IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

vs

1. ALPHA SESAY
2. LAMIN KOROMA
3. MOHAMED KAMARA

COUNSEL:

Y S KOROMA ESQ State Counsel for the State
A K A BABER ESQ for the accused persons

JUDGMENT DELIVERED THE 30 DAY OF NOVEMBER,2011 BY
THE HONOURABLE MR JUSTICE N C BROWNE-MARKE,
JUSTICE OF APPEAL

INTRODUCTION - THE INDICTMENT

1. The accused persons are charged on a 5 Count Indictment with the following offences: Count 1, Conspiracy Contrary to Law; The particulars allege that 1st,2nd and 3rd accused persons on 17 June,2009 at Freetown in the Western Area of Sierra Leone, conspired together with other persons unknown to commit a felony, to wit, a Robbery. Count 2, Robbery Contrary to Section 23(2) of the Larceny Act,1916.The particulars allege that, 1st, 2nd and 3rd accused persons on 17 June,2009 at Freetown, robbed Mariatu Dumbuya of one bag of the value of Le50,000, containing Le450,000; 3 bundles of artificial hair of the value of Le120,000; and one Nokia push-up phone valued Le300,000 the property of Mariatu Dumbuya. In Count III, 1st accused alone is charged with the offence of Wounding with Intent contrary to Section 18 of the Offences against the Person Act,1861; In Count IV, 1st accused is charged with the lesser alternative offence of Wounding contrary to Section 20 of the same Act; and in Count V, 1st accused is again charged with the even lesser alternative offence of Assault Occasioning Actual Bodily Harm. In Count III, it is alleged 1st accused wounded Mariatu Dumbuya with intent to do her

grievous bodily harm; in Count IV, that he maliciously wounded her; and in Count V, that he assaulted her in a manner occasioning her actual bodily harm.

1. On 15 November,2010, the accused persons took their pleas before me. In Counts I and II, all 3 accused persons pleaded Not Guilty. In Counts III, IV and V, 1st accused alone, pleaded Not Guilty to all three charges. Proceedings were next taken on 21 February,2011. Then, Mr Koroma applied for amendments to the Indictment. He converted the original Robbery with Aggravation Count to Simple Robbery. The amendments are detailed on page 7 of my minutes, and on the Indictment itself. Also, as appears on the same page 7, and also on page 8, the Indictment was read over to the accused persons again, and their pleas taken. Pleas of Not Guilty were once more entered in respect of each Count.

ORDER FORTRIAL BY JUDGE ALONE

2. Mr Koroma applied for an Order for Trial by Judge Alone to be made, pursuant to an Application signed by the then Acting DPP, and dated 11 February,2011. The Order for Trial by Judge Alone, was made as of course by the Court.

ELEMENTS OF THE OFFENCES CHARGED

3. I shall first, go briefly through the elements of the offences with which the accused persons have been charged. In Count 1, the charge is Conspiracy Contrary to Law. On the basis of the evidence led, I do not think it necessary to make a finding in respect of this charge. There is no evidence of Conspiracy. And, besides, Robbery is an offence which one person could commit alone, or, which he could commit jointly with another. Further, and as I have always pointed out to the prosecution, a charge of Conspiracy simpliciter, is bad in Law for uncertainty and vagueness. The prosecution must allege the object of the Conspiracy in the Statement of Offence, not just in the particulars. When what is charged in one Count, is a Conspiracy to commit the substantive offence charged in the next Count, it would be rare for a Trial Judge, sitting alone, to consider, and to convict an accused of both offences. The prosecution should elect at the end of its case, which of the two offences, it would wish to leave to a jury, in a jury trial, for consideration. In a trial by Judge alone, since I

am the sole adjudicator of the facts and of the Law, no harm is really done, if the prosecution does not so elect at the close of its case. As I have now done, a Trial Judge would simply enter a verdict of Not Guilty in respect of the Conspiracy Count, if the evidence so warrants. I therefore find the accused persons Not Guilty in Count 1, and they are hereby Acquitted and Discharged on that Count.

