

IN THE HIGH COURT OF SIERRA LEONE  
HOLDEN AT FREETOWN  
THE STATE  
VS.

1. SOLOMON LEBBIE
2. MARCUS BANGURA

BEFORE THE HONOURABLE JUSTICE MIATTA M. SAMBA, J.  
DATED THE 24<sup>TH</sup> DAY OF FEBRUARY 2018

Counsel:

A.J.M. Bockarie Esq and E.Y Mannah for the State  
Legal Aid Board for the Accused Persons

Judgment

1. The accused, Solomon Lebbie and Marcus Bangura, stand charged on a one Count Indictment dated 2<sup>nd</sup> day August 2016 with the offence of wounding with intent contrary to Section 18 of the Offences against the Person's Act, 1861. The Prosecution's allegation is that on the 1<sup>st</sup> day of September 2015, at Freetown in the Western Area of the Republic of Sierra Leone, the accused, Solomon Lebbie and Marcus Bangura wounded Marie Conteh with intent to cause him grievous bodily harm.
2. Section 18 of the Offences against the Persons' Act 1861 provides as follows:

*Whosoever shall unlawfully and maliciously by any means whatsoever wound or cause any grievous bodily harm to any person ... with intent to do some ... grievous bodily harm to any person ... shall be guilty of a felony, and being convicted thereof shall be liable ... to be kept in penal servitude for life ....*

- 2.1. Grievous bodily harm as appears in section 18 of the Offences Against the Persons' Act (OAPA) 1861 means nothing more than serious bodily harm. The commission of a Section 18 OAPA 1861 offence does not necessarily involve a battery. For the prosecution to secure a conviction on a Section 18 offence, it must prove specifically that the accused person caused grievous bodily harm to the victim named in the Indictment with the specific intent of malice. If they fail to do this, then, if there is evidence that the accused may have been reckless as to whether injury was caused to the victim or not, then the accused would be guilty of an offence under Section 20 OAPA 1861, if he is charged with one but not one under Section 18 OAPA 1861.

**3. Burden and standard of proof**

- 3.1. This Court is sitting both as a Tribunal of Fact and as a Tribunal of Law. I must therefore keep in mind and in my view, at all times, the legal requirement that in all criminal cases, it is the duty of the prosecution to prove its case beyond reasonable doubt. It bears the

burden of proving beyond a reasonable doubt every element of the offence or the offence with which the accused person is charged.

- 3.2. If I have any doubt in my mind as to the guilt or otherwise of the accused person in respect of any or all of the charges against him in the Indictment, I have a duty to acquit and discharge that person of that Charge or Charges. I must be satisfied in my mind so that I am sure that the accused person has not only committed the unlawful act charged in the Indictment but that he did so with the requisite *mens rea*; i.e. I am also mindful of the principle that even if I do not believe the version of the events put by the defence, I must give it the benefit of the doubt if the prosecution has not proved its case beyond all reasonable doubt.
- 3.3. No particular form of words are "sacrosanct or absolutely necessary" as was pointed out by SIR BANKOLE JONES, P in the Court of Appeal in *Koroma Vs. R* (1964-66) ALR SL 542 at 548 LL 4-5. What is required is that it is made clear by or to the Tribunal of fact, as the case may be, that it is for the Prosecution to establish the guilt of the accused beyond a reasonable doubt. A wrong direction on this most important issue will result in a conviction being quashed. See the judgment of Livesey Luke, JSC at pgs 11-13 in *Sahr M'Bambay Vs. The State* Cr. App 31/71 CA unreported.
- 3.4. Referring to the case of *Woolmington Vs. DPP*, Luke, JSC said at page 12 of his judgment that "if at the end of the whole case, there is a reasonable doubt created by the evidence given either by the prosecution or the prisoner ... the prosecution has not made out the case and the prisoner is entitled to an acquittal." According to Tambiah JA at page 358 LL 3-5, "The onus is never on the accused to establish this defence any more than it is upon him to establish provocation or any other defence apart from that of insanity." The accused in that case pleaded self-defence. The same point was re-stated by Awoonor-Renner JSC in *Franklyn Kenny Vs The State*, Supreme Court Cri/App 2/28 unreported at pages 6&7.
- 3.5. On file is an instrument under the hands of the DPP dated 19<sup>th</sup> day of August 2015 for trial by Judge made pursuant to Section 144(2) of the CPA No. 32 of 1965 as repealed and replaced by Section 3 of the CP Amendment Act No. 11 of 1981. No objection being made to the application, Bockarie's application was granted by this Court.

