CONTEH *v.* REGINAM

COURT OF APPEAL (Sir Samuel Bankole Jones, P., Dove-Edwin and Marcus-Jones, JJ. A.): May 5th, 1967
(Cr. App. No. 7/67)

[1] **Criminal Law—libel—republication—informant named—republication of statements by named person imputing corruption to another not defamatory:** The publication of statements imputing corruption to the head of the government cannot defame him if it attributes the statements to another person, not the publisher, and names him; and therefore such a publication is not seditious (page 146, lines 4–11).

[2] **Criminal Law—sedition—republication—informant named—republication of statements by named person imputing corruption to head of government not seditious:** See [1] above.

[3] **Criminal Procedure—discharge—no power to discharge without trial unless nolle prosequi or withdrawal of charge:** The only circumstances in which an accused person can be discharged without being tried and found not guilty are by the Crown's withdrawal of the charge against him or the entry of a *nolle prosequi.* A court has no power of its own volition to enter a plea of not guilty on behalf of the accused and then discharge him without trial (page 144, lines 14–18, 23–25).

[4] **Criminal Procedure—pleas—plea of not guilty—court has no power to enter not guilty plea of own volition:** See [3] above.

[5] **Criminal Procedure—sentence—sentencing principles—accused giving evidence against co-accused to be sentenced first:** An accused person who has pleaded guilty and is required to give evidence at the trial of his co-accused should be sentenced before giving evidence (page 144, lines 4–8).

[6] **Criminal Procedure—sentence—sentencing principles—co-accused normally sentenced together so that relative culpability assessed:** Where two or more persons are jointly charged and one of them pleads guilty, then unless he is to give evidence against his co-accused he should not be sentenced until their trial is concluded, when the position and the relative culpability of all the accused can be assessed (page 143, line 40—page 144, line 4).

[7] **Criminal Procedure—trial of charges—co-accused—improper for separate judges to try persons jointly charged—trial a nullity:** Where two or more persons are jointly charged and one of them pleads guilty and is dealt with separately, the principles of natural justice will be violated and the trial rendered a nullity if the remaining accused are tried by a judge who is a complete stranger to the previous proceedings (page 144, lines 27–32).

[8] Criminal Procedure—venue—change of judge—improper for separate judges to try persons jointly charged: See [7] above.

[9] Evidence—witnesses—accused witness against co-accused to be sentenced first: See [5] above.

[10] Jurisprudence—justice—natural justice—contrary to natural justice for separate judges to try persons jointly charged: See [7] above.

The appellant and another were charged in the Supreme Court with publishing a seditious libel contrary to the Public Order Act, 1965, s.33(1)(c).

The appellant published a newspaper article under the caption "Corruption in High Places" in which he stated that a Dr. Nelson-Williams had approached the representatives of a development corporation interested in investing in the development of tourist amenities in Sierra Leone and had suggested that they approach the then Prime Minister, with whom Dr. Nelson-Williams boasted that he had great influence. Later, the article said, Dr. Nelson-Williams reported to the representatives that they could obtain approval for their projects if they made certain corrupt gifts and payments to the Prime Minister.

The appellant and another were charged on an *ex-officio* information with publishing a seditious libel. Each pleaded not guilty before Browne-Marke, J. and the case was twice adjourned. They then appeared before Betts, J. and their pleas were taken again: this time the appellant again pleaded not guilty but his co-accused pleaded guilty. Betts, J. adjourned passing sentence on the co-accused for two days and adjourned the trial of the appellant for two weeks. When the co-accused appeared for sentence, Crown Counsel did not press for a sentence of imprisonment because his offence was only technical but Betts, J. expunged his plea of guilty, substituted one of not guilty and proceeded to discharge him. The appellant was then tried by Forster, J. and convicted.

On appeal, the court considered the correct procedure to be followed in the trial and sentencing of persons jointly charged; the circumstances in which an accused person could be discharged without a complete trial; and whether the published words constituted a seditious libel.