ROBBERY

4. To turn to the offence charged in Count 2, Robbery contrary to Section 23(2) of the Larceny Act,1916 as amended by Act No.16 of 1971 states that: "*Every person who robs any person shall be guilty of felony and on conviction thereof, liable to imprisonment for life*", and to quote ARCHBOLD 35th Edition paragraph 1763: "*Robbery consists in the felonious and forcible taking from the person of another, or in his presence against his will, of any money or goods to any value, by violence, or putting him in fear.*" There must be an actual taking either by force or upon delivery. A carrying away must also be proved. The property must be taken from the person of the complainant, or, in his presence, and against his will. The prosecution must prove either that the complainant was actually in bodily fear, from the actions of the accused, at the time of the robbery; or, it must prove circumstances from which the tribunal of fact may presume such a degree of apprehension of danger as would induce the complainant or victim to part with his property. In this respect, if the circumstances proved by the prosecution, are calculated to create such a fear, the Court will not go on to enquire whether indeed, such a fear existed. The Law also requires that there must be more than a mere snatching of the property from the victim, and running away with the property so snatched. This is because fear cannot be presumed in such a case, due to the suddenness of the act of snatching, nowadays called "Mugging" in common parlance. But if in the taking some injury is done to the person robbed, or, there has been a previous struggle for the possession of the property, or some force used to obtain it, Robbery will be found to have been committed. Also, if threats are used by the accused to compel or force the victim to part with his property, this will also be robbery on the part of the accused. In this case, the prosecution is alleging and has set out to prove, that all these elements were present in the actions of the accused persons. There were forcible takings of

various properties from the person of Mariatu Dumbuya; she was put in fear by these actions; and she was wounded in the process of being robbed.

SECTIONS 18, 20 & 47 OAPA,1861

5. I now turn to the offences against the persons, Section 18 of the Offences against the person Act,1861 - OAPA,1861 states that "*Whosoever shall unlawfully and maliciously by any means whatsoever wound....with intent.....to do some grievous bodily harm to any person, ...shall be guilty of felony, and being convicted thereof shall be liable to imprisonment for life.*" Section 20 of the OAPA,1861 provides that: "*Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanour, and being convicted thereof shall be liable to imprisonment for.....five years.*" Assault Occasioning Actual Bodily Harm, is a Common Law offence now punishable for a term of imprisonment not exceeding 5 years by virtue of the provisions of the OAPA,1861 Section 47. An assault is an attempt to commit a forcible crime against the person of another, such as an attempt to commit battery, and also a battery actually committed. A Battery includes beating and wounding; it includes not just striking the victim forcibly with the hand or with a weapon, but also laying hold of the victim's person or clothes, in an angry, revengeful, rude, insolent or hostile manner. Actual Bodily Harm need not be an injury of a permanent character; nor need it be serious bodily harm as contemplated by Section 18 of the OAPA,1861. Any degree of harm which affects the victim, will be considered actual bodily harm.
6. To Wound under Section 18 of the OAPA,1861 means the continuity of the skin must be broken. The outer covering of the body must be divided. But a division of the internal skin within the cheeks or lips could constitute a wound within the meaning of the statute. Once the skin is broken, the nature of the instrument used to cause the wound is immaterial. Wounds include lacerated wounds, incised wounds, punctured wounds, contused wounds. The wound must have been given by the act of the person accused. For the prosecution to secure a conviction under this charge, it must prove that the wound was caused by the 1st accused with the specific intent to cause grievous bodily harm.

