YOUNGE & ORS v THE STATE

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COURT OF APPEAL FOR SIERRA LEONE, Criminal Appeal 18 of 1975, Hon Mr Justice S C W Betts JSC, Hon Mrs Justice A V Awunor-Renner JA, Hon Mr Justice S Beccles Davies JA, 6 July 1976

[1] Criminal Law and Procedure – Larceny as a bailee – Distinction between stealing and bailment – Not necessary for cashiers to pay out specific coins – Question of bailment did not arise until non-payment after request for monies was made – Larceny Act 1916 s 17(1)(a)

[2] Criminal Law and Procedure – Evidence – Evidence adduced not sufficient or does not constitute offence charged – Judge applying wrong principle of law – Retrial on those issues

[3] Constitutional Law – Distinction between "Republic of Sierra Leone" and "Government of Sierra Leone" – Context in which both phrases used synonymously

The three appellants, who were officers working in the Judicial Sub-Treasury, were charged and convicted of larceny under s 1 of the Falsification of Accounts Act 1875. They were also charged and convicted under section 17(1)(a) of the Larceny Act 1916 as having stolen amounts "from the Sierra Leone Government as bailees." The falsifications were said to be made in relation to paying-in-slips and paying-out vouchers in respect of three amounts of money transferred into and out of the Judicial Sub-Treasury. The main ground of appeal was that the evidence adduced could not constitute any of the offences charged and that the verdict was unreasonable and cannot be supported having regard to the evidence. An issue also arose as to whether the judge was correct finding the appellants guilty of having stolen "as bailees".

Held, per Betts JSC:

1. There was no evidence connecting the first appellant with any prior or subsequent dealings with the documentation the subject of the charge, nor was there evidence that she had any agreement with those dealing with the documentation or that she procured them or concurred with them in omitting, defacing or otherwise tampering with the documents to effect falsification. As a result, the first appellant's appeal was upheld and she was to be acquitted and discharged on all the falsification counts. The appeal of the second and third appellants was dismissed on all the counts relating to falsification of accounts.

2. It was important to distinguish between stealing and bailment. In the first case the thing stolen is taken fraudulently, without the knowledge and consent of the owner, with a view to deprive that owner permanently of the thing stolen. On the other hand a bailee is person to whom goods are entrusted for a specific purpose without any intention of transferring the ownership to such person. In the present case monies were deposited or supposed to have been deposited to two Cashiers, at different times for third persons, but in the particular circumstances – when a lot of people are paying in monies – it would be impractical and certainly not obligatory on the Cashiers to pay the specific coins. *R v Hassall* [1861] Le& Ca 56 applied.

3. The question of bailment did not arise until an application was made by the parties for whom the monies were intended and there was non-payment as a result of conversion of the money deposited. Here there was no complaint of an application being made and the matter of investigation as to conversion did not arise. The trial judge was incorrect in

4. finding that the appellants were guilty of stealing from the government as bailees as the question of bailment was not a matter for consideration. The three appellants were to be acquitted and discharged on the various charges of larceny.

Per curiam

5. The indictment used the words "the Republic of Sierra Leone" while the judgement used the words "the Government of Sierra Leone." In the Interpretation Act, No 8 of 1971, "Government" means the Government of Sierra Leone and includes, where appropriate, any authority by which the executive power of the State is duly exercised in a particular case and "Republic" means the State of Sierra Leone as constituted by the Constitution." Under constitutional provisions which divide powers of government into the legislative, the executive, including the administrative, and the judicial departments, the word "administrative" is not synonymous with "executive". But when not used in this specialised way the words "executive" and "administrative" may be used as synonyms or may be interchangeable terms. In the same way, although the words "Republic" and 'Government' appear dissimilar, they were synonymous in the current context.

Cases referred to
Baker v The Queen (1975) 3 WLR 115
R v Butt (1884) 51 LT 607
R v Hassall [1861] Le& Ca 56
R v Oliphant [1905] 2 KB 67
State v Allen 369 Louisiana 1046
Tucker v State (1941) 218 Ind 614
Waddington v Miah (1974) 1 WLR 683

Legislation referred to
Falsification of Accounts Act 1875 s 1
Interpretation Act, No 8 of 1971
Larceny Act 1916 ss 1(1), 17(1)(a)

Appeal
This was an appeal by Irene Younge and two others who were convicted before the High Court on charges under the Falsification of Accounts Act 1875. The facts appear sufficiently in the following judgment.

Mr J H Smythe QC and Mr N D Tejan-Cole for the 1st appellant.
Mr J W Davies for the 2nd and 3rd appellants.
Mr Bankole Thompson for the State.