Case referred to:

(1) *R.* v. *Payne,* [1950] 1 All E.R. 102; (1949), 34 Cr. App. R. 43, applied.

Smythe for the appellant;
Tejan-Cole, Senior Crown Counsel, for the Crown.

SIR SAMUEL BANKOLE JONES, P., delivering the judgment of the court:

The appellant and another man, who was the first accused in the court below, were jointly charged on an *ex-officio* information and arraigned before the court on charges of publishing a seditious publication contained in the issue of a newspaper for October 15th, 1966 entitled *We Yone,* contrary to s.33(1)(c) of the Public Order Act, 1965. There were two counts, one of which, the second, charged only the appellant. The trial was by a judge alone, who found the appellant guilty and sentenced him to a fine of Le100 or three months' imprisonment. It is against this conviction that he has appealed to this court. His counsel has, among other things, bitterly complained about the procedure adopted at the trial and submitted that this court ought to pronounce it a nullity.

The facts on which he relies for his submission are these: On December 14th, 1966, when pleas were first taken, each accused pleaded not guilty before Browne-Marke, J. The case was then adjourned to January 4th, 1967, and then again subsequently to January 30th. On that day they appeared before Betts, J. Their pleas were again taken, and this time the first accused pleaded guilty but the appellant still maintained his plea of not guilty. For some obscure and inexplicable reason, the learned judge adjourned passing sentence on the first accused to February 1st and put off the hearing of the case of the appellant to February 14th. On February 1st the first accused, still on bail, appeared alone in the dock. Crown Counsel then informed the court that he had been instructed not to press for a term of imprisonment against this accused because the offence he had committed was only a technical one. The learned judge, however, did not think any offence had been committed and he had this to say: "His plea of guilty is expunged and a plea of not guilty entered. He is discharged."

On February 14th, when the appellant appeared for his trial, he faced another judge in the person of Forster, J., who then heard his case throughout and convicted him.

It seems to us, with the greatest respect, that when Betts, J. took it upon himself to split up persons who had been jointly charged together in the manner he did, by adjourning their individual cases to two different dates, he acted in error. The law has been stated several times to be this, namely, that where persons are joined in

one indictment and one of them pleads guilty, he should not be sentenced until the trial of the others is concluded, when the position of all the prisoners can be considered and their relative degrees of guilt assessed for the purposes of sentence. There is one obvious exception, however, and that applies to a prisoner who has pleaded guilty and is required to give evidence at the trial of his co-prisoners. He should first be sentenced before giving evidence: see *R.* v. *Payne* (1). This exception did not apply in this case.

But what we find somewhat alarming is the fact that after the learned judge had "expunged" the first accused's plea of guilty from the record, he entered a plea of not guilty and then, unbelievably, discharged him. Whilst it is true that a judge can, if the circumstances warrant it, advise an accused person to change his plea from one of guilty to that of not guilty, yet there is no authority that we know of, and we are certain none can be found, that gives a judge the right to discharge such a person without conforming with the due process of law, that is, without the accused having first been tried and *found* not guilty. The procedure adopted by the learned judge was tantamount to this, namely, that when an accused person has been arraigned for trial, and he pleads guilty, if in the opinion of the judge he is not guilty and he says so, the judge can set him at liberty straight away without further ado. This we think is wrong. There is one method that we know of by which such an accused person can be discharged and it is this: the Crown may either withdraw the charge against him or enter a *nolle prosequi.* This was not done in this case.

In the case of the appellant, another judge, a complete stranger to the previous proceedings in which the first accused was discharged, was made to enter the scene and take up the trial from that point. He then, unwittingly, purported to continue what was left of the trial. All this in our view violated the principles of natural justice, which would certainly have the effect of rendering the trial a nullity.