7. In my Judgment in the case of THE STATE v ISATA KAMARA & 2 OTHERS- Judgment delivered 20 June,2011 - I explained what the requirements of the Law in this regard, were. There, I said, inter alia: *"Grievous Bodily Harm in Section 18 of the OAPA,1861 means nothing more than serious Bodily Harm. So that where the offence charged is Wounding with intent to cause grievous bodily harm, the prosecution has to prove that the victim suffered a wound, in that the continuity of the skin i.e. the dermis and epidermis, was broken; or that there was a break in the inner skin within the cheek, lip or urethra; and also, that the wound was inflicted or caused with intent to cause serious bodily harm. If the charge is Causing grievous bodily harm with intent, what the prosecution has to prove is that the accused caused serious bodily harm to the victim with the intent to do so.*
8. *In the Section 20 offences, the prosecution has to prove that a wound was caused or inflicted in the manner described above; and/or that serious bodily harm was inflicted but without the specific intent of causing serious bodily harm. As far as infliction of grievous bodily harm is concerned in the recent case of IRELAND [1998] AC 147 LORD STEYN in the House of Lords held at page 160 that harm could be inflicted without the need for an assault, and that in the context of the OAPA,1861 there was no radical divergence between the meanings of the words 'cause' or 'inflict.' Grievous bodily harm within the context of Section 20 could thus be inflicted by means of menacing telephone calls which gave rise to serious psychiatric injury, whether or not the injury was caused by fear of imminent physical attack.*
9. *Further also, in Section 20 the offence must be committed maliciously. Maliciousness requires an intent to do some kind of harm to another person or recklessness, in the subjective sense, as to whether any such harm might be caused. The harm intended or foreseen by the defendant need not amount to a wound or grievous bodily harm; an intent to cause minor injury, which inadvertently results in the infliction of a wound or serious injury, is sufficient to found liability under Section 20. On the other hand, there cannot ordinarily be liability under section 20 if the defendant was unaware that his conduct might cause any injury at all.*
10. *AOABH is an alternative to a Section 20 offence, though not to a Section 18. This is because, the commission of a Section 18 offence does not*

necessarily involve a battery. If the prosecution fails to prove the specific intent required for conviction of a Section 18 offence; and to prove the general intent necessary for conviction of a Section 20 offence, then it is still open to the tribunal of fact, if the evidence so warrants, to return, or to deliver a verdict of guilty of the offence of AOABH. To be found guilty of this offence, there must be an assault, or a battery, and it must be established that this assault or battery occasioned i.e. caused, the victim actual bodily harm. As long as there is a direct assault or battery, it does not matter if the bodily harm was suffered indirectly. In ROBERTS(1971) 56 Cr App R 95 STEPHENSON,LJ said, inter alia, "the test is: was her injury the natural result of what the accused said and did, in the sense that it was something that could reasonably have been foreseen as the consequence of what he was saying and doing?" Actual Bodily Harm has been defined as any injury which is calculated to interfere with the health and comfort of the victim. Minor cuts and bruises may satisfy this test.

11. The mens rea for AOABH is in many respects the same as that for Assault and Battery. The assault or battery must be committed intentionally or recklessly in the subjective sense. The accused must have known that the criminal act would result in harm or injury being caused to the victim; or, was reckless whether such harm would be caused or not irrespective of whether the harm or injury caused was foreseeable. If the injury is caused, it need not even be proved that the particular injury was foreseeable, because this element of the offence is one of strict liability.

12. So, in this case, for the prosecution to secure a conviction on the Section 18 Counts, it must prove specifically that the accused persons inflicted or caused the wounds, or caused grievous bodily harm to the victims named in the Indictment, with the specific intent of causing grievous bodily harm. If they fail to do this, then, if there is evidence that each of them may have been reckless as to whether injury was caused to the victim in each case or not, then each of the accused would be guilty of an offence under Section 20 if he is charged with one. If the prosecution fails to prove this lesser mens rea as well, or to lead evidence from which it could be inferred, then I would have to consider whether each of the accused charged in those Counts, is guilty of the much lesser offence of AOABH.

If of course, the prosecution cannot, or fails to prove the elements necessary to constitute the offence of AOABH in each case, then each accused person is entitled to an acquittal. In the case of Count 10, once the prosecution has proved beyond a reasonable doubt that excreta was flung on PW7, it would be for the Court to infer that she was annoyed by this act." These are also, (with minor modifications relating to the fact there is no charge in this Indictment for Causing Grievous Bodily Harm with intent, nor for Inflicting Grievous Bodily Harm), the matters the prosecution must prove beyond all reasonable doubt in this case.

