 of this section [illness of defendant]*” emphasis supplied.

Mr. Chief Justice Grimes speaking for this Court on the construction of similar provision of the Constitution (1847) scholarly articulated as follows:

“Under a constitutional provision guaranteeing the right to bail except in capital cases 'when the proof is evident,' the word 'evident' means manifest, plain, clear, obvious, apparent, and notorious, and therefore unless it plainly, clearly and obviously appears by the proof that the accused is guilty of a capital crime, bail should be allowed. As has been very cogently pointed out, the terms 'proof is evident or presumption great' are as definite to the legal mind as any words of explanation could make them, and are intended to indicate the same degree of certainty whether the evidence is direct or circumstantial. These statements make clear the conclusion that a mere conflict in the testimony is insufficient of itself to warrant the allowance of bail, and the same is true of the fact that the evidence against the accused is circumstantial. On the other hand where it is uncertain whether the accused is innocent or guilty—in other words where, upon an examination of the testimony, the presumption of guilt is not strong, the court will exercise its discretionary powers and admit to bail ; and it is particularly called upon to bail in all cases where the presumptions are decidedly in favor of the innocence of the accused. . . ." 3 *Id. Bail and Recognizance* § 8, at 10—11 (1914) ." *Coleman v. R. L.* 8 *LLR* 59 (1942). We affirm.

The appellant also contends that it was error for the trial judge to have denied her motion for a new trial for several reasons as outlined hereinabove. The trial court denied the appellant’s motion for a new trial on the basis that the verdict of guilty returned by majority of the jury is consistent with the evidence adduced in the trial of the case; particularly, where the appellant admitted to taking a knife to scare the victim away, but at the same time denied stabbing the victim. To the mind of the trial court, the appellant’s evidence admits via affirmative defenses such as self-

defense, heat of passion and battered woman syndrome, but refuses to take responsibility for the murder of Morris Johnson.

For a resolution of the second issue on the denial of the appellant's motion for a new trial, we shall delve into certain specific contentions, for examples, the issue of a defective indictment, the issue of prosecution misconduct and the issue of a juror receiving evidence outside of the trial proceedings in the order as they are presented herein.

This Court says that a challenge to an indictment is interposed prior to a trial in a criminal case. The law is clear and direct that "any defense or objection which is capable of determination without trial of the general issue may be raised before trial by a motion to dismiss the indictment." *Criminal Procedure Law Rev. Code: 2:16.7(1)*. In the case at bar, the appellant raised its objections to the indictment after the return of the verdict of the trial jury contrary to the plain language of the statute. Succinctly stated, not having filed her objections to the indictment before trial commenced, the appellant is deemed to have voluntarily relinquished her right and that she is precluded by operation of law to have raised the objections in a motion for a new trial which is a post-trial motion. *Juah v Konneh et al 42 LLR 187 (2004)*, *Faith Mission International Church v. the Intestate Estate of James B. Marshall, Supreme Court Opinion, October Term, A.D. 2022*

The appellant further contends that one of the grounds for setting aside a verdict and ordering a new trial is that the prosecuting attorney has been guilty of misconduct. *Criminal Procedure Law Revised Code: 2: 22.1(2)(d)* According to the appellant, Counsellor Cornelius Winnie made inflammatory and prejudicial comments such as "“ehn why [y'all] treating Morris so”".

We note that, except for the statement alluded to Counsellor Winnie herein which the appellant termed inflammatory and prejudicial, the appellant failed to state to what extent or degree such statement prejudiced or persuaded the jury to wrongly convict the appellant. A misconduct of a prosecuting attorney is defined as that which "... attempt to avoid required disclosure or to persuade the jury to wrongly convict a defendant or assess an unjustified punishment." *Black's Law Dictionary Ninth Ed, page 1342* In the instant case, we do not see how the alleged comment said to have been made by the prosecuting attorney constitutes a misconduct to a degree which warrants the setting aside of the verdict and ordering a new trial. More besides, the appellant has alluded to the fact that when the prosecuting attorney made

the alleged comment, the judge reprimanded said misconduct and imposed a fine on the counsel. Stated *arguendo*, we do not see how the alleged comment “ehh why [y’all] treating Morris so” violated the constitutional right of the appellant to a fair and impartial trial in the face of the reprimand and fine meted out against the said prosecuting attorney. Therefore, we are inclined to believe that the alleged comment by the prosecuting attorney did not rise to a degree of prejudice or jury bias to warrant the setting aside of the jury verdict and ordering a new. In fact, nowhere in the record to show that the alleged comment influenced jury bias or that the jury gave credence to such comment.

