

RESUBMITTED DRAFT/JANUARY 31, 2024

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,
SITTING IN ITS MARCH 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 : CEATNEH D. CLINTON-JOHNSON.....ASSOCIATE JUSTICE

Abdullah Sheriff & David Onanah..... Appellants)
)
Versus) APPEAL
)

R.L. by & thru the Ministry of Justice, Monrovia, Liberia)
LiberiaAppellee)

GROWING OUT OF THE CASE :

R.L. by & thru the Ministry of Justice, Monrovia, Liberia) GANG RAPE,
.....Plaintiff) INVOLUNTARY SODOMY
) SEXUAL ASSAULT &
Versus) CRIMINAL CONSPIRACY
)

Abdullah Sheriff and David Onanah.....Defendants)

Heard: June 25, 2024

Decided: February 17, 2025

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This present appeal emanates from a guilty verdict brought against the appellants, Abdullah Sheriff and David Onanah, defendants in the 11th Judicial Circuit, Tubmanburg, Bomi County, growing out of an indictment drawn by the grand jury of said county which accused the appellants of committing the crimes of gang rape, involuntary sodomy, sexual assault and criminal conspiracy. The indictment sets out the following:

“INDICTMENT

The Grand Jurors for the County of Bomi, Republic of Liberia, sitting in its May Term of Court, A. D. 2022, do hereby find, more probably than not, that the above-named defendants committed the crimes of Rape, a felony of the first degree, Involuntary Sodomy, a felony of the third degree, Sexual Assault, a misdemeanor of the second degree, and Criminal Conspiracy as showeth to wit:

1. That on the 16th day of May, A. D. 2022, during the night hours, you, the within named defendants, Abdullah Sheriff and David Onanah, knowingly, wickedly, purposely and with criminal mind and intent, committed the crimes of rape, gang rape, sexual assault,

involuntary sodomy and criminal conspiracy against victim Sayo Sherman of the City of Tubmanburg, Bomi County, Republic of Liberia;

2. That during the aforesaid night, you, the within named defendants, induced the victim and administered alcoholic intoxicants in her drinks while drinking at the Planet 44 Night Club in Tubmanburg, rendering her helpless and impaired her ability to put up any defensive resistance thereby taking her to a destination unknown to her, that is, to defendant's David Onanah's room, where you, both defendants Abdullah Sheriff and David Onanah had multiple sexual intercourse encounters with her, without her knowledge and consent;
3. That you, defendant Abdullah Sheriff, admitted offering the victim drinks (liquor) worth over Four to Five Thousand Liberian (LD\$4,000 – LD\$5,000.00) Dollars for her birthday celebration, with the intent to have sex with her as the both of you have never had any casual relationship prior to the incident; while also admitting carrying the victim to co-appellant David Onanah's room the same night of the incident and accomplished your sexual desire of gang raping, sexual assaulting and raping her;
4. That prior to, and with manifest intent to commit the crime of gang rape, you, co-appellant David Onanah, exploited the casual relationship of knowing the victim, admitted introducing the victim to co-appellant Abdullah Sheriff, planned and conspired with co-appellant Sheriff who purposely provided a huge volume of alcohol infused with substances to impair the knowledge of the victim to enable you both have sex with her at different intervals in defendant Onanah's room on the fateful night of 16th day of May, A. D. 2022 and up to the morning hours of the 17th May [2022];
5. That you, co-appellant David Onanah, also admitted that the acts were accomplished in your room situated at Vai Town One Community, Tubmanburg City, Bomi County;
6. That you, co-appellant David Onanah, upon accomplishing your evil design, and without remorse, photographed the private parts of the victim while she lied unconscious on your phone and displayed same photographed image to students the next day on your school's campus to denigrate her womanhood, exposing her to public ridicule and psychological trauma, mental anguish and disdain;
7. That you, the defendants, have no affirmative defense..."

Upon their arraignment, the appellants entered a plea of not guilty, and subsequently waived their rights to a trial by jury. The trial judge, consistent with Section 20.2 of the Criminal Procedure Law, granted the defendants' request as the sentence of the crimes as charged did not constitute a death sentence. Thereafter, the judge proceeded to hear the evidence.