BURDEN AND STANDARD OF PROOF

13. I shall now go on to deal with the burden and standard of proof in criminal cases: i.e. to explain what the prosecution must do in order to secure a conviction, and to what extent it should be done. This Court is sitting both as a Tribunal of Fact, and as the Tribunal of Law. I must thus, 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 all reasonable doubt. It bears the burden of proving beyond a reasonable doubt every element of the offence or the offences, with which the Accused persons are charged. If there is any doubt in my mind, as to the guilt or otherwise of the Accused persons, in respect of any, or all of the charges in the Indictment, I have a duty to acquit and discharge the Accused persons of that charge or charges. I must be satisfied in my mind, so that I am sure that the Accused persons have not only committed the unlawful acts charged in the Indictment, but that each of them did so with the requisite Mens Rea: i.e. the acts were done wilfully as explained earlier in this Judgment. I am also mindful of the principle that even if I do not believe the version of events put forward by the Defence, I must give it the benefit of the doubt if the prosecution has not proved its case beyond all reasonable doubt. No particular form of words are "*sacrosanct or absolutely* necessary" as was pointed out by **SIR SAMUEL BANKOLE JONES,P** in the Court of Appeal in **KOROMA v R [1964-66] ALR SL 542 at 548 LL4-5**. 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: **SAHR M'BAMBAY v THE STATE Cr. App 31/74 CA** unreported - the cyclostyled Judgement of **LIVESEY LUKE,JSC at pages 11-13.** At page **12 LUKE,JSC citing WOOLMINGTON v R** says, inter alia, 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.*" **KARGBO v R[1968-69] ALR SL 354 C.A. per TAMBIAH, JA at 358 LL3-5:** "*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.*" There, the accused pleaded self-defence. The point was again hammered home by AWOONOR-RENNER,JSC in **FRANKLIN KENNY v THE STATE Supreme Court Cr App 2/82** (unreported) at pages 6-7 of her cyclostyled judgment.

14. I must also bear in mind, and keep in view at all times the fact that though all three Accused persons are tried jointly, the case against each of them has to be treated separately. At no time must I treat evidence which is only applicable to, or which inculpates only one Accused person, against the other Accused person. Each Accused person is entitled to an acquittal, if there is no evidence, direct or circumstantial, establishing his guilt, independent of the evidence against his co-Accused.

EVIDENCE

15. I shall now go on to deal with the evidence led in support of the various charges. The victim of the Robbery and Wounding, Mariatu Dumbuya, gave evidence as PW1. She said she was a hairdresser, and lived at Dworzak Farm. She recalled 17 June,2009. She was on her way home when she was accosted by the accused persons who surrounded her. There were other people around. One of the accused took her phone; another took her bag; and yet another stabbed her on her left arm. It was 1st accused who stabbed her; 2nd accused grabbed her phone; 3rd accused grabbed her bag. She bled from the stab wound. She reported the robbery at the Police Station, where she was given a Medical Report Form to take to the hospital. She went to a neighbour, Tamba Sewa's house for first aid, and there the wound was stitched. She went to the Police Station in the morning. She took a picture of her arm. She went to

see the Police Doctor, Dr Rashida Kamara who completed in the Police Medical Report Form which she returned to the Police Station. She made a statement to the Police. She also indentified the Medical Report Form. Under cross-examination by Mr Barber, PW1 said she went to see the Doctor on 18 June,2009.

16. PW2 was Joseph Kalawa, initially wrongly described as Joseph Sulaiman on the back of the Indictment. The misnomer was corrected by the Court on Application made to it by Mr Koroma on 11 April,2011 as recorded on page 11 of my minutes. He lives at 24 Dworzak Farm and knew the victim, PW1. He recognised the accused persons. On 17 June,2009 he received a phone call, as a result of which he went to the place where PW1 was. She was bleeding seriously. He took her to the Police Station, and to a nurse for treatment, and the next day, to the hospital to see the Police Doctor. On their return home, PW1 told him her phone had been stolen. He called the telephone number three times but there was no response. He therefore went to the scene, and again called the number. Somebody came out of a house approaching him. He was called Carter. He asked PW2 what had happened. He told Carter his Fiance's phone had been stolen. He put his hand in his pocket, and took out a phone. He said he had found it under a step. PW2 told Carter it was PW1's phone. Carter gave him the phone. Carter advised that they try to entrap the thief by waiting to see whether he would come looking for the phone where, he, Carter had found it. PW2 went to this place where the phone was said to have been found with two neighbours, Hassan Bangura and Denis Kpundeh. They waited for about 30 minutes. It was raining and it was dark. He saw two persons approaching. One person went straight up the road. The other, the second accused, went to the spot where Carter had said he had found the phone. PW2 arrested 2nd accused. He was taken to the Police Station. PW2 asked 2nd accused what he had been looking for; 2nd accused said nothing. The next morning, PW2 returned to the Police Station. 2nd accused was there. He said Alpha had stabbed PW1, and he had stolen the phone. The Police advised that they try and get Alpha. PW2 had known Alpha before. A few days later, Alpha was arrested and taken to the New England Police Station. He identified 1st accused as Alpha. He was not cross-examined by Mr Barber.