BETTS JSC: The appeal is on behalf of three accused who were convicted before the High Court on eleven of a thirteen court indictment. They were represented by John H Symthe QC and JW Davies. The grounds of appeal were in substance – after specifying the particular counts of their respective clients – that the evidence as adduced cannot constitute any of the offences charged and that the verdict is unreasonable and cannot be supported having regard to the evidence. To these, counsel for the 1st appellant added another five. They however, did not break fresh grounds but gave details relevant to the grounds of appeal as summarised earlier.

The three accused were charged under the Falsification of Accounts Act 1875 s 1. It reads:

"That if any clerk, officer, or servant, or any person employed of acting in the capacity of a clerk, officer, or servant shall wilfully and with intent defraud, destroy, alter, mutilate or

falsify any book, paper writing, valuable security, or account, which belongs to or is in the possession of his employer, or has been received for or on behalf of his employer, or shall wilfully with intent to defraud make or concur in making any false entry in, or omit or alter or concur in omitting or altering any material particular from or in any such book, or any document or account, then and in every such case the person shall be guilty of a misdemeanour."

The expression 'any person' is equally pertinent in a case in which more than one person is involved, and even where a person fraudulently and wilfully procures an innocent person to make the entry as in *R v Butt* (1884) 51 LT 607, or omit some material particular through an innocent party as in the case of *R v Oliphant* [1905] 2 KB 67. In that case the operational mechanics were so organised that a discrepancy could be located. The prisoner was employed in Paris by a firm carrying on business in London, and it was his daily duty to enter on slips an account of all sums received by him in Paris for his employers, and to transmit these slips to them in London in order that the amounts might be entered up in a cashbook in London. He received three sums in Paris, which he fraudulently appropriated to his own use, and omitted to enter an account of them on the slips sent by him on that day to London, intending that the same should be omitted from the cashbook in London, as was the case. Held, he was rightly convicted in London of omitting material particular from the cashbook. I would wish to impress the significance of this point – that a flaw in a chain of activity could be identified at the point of its occurrence.

A location of this kind in the instant case is not as simple as in *Oliphant's* case because of the number of people who work in the Judicial Sub-Treasury and who get involved with the subject matter somewhere along the line; the duties of each officer and how these duties were related to one another. Apart from the three accused persons there were Rosaline Benjamin PW4, Augustus Sannah PW7, I S B Johnson PW8, Hannah Marsh PW9. The subject matters were the sums covered by Exhibit C1, the paying-in-slip for Le80, and Exhibit H, the authenticating paying out voucher for Le801; Exhibit C2 covering the paying-out voucher for Le375.65 authenticated by Exhibit D1 and Exhibit C3 for Le300 and authorised Exhibit C3.

No one knew for certain how Exhibit C1 started its life history but it appeared to have been registered in Exhibit A as having been issued from the Magistrate's Office and made payable to one S B Pratt. No one could tell in what condition it was when its life cycle began but when PW9 Hannah Marsh saw it, the name of the person who paid and the amount paid in, had been rubbed off. The amount paid appeared to have been pasted over with a piece of paper. The peculiar thing about it was that it was accompanied by Exhibit H which carried the signature of the Sub-Accountant, the 1st accused; and the authentication of the Accountant PW2. Up to the point where the Accountant authenticates the payment voucher there is provision for cross- checking all entries. The sum of Le801 endorsed on Exhibit H and purportedly based on Exhibit C1 was to have been posted in the Magistrate's Court Ledger, the Receipt Cash-Book and the Revenue Cash Book. These two letter books were controlled by the Cashier who also prepared Exhibiit F1, the document which states the sum paid out. Although Exhibit F1 showed that Exhibit H for laser had been met there was no record in either the Receipt Cash Book or the Revenue Cash Book showing how the amount covered by Exhibit H came in. If anyone should know what monies were paid in, paid out and to whom, it should be the Cashier as he tabulates all the documents. He receives the paying-in-slip from the Magistrates, states the receipt number, and stamps the back of the slip to indicate that payment has been inserted, also a machine number together with the name of the payee and the cause in which the money was paid. When the person for whom the money was intended draws out the money from the Cashier he makes the final endorsement on the voucher and slip and passes them out for filing. To confirm my view I would refer to portion of evidence of PW3 Gilbert Jarrett who, in opinion, is an important witness as being the most independent. He said:

"Exhibit H being posted in Exhibit F1 means money is paid out. This in short is that money not received was money paid out."

The evidence points out to me that there been a falsification and that falsification was by the Cashier, the 2nd accused who was the Cashier in July 1972, when PW3 was holding down the post as Accountant Judicial Sub-Treasury. I cannot see from the evidence any connection between the Cashier and the 1st accused. There was no evidence indicating that she influenced which could lead one to conclude, that she procured 2nd accused to falsify by omitting to make the necessary entries in the Cash Revenue Book and the Cash Book. The 2nd accused in my opinion falsified voluntarily with the necessary intent to defraud.

