

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,
SITTING IN ITS OCTOBER TERM, A. D. 2024.

BEFORE HER HONOR: SIE-A-NYENE G. YUOH CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE..... ASSOCIATE JUSTICE
BEFORE HIS HONOR : YUSSIF D. KABA ASSOCIATE JUSTICE
BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SR..... ASSOCIATE JUSTICE
BEFORE HER HONOR: CEANEH D. CLINTON-JOHNSON..... ASSOCIATE JUSTICE

Republic of Liberia by and thru the Ministry)
of Justice, Republic of Liberia)
..... 1st Appellant)
)
And)
)
Her Honor Serena Garlawolu, Resident Circuit)
Judge, Criminal Assizes “E”, Montserrado)
County, Republic of Liberia)
..... 2nd Appellant)
)
Versus) Appeal
)
James Kollie of Monrovia Central Prison, City)
of Monrovia, Montserrado County Republic)
of Liberia Appellee)

GROWING OUT OF THE CASE:

James Kollie of Monrovia Central Prison, City)
of Monrovia, Montserrado County Republic)
of Liberia Appellee)
)
Versus) Petition for Writ of
) Certiorari
)
Her Honor Serena Garlawolu, Resident Circuit)
Judge, Criminal Assizes “E”, Montserrado)
County, Republic of Liberia)
..... 1st Respondent)
)
And)
)
Republic of Liberia by and thru the Ministry)
of Justice, Republic of Liberia)
..... 2nd Respondent)

GROWING OUT OF THE CASE:

James Kollie of Monrovia Central Prison, City)
of Monrovia, Montserrado County Republic)
of Liberia Movant)
)
Versus) Motion to Admit to Bail
)
)
Republic of Liberia by and thru the Ministry)
of Justice, Republic of Liberia)
..... Respondent)

GROWING OUT OF THE CASE

Republic of Liberia by and thru the Ministry)	
of Justice, Republic of Liberia)	
..... Plaintiff)	
)	
Versus)	Statutory Rape
)	
James Kollie of Monrovia Central Prison, City)	
of Monrovia, Montserrado County Republic)	
of Liberia Defendant)	

Heard: October 29, 2024

Decided: February 18, 2025

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

This is an appeal from a chambers’ ruling rendered by our distinguished colleague, Mr. Justice Yamie Quiqui Gbeisay, Sr., then presiding in chambers, granting a Petition for a Writ of Certiorari prayed for by the appellee, James Kollie.

The facts in this case show that the grand jury of Montserrado County, sitting in the August A.D. 2020 Term of Court, indicted the appellee for the crime of Statutory Rape. Regular trial was had in the case, and the trial jury sitting therein returned a Hung Verdict, in which seven (7) of the twelve (12) trial jurors voted not guilty, and five (5) of the jurors voted guilty. Thereafter, the appellee’s counsel, relying on *Chapter 13, Section 13.1* of the *Criminal Procedure Law*, filed a motion praying the court to admit the appellee to bail. The appellant filed its resistance, relying on *Chapter 13, Section 13.1 of the Criminal Procedure Law*. After hearing the said application, the 2nd appellant, the trial judge, denied the appellee’s application. Being dissatisfied with this action of the trial judge, the appellee flew to the Chambers of this Court and filed a Petition for a Writ of Certiorari.

Substantially the appellee argued in its Writ of Certiorari 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,” *Chapter 13, Section 13.1 of the Criminal Procedure Law*; that on the hearing of an application for admission to bail made before indictment by a person in custody for the commission of a capital offense, the burden of showing that the proof is evident or the presumption great is on the Republic; that the second appellant violated Chapter 13, Section 13.1 of the Criminal Procedure Law when

she denied appellee's motion to admit to bail after an arduous trial proceeding, where the empaneled jury returned from their room of deliberation with a hung verdict; that because the jury could not unanimously agree to convict the appellee based on the evidence adduced during the trial, the same was sufficient enough to establish that proof is not evident and presumption is not great, thus appellee is entitled to bail as a matter of law; that second appellant denial of the petitioner's motion to admit to bail was a gross violation of his statutory rights after he had spent two (2) years seven (7) months in Monrovia Central Prison; and that the second appellant violated the right of the appellee to bail after seven (7) of the twelve member empaneled jurors found the evidence against the appellee to be insufficient to convict him. Therefore, the decision to deny the appellee's motion to admit to bail constitutes a flagrant disregard for the rule of law and a reversible error for which a writ of certiorari will lie.