17. PW3 was Bai Francis Kamara, wrongly described on the back of the Indictment as Bai Banas Kamara. The misnomer was corrected on 18 April,2011 as appears on page 14 of my minutes. He is Police Sergeant 4326 attached to New England Police Station, Investigation Branch. He knew PW1 whom he had seen at the Police Station on 17 June,2009. Another Officer had issued her the Police Medical Report Form. On 19 June,2009 he obtained a voluntary cautioned statement from 3rd accused. The witness stopped at this point because of the absence of Defence Counsel as recorded on ~~page~~ on page 15 of my minutes. This was on 18 April,2011. For various reasons as recorded on pages 15-21, PW3 was only able to conclude his evidence on 20 June,2011. In the interim another witness had to be interposed with leave of the Court. On resumption of his testimony, PW3 tendered in evidence the statement of 3rd accused as exhibit C pages 1&2, and read it out. He also tendered as exhibit D the charge statement of 3rd accused. On 18 June,2009 he obtained a voluntary cautioned statement from 2nd accused which he tendered as exhibit E pages 1&2; and on the same day obtained a charge statement which he tendered as exhibit F.
18. Under cross-examination by Mr Barber, PW3 said that 2nd accused told him he was a school boy, but did not find out his school. He said he was investigating the snatching of a mobile phone. He could not remember the make of the phone. The complainant was sent for medical treatment. He had received the medical report form back from the Doctor before he charged 2nd accused.
19. I shall now deal with the statements of the 2rd and 3rd accused respectively. The statements of accused persons are tendered as exceptions to the hearsay rule. They are indeed out of Court assertions made by a person who is not called as a witness by the prosecution. But they are admitted because they provide evidence of what an accused person said when confronted with the accusation that he has committed the crime in question. If they are confessions, and they are properly proved, they could in themselves ground a conviction without further evidence though the cases show that, usually, it is incumbent on the trial Judge to look for other evidence which supports the truth of the confession – see *THE STATE v ARCHILLA & OTHERS Judgment delivered 21 April,2009 where I said at paragraph 202: The Law says*

that a statement in which an accused person admits his culpability for an offence with which he is charged, is a confession. The Law provides also, that once I have admitted that confession as having been freely and voluntarily made, into evidence, my next duty is to find evidence supporting the truth of what is stated therein.....the Law says further that I can convict him on his confession alone. His confession does not require corroboration. I have already said that there is evidence that his confession is true. In ***KULANGBANDA v R [1957-60] ALR SL 306 C.A. BAIRAMIAN, CJ*** *said at page 307 citing the headnote of* ***R v SYKES [1913] 8 Cr App R ,233*** *that: "a confession properly proved in law needs no corroboration to found a conviction, although in practice there is invariably some corroboration....the headnote of KANU v R 14 WACA at page 30 reads... the confession.....was free and voluntary and in itself fully consistent and probable, and the inculpating statements were corroborated by several facts testified to by witnesses for the Crown - which showed that the confessions were true."*

20. In exhibit E, the 2nd accused admits that *"....I still maintain that I was the one who snatched complainant's mobile phone, I hid it somewhere on top the big stone at the place the incident occurred. I was in the company with the following on that day when we physically attacked complainant. There nick names are as follows: T PIG the others I cannot recollect....I don't know if anything else that might have happened*". We have the evidence of PW1 that she was robbed of her phone. We also have the evidence of PW2 that he had arrested 2nd accused on a tip off given by one Carter, and that in his presence at the Police Station, 2nd accused admitted he had stolen the phone. The testimony of both witnesses, if believed, constitutes evidence that the 2nd accused's confession is true.

