

**THE STATE v YOUNGE & OTHERS**

SC

**SUPREME COURT OF SIERRA LEONE**, Criminal Appeal 1 of 1976 and 1 of 1977, Hon Chief Justice C O E Cole, Hon Justice E Livesey Luke JSC, Hon Justice C A Harding JSC, Hon Justice O B R Tejan JSC, Hon Mr Justice K E O During JA, 28 June 1977

- [1] **Criminal Law and Procedure – Falsification of accounts – Evidence – Whether trial judge's findings of fact ought to have been overturned by Court of Appeal – Whether accused concurred in making of false document – General principles – Falsification of Accounts Act 1875 s 1**
- [2] **Criminal Law and Procedure – Evidence – Circumstantial evidence – Where case based largely on circumstantial evidence court must ensure facts consistent with guilt of accused and inconsistent with any other reasonable conclusion**

The respondent and the cross appellant were employed by the Sierra Leone Government within the Sub-Treasury of the Judicial Department. The respondent was a Sub-Accountant and the cross appellant was a Cashier. It was alleged that they made false entries on the slips, made payment vouchers as a result of those slips and omitted to make entry of a material particular in the Revenue Cash Book, and by such acts stole certain sums of money belonging to the Sierra Leone Government. The cross-appellant was alleged to have made the false entries on the payment slips and omitted to make entries of material particulars in the Revenue Cash Book; and the appellant was alleged to have concurred in making the payment vouchers. They were convicted at trial of offences for falsification of accounts under the Falsification of Accounts Act 1875 and larceny by a servant under the Larceny Act 1916. On 6 July 1976, the Court of Appeal affirmed the conviction of the cross appellant as regards the counts relating to falsification of accounts and quashed the convictions of the respondent on the whole indictment. The Attorney General appealed against this decision and the cross appellant appealed against the decision affirming his conviction.

**Held per Cole CJ allowing the State's appeal and allowing the cross appellant's appeal in part:**

1. The counts in the indictment in every respect substantially complied with the provisions of the Criminal Procedure Act 1965. The question of the effect of a bad or defective indictment did not therefore arise.
2. Based on the evidence, it was open for the trial judge to find that the respondent had procured her colleague, who was an innocent agent, to prepare or cause to be made the voucher in question. It was also open to find that as a matter of fact the respondent concurred in the making the false document. There was abundant that the respondent signed the payment voucher in question. There was no better evidence of concurrence in the ordinary sense of the word.
3. It was within the competence of the Court of Appeal to reverse the trial judge's findings of fact. However it was settled law that it should be on the rarest occasion and in circumstances where the appellate court is convinced by the plainest considerations, that it would be justified in finding that the trial judge had formed a wrong opinion. In this case, no justifiable reason had been shown in the Court of Appeal's judgement for disturbing the findings of fact of the trial judge. On the contrary, it was clear from the judgement that what operated in their minds was the fact that agreement in the legal sense as in the crime of conspiracy, for example, was a necessary ingredient of the offence of concurring in making a false document with intent to defraud contrary to the Falsification



of Accounts Act 1875. This was not necessarily the case. *El Nasr Export & Import Company Limited v Mohie El Deen Mansour* (Supreme Court, Civil Appeal No 3/73, 25 April 1974) applied.

4. Taking the evidence as a whole, the prosecution proved their case beyond reasonable doubt and the trial judge was justified in saying that that was the case as regards counts 5 and 9 with regard to the respondent. The Court of Appeal in considering the case of this respondent applied wrong principles of law.
5. The evidence on which the State relied for its case on the counts against the cross-respondent were in substance circumstantial. It was a well-established legal principle that circumstantial evidence is receivable in criminal cases. What the High Court as well as an appellate court should seek to address is that where the prosecution's case is substantially based on circumstantial evidence the evidence must be such as to satisfy the learned trial judge that the facts proved are not only consistent with the guilt of the accused, but also such as to be inconsistent with any other reasonable conclusion. In the present case, there was no evidence of any such co-existing circumstances *Mogroy v Director of Public Prosecutions* (1973) 1 All ER 503 applied.