The prosecution produced four regular witnesses: private prosecutrix, Jereline Mambu, Armstrong P. Wonleh, and Varney G. Sekou. The defense produced the two appellants to testify on their behalf.

Prosecution's first witness, the private prosecutrix, took the witness stand and testified that she is a resident of Gbalasuah, Tubmanburg; that on the night of her birthday, May 15, 2022, while at the Planet 44 Entertainment Center, she came across the appellants, Abdullah Sheriff and David Onanah, who were also sitting at the entertainment center; that the appellants bought liquor and they drank, with her drinking Ezzy Beer up until 1 to 2: O'clock am. The witness further testified that at

one point co-appellant, David Onanah brought a strange liquor in a red cup to her, and upon drinking said liquor, she became disconcerted and woke up the following morning naked and messed-up in David Onanah's house with the co-appellant Onanah lying beside her; that, when she asked him what she was doing at his house, he, Onanah, told her that she was drunk, and she responded that even if she was drunk, her house not being too far from Planet 44, the Club they were at, why did they not take her to her home? The Co-appellant Onanah responded that it had already happened so it should stay right there.

The witness, testifying further, told the court that on Tuesday morning, co-appellant David Onanah displayed to his friends on his school campus a nude photograph of hers which he had taken while she was at his place that night of May 15, 2022. Upon hearing of it, she reported the matter to the police and they arrested the appellants and had them write statements of the incident.

Responding further to questions on the direct examination, the witness informed the trial court that while they were sitting together at the night club, it was co-appellant Abdullah Sheriff that approached her and he bought drinks which they drank; that co-appellant David Onanah gave his room keys to Abdullah Sheriff and thereafter, she, Abdullah Sheriff, David Onanah and Faith left Planet 44 and went home to David Onanah's house; that while in the room, Sheriff tried taking off her clothes but because she was helpless she fought in vain and he overcame her and had sex with her. The private prosecutrix on direct examination stated that she did not remember the whereabouts of David Onanah but after Abdullah Sheriff left and she woke up the next morning, she saw David Onanah lying beside her naked in his boxer and that he also had sex with her.

Prosecution's second witness, Jereline Mambu, a Registered Nurse and an SGBV (sexual and gender based violence) examiner, assigned at the Government's Hospital in Tubmanburg, Bomi County, testified that her job is to do physical and medical examinations of SGBV cases and prepare reports of her findings; that on May 26, 2022, ten days later, at about 8:10 a.m., the private prosecutrix and the Rural Women Advocate [representative] visited her office and requested her to perform a physical and medical examination on the private prosecutrix for the purpose of determining sexual abuse; that she conducted all the procedures, including laboratory, physical and medical examinations; that given the story she got from private prosecutrix, she prepared her report; that her findings show blunt penetration of the vagina with a fresh and red laceration/tear at twelve, eight, six and four o'clock wise on the vulva, with bruises and it was swollen and painful.

The prosecution's third witness, Armstrong P. Wonleh, the Chief Inspector for the Police Detachment in Tubmanburg, testified that according to the Police Charge Sheet, on May 16, 2022, the private prosecutor reported to the police that on her birthday, May 15, 2022, she, along with three friends, was sitting at a table drinking in Planet 44, when co-appellant David Onanah entered the Club and

sat with them at their table; that because they were celebrating her birthday, she and her friends welcomed him; that while drinking, David Onanah brought a red-colored drink in a red cup and asked her to drink it which she refused at first, but based on his insistence and encouragement that the liquor was sweet, she accepted the drink and drank it. Witness Wonleh stated that the private prosecutrix explained that upon drinking the said liquor, she became dizzy; that she found herself lying on the bed in the co-appellant Onanah's room the next morning with Onanah lying beside her; that she noticed her pant slightly opened.