21. On the other hand, exhibit C is a denial. In it, 3rd accused said he had been wrongly identified by a lady who had accused him "*...of being the person at one point in time threatened her with a knife...*" Presumably, he is here referring to PW1, the victim of the attack. He goes on talk about an alleged attack on PW2, but as this supposed attack is not the subject matter of a charge in the Indictment, I shall say no more about it. The guilt or innocence of 3rd accused depends on the quality of the identification evidence.

22. The interposed witness, PW4, was Sgt 275 Issa Mansaray attached to New England Police Station. He recognised PW1. On 19 June,2009 he was present when a voluntary cautioned and charge statements respectively, were obtained from 1st accused. He tendered them respectively, as exhibits A pages 1-4 and B pages 1&2. Mr Barber asked him a few questions in cross-examination.

23. In exhibit A 1st accused describes himself as a driver, and alleges that the allegation made against him is untrue. He said he was on his way home on the night of 17 June,2009 when he came across some people beating a boy called ZIGGIE whose name was really Lamin Koroma. This is the 2nd accused. 2nd accused asked him to rescue him from his attackers. After much talk, without the alleged stolen phone being found on 2nd accused, 1st accused was able to persuade the crowd to release 2nd accused. He then left the scene, and went home. About 2 days later, the date seems unclear - exhibit A bears two dates: 19 June,2009 and 21 June,2009. He was doing his laundry at a stream in George Brook when he was arrested as one of those who had stabbed and robbed Mariatu, i.e. PW1. He said he had never done so, and had never set eyes on Mariatu before. In exhibit B, he relies on the contents of exhibit A. 1st accused's statement is thus a denial of his involvement in the robbery. He is here alleging that his identification by PW1 as one of her attackers, is incorrect. It was PW2 who said that whilst at the Police Station, 2nd accused had said that 1st accused had stabbed PW1. This accusation was not put directly to 1st accused; nor, does it appear, an identification parade was held so that PW1 could positively identify her assailant or assailants. A statement made by an accused person in the absence of another, implicating that accused person, is not evidence against that accused person. It only becomes evidence against that accused, if the specific allegation is put to him and he admits its truth; or, he denies the allegation but his denial is disbelieved by the tribunal of fact for one reason or the other; or, it is put to him in circumstances in which a response is expected from him, and he says nothing. So, what PW2 says 2nd accused said at the Police Station does not really constitute admissible evidence against 1st accused, since it appears, 1st accused was not present when it was made. In such circumstances, an identification parade was essential, and the specific allegation ought to have been put to the accused.

24. The necessity for an identification parade to be held, and the dangers of convicting an accused person on the identification of a victim who has only seen the accused for the first time after the attack, say, in Court, have been emphasised in the cases, the most prominent of which is R v TURNBULL. A dock identification, such as was done in this case is not prohibited by Law. But Judges do discourage it for the simple reason that it could be done as a result of prompting: the presence of the accused in Court, handcuffed, for instance, to a Prison Officer. It is an unfair and unsatisfactory procedure as was said by the Privy Council in EDWARDS v R [2006] UKPC 29. In TURNBULL[1976] 3 All ER 549, the Court of Appeal laid down the guidelines which have been accepted in most Common Law jurisdictions. Caution should be exercised where the conviction of an accused person rests on visual identification only. A mistaken witness could be a convincing one. The circumstances in which the identification was done should be examined closely. How long did the witness have the suspect under observation? At what distance? In what light? Had the witness ever seen the accused before. The Court said further, "*When in the judgment of the Judge the quality of the identifying evidence is poor, as for example when it depends only on a fleeting glance or on longer observation made in difficult conditions, the situation is very different. The Judge should then withdraw the case from the jury and direct an acquittal unless there is other evidence which goes to support the correctness of the identification...*" No doubt, the conditions under which PW1 said she saw 1st accused were difficult: she was under attack, and therefore under pressure. It would be dangerous to rely on her evidence alone to sustain a conviction. If, for instance, the bag stolen, had been found in 1st accused's possession, or in his house, this may have gone some way to show, under the doctrine of recent possession, that he was her assailant. But in the absence of such evidence, it would be dangerous for this Court to rely PW1's identification of 1st accused in Court, whether this Court, or the lower Court, as the sole basis for a conviction for such a serious offence.