In the case of the second sum of Le375.65 the 2nd accused was again involved. Exhibit C2 and D1 were the Exhibits pertinent to this count. Of these PW2 said in evidence:

> "I see Exhibit C2. The importance of Exhibit C2 is to show that money is paid into the Sub-Treasury. It means that the money should be paid into the Sub-Treasury. This is prepared by the Magistrate Court Office. When it comes to my Department the Cashier deals with it. He stamps it at the back. This is posted into the Receipt Cash Book and Revenue cash Book. Mr Koroma was the Cashier who dealt with the slips. He is 2nd accused. Date on it is 17/11/72. Exhibit C2 is not posted in Exhibit B. Exhibit F is posted with Exhibit F5."

Apart from these technical details she goes to say that: "the significance of these postings and non-postings is that amounts were never deposited into the Sub-Treasury but were paid out."

In this case the 2nd accused was directly involved according to the evidence; but a new aspect – that of attempting to connect the 1st accused also directly – was brought in. PW4 Madeline Coker said in evidence that Exhibit C2 was handed to her by 1st accused with instruction to prepare Exhibit D1, which allegedly was the supporting payment voucher for Le375.65. But it was PW4 herself who took the voucher for checking. There is no account of how the checking was conducted by 1st accused; it is however significant that after the checking, PW4 took Exhibit D1 for the counter-signature of the Accountant. According to her evidence, she, PW4 took Exhibit D1 after being signed by the Accountant to the Cashier and then left. Again, I was unable to conclude that there was any agreement between the 1st and 2nd accused persons; even though one has to concede it was gross negligence to have failed to ensure that money had been deposited to meet the out-payment. That would not amount to falsifying by omitting to make an entry. The entry, in the final analysis, was to have been made by the Cashier with definite indication as to the person who paid the amount in and the person for whom it was intended. In his position a payment out must necessarily imply a payment in of a similar amount. An unusually large disparity between a payment-in and a payment-out ought in my opinion to have struck the Cashier that something had gone wrong somewhere as the payment in took place on one day and the payment out the next. Again the Cashier failed to make the entry. I have come to the conclusion that the omission was deliberate. The Cashier's office collates and processes all the data collected. After monies have been received, paid out and necessary documentations made the papers are sent away for filing. Exhibit C3 authorises the preparation of Exhibit D2. The same system operated. There were generally speaking postings of amounts in books where payment-out were made; counter payment-in were either not recorded at all and show nil or smaller amounts were recorded. The evidence of P.W.2 says that:

> "Exhibit D2 is not posted in Exhibit B. It is not posted in Exhibit A. It posted in Sub-Accountant who initialled Exhibit D2 was the 1st accused. I signed it. The Cashier was 3rd accused."

The sum of money paid out on Exhibit D2 was Le300 supposedly authorised by Exhibit C2 supporting a payment-in of 50 cents. The difference was so large that one would have expected the 3rd accused, Samuel Fowler, to have noticed it because of the shortness of the withdrawal time. But obviously he did not, and again there was no entry in the relevant books of account and no evidence from which one can conclude that there was some agreement between the 1st and 3rd accused. This omission, in my opinion is deliberate.

The learned trial judge said in his judgement that he believed the evidence of PW4 Madeline Coker that it was the 1st accused, Irene Younge who gave her Exhibits C2 and C3 to prepare Exhibits D1 and D2 which were payment vouchers for Le375.65 and Le300 respectively. On Exhibit C2 the payment-in was nil and on Exhibit C3 the payment-in was 50 cents. The fact that it was the 1st accused who handed her these slips C2 and C3 was not disclosed until one year after the investigation stated and after PW4 had made two statements to the police and had an opportunity of talking to PW1. As a single finding of fact, I do not think, with respect, that the decision that it was the 1st accused who gave PW4 exhibits 3 and 4, should be so pointedly isolated as regards the charge of falsification. Conceding that the 1st accused did give PW1 Exhibit C2 and Exhibit C3, there is no evidence connecting her with any prior or subsequent dealings with the exhibits, nor was there evidence that she had any agreement with those dealing with the exhibits or that she procured them or concurred with them in omitting, defacing or otherwise tampering with the exhibits to effect falsification. I am bound by the evidence deposed in court and referred to before me and also the arguments recorded. As a result I agree with the judgement of learned trial judge against the 2nd and 3rd accused and dismiss their appeal on all the counts relating to falsification of accounts but, with respect, differ from him about the 1st accused, I uphold the appeal and I acquit and discharged her on all the falsification counts. It should be recorded that the Cashiers paid these huge sums of money out against a financial order that only Le20 ought to be paid in cash without the permission of Accountant.