#### **4. EVIDENCE ANALYSIS**

4.1. PW1 was DPC 10174, Idrissa Massa Bangura, attached to the CID Adonkia Police Station. He said he received a complaint from one Sheku Sesay on the 1<sup>st</sup> day of September 2015 of wounding with intent against the Accused persons and he it was who investigated the matter. He said he issued a Police Medical Report Form in duplicate to

Sheku Sesay on behalf of his wife, Marie Conteh, the victim herein, for examination and treatment. He paid a visit to the Emergency Hospital where the victim was admitted and treated and he observed injuries on her face. He identified Exhibit Z as the endorsed Medical Form. He said he obtained statements from the complainant and her witnesses.

4.2.1. PW1 told the Court that on the 2<sup>nd</sup> day of September 2015, together with DPC 14330 Yamba A.J, he cautioned and contemporaneously interviewed the Accused persons separately in Krio. The Accused he said, made their responses separately in Krio which was recorded in English. The Accused persons admitted their statements to be true and correct by affixing their right hand thumb prints separately. The witness tendered the Accused persons Voluntary Caution Statements as Exhibits A1-9 and B1-9 respectively both of which were read in open Court.

4.2.2. PW1 told the Court that together with Sergeant 6607 Marrah on the same day, that is 2<sup>nd</sup> September 2015, he cautioned and charged both Accused persons for the offence of wounding with intent to cause grievous bodily harm. He tendered each Accused person's charge statement as Exhibits C1-3 and D1-4 respectively.

4.2.3. In answer to questions put to him in cross examination, the witness told the Court that he did visit the crime scene and interviewed witnesses including one Abubakarr Sesay, who made their statements to him.

4.3. PW2 was DPC 11640 Conteh J.T attached to the Adonkia Police Station as the Scene of Crime Officer. He told the Court that he knows the Complainant, Marie Conteh and that he does not know the Accused persons. He recalls the 10<sup>th</sup> day of September 2015 when whilst on duty, he was instructed by Detective Police Inspector, to visit the Complainant upon her discharge from hospital. The witness told the Court that he did as was instructed and that upon his visit, he observed injuries on the body of the Complainant which the Complainant told him were inflicted on him by the Accused persons. He said he took photos of the injuries which he printed into pictures which said pictures he tendered as Exhibits E1 & 2.

4.3.1. In answer to questions put to him in cross examination, the witness told the Court that he took the said photos on the 10<sup>th</sup> day of September 2015 in the afternoon hours. He said he saw scars on the left head and eye brow of the victim.

4.4. PW3 was the Complainant/Victim, Marie Conteh. She identified A1 and A2 as her assailants. She recalled 1<sup>st</sup> September 2015 which she told the Court was a Tuesday. She told the Court that she was in her room bathing her grandchild when she heard voices outside her compound saying "Future Friends dae cam oh". A1 and A2 then

entered into her room where she was busy bathing her grandchild and dragged her out of her room saying that since the Complainant's son, Mohamed Sesay was not home, the Complainant should be dealt with.

4.4.1. PW3 told the Court that A1 then used a machete and chopped her on the left of her head and A2 stabbed her in the eyebrow with a knife; that she fell to the ground and became unconscious and only gained consciousness at the Emergency hospital. She said she suffered a lot of pain. She spent three nights at the Emergency hospital and was discharged on the Friday after the incident hereinbefore referred. She was then referred to the Connaught hospital and thence to other hospitals for treatment due to injuries sustained at the hands of the Accused persons. She made a report against the Accused Persons and she told the Court that up to date, she is still suffering pains from the injuries inflicted on her by both Accused persons. She can no longer do her gardening on which she use to survive and cannot see properly. She still takes treatment for the pains she suffered at the hands of both Accused persons.