The first appellant filed a ten-count resistance to the appellee's motion to admit to bail, substantially challenging the appellee's interpretation of Criminal Procedure Law 2:13.1. He alleged substantially that the appellee's interpretation of the said section is repugnant to the true meaning, interpretation and intent of the framers of the statute; that in the matter under review, proof is evident and the presumption is great in the case at bar as the indictment was drawn and endorsed by the grand jury of Montserrado County, thus rendering the motion for bail moot; that an empaneled petit jury does not examine whether "proof is evident or presumption great", rather a petit jury authority is to deliberate on facts presented by opposing lawyers and render a verdict of guilty or not guilty; that after an indictment for such an offense, the burden is on the defendant to show that proof is not evident and presumption not great by convincing the petit jury to return a not guilty verdict, which is not what obtained in the case at bar; that the second appellant's ruling denying the appellee's motion to admit to bail is in absolute adherence to the 1986 Constitution of Liberia, Article 21 (d)f which states "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"; that the second appellant did not err by denying the appellee's motion to admit to bail as the crime charged of statutory rape is a grave offense and defined in *Chapter 14.70 4(d)* which states "a felony of the first degree and for the purpose of bail it shall be treated as a capital offense"; that the second appellant's ruling is in consonance with *Article 21 (d) of the 1986 Constitution of Liberia* and *Chapter 14.70 4(b) of the*

Amended Rape Law and as such has not breached any law or statute to warrant a violation of the rights of the appellee; that there is no scintilla of violation of the rights of appellee by the second appellant as the 1986 Constitution of the Republic of Liberia, *Article 21 (d) and Chapter 14.70 4(b) of the Penal Law of Liberia* state succinctly that grave offenses shall not be bailable; and that procedurally, appellee failed, refused, neglected, and opted not to request for an assignment for a new trial rather requested for admission to bail which is repugnant to law and practice within this jurisdiction.

The Chambers Justice issued the alternative writ, conducted a hearing of the petition and the resistance thereto, and granted the petition, thereby ordering the issuance of the peremptory writ. In the mind of the Chambers Justice, the fact that seven out of the twelve members of the panel had determined by their vote that the first appellant failed to produce convenience evidence of the guilt of the appellee logical conclusion is that the proof is not evidence and the presumption not great that the appellee committed the crimes as charged. According to the Chamber Justice, while the hung verdict does not exonerate the appellee from answering to the charge, it demonstrates that the proof presented by the 1st appellant failed to convince the majority of the panel of the guilt of the appellee. The Chamber Justice reasoned that one of the basic protections afforded to all people, whether guilty of a crime or not, is the presumption of innocence. This presumption is essential because the justice system's role is not to convict but to ensure justice is done. Its goal is to protect the innocent; the Chamber Justice further reasoned that the fact that the appellee went through a rigorous trial proceeding and the appellant paraded all its evidence in support of its case, the hung verdict in this case as returned by the panel demonstrate that the proof is not evident and the presumption not great that the appellee committed the crime as charged.

Therefore, the issue for our determination is whether or not the Chamber Justice erred when he overturned the interlocutory ruling of the trial judge by ordering that the appellee be placed on bail in keeping with Criminal Procedure Law 2:13.1.

We are in full agreement and accord with our colleague in the determination of this matter. The statement under Section 13.1 that “where the proof is not evident and the presumption not great” does not translate that in such a case, the defendant is to be acquitted, exonerated, or absorbed from answering to the crime he is accused of.

Under such circumstances, the defendant remains accused of the crime. That statement is only relevant in determining whether or not the defendant stands entitled to bail when accused of the commission of a capital offense. Because such an accusation is not tantamount to guilt and to guarantee that all precautions are put in place to ensure that not only will the defendant appear when the matter is called for hearing, but that he will also be available to serve the penalty when convicted, the law provides that it must first be established that a defendant accused of a criminal offense pass the test of whether the proof is evident and the presumption great in determining his right and entitlement to a bill.

In the instant case, the appellee was placed on trial before a panel duly selected to hear and determine the facts of the matter. Suppose seven out of the twelve panel members can agree that they are not convinced that the appellee committed the crime after the State paraded all its witnesses and produced all its evidence. In that case, it can be safely said that the proof is not evident and the presumption not great that the appellee is guilty of the commission of the crime. We, therefore, find no reason to disturb the holding of the Chambers Justice.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the Chambers Justice is affirmed. The alternative writ issued is upheld, and the peremptory writ is sustained. The Clerk of this Court is ordered to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction over this matter and give effect to the Judgment of this Opinion. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors T. Joseph D. Debleh, Anthony Kollie, William Moore Johnson, and Bestman D. Juah appeared for the appellee. Counsellors Isaac L. George and Augustine C. Fayiah appeared for the appellant.