Regarding the issue that a juror received evidence out of court in violation of *Criminal Procedure Law Rev. Code: 2:22.1(b)*, the appellant alleged that Jurorman Oliver J. Fagans put a question to the appellant’s witness, John P. Abu, the father of the appellant, as follows: “Mr. witness, did Pinky tell you at any point in time that she was going to get marry to late Morris Johnson?”

Our review of the transcribed record shows that on the 32nd day of jury sitting, that is, on December 19, 2018, the juror posed the question to the witness without an objection interposed by the appellant and that the witness answered as follows: “even though I have not informed this court in my explanation, I have not informed this about any issue pertaining Pinky and Morris concerning marriage.”

It is the law extant that “an exception shall be noted by a party at the time the court makes any order, decision, ruling or comment to which he objects. *Criminal Procedure Law Revised Code: 2:20.6* This Court says that had the appellant objected to the question posed to her witness, it would have given the opportunity to the trial judge to act thereon which could have been made a part of the record for appellate review. The appellant’s failure to object to the question is deemed as a waiver; therefore the appellant is, by operation of law, precluded from raising the exception for the first time before this Court. *Juah v Konneh et al 42 LLR 187 (2004)*, *Faith Mission International Church v. the Intestate Estate of James B. Marshall, Supreme Court Opinion, October Term, A.D. 2022, supra*

The appellant has assigned as an error that the trial judge defamed and degraded the appellant’s counsels and prejudiced her defense team in the presence of the prospective trial jurors after the appellant’s counsels objected to a prospective

juror, Mohammed Kamara, who allegedly had vested interest in the conviction of the appellant. Our review of the records does not support the appellant's allegation that the trial judge defamed and degraded her counsels. In support of this holding, we quote verbatim an excerpt of the exchange between the trial judge and the appellant's counsel as follows:

“This court, having gone through the process of examining the witness as to the allegation made against juror Mohammed Kamara, says that in order to allow a fair and transparent trial and the fact that the Jury Management Team still has [pool] of jurors, will sustain the challenge of the defense counsel and thankfully discharge Juror Mohammed Kamara from serving on the petit jury. While it is true that we [may] not have gotten all of the evidence against juror Mohammed Kamara, we are doing this in the interest of [justice] and fair play and also not to delay this trial which will be a violation of our constitution.

To which ruling of your honor and oral statement in open court, counsel for the defendant except in part as to the following grounds:

1. This court failure or refusal to hold Mr. Mohammed Kamara in contempt for misleading the court until after a witness has been produced;
2. That conduct of this investigation before the selected [sequestered] jurors who are yet to be [sworn] that prejudicial questions and statements were asked on the merits, thereby prejudicing the rights of the defendant to a fair trial;
3. This court's statement “that it is a fact may not have gotten all the evidence against Mr. Mohammed Kamara but we are doing it in the interest of justice and speedy trial”;
4. Your Honor's denial of the defense counsel application for the issuance of a writ of subpoena duces tecum to produce the call log of Mr. Mohammed Kamara whose form is part of the record of this court and his number therein indicated and the cell numbers of some of the witnesses who are relative to the deceased at least for investigative purposes because the burden is on the applicant

defense counsel to [prove] that Mr. Kamara have manifest interest and therefore should not be accepted by this court.

The court notes the application but [the] purpose for which the defense counsel wanted to subpoena the cell numbers or prospective juror Mohammed Kamara was to further establish the manifest interest and biasness as alleged by the defense counsel and the court said we may not have gotten all of the evidence after it denied the application to subpoena Mohammed Kamara[‘s] cell numbers and notwithstanding that Mohammed Kamara was discharged from further serving on the panel.”