4.4.2. In answer to questions put to her in cross examination, the witness told the Court that she did not know A1 and A2 before the day they attacked her. She reiterated that A1 and A2 entered her room at about 10:00am while she was bathing her grandchild and that the mother of her grandchild was also present in the room when A1 and A2 entered therein. She agreed with Counsel that A1 hit her with a machete which she said was a long machete and that A2 used a knife to stab her on her left eye brow. I wonder why Counsel would ask questions in chief which will give obvious answers in support of the Prosecution's case.

4.5. PW4 was Sheku Sesay who told the Court he knows both Accused persons who he said belong to a group called 'Future Friends'. He identified PW3 as his wife. He recalls the 1<sup>st</sup> day of September 2015 when while at Waterloo he was called upon to return home which he did. He went to the Emergency hospital where he found his wife, PW3 on oxygen; she spent 4 days, that is 3 nights at the Emergency hospital after which she went for further treatment at the Connaught hospital and the Lumley hospital. He told the Court that he returned an endorsed Medical Report Form to the police, which said Medical Report Form he tendered for identification as Exhibit Z.

4.5.1. In answer to questions put to him in cross examination, PW4 told the Court that he has known both Accused persons for a period of 2 to 3 years. He said he does not know about the organization, 'Red Flag' but that he knows about the existence of an organization named 'Future Friends'.

4.6. PW5 was Haja Mariama Kebbay who said she was present when they attacked and wounded Marie Conteh, PW3 whom she identified

as her mother in law. She recalls 1<sup>st</sup> day of September 2015. She was at home where PW3 was bathing her new born baby in a room when she heard the words "They are coming, they are coming". She said she watched out of the window and saw a lot of people, some carrying sticks and others carrying machetes whilst others pelted the house with stones. She said three people including the A1 and A2 entered the house where PW3 was. He heard the three persons say if the person they were at the house for is unavailable, that person's mother must be dealt with.

4.6.1. PW5 told the Court that the three persons, including A1 and A2 then dragged PW3 to the back of the house and she grabbed her baby and ran into the bathroom from where she watched through the bathroom window. She told the Court that she saw A1 chop PW3 with a machete and when A2 stabbed PW3 with a knife on the left part of her head. She said A1 and A2 and the third person whose name she could not remember left Marie Conteh, PW3 bleeding as she fell unconscious.

4.6.2. In answer to questions put to her in cross examination, PW5 reiterated that she was home when the incident took place and that herself, her new born baby and PW3 were the only ones at home when the incident happened. She reiterated that she saw 3 people including A1 and A2 enter the victim, Marie Conteh's house and that those three persons were part of the crowd of people she referred to in chief. She said the bathroom where she hid as referred in chief is inside PW3's house and that she saw what was happening at the back of the house where the victim, Marie Conteh was dragged, from the bathroom window. She again reiterated that Marie Conteh was chopped with a machete by A1 and stabbed with a knife by A2.

4.7. PW1 was recalled upon an application by the Prosecutor and on the 22<sup>nd</sup> day of February 2017; he tendered the endorsed Medical Report Form hereinbefore referred as Exhibit F. In answer to questions put to him in cross examination, the witness told the Court that he had a reason to issue a Medical Report Form to the victim who he said had made a complaint to the police against the Accused persons for beating and wounding her. I wonder why Counsel had to ask questions as to why a Medical Report Form was issued when the answer would have been so obvious in support of the Prosecution's case.

5. On the 3<sup>rd</sup> day of March 2017, the Prosecution closed the State's case against both the A1 and A2. She tendered the Committal Certificate in respect of both Accused persons as in Exhibits G1-2 and H1-2 respectively. Pursuant to Section 194 of the CPA, No. 32 of 1965, the Accused persons were put to his elections to wit:

a. Make his unsworn statement from the dock;

- b. Make a sworn statement from the witness stand;
- c. Rely on his statement to the police.