The witness, responding to questions on the direct examination, stated that the private prosecutrix had complained that co-appellant, David Onanah, had shown her nude photo that he had in his phone to students on his school campus, and based on that, Onanah was arrested by the police and investigated; that during the investigation, Onanah admitted that he took the private prosecutrix to his room but did not sleep with her, that it was his friend, the co-appellant Abdullah Sheriff, who did. The police testified that the police having concluded its investigation, had Abdullah Sheriff charged with the crimes of sexual imposition and sexual assault, while David Onanah was charged with the crimes of criminal facilitation and criminal solicitation, and later forwarded to court.

Prosecution's fourth witness, Varney C. Sekou, a resident of Tubmanburg and also a student of the Anderson Weamah Methodist School, testified that he knew the appellants and the private prosecutrix; that he and the co-appellant David Onanah attended the same school, and that he and the appellants were members of the same soccer team, Lion FC. He testified that on Monday, May 16, 2022, while on his campus, co-appellant, David Onanah, called him aside and showed him the nude photo of the private prosecutrix that was stored in his phone. She was lying on a bed. The witness confirmed that the nude photo he saw in co-appellant David Onanah's phone was that of the private prosecutrix.

Having rested with the production of both oral and documentary evidence, the prosecution admitted into evidence the statement from the private prosecutrix, the medical report, and the police charge sheet, and gave notice that it would produce a rebuttal witness, if need be.

On Monday, June 20, 2022, the defense's first witness, co-appellant David Onanah, took the witness stand and testified that he was a resident of the Vai Town #1 Community, Tubmanburg, and a student of the Anderson Weamah Methodist School; that he often times met the private prosecutrix at the Planet 44 Night Club and she would ask him to find man for her which he had been unable to do; that on May 15, 2022, while he and his friend, co-appellant Abdullah Sheriff, were sitting at the Planet 44 Club, the private prosecutrix went to him and informed him that it was her birthday and if any man offers her drinks she would spend the night with him; that he informed Abdullah Sheriff what the private prosecutrix had told him and Sheriff decided to confirm from her; that after a while, he saw

Abdullah and the private prosecutrix in discussion and overheard her repeating what she had told him to Abdullah Sheriff; that after their discussion, she took a table outside and they all sat at the table and Abdullah bought 15 bottles of stout for the first round; later Abdullah decided to put his phone on charge and upon his return, the drinks were finished, so he bought additional 5 bottles of stout.

David Onanah testified further that after their drinks, co-appellant Abdullah asked the private prosecutrix for both of them to go to her house, but she refused stating that her son was at home. She suggested that they go to another venue. Co-appellant Sheriff then decided to take her to the Red Cross Guests House located at the old parking station, opposite Vai Town; that he and Faith (private prosecutrix's best friend), escorted them there but the guest house was locked because it was about 2:30 a.m., so the private prosecutrix asked where could they go next, and that was how he offered his room and gave his keys. The witness further testified that because the room was dark, the private prosecutrix requested her handbag from her friend, Faith, to use her phone light, but the phone battery was low, so she asked about his phone, and the co-appellant Sheriff requested him (Onanah) to use his phone light, which he did. Thereafter, he and Faith went towards the direction of Planet 44. The next morning, at about 7:0'clock a.m., he returned home and met the private prosecutrix lying on the bed well dressed, and he lied on the floor because she was sleeping. He later went to prepare for school but when he returned, she had left. He testified further that on that day, May 16, 2022, he left his campus earlier than usual, and on his way home, he met the private prosecutrix and one Umu Sow at Club 6:30, and the private prosecutrix spoke to him in a happy mood as he passed.

The witness said that he later received a call from the police, through one R-Bomi, that his presence was needed at the police station, so he went, and while sitting, he saw the private prosecutrix and Faith coming out of the CSD's Office; that R-Bomi informed him that the private prosecutrix reported to the police that a student from his (Onanah) school campus told the private prosecutrix that Onanah had her nude photo in his phone; that he denied having such picture in his phone and his phone was searched by R-Bomi but they saw no such picture.