From the reading of the trial court’s minutes, we are left to wonder what were the defamatory and degrading statements to which the appellant could not note an exception, if any, so as to form part of the records. This Court is unable to make any reasonable inference on alleged oral statements made to which the appellant failed to note an exception, therefore the said allegation of defamation and derogation of the appellant’s counsel in the presence of other prospective jurors, not having been supported by the certified records is overruled.

Regarding the appellant’s contention that the trial judge erred when he included documents and instruments submitted to the jury, for example, the police investigative report, that were never admitted into evidence, we hasten to note that the records established that on December 6, 2018, same being the 21st day jury’s sitting, the prosecution prayed and the trial court granted and ordered a mark of confirmation on the instrument marked “P/4” in bulk which contained the police charge sheet testified to by prosecution’s third witness in person of Sergeant Wesley Doe, Jr. of the Liberia National Police assigned at Zone 5, Depot 4. Additionally, the certified records established that on December 12, 2018, same being the 26th day of jury sitting, the prosecution prayed and the trial court granted the admission of the instruments testified to, identified by the witnesses, marked by and confirmed without objection made by the appellant as follows:

1. P/1 which is the testimony of Cecelia Barclay containing seven sheets marked by court;
2. P/2 which is the statement of Naomi Gabawee containing three sheets marked by court;
3. P/3 which is the murder weapon green and civil knife marked by court;

4. P/4 which is the police charge sheet containing six sheets marked by court; and
5. P/5 which is the coroner report containing photographs depicting the wound of the late Morris Johnson, the coroner written report, names and addresses of the fifteen man coroner jury.

The records further established that during the self-same jury sitting after the close of the prosecution's evidence, the appellant made the application and was allowed by the trial court to proceed with her opening statement to the jury. This Court notes with discountenance the third incidence of unsubstantiated exceptions taken by the appellant's counsels.

Relative to the appellant's assignment of error that the trial judge erred when he held that the appellant pleaded affirmative defenses while at the same time, denying stabbing the victim to death, it is the contention of the appellant that she did not plead affirmative defense, but rather she assumed without admitting the defenses such as self-defense, heat of passion and battered woman syndrome.

This Court again notes that the appellant's use of the negative averment as demonstrated in the present case is ordinarily applicable in civil proceedings. *Black's Law Dictionary, Ninth Ed. Page 156* Our *Penal Law Revised Code: 26:1.6(c)* provides that an affirmative defense "...involves a matter of excuse or justification peculiarly within the knowledge of the defendant on which he can fairly be required to adduce supporting evidence." To be able to adduce supporting evidences, the defendant is required by law to first raise the issue (*id*, 26:1.6(2)); that is to say that the defendant must assert the defense affirmatively that he committed the act but with an excuse of justification. The common law also recognizes this position of the Court that affirmative defense is "a defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all the allegations in the complaint are true"; sometimes it is referred to as plea in justification. *Black's Law Dictionary, Ninth Ed. page 482*. To assert is to state positively; or invoke a legal right. *Page 133, id*.

In the instant case, the appellant has argued that the trial judge erred when he held that the appellant pleaded affirmative defense, but at the same time denied stabbing Morris Johnson; and that she did not plead any affirmative. We are at loss as to why would the appellant parade witnesses in persons of Genevie Jallah, Mr. John P. Abu, father, Joseph H. Constance and Madam Alfreda Hanson whose testimonies tend to

illustrate a violent character of the victim and his history of abuse against the appellant. It should be noted that in the face of the appellant's denial to have pleaded an affirmative defense, it can be said that the testimonies produced by these witnesses tending to prove self-defense, heat of passion and battered woman syndrome cannot serve any evidentiary utility. It further goes to say that the attempt by the appellant to portray the victim as a violent person with a history of abuses against the appellant was nothing more than an exercise in futility. We hold.

Finally, the appellant has assigned as error that the trial judge allowed the reading of the pre-sentencing report without notice to the appellant so that the appellant could have had the opportunity to except to the report as a matter of law. We shall once again revert to the records to ascertain whether or not the trial court did order the issuance of a notice of assignment and whether or not the notice ordered issued was served on the parties and returned served?