It may as well be desirable to refer to the use in the indictment of the words "the Republic of Sierra Leone" and the use of the words in the judgement "the Government of Sierra Leone." In the Interpretation Act, No 8 of 1971, "Government" means the Government of Sierra Leone (which should be deemed to be a person) and includes, where appropriate, any authority by which the executive power of the State is duly exercised in a particular case and "Republic" means the State of Sierra Leone as constituted by the Constitution." Under constitutional provisions which divides powers of government into the legislative, the executive, including the administrative, and the judicial departments, the word "administrative" is not used as synonymous with "executive", as in the American case of *Tucker v State* (1941) 218 Ind 614. But when not used in this specialised way the words "executive", and "administrative" may be as synonyms or may be interchangeable terms as in the *State v Allen* 369 Louisiana 1046. As both words could be descriptive of the same functions I shall adopt the interpretation in the latter case and apply it to the instant case. Though the words "Republic" and 'Government' appear dissimilar, I hold that they are synonymous. In view of this my finding will remain unaffected.

The three accused were also charged under section 17(1)(a) of the Larceny Act 1916 which provides that:

> "Every person who (1) being a clerk or servant or person employed in the capacity of a clerk or servant (a) steals any belonging to or in the possession or power of his master or employer, shall be guilty of a felony."

Section 1(1) of the same Act outlines the position under which a person could be said to 'steal' and provides that even a part owner or a bailee can steal. It is necessary to make distinction between stealing and bailment. In the first case the thing stolen is taken

fraudulently, without the knowledge and consent of the owner, with a view to deprive that owner permanently of the thing stolen. On the other hand a bailee is person to whom goods are entrusted for a specific purpose without any intention of transferring the ownership to such person. The principle adumbrated by *R v De Bank* is:

> "A person may be convicted of larceny as a bailee if on the facts in the particular case he is under an obligation to deliver the specific coins (chattels) representing the proceeds of the chattel bailed, to the bailer."

R v Hassall [1861] Le& Ca 56 looks at the converse of the case. It reads:

> "A person may not be convicted of larceny as a bailee if he is not under an obligation to redeliver specific chattels or coins to the person who delivered them to him or to deliver them to some third person in specie."

In this case monies were deposited or supposed to have been deposited to the two Cashiers, at different times for third persons, but in the particular circumstances – when a lot of people are paying in monies – it would be impractical and certainly not obligatory on the Cashiers to pay the specific coins. To my mind the principle in *Hassall's* case would therefore be applicable to the instant case and the judgement "The two accused together with Mrs Younge, the 1st accused, stole these amounts from the Sierra Leone Government as bailees." Apart from this point the question of bailment would not arise until application is made by the parties for whom the monies were intended and there was non-payment as a result of conversion of the money deposited. In at least two cases there was no complaint of an application being made and the matter of investigation as to conversion did not arise and in the third case it was alleged that payment had already been made but was to a wrong person. It seems to me that when the learned trial judge came to his finding his mind was not directed to the principle of law which should have guided him as I think the question of bailment in view of the charge was not the principal matter for consideration and I agree with the submission.

I would now refer to Act No 3 of the Courts (Amendment) Act of 1976 which empowers me to remit the case for retrial. I refer to the Jamaican case of *Baker v The Queen* (1975) 3 WLR 115. The facts were that on 26 November 1969, the appellants, who were then aged 17½, committed murder and on 3 March 3 1971, when both attained the age of 18, they were convicted of the offence and sentenced to death. They applied to the Court of Appeal for leave to appeal against their sentences contending that, on the correct interpretation of sections 20(7) and 26(8) of the Jamaican (Constitution) Order in Council and section 29(1) of the Juveniles Law, the court was prohibited from passing the death sentence upon them. The Court of Appeal dismissed their applications.

On appeal by the appellants to the Judicial Committee it was held dismissing the appeal that the provisions of section 29(1) of the Juveniles Law made it plain (1) that the time for ascertaining whether the appellants were to be treated as juveniles was the date on which the sentence was passed and not the date of the offence (Lord Salmon dissented, Lord Diplock read the majority judgement).

In another case *Waddington v Miah* (1974) 1 WLR 683 the House of Lords reversed the decision of the Court of Appeal by holding that the punishment was to be determined at the date of the offence. Under our Constitution No 6 of 1971, the provision states:

"No person shall be held to guilty of a criminal offence on account of any act or omission which did not at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed."

In view of the two latter authorities I acquit and discharge all three accused on the various charges of larceny.

Reported by Anthony P Kinnear and Victoria Jamina