#### Cases referred to

*Ababio v The State* (1966) GLR 422

*Brian Gidern Astor and Malcolm Thomas Holly* 55 Cr App R 48

*El Nasr Export & Import Company Limited v Mohie El Deen Mansour* (Supreme Court, Civil Appeal No 3/73, 25 April 1974)

*Michael Williams Holly and Others* 53 Cr App R 519

*Mogroy v Director of Public Prosecutions* (1973) 1 All ER 503

*Mubashion Aiyepole* 14 WACA 152

*Patrick Cole v The State* [1974-82] 1 SLBALR 87

*R v Butt* 15 Cox 564

*R v McVitie* (1960) 2 All ER 498

*R v Oliphant* (1905) 2 KB 67

*R. v Solomons* (1909) 2 KB 980, 2 Cr App R 288

*R. v Effiong Edat Itah* (1943) 9 WACA 35

*State v Lawmann* (1961) GLR 698

*The Comptroller of Customs v Micheal Nitio Effiong* 7 WACA 35

*Tommy Kargbo & Ors v The State* (1975, Court of Appeal)

#### Legislation referred to

*Court of Appeal Rules 1973 (Public Notice No 28 of 1973) rule 21*

*Criminal Procedure Act No 32 of 1965 ss 50, 51(1), (2), Sch 1, r 3(5), Form 19*

*Falsification of Accounts Act 1875 s 1*

*Larceny Act 1916*

#### Appeal

This was an appeal to the Supreme Court by the State against the judgment of the Court of Appeal of Sierra Leone which on 6 July 1976 quashed the convictions of the respondent, Irene Young, and a cross appeal by the 2<sup>nd</sup> respondent, Joseph Koroma, against the same judgement of the Court of Appeal which affirmed his conviction for falsification of accounts. The facts appear sufficiently in the following judgment.

*Solicitor-General and Dr Bankole Thompson, Senior State Counsel, for the State.*

*Mr J H Smythe QC and Mrs Hannah Ahmed for the 1<sup>st</sup> respondent.*

*Mr N D Tejan-Cole for the 2<sup>nd</sup> respondent.*



**COLE CJ:** The respondent, Irene Younge, one Joseph Koroma and one Samuel Fowler (who is now dead) were charged on an indictment dated the 16<sup>th</sup> day of July, 1974 on 13 counts of falsification of accounts under the Falsification of Accounts Act 1875 and larceny by a servant under the Larceny Act 1916.

Irene Younge was charged separately in counts 1, 5, 9 and 10 with falsification of accounts. She and Joseph Koroma were charged in counts 4 and 8 with larceny by a servant.

Joseph Koroma was charged in counts 2, 3, 6 and 7 with falsification of accounts. Samuel Fowler (with whom we are not concerned for the purposes of this appeal) was separately charged in counts 11 and 12 with falsification of accounts. In count 13 he was also charged with Irene Younge with larceny by a servant.

On the 6<sup>th</sup> July 1976, the Court of Appeal finally determined the appeal. The convictions of Joseph Koroma and Samuel Fowler were affirmed as regards the counts relating to falsification of accounts. The convictions of Irene Younge on the whole indictment were quashed, the sentences were set aside and verdicts of acquittal and discharge were substituted.

The Attorney-General on behalf of the State being aggrieved with the judgement of the Court of Appeal as regards the respondent Irene Younge, sought leave of the Court of Appeal to appeal to the Supreme Court of Sierra Leone against the judgement on two grounds namely:

- (1) Whether in law persons named and charged with an accused person on same indictment can be regarded as innocent agents of that person;
- (2) Whether agreement is a necessary ingredient in the offence of concurring in making a false document with intent to defraud contrary to section 1 of the *Falsification of Accounts Act 1875*.

The Court of Appeal by order dated the 20<sup>th</sup> day of August, 1976 granted the State leave to appeal to this court on those two grounds.

As I have already stated the appeal by the State does not affect the respondent Joseph Koroma.