Both Accused persons chose to testify on oath.

6. A1 who is DW1 told the Court he is the Secretary General of "Future Friends Development Association" which objectives he told the Court include construction of roads in their local community and sensitization. He said the victim, Marie Conteh is his neighbor. He told the Court that between the 1<sup>st</sup> and 4<sup>th</sup> day of September 2015, himself and others were in police custody at the Adonkia Police Station for riotous conduct; that on the 1<sup>st</sup> day of September 2015, there was no incident between himself and PW3.

6.1. DW1 told the Court that on the 31<sup>st</sup> day of August 2015, he was called upon by the wife of a member of "Future Friends", Alfred Moseray who made a complaint against PW3. He said he went to the scene upon being informed, and that a fight ensued. He denied wounding PW3 as alleged. He told the Court that he was part of a crowd at whom PW3's son, Mohamed Sesay and Abubakarr Sesay threw bottles on the said 31<sup>st</sup> September 2015. He said he made a report at the police station on the 1<sup>st</sup> day of September 2015 but that they were arrested on allegations of wounding the victim, Marie Conteh.

6.1.1. In answer to questions put to him in cross examination, A1 reiterated that he was arrested by the police for riotous conduct; he said when he received a call from Alfred's wife, he went to the scene with 6 other persons including A2 and 5 other members of "Future Friends" whose names are on the Court records. He told the Court that the incident between Alfred's wife and PW3 was in respect of demarcation of land between themselves and PW3 and her family. He was referred to Exhibit A1-9 and told the Court that in retaliation of PW3's children throwing stones at them, that is the crowd of persons, "Future Friends" including A1 and A2, they also threw stones at PW3 and her family. He denied being arrested with a knife or machete.

7. A2, who is DW2 Marcus Bangura told the Court that he is the Assistant Secretary General of "Future Friends". He identified PW3, the victim herein as his neighbor. He told the Court that on 30<sup>th</sup> August 2015, whilst at Kobo junction, he saw Mohamed Sesay and Abu Sesay, who are PW3's sons and members of a click group called "Red Flag", demolishing their zinc structure and beating the wife of Alfred, one of their members of "Future Friends". He told the Court that on that same day, himself and other members of his group made a report to the Police Local Unit Commander and the Chief.

7.1. DW2 told the Court that on his way to see the persons who attacked Alfred's wife, he was pelted with bottles by PW3's sons

that DW3 and DW4's testimony that both A1 and A2 were incarcerated between the 30<sup>th</sup> August and 9<sup>th</sup> September 2015 cannot be true.

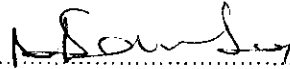
10. PW3's testimony of being wounded by A1 and A2 is corroborated by the testimony of PW5, who told the Court that she was an eye witness to the injuries suffered by PW3 at the hands of both A1 and A2 and another. As said, PW3's testimony and the Prosecution's case is further corroborated by the testimony and Voluntary Caution Statements of both A1 and A2 who I now find guilty for wounding Marie Conteh with intent to cause her grievous bodily harm contrary to Section 18 of the Offences Against the Person's Act, 1861.

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Hon. Jst. Miatta M. Samba, J

### **Sentencing**

Section 18 of the Offence against the Persons Act 1861 provides that a breach of the said section is punished by way of life imprisonment with penal servitude for

life. The Correctional Services Act 2014 prohibits penal servitude. I have heard the plea in mitigation by both convicts on their own behalf. One who commits a crime runs the time as prescribed by law. We do not need people who are prone to violence in society. Victims like Marie Conteh believe in the rule of law and she has looked up to the Court for redress; she could easily have lost her life. I therefore send you, Solomon Lebbie and Marcus Bangura to the Pademba Road Correctional Center for 2 years each, beginning to and hope you will each regret your actions and come out as peaceful people in society.



HON. JST. MIATTA MARIA SAMBA, J.