The defense's second witness, Abdullah Sheriff, testified as follows: that on the night of May 15, 2022, while he and his friend, David Onanah, were sitting together at Planet 44, Onanah left him and went outside, and upon his return, Onanah called him outside; that when he got outside, he saw Onanah and the private prosecutrix discussing and Onanah introduced him to her and said you [Sheriff and private prosecutrix] can discuss further; that during their talk, she informed him that it was her birthday and wanted someone to offer her, and when he asked her what she said, she repeated by saying "today is my birthday, if you offer me, I will spend the night with you", so he

decided to offer her. The witness stated that the private prosecutrix took a few chairs and a table and set them outside of the club, and while they were drinking, his phone went off so he went on the road to put his phone on charge; that upon his return, the drinks he had earlier bought had finished, so he bought additional drinks.

The witness in continuing his testimony stated that while they were drinking, he asked the private prosecutrix if they could go to her house to spend the night, but she said, no, because her son was there at her house; that he decided to go to the Red Cross Guest House near the Old Parking but the guest house was closed. He then asked the private prosecutrix what could they do, and she suggested that they ask David Onanah for his room, which he did; that while they were lying in the room, he started to touch the private prosecutrix but she refused, so he slept off, and that at about 6:45 a.m. he woke her up and told her that he was going home, and he left. He concluded that thereafter, while at home, Onanah escorted police to his house and he was arrested.

Following the resting of evidence by both parties, the case was presented to the court for final determination. On June 29, 2022, the trial judge, sitting both as judge and jury, rendered his final ruling and adjudged the appellants guilty of all the crimes as charged, and sentenced them to thirty (30) years imprisonment, each.

The defense noted exception and announced an appeal to the Honorable Supreme Court sitting in its October Term A. D. 2022. On July 7, 2022, the appellants filed a seven (7) count bill of exceptions. The crux of the bill of exceptions is that the guilty verdict of the trial court was not supported by the weight of the evidence adduced during the trial; hence, the question that presents itself for our determination is, did the prosecution produce such convincing evidence to lead a reasonable mind without doubt as to the truthfulness of the accusation made? In answer to the question, we shall review the evidence presented by the parties as this Court has held that it is the law in our jurisdiction that in all criminal trials in order, for the state to convict, the prosecution must prove the guilt of the accused with such legal certainty as to exclude every reasonable hypothesis of his innocence; that material facts essential to constitute the crime charged must be proven beyond a reasonable doubt; and that the burden to prove the guilt of the defendant in criminal cases remains with the state throughout the trial. *Yates et al v. R.L.*, Supreme Court Opinion, October Term, 2015; *Massaquoi v. Republic*, Supreme Court Opinion, October Term A.D. 2013; *Davis v. Republic*, 40 LLR 659, 679 (2001).

The prosecution, in its indictment, accused the appellants of intentionally conspiring to rape the appellee by substantially impairing her power to control her conduct and capacity when they gave her some drink in a red cup while they were drinking at a club, and which drink impaired her ability to resist their sexual assault carried upon her.

The prosecution brought the alleged victim, the private prosecutrix, to testify as to the facts leading up to the incident, which she did. However, the appellants denied the allegation that they presented her with drinks in a red cup in furtherance of their plan to seduce and rape her; that in fact, the co-appellant Sheriff had bought a large quantity of drinks as had agreed that if he bought her drinks to celebrate her birthday, she would sleep with him.

We note that after the alleged incident, the private prosecutrix heard that the co-appellant David Onanah had displayed a naked photo of her at his school, showing her lying on his bed in the morning of May 16, 2022; that it was when she went to the police to report him and the co-appellant Abdullah Sheriff, accusing them of raping her the morning of May 16, 2022.

We must examine the evidence presented by the prosecution to come up with a logical conclusion whether indeed the appellants committed rape against the private prosecutrix, that is, whether the private prosecutrix was sexually violated against her will.

The appellants were found guilty of having conspired to gang rape the private prosecutrix. We see that the charges against appellants were necessitated by the allegation of the private prosecutrix that she was given a drink by the appellants in a red cup after which she was “not to herself” (dizzy) and when she got up in the morning, she was naked and messed up (filled with sperm) at co-appellant David Onanah’s house.