The respondent, Joseph Koroma, however, sought special leave from this court to appeal from his conviction. On the 15<sup>th</sup> March, 1977, after listening to argument on both sides, we granted special leave to appeal to the 2<sup>nd</sup> respondent with regard to grounds 1(a), (d) and (e) as filed. (I shall hereafter refer to Joseph Koroma as the "cross appellant".) These grounds read as follows:

- 1(a) In a trial by judge alone, when the main contention is the alteration of figures on charges of falsification of accounts, the court ought not to be assisted before arriving at its conclusion.
- (d) Whether as (1) above, circumstantial evidence against one accused can be used against another accused charged in the same indictment but not on the same count.
- (e) Where a clerk or servant is charged with falsification of accounts by making a false entry on a document belonging to his employer, whether he commits a further falsification of accounts if he omits the false entry in another accounting book of his employer but enters the correct entry."

In the course of the arguments some doubts were raised as to whether the indictment was bad, defective or good. This was because the particulars of offence were not in the form set out in Form 19 of the Appendix to Rules to the First Schedule of the Criminal Procedure Act No 32 of 1965. In this connection sections 50 and 51(1) and (2) of the Criminal Procedure Act which relate to informations and indictments are relevant. These sections read as follows:



"50. The rules contained in the first Schedule with respect to informations and indictments shall have effect as if enacted in this Act, but these rules may be added to, varied, revoked, or replaced by further rules made by the Chief Justice with the approval of Parliament, and the Chief Justice is hereby empowered to make such further rules.

51(1) Every information or indictment shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.

(2) Notwithstanding any rule of law or practice, an information or indictment shall subject to the provisions of this Act, not be open to objection in respect of its form of contents if it is framed in accordance with the rules under this Act."

In order to appreciate the true position, perhaps it would be of interest to set out the relevant parts of the indictment which relates, to this appeal. They consist of counts 5 and 9 as regards the 1<sup>st</sup> respondent Irene Younge and counts 2, 3, 6 and 7 as regards the cross-appellant Joseph Koroma.

The relevant counts in question ie, counts 2, 3, 5, 6, 7 & 9 are as follows:

"Second count

Statement of offence: Falsification of accounts, contrary to section 1 of the Falsification of Accounts Act, 1875.

Particulars of offence: Joseph Koroma. On the 26<sup>th</sup> day of July, 1972 in the Judicial Department, Freetown in the Western Area of the Republic being a Clerk or Servant to the said Republic, with intent to defraud made a false entry on a payment slip belonging to the said Republic, his employer purporting to show that on the said day the sum of Le801.00 had been paid into the sub-Treasury of the said department by A S Kamara in favour of S B Pratt.

Third count

Statement of offence: Falsification of accounts, contrary to section 1 of the Falsification of Accounts Act, 1975

Particulars of offence: Joseph Koroma on the 26<sup>th</sup> day of July, 1972 in the Judicial Department, Freetown in the western Area of the Republic, being a Clerk or Servant to the said Republic, with intent to defraud omitted from or in a Revenue Cash Book belonging to the said Republic his employer a material particular, to wit, that the sum of Le801.00 had been paid into the sub-Treasury of the said department by A B Kamara in favour of S B Pratt.

Fifth count

Statement of offence: Falsification of accounts, contrary to section 1 of the Falsification of Accounts Act, 1875.

Particular of offence: Irene Young on the 20<sup>th</sup> day of November 1972 in the Judicial Department, Freetown in the Western Area of the Republic, being a Clerk or Servant to the said Republic with intent to defraud concurred in making a payment voucher No 74282 belonging to the said Republic her employer, purporting to show that on the said day the sum of Le375.65 which had been previously paid into the sub-Treasury of the said Department by A E Cole in favour of A S Johnson was on the said date payable to the said A S Johnson.



Sixth count

Statement of offence: Falsification of accounts, contrary to section 1 of the Falsification of Accounts Act, 1875.

Particulars of offence: Joseph Koroma, on the 18<sup>th</sup> day of November, 1972 in the Judicial Department Freetown in the Western Area of the Republic, being a Clerk or Servant to the said Republic with intent to defraud made a false entry on a Payment Slip belonging to the said Republic, his employer, purporting to show that on the said day the sum of Le375.65 had been paid into the sub-Treasury of the said Department by A E Cole in favour of A S Johnson.

Seventh count

Statement of offence: Falsification of accounts, contrary to section 1 of the Falsification of Accounts Act, 1875.

Particulars of offence: Joseph Koroma, on the 18<sup>th</sup> day of November, 1972 in the Judicial Department Freetown in the Western Area of the Republic being a Clerk or Servant to the said Republic with intent to defraud omitted from or in a Revenue Cash Book belonging to the said Republic, his employer, a material particular, to wit that the sum of Le375.65 had been paid into the sub-Treasury of the said Department by A E Cole in favour of A S Johnson.

Ninth Count

Statement of offence: Falsification of accounts, contrary to section 1 of the Falsification of Accounts Act, 1975

Particulars of offence: Irene Younge on the 2<sup>nd</sup> day of March, 1973 in the Judicial Department, Freetown in the Western Area of the Republic being a Clerk or Servant to the said Republic with intent to defraud concurred in making a payment voucher No 105210 belonging to the said Republic, her employer, purporting to show that on the said day the sum of Le300.00 which had previously been paid in to the sub-Treasury of the said Department by B S Sandy in favour of E E Jones was on that day payable to the said E E Jones."

Form 19 in question is as follows:

"Statement of OffenceFirst Count

Falsification of accounts, contrary to section 1 of the Falsification of Accounts Act, 1875.

Particulars of Offence

A B on the ... day of ... at ... in the Western Area of Sierra Leone, being clerk of Province ... and Servant to C D with intent to defraud, made or concurred in making a false entry in a case book belonging to the said C D, his employer, purporting to show that on the said day Le100 had been paid to L M.

Statement of offence

Second Count: same as first count.

Particulars of Offence

A B on the ... day of ... at ... in the Western Area of Sierra Leone, being clerk or Province ... and Servant to C D with intent to defraud, omitted or concurred in omitting



from or in a cash book belonging to the said C D, his employer, a material particular that is to say, the receipt on the said day of Le100 from H S.

Mr Thompson on behalf of the State argued that the indictment is good in law. He relied on section 51 of the Criminal Procedure Act 1965 as well as the case of *R. v Solomons* (1909) 2 KB 980 for this proposition. In this regard, he was supported by Mr N D Tejan-Cole, learned counsel for the cross-appellant, Joseph Koroma.

Mr Thompson also argued that even if any objection can be taken to the indictment at all, it is that the indictment is defective because of insufficiency of particulars. He further argued that if that is the case then the defect is cured by the respective verdicts provided there is sufficient evidence in support of these verdicts. The authorities of *R v McVitie* (1960) 2 All E R 498, *Tommy Kargbo & Ors v The State* (1975, Court of Appeal), *Patrick Cole v The State* [1974-82] 1 SLBALR 87 in which the judgment was delivered by the Court of Appeal of Sierra Leone on 21 December 1975, were cited in support of this proposition. Our attention was drawn also to the case of the *State v Lawmann* (1961) GLR 698, in which *McVitie's* case was followed. Other cases referred to were those of *Ababio v The State* (1966) GLR 422 at p 425; *The Comptroller of Customs v Micheal Nitio Effiong* 7 WACA 35 at p 36.

Mr Smythe, on the other hand argued that as regards the counts relating to the respondent Irene Younge, they are bad for want of particulars. He relied on the provision of rule 3(5) of the Schedule to the Criminal Procedure Act 1965 which reads as follows:

"(3) The forms set out in the Appendix to these rules, or forms conforming thereto as nearly as may be, shall be used in cases to which they are applicable; and in other cases forms to the like effect or conforming thereto as nearly as maybe shall be used, the statement of offence and the particulars of offence being varied according to the circumstances in each case.

He also relied on Form 19 of the Appendix to these rules. He submitted that there had not been substantial compliance with those forms. The pith of his argument is that where forms are prescribed by statute those forms must be used. To do otherwise would be going out of the provision of the statute. He urged on us that the particulars of the relevant counts as far as the respondent Irene Younge was concerned were not in the relevant form set out in the Appendix to the Rules. He submitted that being the case the indictment was bad in law since one aspect of the *actus reus* of the offence was "making or concurred in making" not "concurred in making" as stated in the Particulars of Offence. He further submitted that "make or concur in making" is one and indivisible. He added that on the authorities of *R. v Effiong Edat Itah* (1943) 9 WACA 35, *Michael Williams Holly and Others* 53 Cr App R 519, *Brian Gidern Astor and Malcolm Thomas Holly* 55 Cr App R 48, *Mubashiou Aiyepole* 14 WACA 152 the indictment was bad.

I have given due consideration to the authorities, I have come to the conclusion that the counts in the indictment in every respect substantially comply with the provision of the Criminal Procedure Act 1965. The question of the effect of a bad or defective indictment does not therefore arise.

Mr Smythe also submitted that there is no offence known to our laws as "concurring in making". Suffice it to say the offence charged is falsification of accounts under the Falsification of Accounts Act 1875.

Let me now turn to the facts of this case. They are succinctly set out in the judgement of the learned trial judge which I quote as follows:

"The facts of the case are simple. All three accused are employed by the Sierra Leone Government. They are attached to the Sub-Treasury of the Judicial Department. The 1<sup>st</sup>



accused is a Sub-Accountant and the 2<sup>nd</sup> and 3<sup>rd</sup> accused are Cashiers. They were so engaged at the material time when the alleged offences were committed.

It was the duty of the Cashiers to receive payment slips from members of the public who had been condemned to pay sums of money in favour of a successful litigant in a claim before the Magistrates Courts. These slips contain the Particulars – the parties, the amount and date. These payment slips are prepared by the bailiffs in the Magistrates Office on request of whoever wants to pay this amount in and they are made in duplicate. The person paying presents them to the Cashier at the Sub-Treasury where the Cashier receives the money, issues a receipt to the person paying, stamps the back of the slip and fills in the details – amount paid, date, and receipt number. One copy is returned to the payee who returns it to the Bailiff for filing. He keeps his receipt. This amount is posted into a Revenue Cash Book by the Cashier. At the close of the business for the day, the payment slips are passed to a clerk who posts them into a Ledger – Magistrate Court's Ledger. These slips are passed on to a filing clerk who keeps them in a folder. When a claim is made for the amount a voucher clerk ascertains the identity of the claimant by interrogation and if he is satisfied, the slip is retrieved from the folder and the clerk informs the claimant when to call for the payment. This clerk prepares a voucher – a payment voucher with the aid of the slip and the Magistrates Courts Ledger. The entries must agree. After she has prepared the voucher she will pass the slip with the said Ledger for checking to the Sub-Accountant. She checks and if satisfied, she will sign the voucher in the space marked "passed for payment". The Clerk takes voucher back to the Accountant who does spot checking and signs in the space marked "approved and certified correct". The voucher is cut out and passed to the cashier who eventually pays the payee on demand. This he does after ascertaining identity of payee.

In the course of three such transactions, two in 1972 and one in 1973, the prosecution, allege that the three accused made false entry on the slips or made payment vouchers as a result of those slips or omitted to make entry of a material particular in the Revenue Cash Book, and by such acts stole certain sums of money belonging to the Sierra Leone Government.

The 2<sup>nd</sup> and 3<sup>rd</sup> accused are alleged to have made the false entries on the payment slips and omitted to make entries of material particulars in the Revenue Cash Book; and the 1<sup>st</sup> accused is alleged to have concurred in making the payment vouchers."

I agree with the facts as stated.

The question arises whether on the evidence before the learned trial judge the respondent Irene Younge procured the witness Madeline Coker to prepare or cause to be made the voucher in question – Exhibits D1 and D2 which are the subject matters of Counts 5 and 9 and which are the subject matters of this appeal as regards the respondent Irene Younge.

Secondly, did the respondent Irene Younge concur as a matter of fact according to the evidence in making these documents – Exhibits D1 and D2? On these two points the learned trial judge found as follows:

"There is evidence that the police executing a search warrant at the house of 1<sup>st</sup> accused found Exhibit "P1 and 2". PW 11 Grace Kakpa said 1<sup>st</sup> accused gave her to copy out from another paper. It is true that the dates and figures on Exhibits P1 and P2 do not correspond with any of those on Exhibit "A" but these are relevant facts to the issue. Why did she have to give the girl these particulars to copy? The girl said this was the first time the 1<sup>st</sup> accused had asked her to do any copying for her. Despite her denial, I believe PW 11. Concealment of a vital information about the torn pages in Exhibit "A" can only import an element of fraud. I am satisfied that 1<sup>st</sup> accused knew her "game was up" so she



did everything possible to conceal it from the Accountant who was her immediate boss. In my view Mrs Coker PW 4 was an innocent agent and it was the 1<sup>st</sup> accused who procured Mrs Coker and concurred in making Exhibit D1 and D2. When she did this she had the fraudulent intent to defraud the Sierra Leone Government."

I have examined carefully the evidence and I have no difficulty whatsoever in accepting the findings of the learned trial judge on these points.

I am also satisfied on the evidence that the witness Madeline Coker, as the learned trial judge found, was not only a witness of truth, but an innocent agent of the respondent, Irene Younge. In this connection, I would apply the principle of law laid down in the cases of *R. v Butt* 15 Cox 564; *R. v Oliphant* (1905) 2 KB 67 and *R v Solomons* (1909) 2 KB 980; 2 Cr App R 288.

Mr Smythe submitted that there is no evidence of concurring in making the voucher in question. There is abundant evidence both from the side of the prosecution and that of the respondent Irene Younge that she the respondent Irene Younge signed the payment voucher in question. What better evidence of concurrence in the ordinary sense of the word does one want? I find that the evidence clearly supports that aspect of the case.

The Court of Appeal in the course of their learned judgement in disturbing the findings of the learned trial judge in this regard said inter alia:

"In this case the 2<sup>nd</sup> accused was directly involved according to the evidence; but a new aspect – that of attempting to connect the 1<sup>st</sup> accused also directly was brought in. PW4 Madeline Coker said in evidence that Exhibit C2 was handed to her by 1<sup>st</sup> accused with instructions 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 1<sup>st</sup> accused; it is however significant that after the checking she 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."

I appreciate that the reversal of a finding of fact by a judge who has tried a case without the assistance of a jury as well as a finding of fact by an appellant tribunal is well within the competence of such trial judge as well as the appellate tribunal. This Court, in the case of *El Nasr Export & Import Company Limited v Mohie, El Deen Mansour* (Supreme Court, Civil Appeal No 3/73, 25 April 1974), in delivering the judgement of the court on the 25<sup>th</sup> April, 1974 I said inter alia:

"One of the main grounds of complaint before this Court by the appellant was that the Court of Appeal was wrong in law in interfering and reversing the findings of fact by the learned trial judge. There is substance in this ground of complaint. It is true that rule 21 of the Court of Appeal Rules 1973 (Public Notice No 28 of 1973) gives very wide and sweeping power to the Court of Appeal even to the extent of re-hearing the whole case. At the same time it is settled law and good sense that it should be on the rarest occasion and in circumstances where the appellate court is convinced by the plainest considerations, that it would be justified in finding that the trial judge had formed a wrong opinion."

With the greatest respect to the Court of Appeal, no justifiable reason has been shown by their judgement for disturbing the findings of fact of the learned trial judge. On the contrary, it is clear from the the judgement that what operated in their minds was the fact that agreement in the legal sense as in the crime of conspiracy, for example, was a necessary ingredient of the offence of concurring in making a false document with intent to defraud contrary to the Falsification of Accounts Act 1875. I do not think this is necessarily the case.



It is not uninteresting to note that the finding of the learned trial judge that the witness Madeline Coker was an innocent agent was not disturbed by the Court of Appeal. The whole tenor of the judgement of the Court of Appeal shows clearly that there appears to be no dispute as to the falsity of the payment vouchers involved in Counts 5 and 9 – Exhibits D1 and D2.

As to knowledge by the respondent Irene Younge of the falsity of these documents it might be of interest to refer to the evidence of the witness Rosaline Benjamin who was the Accountant of the Judicial Sub-Treasury and immediate boss of the respondent Irene Younge at the material time; so also that of the witness Gibert Nethane Jarett who for a while was also Accountant posted to the Judicial Sub-Treasury. They both testified to the fact that before payment vouchers were passed for payment in the Judicial Sub-Treasury the Sub-Accountant should ensure that:

“the name of payee, amount Receipt Voucher quoted, the case for which the amount was paid are recorded in the Magisterial Ledger. On the payment side of this Ledger, the date voucher is supposed to be paid, name of payee and the amount”.

In this connection, the Court of Appeal seemed to have relied heavily on the fact that “There is no account of how the checking was conducted by the 1<sup>st</sup> accused”.

Quite apart from the fact that this was a matter well within the knowledge of the respondent Irene Younge, she herself in her evidence said about this matter, *inter alia*:

“I see Exhibit D2, it agrees with Exhibit “C3”. I checked it with the Ledger Exhibit “A” and it was there. I see Exhibit “A” and Exhibit “C1”. When I checked it was in the Ledger Exhibit “A”.

It is highly significant to note that according to the evidence the pages of the Ledger Exhibit “A” which were supposed to contain the entries relating to Exhibits C1 and C3 were missing to the knowledge of the respondent Irene Younge long before police investigations started. She never reported that matter to anyone in authority; she did nothing about it.

In spite of the very impressive arguments urged on us by learned counsel for the respondent Irene Younge, I am of the opinion that the Honourable Attorney-General, acting on behalf of the State had good grounds to be aggrieved by the decision of the Court of Appeal in respect of the respondent Irene Younge.

Taking the evidence as a whole, I am more than satisfied that the prosecution proved their case beyond reasonable doubt and the learned trial judge was justified in saying that that was the case as regards counts 5 and 9 with regard to the respondent Irene Younge. I regret to say that the Court of Appeal in considering the case of this respondent applied wrong principles of law. I would, in the circumstances, reverse the decision of the Court of Appeal as regards the respondent Irene Younge, set aside the order of acquittal and discharge and restore the convictions and sentences of the learned trial judge in respect of counts 5 and 9.

I now turn to the appeal of the cross appellant Joseph Koroma. His grounds of appeal are as follows:

- “(c) whether as (1) above, it is safe to convict on the basis that the appellant is one of a number of persons who “deals” with alleged document.
- (d) whether as (1) above, circumstantial evidence against one accused can be used against another accused charged in the same indictment but not on the same count.
- (e) where a clerk or servant is charged with falsification of account by making a false entry on a document belonging to his employer, whether he commits a further falsification of accounts if he omits the false entry in another accounting book of his employer but enters the correct entry.”



It might be noted that although special leave was not granted for another ground of appeal to be argued by this appellant namely, that:

"the verdict was unreasonable or could not be supported having regard to the evidence"

but in my view the whole trend of the argument advanced in favour of the cross appellant turned on that ground.

The evidence on which the State relied for their case on the counts in question was in substance circumstantial. It is a legal principle hallowed by the ages that circumstantial evidence is receivable in criminal cases. What the High Court as well as an appellate court, in my view should seek to see is that where the prosecution's case is substantially based on circumstantial evidence the evidence must be such as to satisfy the learned trial judge that the facts proved are not only consistent with the guilt of the accused, but also such as to be inconsistent with any other reasonable conclusion. *Mogroy v Director of Public Prosecutions* (1973) 1 All ER 503.

I have searched in vain to find in the evidence before us of any such co-existing circumstances.

I have carefully considered the evidence as a whole and I agree wholeheartedly with the learned trial judge as well as the Court of Appeal that his conviction were well sustained with the exception of the conviction relating to counts 3 and 7. In regard to these counts, Mr Bankole Thompson, with his usual candour did concede that as the particulars in respect of those counts stood, they were both inconsistent and anomalous to the other charges contained in the indictment against the respondent Joseph Koroma. I agree with him. On a close study of the particulars in question it would appear that the State was approbating and reprobating on the same issue. For, if the alleged entries were false there could not notionally be a duty on the part of the cross appellant Joseph Koroma to post them in his employers' accounts books. I share the view that the end result would amount to a licence to perpetrate the criminality complained of. In those circumstances. Where the respondent Joseph Koroma was found guilty on count 2 and 6 it was inconsistent for him to be found guilty on counts 3 and 7, I would therefore quash the convictions in respect of those counts, set aside the sentence imposed and would order that an acquittal and discharge be entered in respect of those two counts namely, counts 3 and 7.

I have nothing more to add except to dismiss his appeal as regards the other counts in respect of which he was convicted.

Reported by Glenna Thompson