LUSENI v THE STATE

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COURT OF APPEAL FOR SIERRA LEONE, Criminal Appeal 4 of 1978, Hon Mr Justice Ken E O During JA, Hon Mr Justice F A Short JA, Hon Mr Justice S M F Kutubu JA, 29 February 1979

[1] Criminal Law and Procedure – Summing up – Judge required to sum up and analyse evidence and relate evidence to the law – Reading out evidence insufficient

The appellant appealled against conviction for manslaughter and reckless driving based on a number of inadequacies in the judge's summing up.

Held, per Ken During JA, allowing the appeal and acquitting the appellant:

1. A judge is required to sum up the evidence before the court, make a proper analysis of the evidence and relate the evidence to the law. Reading out the evidence of the appellant and witnesses to the jury was not a proper summing up. Nor was reading out passages from text books and Acts of Parliament but failing to apply the law to the facts, which was an absolute necessity. There should also be proper analysis of the evidence. The judge's summing up precluded the jury from properly considering the appellant's defence.

Legislation referred to
Act No 62 of 1964 ss 38, 39(1)

Appeal
This was an appeal by Senesi Luseni against conviction for manslaughter and reckless driving. The facts appear sufficiently in the following judgment.

Mr Garvas J Betts for the appellant.
Miss M A C Jones, Senior State Counsel, for the State.

KEN DURING JA: This is an appeal against the decision of the High Court, M O Taju-Deen J Presiding, given on the 22nd day of February 1978, held at the Port Loko Session.

The appellant was charged with six counts for committing the offence of manslaughter and found guilty on all counts of reckless driving.

Learned counsel for the appellant complained that what the learned trial judge apparently did in his summing up was to call out the name of each witness and then proceed to read out what the witness said from the witness box and that he did the same when it came to the defence. A judge is expected to sum up the evidence before the court, make a proper analysis of the evidence and relate the evidence to the law. Reading merely the evidence of the appellant could not be regarded as a summing up. I have read what purports to be summing up by the learned trial judge. I fail to see how one could say there was a real summing up to the jury. Learned counsel for the appellant submitted and I think quite rightly that the fact that the second light went out leaving the vehicle of the appellant in complete darkness was enough for the trial judge to have told the jury that they were entitled to consider whether there was a mechanical defect. I entirely agree with counsel for the appellant that the manner of the trial judge's summing up precluded the jury from considering the defence of the appellant.

Counsel for the appellant complained that the trial Judge should have directed the Jury that if on the facts of the case they could not find the appellant guilty of manslaughter, reckless

driving or dangerous driving they should bring in a verdict of acquittal. The learned trial judge failed to do this and therefore completely went wrong.

In his summing up all the learned trial judge did was to read out passages from text books and Acts of Parliament. He failed to apply the law to the facts which was his duty. Failure to apply the law to the facts is absolutely necessary. There should also be proper analysis of the evidence. The learned trial judge for example read out section 38 of Act No 62 of 1964 which creates the offences of reckless driving and also read out section 39(1) of the said Act which creates the offence of dangerous driving without telling the jury what amounted in law to reckless driving and also what in law amounted to dangerous driving.

The learned trial judge referred to an alleged visit to the locus in quo and relied on what he saw presumably during the visit when no evidence was led on the alleged visit. He was actually wrong to have relied on what he presumably saw when no evidence was led on the alleged visit. There is no note that the accused was present at the locus in quo. It would have been necessary for the appellant during the alleged visit to have been present since he was charged with committing a felony.

Learned counsel for the State indeed rightly stated before us that she could not support the conviction. In my view the summing up was most unsatisfactory. For the reasons I have stated above I would allow the appeal, set aside the verdict and enter a verdict of acquittal and discharge on all counts.

Reported by Anthony P Kinnear