The appellants denied that they raped the private prosecutrix. They, in their corroborating testimonies as to what transpired on the night of May 15, 2022, stated that on May 15, 2022 while at the club, the private prosecutrix made a statement that “any man who offers her on her birthday, she would spend the night with him”, and upon which Abdullah Sheriff bought lots of drinks which they drank and she went with him to Onanah’s house to sleep. Their statements were never rebutted by the private prosecutrix, neither did she deny the appellants’ statements that due to the presence of her son in her house, she suggested that they go elsewhere. She herself on the direct examination admitted that she left the club on the night of her birthday with the co-appellant Sheriff to go to the co-appellant’s Onanah’s house. This Court has held that “the failure of a person to reply to an oral statement or written instrument made and introduced into evidence against him, where he had the opportunity to act, is an implied admission of the facts”. *Tom Harris v. David Woah et al*, Supreme Court Opinion, March Term, A.D. 2024; *Wlo Flo v. RL 29 LLR 3, 12* (1981).

This then raises the question whether there was an understanding between the private prosecutrix and Sheriff to have consensual sex. From the statements made by the appellants and not rebutted by the private prosecutrix when she testified that she, Abdullah Sheriff, David Onanah and Faith left Planet 44 and went to Onanah’s house, we believe therefore that there was initially consent by the

private prosecutrix that she would have sex with the co-appellant Sheriff on the night of her birthday if he bought her drinks. This is supported by the records where during the direct examination the appellant was asked the following questions which she responded to as follows:

Q. Madam Witness how far is your house from Planet 44 (Club)?

Ans. Just two minutes' walk.

Q. Please tell the Court Madam Witness, how far is defendant Onanah house from Planet 44?

Ans. One hour two minutes' walk.

From the records there is no indication that the appellants, the private prosecutrix, and her friend Faith, who was with her, took a motor ride to co-appellant's Onanah's place. In fact, she testified during the crossed examination, as follows:

Q. Madam witness You said that you walked with Abdulah Sherif, David Onanah and one Faith to the room of David Onanah.

Ans. Yes.

Q. Madam Witness, if you can remember, where was Faith when you found yourself in the room of David Onanah?

Ans. After we reach opposite the Old Parking, I remember Faith crossing the road, but don't remember where she went.

The question that comes to a reasonable mind is how was the private prosecutrix who was so dizzy by a drink alleged to have been given to her in a red cup could have walked more than an hour to the co-appellant Onanah's house along with the appellants and her friend Faith who took off at the Old Parking while the private prosecutrix went on to the home of co-appellant Onanah? Why was Faith not called by the prosecution to testify to this drink that was given to the private prosecutrix in the red cup, and as to her state of mind thereafter?

Co-appellant Sheriff in his testimony stated that while he was lying in the room with the private prosecutrix, he started to touch her, but she refused so he went to sleep. About 6:45 A.M, later that morning, he left to go home. The private prosecutrix stated that when she got up in the morning, she was messy with sperm, that in fact she remembered co-appellant Sheriff trying to have sex with her and she tried to push him off, but as she was so dizzy, she had no strength to fight him off.

Though the evidence in this case shows overwhelmingly that the private prosecutrix did consent to have sexual intercourse with co-appellant Sheriff who brought her drinks, her consent, however, could be withdrawn at any time prior to penetration. Any persistence by co-appellant Sheriff after

she had refused to continue with her agreement to have intercourse with him and his insistence on having intercourse with her despite her subsequent rejection was a commission of the crime of rape since it was done against the private prosecutrix will and consent; especially considering her state of mind after the intake of huge quantity of alcoholic beverages bought by the co-appellant Sheriff.

The private prosecutrix also accused the co-appellant David Onanah of raping her. In her testimony in chief, she stated that when she had the drink given to her in a red cup “she did not know herself” (sedated) and when she came through, she was in bed with David lying beside her; that she was naked and messed up (31st Day Jury Session, Tuesday June 15, 2022).

Co- appellant David Onanah denied that he slept with the private prosecutrix. He testified that after he and Faith, the private prosecutrix’s friend, had the private prosecutrix and co-appellant Sheriff settled in his room, they left and went back to the Club. At 7: O’clock. a m., he returned to his place and met the private prosecutrix lying on his bed well-dressed and asleep; that he lied on the floor and after a while he went to get prepared for school and upon his return, the private prosecutrix had left. He stated that while on his way after school, about 6:30 pm, he met the private prosecutrix and one Umu Sow at another Club, and she spoke to him in a happy mood.