On this ground alone the appellant is bound to succeed, but we do not consider that we ought to rest our judgment on this alone. There was another ground of appeal which we think it necessary to examine, if only for the reason that a question of substantive law was in issue. It was this, namely, that the words complained of could not in their context amount to seditious libel. The words in the publication, of which the caption was "Corruption in High Places," were as follows:

"Some time in August, about two weeks or so before Sir

Albert was due to leave for London to attend the Commonwealth Prime Ministers' Conference, two representatives of a development company went to Sierra Leone to open negotiations for investing some four million leones or more in various schemes connected with enhancing the prospects of the tourist trade in Sierra Leone. Before they could make official contacts, they were contacted by Dr. Nelson-Williams through the manager of a firm of architects and made to understand that their mission would be facilitated by a direct approach to the Prime Minister, Albert Margai, with whom he, Dr. Nelson-Williams, boasted he had great influence."

Later it is alleged that Dr. Nelson-Williams met the two gentlemen and told them that Sir Albert had laid down the following conditions:

(1) That the two gentlemen should be prepared to pay a first instalment of Le10,000 to Sir Albert in order to secure the "letter of intent" for their projects.

(2) That a final instalment of another Le10,000 be paid to Sir Albert while in London for the Commonwealth Prime Ministers' Conference, when the agreement finalising the arrangements would then be signed by him.

(3) That once the projects are in operation and yielding profits, one-eighth of those annual profits be paid to Sir Albert.

(4) That a presentation of one hovercraft be made to him, Sir Albert, which he will later pass on to the nation.

The learned trial judge in his judgment had this to say:

"It ought not to be necessary for me to say this, but I find that I must, that libels on persons employed in a public capacity may tend to scandalise the government by reflecting on those who are entrusted with the administration of public affairs, for they not only endanger the public peace, as all other libels do, by stirring up the parties immediately concerned to acts of revenge, but also have a direct tendency to incite people to faction and sedition, more so in my opinion when the person defamed is the head of the administration."

But was the head of the administration, Sir Albert Margai, defamed by the above publication? In our view, he certainly was not. All the articles purported to show was, that Dr. Claude Nelson-Williams, rightly or wrongly and perhaps imprudently, boasted that he had great influence with the Prime Minister, Sir Albert Margai, who, he said, whether truthfully or not, had laid down certain corrupt conditions before the sum of four million leones could be invested

in this country. If anyone was allegedly libelled, it was Dr. Claude Nelson-Williams, who should have wasted no time in bringing an action to defend his integrity which had been publicly assailed. He did not. We of course cannot say why he did not. All we can say in the circumstances is, that we are appalled that the Attorney-General started these proceedings, when it ought to have been obvious to him that the statements in the article alleged to have been seditious were mere hearsay matters emanating from Dr. Claude Nelson-Williams and could not have touched the good name and reputation of Sir Albert Margai which he is presumed by law to have in common with all other men.

There are other grounds of appeal, which we do not consider ourselves called upon to determine, because we are clearly of the opinion that we have given sufficient reasons why we must allow the appeal. The appeal is accordingly allowed.

Appeal allowed.

KARGBO, KARGBO and KAMARA *v.* REGINAM

COURT OF APPEAL (Sir Samuel Bankole Jones, P., Marke and Luke, Ag. JJ. A.): May 10th, 1967
(Cr. App. Nos. 43/66, 44/66 and 45/66)

[1] Criminal Law—degrees of complicity—accessories—accessory before the fact—accused acquitted where charged as accessory and proved to be principal: Where an accused person is charged with being an accessory before the fact to a felony and is proved to have been a principal, he may not be convicted of being either accessory or principal and should be acquitted (page 149, lines 11–15; page 149, line 40—page 150, line 1).

[2] Criminal Law—degrees of complicity—accessories—accessory before the fact—definition—person who counsels or procures commission of offence—must be absent at time of commission: To qualify as an accessory before the fact to a felony, a person must be absent at the time the crime is committed and the act must be done in consequence of some counselling or procurement of his (page 150, lines 1–4).

[3] Criminal Procedure—judge's summing-up—burden of proof—direction to jury essential: It is essential in every criminal trial that the judge's summing-up to the jury should include a direction on the burden of proof (page 152, line 37—page 153, line 1).