The records show that the trial judge charged the trial jury on December 31, 2018 and after deliberation on the self-same day, the jury returned a majority verdict of guilty. On the said December 31, 2018, the trial court in a communication to the Director of Probation Services, Ministry of Justice ordered the pre-sentencing investigation of the appellant for a submission on January 7, 2019 pursuant to *Criminal Procedure Law Revised Code: 2:31.5*. On January 2, 2019, the appellant filed her motion for a new trial which was resisted by the prosecution, and assigned for hearing on January 7, 2019. The records also show that, in obedience to the trial court's order, the Division of Probation Services of the Ministry of Justice filed its report on January 7, 2019, the same date, the motion for a new trial was heard and denied; and final judgment entered by the trial court affirming the jury's verdict of guilty against the appellant in the presence of her counsel. It is the contention of the appellant that the pre-sentencing investigation report was read without a notice and without an opportunity to except to the report.

We are in agreement with the contention of the appellant that notice for the hearing the pre-sentencing investigation report was not assigned as provided for by law. *Criminal Procedure Law Revised Code: 2:31.5(5)* However, we also gather from the certified records that the Division of Probation Services was ordered to file its report on January 7, 2019 which was read in open court in the presence of appellant's counsel. It is not clear from the records that the trial court served the appellant a copy of the court's order for the submission of the pre-sentencing report which would have demonstrated service anyways. The appellant has argued further

that she did not have the opportunity to except to the pre-sentencing report on the date the motion for a new trial was heard and denied. The trial court entered final ruling on the said January 7, 2019, there and then sentenced the appellant to twenty-five years imprisonment.

This Court says that the practice adopted by the trial court to have assigned the motion for a new trial, the pre-sentencing report filed, read and passed upon on the same day of final ruling and sentencing was strange and irregular. We strongly frown on this strange practice.

This Court also says that it having reviewed and examined the whole volume of the evidence as revealed by the records, it would appear that the appellant stabbed the deceased in an affray at the appellant's home due to extreme mental and emotional disturbance, that the deceased was the aggressor, that the appellant, under the facts and circumstances, was weak and had intended to scare the deceased from further assaulting and battering her when she stabbed the deceased, and that the deceased had history of violence against the appellant. Although we agree with the trial court's holding that the appellant could not denied that she stabbed the deceased and at the same time asserting the defense of battered woman syndrome, heat of passion and self-defense, it would appear ludicrous or absurd were this Court to shut its eyes on glaring and compelling evidence of violence reportedly perpetrated against the appellant. Therefore, we are of the considered opinion that under the facts and circumstances, the stabbing of the deceased by the appellant on that fateful night of January 14, 2018 was not premeditated and intentional, but rather the stabbing was as a result of an extreme mental and emotional disturbance amidst an affray between the deceased and the appellant who was assaulted and battered by the deceased which negates the elements of malice required for a crime of murder.

This Court has held that 'the appellate court or the Supreme Court is authorized, under the law and upon examination of the records, to render whatever judgment as the court below should have rendered, and which in its opinion will best conduce to the ends of law, justice and equity.' *Sibley v. Bility*, 33 LLR 548 (1985) In the instant case, we are of the considered opinion that the appellant's act, being as a result of extreme mental and emotional disturbance does not exempt her criminal responsibility for killing, it however downgrades the act from the crime of murder to manslaughter; therefore, the appellant is guilty of crime manslaughter, a felony of second degree; rather than a crime of murder.

WHEREFORE and in view of the foregoing, the final ruling of the trial court is affirmed with modification. The appellant is adjudged guilty of manslaughter and is hereby sentenced to the maximum of five years imprisonment. If the appellant has served five years or more in prison, she shall be released forthwith. The Clerk of this Court is ordered to send a mandate to the lower court, commanding the judge presiding therein to resume jurisdiction over this case and enforce the Judgment of this Opinion. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors G. Weifueh Alfred Sayeh, Jimmy Saah Bombo and J. Augustine Toe appeared for the appellant. Counsellor Wesseh A. Wesseh, Acting Solicitor General of Republic of Liberia appeared for the appellee.