The private prosecutrix was brought to rebut co-appellant Onanah’s statements, and she answered to questions put to her as follows:

Q. Madam witness, (see page 30, paragraph-6, 36th day’s Jury Session), a question was posed to Co-appellant David Onanah, and I quote: “Mr. witness, please tell the court, upon your return to your room the next morning, you met the [private prosecutrix] lying in your room and you slept with her.” He answered, “No”. You have been called as a rebuttal witness to rebut this answer given by the said witness, please tell the court what have you to say?

Ans. He is lying. After David entered the room, at that time I was still weak in my body, he started forcing me to have sex with me, and he had sex with me against my will.

This statement by the private prosecutrix is a clear contradiction to the statements made by her earlier in her answers to questions posed to her during the direct examination.

During the prosecution direct examination of the private prosecutrix, she answered to the following questions posed to her as follows: (See 32nd day’s Jury Session, Wednesday, June 15, 2022).

Q. Madam witness, you said in your testimony that on that fateful night at Planet 44 you sat and drink with the defendants (appellants). Please tell this court what conversation did you and the defendants have while sitting.

Ans. It was that fateful night after I went at the Club, Planet 44, it was defendant (Co-appellant Abdullah Sheriff) who approached me, and so that night after defendant Abdullah Sheriff bought the drinks, we all were sitting together drinking, including David Onanah. After

that, David Onanah gave his keys to Abdullah Sheriff, and so that night defendant Abdullah Sheriff and I went home and he tried taking off my clothes and I pushed him, and because I was helpless, I laid down and he had sex with me that night.

Q. Madam witness please tell this court how did you leave Planet 44 that night and with whom, if you can remember?

Ans. It was defendant David Onanah, Defendant Abdullah Sheriff, with Faith.

Q. Madam where did you go next and with whom?

Ans. Defendant Abdullai Sheriff and I went to defendant Onanah house.

Q. Madam witness according to you, you said defendant Sheriff tried to have sex with you but you resisted him, please tell this court where was defendant Onanah at the time?

Ans. I can't remember, but when I woke up. I saw defendant Onanah lying beside me in the morning (emphasis ours).

Q. Madam witness when did you realize that sexual intercourse was had with you?

Ans. In the morning when I saw myself messed up.

Q. Madam witness, you said that the next morning you saw defendant Onanah lying by you in the room naked with his boxers on. Please tell the court did he have sex with you?

Ans. Yes.

This Court is perplexed by the private prosecutrix testimony regarding Onanah, and her allegation that he also raped her. She testified that she slept off during the time co-appellant Sheriff had intercourse with her and when she got up, she saw Onanah in the bed with her in his boxers. In her rebuttal she states, "after David entered the room, at that time I was still weak in my body, he started forcing me to have sex with me, and he had sex with me against my will".

Was her accusation against Onanah an assumption or a statement of fact? This Court has held that criminal accusation made against an accused must be made with certainty, otherwise the accused will be entitled to discharge. *Davis v. R.L.* 40 LLR 659, 675-676 (2001).

The appellants are being charged with committing the crime of gang rape. Our Criminal law has defined gang rape as follows: "A person has committed Gang Rape, a first degree felony, if he or she purposely promotes or facilitates rape, or agrees with one or more persons to engage in or cause the performance of conduct which shall constitute Rape." (Penal Code 14.70.2).

From the evidence adduced at trial, did co-appellant Onanah purposely promote or facilitate rape? The evidence in the records clearly supports that there was an agreement that the private prosecutrix would sleep with the one that bought her drinks and that co-appellant Sheriff bought her drinks and

thereafter they left to go to the co-appellant's Onanah's house to sleep. The private prosecutrix, we believe, must have been under the influence of alcohol since the appellants admit that co-appellant Sheriff bought a considerable number of drinks. Could we then interpret this as a conspiracy to rape her, or an arrangement/ agreement to have sex with who bought her drinks, in this case, co-appellant Sheriff? We see that the evidence adduced by the police and testified to by the prosecution third witness, Chief Inspector Amstrong P. Wonleh, stated that Onanah was charged with the crimes of criminal facilitation and criminal solicitation, and later forwarded him to court.