25. To return to the evidence, PW5 was Dr Rashida Kamara, the Police Doctor. She tendered in evidence as exhibit G pages 1 & 2, the Police Medical Report Form, duly completed by her. It confirms that PW1 sustained a wound to her arm which had been sutured. This supports the

charge of Wounding, and appears grave enough to constitute an offence under Section 18 of the OAPA,1861.

26. The last witness was PW6, PC 10238Santigie Sesay, attached to New Englandpolice Station as Exhibits Clerk. He tendered in Court a mobile telephone handed over to him by one Sgt 2031 Hassan. Sgt Hassan was not a witness in this Court, and his absence, and the evidence of this witness, gave rise to a no-case submission made by Mr Barber on behalf of 2nd accused. Sgt Hassan Dumbuya, whose name appears at the back of the Indictment, according to the State Counsel, Mr Koroma, had been sent on secondment to Darfur. His presence in Court could not therefore be secured without expense and considerable delay. On application made to the Court by Mr Koroma on 6 July,2011 as recorded on pages 27-28 of my minutes, I ordered that the prosecution could be allowed to dispense with calling him as a witness. Mr Barber had no objection to the Application.

27. At the close of PW6's evidence, Mr Koroma tendered in evidence the Committal Warrants of all accused persons as exhibits J pages 1-4; K pages1-5; and L pages 1-4. The prosecution rested thereafter. Mr Barber opted to make a no-case submission on behalf of 2nd accused. His submission was based in part, on the non-identification of the phone by PW1. For the reasons I stated on pages 30-31 of my minutes, his submission was untenable, and I rejected the same.

DEFENCE CASE

28. The accused persons were accordingly put to their election in accordance with the provisions of Section 194 of the Criminal Procedure Act,1965 - CPA,1965. 1st accused relied on his statements to the Police, and called no witnesses. 2nd accused made an unsworn statement from the dock, recorded on page 33. He denied the allegation that he had stolen PW1's phone. He said that he was being taken to the Police Station when the people who were taking him there saw the phone on top of a stone. He was beaten until he was taken to the Police Station. I do not believe his version of events. It was not subjected to cross-examination. I believe the evidence of PW2 about how 2nd accused was arrested; and I also believe that his confession in exhibit E is true. 2nd accused had no witnesses. The 3rd accused elected to rely on his statements to the

Police, and called no witnesses. There the Defence rested. Both Counsel addressed the Court as recorded on pages 40-41 of my minutes. Thereafter Judgment was reserved.

29. I have reviewed the evidence and the Law. It is obvious that the prosecution has not been able to prove its case beyond all reasonable doubt against both 1st and 3rd accused persons. It is not even clear how it is that 3rd accused came to be charged in this Indictment. In the case of 1st accused, his presence may be accounted for by the reliance put on the evidence of PW2 that 2nd accused said he had stabbed PW1. Prosecuting Counsel should have borne in mind, the Law in this respect before proceeding with his case. Or, Prosecuting Counsel, or the Law Officers' Department should in their supervision of Police Prosecutions, direct the Police as to what could or could not constitute evidence sufficient to sustain a conviction. Good cases could be lost due to careless handling by the prosecution authorities. This is a typical case.

30. I have no doubt in my mind that 2nd accused robbed PW1 of her mobile phone. The evidence proves beyond all reasonable doubt, each and every one of the elements of the offence I have set out above. I therefore find him guilty of the offence of Robbery as charged in Count 2 of the Indictment. I find 1st and 3rd accused Not Guilty of the offence charged in Count 2; and 1st accused alone, Not Guilty of the offences charged in Counts III, IV and V of the Indictment. They are accordingly, acquitted and Discharged.

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE, JUSTICE OF APPEAL

ALLOCUTUS: I beg for mercy.

SENTENCE: 5 years with effect from 4/04/11.

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE