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CR App. 9/2003

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:-

SAMUEL SESAY
Vs.
THE STATE

C O R A M:-

Hon. Mr. Justice John Kamanda - J.A
Hon. Mrs. Justice S. Bash-Taqi - J.A.
Hon. Mr. Justice S.A.Ademosu. - J.A.

R.A.Caesar for the Appellant
C.J. Peacock for the Respondent

JUDGMENT DELIVERED ON THE 27nd DAY OF NOVEMBER, 2006

ADEMOSU J.A.

On 6th February, 2003 the Appellant was arraigned before the Kenema High Court of Sierra Leone holden at Kenema on a two count indictment for the offences of Murder Contrary to Law and Wounding with intent Contrary to Section 18 of the Offences Against the Person Act 1861 and to which he pleaded not guilty. On the 12th of February, 2003 the Jury was empanelled. But it is observed that after the jurors had been sworn and had chosen their Foreman there is no evidence that the indictment was read and explained to them and to tell them that upon the indictment the Accused/Appellant had pleaded not guilty. Suffice it to say that the provisions of Section 187 of the Criminal Procedure Act No.32 of 1965 relating to giving the accused in charge of the jury were completely ignored. The Trial Judge simply started receiving evidence from witnesses for the prosecution. There is no evidence that the jury took part in the whole proceedings because one would have expected the record to show whether or not questions were asked by the jury. This trend continued until the case for the prosecution closed. For the defence one witness was called after which the Defence's case closed. It was after the Prosecuting Counsel had addressed the court, that the Defence Counsel advised the appellant to plead guilty to a lesser offence of Manslaughter and also pleaded guilty to the offence of Wounding with Intent. The Trial Judge without asking the jury for their verdict, recorded a verdict of guilty on its own and sentenced the Appellant to a term of 50 years imprisonment on each count but that the sentences were to run concurrently.

Mr. Caesar for the Appellant's contention is that the Appellant having pleaded guilty to a lesser offence of Manslaughter he should not have been sentenced to 50 years imprisonment. In other words; his complaint is that the sentence is excessive. He started his argument by saying that the Learned Trial Judge erred, having heard the plea of the Appellant he failed to direct the jury to return a verdict of guilty, before he proceeded to pass sentence on the Appellant. For this proposition, he relied on the case of R.v Hayes (1950) 2 ALL ER, 587. In that case the accused changed his plea of not guilty to one of guilty after he was given in charge of the jury; and without any verdict taken he was sentenced. The conviction was quashed on the ground that the trial was a nullity. Coming back home, the local authority on this issue is Basma v. Reginam (1957-60) A.L.R.S.L. 301.(W.A.C.A.) in which the court

emphasised the principle that in Rv Hayes (Supra) the jury must return a verdict even where accused changes his plea to guilty during trial. The court held that the trial is a nullity where verdict is not taken.

I must state here that the record of proceedings in this matter does not indicate whether or not the jury took part in the purported trial of the Appellant and consequently the inescapable conclusion is that the purported trial is a nullity. If the trial is a nullity the next point to consider is whether or not to order a retrial. But before deciding to order a retrial the court is duty bound to examine the evidence adduced properly so as to ascertain whether the evidence taken as a whole disclosed a substantial case against the appellant and to ensure that a retrial would not occasion a greater miscarriage of justice. Mr. Caesar's argument is that the appellant has spent almost four years awaiting the appeal and bearing in mind that he is a first offender it would work a great injustice to order a retrial. The theme of Mr. Peacock's submission is that he conceded that the trial is a nullity. He submitted that the legal consequence of it is for the court to order a retrial. But when his attention was drawn to the fact that the accused had already spent some four years coupled with the fact that it may not be possible to get all the witnesses to start a fresh trial in Kenema, Mr. Peacock dropped the idea of ordering a retrial. He urged the court to decide on a sentence that would meet justice of the case on each count.

This judgment will not be complete without considering the sentence of 50 years imprisonment passed on the 2nd Count of Wounding with Intent. In the considering the sentence passed we are guided by what the Court of Appeal said in Mottidge v. R.(1964-66) A.L.R.S.L. 571 at Page 573 on the issue of long prison sentence for the offence of wounding with intent. In that case although there was no appeal against the sentence of 10 years which in the face of the evidence seemed to the court to be unnecessarily severe. Here is a sentence of 50 years. The court held that such sentences can only be justified on a proved record that the person concerned was of a violent nature and had previous convictions for similar violent acts. In the plea mitigation among the things said in his favour was that the accused/appellant was a first offender and that he had never had problem with anybody. I believe that the trial Judge could not have taken these facts into consideration before he passed a sentence of 50 years imprisonment. It goes without saying that this sentence is too severe and inordinate. On the proved facts and the circumstances of this case, I think a sentence of two (2) years imprisonment will meet the justice of the case. In the premises, the sentence of 50 years imprisonment is reduced to two (2) years imprisonment.

As regards the offence of Manslaughter, the appellant having already pleaded guilty to the offence, I think it would be fruitless ordering that he be retried for the same offence, mindful of the fact that it would be unfair to the relatives of the Victim if we set the appellant free instantly. For this reason, the sentence of 50 years imprisonment passed on him is reduced to six years imprisonment.

The Sentences to run Concurrently.