Interestingly she attempted to give a story of the appellants conspiring to rape her and accomplished their plan by tampering with her drinks which made her dizzy. How could she have been drunk considering that she admits that she walked with Sheriff for more than an hour to co-appellant's Onanah house; remembered that her friend Faith who went along with them went off, crossing the road after they got opposite the Old Parking; remembered and stated as a rebuttal witness that Co-appellant Onanah's phone was used to provide light into the room, confirming Onanah's statement that when they got to his place, he was asked to used his phone light to enter his room?

This Court has held in a line of Opinions that "a defendant charged for the commission of any criminal offense is presumed innocent until the contrary is proved; and that in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to acquittal". *Republic of Liberia v. Eid et al*, 37 LLR 761, 763 (1995); *Stubblefield v. Republic of Liberia*, 35 LLR 275, 285 (1988) *Keller v. Republic of Liberia*, 28 LLR 49 (1979); Criminal Procedural Law, Revised, 2:2.1. Additionally, it is the law that "in order for any evidence to be weighty and relied upon, especially in criminal matters, such evidence must be corroborated". *Davis v. Republic of Liberia*, 40 LLR 659, 682 (2001).

The Court's question is why was Faith, a direct witness and the private prosecutrix friend not invited by the prosecution to testify as to what transpired on the night of May 15, 2022, between the appellants and the private prosecutrix? We must ask further, why was there not an in-depth examination, to include a forensic or DNA testing necessary to establish whose sperm was found on the private prosecutrix, considering the private prosecutrix's contradiction regarding co-appellant Onanah, and the number of years the lower court had the appellants sentenced. Was her accusation of rape against Onanah brought because she was told that co-appellant Onanah had taken and shown a naked photo of her on his bed?

From the evidence adduced, this Court finds that there was a consent by the private prosecutrix to sleep with the co-appellant Sheriff but when they got to his room, she refused to continue with the arrangement which Sheriff himself admitted in his testimony. We do not believe that he then went off to sleep, but that he pursued to have sex with the private prosecutrix after her rejection, and as she stated, she could not resist because she was dizzy and helpless. Our question is, if co-appellant

Sheriff did not have sex with the private prosecutrix, how then was she lying in bed naked when co-appellant Onanah came in and took her photo, which he displayed on his school campus?

We find that where the private prosecutrix subsequently withdrew her consent to have sexual intercourse with the co-appellant Abdullah Sheriff, his sexual imposition constituted rape. Our Penal Code, Subchapter D. Sexual Offenses, Section 14.70 – Rape, provides that a person who has sexual intercourse with another person (male or female) has committed rape if he intentionally penetrates the vagina, anus, mouth or any other opening of another person (male or female) with his penis, without the victim’s consent; or, for the purpose of this felony, a person consents if he/she agrees by choice and has the freedom and capacity to make that choice. There shall be a presumption of lack of consent in case where the victim was asleep or otherwise unconscious at the time of the relevant act”.

Under the circumstances of this case, we believe that the co-appellant Sheriff had intercourse with the private prosecutrix after she rejected his advances while they were in bed and she was unable to ward off his advances because she was dizzy from excessive alcohol intake. Having sex without her consent therefore constituted rape.

The grading of sexual offenses under our Penal Laws is as follows:

4. Grading and Sentencing

(a) Rape is felony of the first degree where:

- (i) The victim was less than 18 years of age at the time the offense was committed; or,
- (ii) The offense involves gang rape as defined in the sub-paragraph 2 above; or
- (iii) The act of rape complained of results in either permanent disability or serious bodily injury to the victim; or,
- (iv) At the time of the relevant act or immediately before it began the defendant threatened the victim with a firearm or other deadly weapon.

(b) The maximum sentence for first-degree rape shall be life imprisonment, and for the purpose of bail it shall be treated as per capital offenses under section 13.1.1; Capital Offenses of the Criminal Procedure Law.

