

[COURT OF APPEAL]

Freetown
March 20,
1963

BUNDU KARGBO *Appellant*
v.
REGINA *Respondent*

Ames Ag.P.,
Dove-Edwin
J.A.,
Bankole Jones
P.J.

[Criminal Appeal 8/63]

Criminal Law—Homicide—Murder—Trial with assessors—Direction of judge.

Appellant was convicted of murder by a judge sitting with two assessors. In his summing-up to the assessors, although the judge instructed them that they must be satisfied beyond a reasonable doubt as to the accused's guilt, he failed to direct them that the burden of proof was on the prosecution to prove the accused's guilt.

Held, that, considering the summing-up as a whole, the judge's failure to instruct the assessors as to the burden of proof was not such a defect as would justify the court in interfering with the conviction.

Case referred to: *Reg. v. Attfield* [1961] 3 All E.R. 243.

Samuel H. Harding for the appellant.

Nicholas E. Browne-Marke (Ag. Solicitor-General) for the respondent.

DOVE-EDWIN J.A. The appellant was charged with the murder of one Bome Kamara at Gbanah Gbak in the Port Loko Judicial District on December 24, 1962.

He was tried by a judge sitting with the aid of two assessors. There were six witnesses for the prosecution including the medical officer who held the post mortem on the deceased woman, and two other villagers to whom accused reported that he had killed the woman. A statement made by accused after he had been duly cautioned was received in evidence and marked Exhibit "A."

At the close of the case for the prosecution, accused (now the appellant) gave evidence in which he admitted killing the deceased and gave details of how he came to kill her. In cross-examination appellant said: "I did not make up my mind to kill her until I knew she was going back to her husband." The two assessors had no difficulty in finding the appellant guilty of murder. Appellant was defended by counsel.

The notes of the trial judge's summing-up appear in the record and this appeal is based solely on those notes.

The ground of appeal argued by learned counsel was:

"Although the learned trial judge directed the assessors as to the standard of proof in a criminal trial, that is to say, that they must be satisfied beyond reasonable doubt as to the accused's guilt, he failed to direct them that the burden of proof, that is to say, that the onus of proof was on the prosecution to prove the prisoner's guilt. In consequence, he further failed to direct the assessors that the onus was on the prosecution to prove that the killing was unprovoked."

All other grounds previously filed were abandoned.

It is true that according to the notes there is no specific mention by the learned trial judge that the onus of proving the charge against appellant was on the prosecution, but when one reads the evidence and the judge's notes as a whole the defect is not at all fatal.

The learned Solicitor-General quoted the case of *Reg. v. Attfield* [1961] 3 All E.R. at pp. 243-247 and we can do no more than respectfully follow it:

"This court would wish to reiterate what has been laid down now in several cases, that the proper form of direction is that the jury should be directed that the burden of proof is on the prosecution, and that the standard of proof required before a verdict of guilty can be returned is that the jury should be satisfied, that they should feel sure. If that simple formula is used, no criticism can be made. In the absence of the use of that formula, in this case when one considers the summing-up as a whole, it is not, in our view, such a defect as would satisfy this court in interfering with the conviction."

In this appeal our view is the same. The case for the appellant was simple and the judge and assessors could not have possibly come to any other conclusion that that appellant was guilty of murder and we are satisfied that appellant was rightly convicted and the appeal is dismissed.

C. A.

1963

KARGBO

v.
REGINA.

Dove-Edwin
J.A.

[PRIVY COUNCIL]

SULAY SEISAY Appellant
v.
PA SHEKA KANU AND OTHERS Respondents

London
April 1,
1963.

Lord Evershed,
Lord Jenkins,
Lord Guest

[Privy Council Appeal No. 2 of 1962]

*Claim for declaration that election of appellant as Paramount Chief invalid—
Evidence—Whether sufficient evidence that appellant direct grandson of
Paramount Chief.*

Plaintiffs-respondents (hereafter referred to as plaintiffs) sought a declaration in the Supreme Court of Sierra Leone that the election of defendant-appellant (hereafter referred to as defendant) as Paramount Chief was invalid and an injunction restraining him from functioning as Chief. The Supreme Court held that it had no jurisdiction, and plaintiffs appealed to the West African Court of Appeal which held that there was jurisdiction and remitted the suit for hearing. At the hearing, the trial judge allowed defendant to amend his defence. From this interlocutory decision, plaintiffs appealed to the Court of Appeal for Sierra Leone and the Gambia, which again sent the case back to the Supreme Court for determination.

At the trial, the issue was whether defendant was a descendant in the male line of Bai Komp Othernip, a previous Paramount Chief. A witness for the defendant, Alhaji Sourì, testified: "I know defendant. I knew his father Kaba Seisay. I knew him as a child. I knew his mother. I did not know of their marriage. The father of Kaba Seisay was Nana Seisay. I do not know him. . . . He told me that his father was Nana Seisay and that he had died in the war. He told me Nana's father was Bai Komp Othernip. . . . Defendant