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

In this case the Court finds the Co-appellant Sheriff act not being done under the conditions set out in 4(a)(i)-(iv), his act constituted a second-degree felony. We therefore modify his sentence by the lower court of thirty years to two years.

With regards to the co-appellant David Onanah, this court says that the evidence produced by the private prosecutrix does not sufficiently establish that co-appellant David Onanah was involved in sexual intercourse with her as her testimony was inconsistent and contradictory. It is trite law that “a judgment in a criminal case must be supported by proof of all elements of the crimes charged beyond a reasonable doubt”. *Heith v. Republic of Liberia*, 39 LLR 50 (2013). Also, where a defendant’s plea in a criminal case is “not guilty”, the burden of proof shifts to the State to establish the defendant’s guilt conclusively without any rational doubt, otherwise, a judgment of conviction will not be sustained by this Court. *Keller v. Republic of Liberia*, 28 LLR 49, 53 (1979).

We believe that the private prosecutrix involvement of Co-appellant David Onanah in her accusation of rape stems from his exposure of her picture on his campus. Co-appellant Onanah testified that when he returned from school the evening of May 16, 2024, after the alleged incident was said to have occurred, he met the private prosecutrix and one Umu Sow at the Club about 6:30 PM, and the private prosecutrix spoke to him in a happy mood as he passed. The private prosecutrix failed to rebut this statement of Onanah. Our question therefore is, if Onanah had not taken the naked photo of the private prosecutrix on his bed and shown it to persons at his school, would her complaint, accusing the appellants of rape have been filed with the police?

Our courts have recently been inundated with cases where the privacy of females involved in sexual activities have been exposed by persons on social media. We note that our Penal Code Chapter 19.1 *Offenses Against Right to Privacy*, section 1 (b) provides that it is a violation of privacy for one to install in any private place without the consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in such place, or uses any such unauthorized installation. And this court has held that for the offense of violation of privacy to lie, the person whose photo, as in this case, was allegedly taken without his/her consent must be in place where he/she reasonably expects to be safe from intrusion whether casual or hostile. That is, he/she must be an invitee, guest, or a resident to fall within the meaning of the statute (*Ansu Jallah Kamara et al. vs R.L.*, Supreme Court’s Opinion, October Term, A.D. 2022). A person commits a first-degree misdemeanor who violates the privacy statute. Sentencing for this grade of offense is a definite term of imprisonment of no more than one year.

In this case, the private prosecutrix visit was based on the consent of the appellants who escorted her to co-appellant’s Onanah house; therefore, it was reasonably expected that she would be safe from surveillance of her privacy during her brief stay at the co-appellant’s home. Hence, the taking of her naked photograph by Co-appellant Onanah and showing it to his school mates violated that reasonable expectation of privacy which the private prosecutrix was entitled to as a matter of law. He is therefore sentenced to an imprisonment term of one (1) year

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the 11th Judicial Circuit, Tubmanburg, Bomi County, adjudging the appellant Abdullah Sheriff guilty of the crime of rape is hereby affirmed; however, his sentence of thirty (30) years imprisonment is modified to an imprisonment term of two (2) years. That as to Co-appellant David Onanah, the lower court ruling finding him guilty of rape and sentencing him to thirty (30) years imprisonment is reversed. The Court has however found evidence that the Co-appellant Onanah did violate the private prosecutrix's right to privacy and he is therefore sentenced to the maximum imprisonment term of one (1) year.

Where the appellants have remained in prison during the pendency of this appeal, same is incorporated in their sentences and should so be computed. The Clerk of this Court is hereby ordered to send a Mandate to the 11th Judicial Circuit, commanding the judge presiding therein to resume jurisdiction over this case and give effect to the Judgment emanating from this Opinion. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLORS WILLIAM MOORE JOHNSON AND T. JOSEPH B. DEBBLAY OF THE OFFICE OF PUBLIC DEFENSE APPEARED FOR THE APPELLANTS. COUNSELLORS J. ADOLPHUS KARNUAH, ALOYSIUS ALLISON AND ALHAJI SWALIHO SESSAY OF THE MINISTRY OF JUSTICE APPEARED FOR THE STATE.